UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	2:14-cv-08909-SVW-PLA	Date	November 24, 2015
Title	*Judy Anne Mikovits v. Adam Garcia et al*		

Present: The Honorable	STEPHEN V. WILSON, U.S. DISTRICT JUDGE	
Paul M. Cruz		N/A
Deputy Clerk		Court Reporter / Recorder
Attorneys Present for Plaintiffs:		Attorneys Present for Defendants:
N/A		N/A

Proceedings: IN CHAMBERS ORDER GRANTING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT [100], DISMISSING PLAINTIFF'S COMPLAINT UNDER RULE 8, AND DENYING DEFENDANTS' MOTIONS [109][113][114][115] AS MOOT.

Procedural Background

On November 17, 2014, plaintiff Judy Anne Mikovits ("Plaintiff" or "Mikovits") filed a *pro se* complaint against twelve named defendants and three unidentified Ventura County Deputy Sheriffs (collectively the "Defendants"). Dkt. 1. The case was initially assigned to Magistrate Judge Abrams, but was reassigned to this Court when Plaintiff retained counsel. Dkt. 76. The Court held a hearing on June 15, 2015, and dismissed the complaint, giving Plaintiff leave to amend. *See* Dkt. 89.

On July 27, 2015, Plaintiff filed her first amended complaint ("FAC"). Dkt. 92. In her FAC, Plaintiff alleges: (1) a host of constitutional violations, (2) unreasonable search and seizure without a warrant, (3) false arrest with a warrant, (4) unnecessary delay in processing and releasing, (5) false arrest without a warrant by a peace officer, (6) false arrest without a warrant by private citizens, (7) abuse of process, (8) fraud, (9) civil conspiracy, (10) intentional infliction of emotional distress, and (11) defamation. *See* FAC ¶¶ 128–86.

On August 13, 2015, Defendant Geoff Dean ("Dean"), the Ventura County Sheriff, filed a motion for summary judgment. Dkt. 100.

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Exhibit "1"

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Uncontroverted Facts

Plaintiff's FAC describes a vast conspiracy involving political corruption, organized crime, and scientific misconduct. But it is undisputed that Dean and the Ventura County Sheriff's Office ("VCSO") played a very limited role in the controversy.

On November 16, 2011, a Washoe County, Nevada Justice of the Peace issued an arrest warrant for Plaintiff, based on felony charges. Dkt. 79-1. The next day, a University of Nevada at Reno Police Officer filed a second criminal complaint in the Justice Court of Reno Township, County of Washoe. Dkt. 79-2. Dean and VSCO had no role in issuing the criminal complaint or the warrant.

On Friday November 18, 2011, Plaintiff was arrested in Ventura County, California. The arrest was not made by Dean or other VCSO personnel. VCSO maintains in internal database where it documents all VCSO contacts. Dkt. 100, Miller Decl. ¶¶ 6–7. If VSCO had any enforcement contact with Plaintiff, including an arrest or citation, documentation would be required and that contact would be entered into the database. *Id.* ¶ 12. VSCO had no record of any patrol contacts with Plaintiff. *Id.* ¶ 11.

On the day of her arrest, Plaintiff was booked at the VSCO Pre-trial Detention Facility. *Id.* ¶ 18. At some point during her incarceration, she was transferred to the Todd Road Jail Facility. *Id.* ¶ 24. She remained in VSCO custody until her release, several days later. *See id.* ¶ 19.

On Monday, November 21, 2011, a fugitive complaint was filed against Plaintiff, pursuant to California Penal Code § 1551.1. Dkt. 79-4. Plaintiff was arraigned on Tuesday, November 22, 2011. *Id.* She was represented by an attorney named Paul B. Tyler. *Id.* After the hearing, Plaintiff was remanded to VSCO custody. *See id.* Later that day, VSCO released Plaintiff from custody. Miller Decl. ¶ 19. Plaintiff was given instructions to return to Reno, Nevada and to turn herself into law enforcement authorities, the following Monday. Dkt. 121 ¶ 28.

The charges against Plaintiff in Nevada were subsequently dismissed. On June 11, 2012, the Washoe County District Attorney voluntarily dismissed the criminal complaint against Plaintiff without prejudice. Dkt. 109-3.

Plaintiff filed her initial complaint in this case, naming defendant Dean and others, on November 17, 2014. Dkt. 1.

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Legal Standard

Summary judgment is appropriate if there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c). The moving party bears the initial responsibility of informing the court of the basis of its motion, and identifying those portions of the pleadings, depositions, answers to interrogatories, admissions, or affidavits that demonstrate the absence of a triable issue of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). In determining a motion for summary judgment, all reasonable inferences from the evidence must be drawn in favor of the nonmoving party. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986). A genuine issue exists if "the evidence is such that a reasonable jury could return a verdict for the nonmoving party," and material facts are those "that might affect the outcome of the suit under the governing law." *Id.* at 248. However, no genuine issue of fact exists "[w]here the record taken as a whole could not lead a rational trier of fact to find for the non-moving party." *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986).

Application

Dean has produced substantial unrefuted evidence establishing his limited involvement in Plaintiff's claims.[1] The uncontroverted evidence establishes that her claim is now time barred.[2]

Plaintiff does not dispute that the applicable limitations period for her § 1983 claims against Dean is two years. *See Jackson v. Barnes*, 749 F.3d 755, 761 (9th Cir. 2014); Dkt. 120, 16–18. Instead Plaintiff argues that the statute of limitations is tolled because either (1) Dean was part of the conspiracy that did not conclude until July 22, 2015 or (2) criminal charges remained open against Plaintiff.

Plaintiff contends that her claims against Dean are not time barred because he may have been part of the larger conspiracy described in her FAC. *See* Dkt. 120, 13–16. But she has not introduced admissible evidence that could lead a reasonable fact finder to conclude that Dean was involved in a larger

[1] Plaintiff concedes that her claims for false arrest by a private party, abuse of process, and defamation against Dean should be dismissed. Dkt. 120, 2. But Plaintiff argues that more discovery is required for her other claims. *See id.* at 4.
[2] The Court notes that it is far from clear whether Plaintiff could have stated a claim against Dean, even assuming that her claim was not time barred.

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plot. Her allegations of processing irregularities are speculative, if not directly controverted. Though Plaintiff alleges that she was not photographed, not informed of her charges, denied access to counsel, and not seen by a magistrate immediately, *id.* at 13, these claims are contradicted by other evidence. On the next page of her filing, Plaintiff concedes that she was informed that she was being charged as a "fugitive from justice." *Id.* at 14. Dean provided Plaintiff with a photograph taken from her booking which she claims, without any evidentiary support, is in fact a forgery. Dkt. 128, 18. Plaintiff was represented by counsel at her arraignment. Dkt. 79-4. And as Dean explains, her arraignment took place within the time prescribed by California Penal Code § 825. Dkt. 134, 6–7; *see Youngblood v. Gates*, 246 Cal. Rptr. 775, 777 (Cal. Ct. App. 1988) (employing two-day rule under § 825). Dean also represents that he has provided Plaintiff with her fingerprint card and the audio recordings of multiple telephone calls made while she was in VCSO custody. Dkt. 134, 8. Plaintiff's uncontroverted allegations only establish that her time in jail was unpleasant and that she was not processed as fast as she could have been. This does not raise the reasonable inference that Dean violated Plaintiff's rights or had any involvement with a conspiracy.

Plaintiff's argument that telephone calls received by her husband while she was in VCSO custody raise a genuine issue of material fact as to Dean's involvement in a conspiracy with Harvey Whittemore are similarly unavailing.[3] First, even if accepted as true, the calls made to Plaintiff's husband would only support the inference that Harvey wanted Plaintiff's husband to believe that he had the power to get Plaintiff released from custody. He did not say that he had contacts within the VSCO or name Dean specifically. *See* Dkt. 120, 15–16. Second, Plaintiff's shifting allegations about the phone calls are inadmissible hearsay, not supported by a signed declaration with someone with personal knowledge of the content of the alleged phone calls. This unsupported allegation is not sufficient to authorize the extensive discovery that Plaintiff seeks to uncover whether Dean had some connection with the alleged conspiracy.

Undaunted, Plaintiff argues that even if Dean was not part of the greater conspiracy, she still has actionable claims against him because the statute of limitations should be tolled by California Government Code § 945.3. Dkt. 120, 17. Under § 945.3:

[3] According to the complaint, Harvey Whittemoe is an attorney and a powerful lobbyist in Nevada. Compl. ¶ 30. He recruited Plaintiff to join the Whittemore Peterson Institute on the campus of the University of Nevada, Reno. *Id.* ¶¶ 25–26. Plaintiff alleges that he played a leading role in the conspiracy to commit scientific misconduct with her research and to misuse the legal process to search and arrest Plaintiff. *See generally id.*

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> No person charged by indictment, information, complaint, or other accusatory pleading charging a criminal offense may bring a civil action for money or damages against a peace officer or the public entity employing a peace officer based upon conduct of the peace officer relating to the offense for which the accused is charged, including an act or omission in investigating or reporting the offense or arresting or detaining the accused, while the charges against the accused are pending before a superior court.
>
> Any applicable statute of limitations for filing and prosecuting these actions shall be tolled during the period that the charges are pending before a superior court.

Cal. Gov't Code § 945.3. But assuming, *arguendo*, that Plaintiff's criminal indictment in Nevada is the kind of proceeding that would have precluded Plaintiff from bringing an action against Dean during its pendency, it is uncontroverted that the Washoe County District Attorney voluntarily dismissed the criminal complaint against Plaintiff on June 11, 2012. In her supplemental affidavit, Plaintiff avers that after the charges were dismissed, her lawyer advised her that if she did not do anything illegal until October 16, 2015, the charges would be expunged from her record. Dkt. 120-2, ¶ 40. Plaintiff latches on to this advice and argues that it means the charges are still pending before a superior court within the meaning of § 945.3.[4] Dkt. 120, 17. Plaintiff offers no legal or textual support for this proposition.[5] Whether or not Plaintiff's criminal attorney's advice was sound, it cannot provide the basis for tolling under § 945.3. As the California Court of Appeal has recognized, "[t]he purpose of the statute is to prevent criminal defendants from using civil lawsuits to gain leverage in criminal plea bargaining." *Damjanovic v. Ambrose*, 4 Cal. Rptr. 2d 560, 563 (Cal. Ct. App. 1992). That rationale simply does not apply to claims that have been voluntarily dismissed.

Thus, there is no genuine issue of material fact and no reasonable fact finder could find against

[4] Of course, this would also mean that Plaintiff is barred from bringing her claim against Dean at this time. *See* § 945.3.
[5] Even if the tolling period could be reopened by the refiling of the same criminal complaint, it is undisputed that over two years passed between the dismissal of the criminal complaint on June 11, 2012 and when Plaintiff filed her complaint on November 17, 2014. *See Blunt v. Cnty. of Sacramento*, No. 204CV1743MCEDAD, 2006 WL 509539, at *5 (E.D. Cal. Mar. 2, 2006) (stating that the plain language of the statute excludes only the period that criminal charges are pending against the plaintiff).

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Dean. Defendant Dean's motion for summary judgment is granted.

Pleading Standard

Federal Rule of Civil Procedure 8 requires a short and plain statement of the claim showing that the pleader is entitled to relief. Fed. R. Civ. P. 8. These factual allegations, accepted as true and construed in the plaintiff's favor, must state a plausible claim. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009); *Daniel v. Cnty. of Santa Barbara*, 288 F.3d 375, 380 (9th Cir. 2002). Plausibility requires factual allegations that allow the Court to infer reasonably that the defendant is liable for the alleged misconduct—"labels and conclusions" or "recitation[s] of the . . . cause[s] of action will not do." *Iqbal*, 556 U.S. at 678.

Moreover, Rule 8(d), which requires "each averment of a pleading to be 'simple, concise, and direct,' applies to good claims as well as bad, and is a basis for dismissal independent of Rule 12(b)(6)." *McHenry v. Renne*, 84 F.3d 1172, 1179 (9th Cir. 1996) (citing *Nevijel v. North Coast Life Ins. Co.*, 651 F. 2d 671, 673 (9th Cir. 1981)). "Something labeled a complaint but . . . prolix in evidentiary detail, yet without simplicity, conciseness and clarity as to whom plaintiffs are suing for what wrongs, fails to perform the essential functions of a complaint." *Id.* at 1180. The Court cannot be expected to "waste[] half a day in chambers preparing the 'short and plain statement' which Rule 8 obligated plaintiffs to submit." *Id.*

The Court understands that Plaintiff has written a book that discusses some of the events in this case, but the narrative of a novel is not the appropriate form for a complaint. The Court is not prepared to read an entire book to discern Plaintiff's legal allegations. Courts routinely dismiss complaints that similarly fail to specifically articulate causes of action or identifiable legal theories that support any claim of relief. *See, e.g.*, *Dema v. Arizona Dep't of Econ. Sec.*, No. CV-14-01887-PHX-JZB, 2014 WL 5820791, at *2 (D. Ariz. Nov. 10, 2014); *R.R. v. Oakland Unified Sch. Dist.*, No. CV-13-05069-KAW, 2014 WL 830222, at *3 (N.D. Cal. Feb. 28, 2014); *Allen v. Soc. Sec. Admin.*, No. 2:13-CV-01823-GMN, 2013 WL 5961195, at *2 (D. Nev. Nov. 5, 2013); *Roettgen v. Foston*, No. 13-CV-1101-GPC-BGS, 2013 WL 5347284, at *2 (S.D. Cal. Sept. 23, 2013); *Boparai v. Shinseki*, No. 1:12-CV-00789-LJO, 2012 WL 4755040, at *1 (E.D. Cal. Oct. 4, 2012); *Godhart v. Sharr*, No. CV-12-01005-PHX-FJM, 2012 WL 4359075, at *2 (D. Ariz. Sept. 21, 2012); *Crittenden v. Murphy*, No. CV-12-1854-PHX-LOA, 2012 WL 3960454, at *5 (D. Ariz. Sept. 10, 2012); *Palacios v. Fresno Cnty. Superior Court*, No. 1:09-CV-0554-OWW-DLB, 2009 WL 1107620, at *3 (E.D. Cal. Apr. 23, 2009).

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Accordingly, the Court dismisses the FAC without prejudice. The Plaintiff is advised to organize her complaint in a readable manner, with appropriate headers and omitting irrelevant narrative details. Plaintiff's claims should be organized so that they include the facts that form the basis of each claim without excessive incorporation by reference.

Order

1) Defendant Dean's motion for summary judgment [100] is GRANTED.
2) Plaintiff's FAC is DISMISSED WITHOUT PREJUDICE and leave to file an amended complaint within 21 days of this order.
3) Defendant Gammick's motion to dismiss [109] is DENIED as MOOT.
4) Defendants Garcia, McGuire, and Hunter's motion to strike [114] and motion to dismiss [113] are DENIED as MOOT.
5) Defendants Whittemore, Whittemore, Hillerby, Lombardi, Kinne, UNEVX, and WPI's motion to dismiss [115] is DENIED as MOOT.

SO ORDERED.

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Exhibit "1"

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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

:
JUDY ANNE MIKOVITS

Plaintiff,

vs.

ADAM GARCIA, JAMIE MCGUIRE, RICHARD GAMMICK, GEOFF DEAN, THREE UNIDENTIFIED VENTURA COUNTY DEPUTY SHERRIFFS, F. HARVEY WHITTEMORE, ANNETTE F. WHITTEMORE, CARLI WEST KINNE, WHITTEMORE-PETERSON INSTITUTE, a Nevada corporation, UNEVX INC., a Nevada corporation, MICHAEL HILLERBY, KENNETH HUNTER, GREG PARI and VINCENT LOMBARDI,

Defendants.

Case No. 2:14-cv-08909-SWV-PLA

PLAINTIFF'S FIRST AMENDED COMPLAINT And JURY TRIAL DEMAND

Plaintiff, Judy A. Mikovits, complains and alleges as follows:

NATURE OF THE ACTION

Exhibit "2"

1. This is a civil action brought as a claim for breach of Civil Rights, pursuant to 28 USC §§ 1981 and 1983, violation of the Plaintiff's First, Fourth, Fifth, Sixth, Seventh and Eighth Amendments to the Constitution of the United States and other ancillary tort claims.

THE PARTIES

2. Plaintiff Judy Mikovits, Ph.D. ("MIKOVITS" or "PLAINTIFF") was at all times material herein a citizen of the United Stated and a resident of Oxnard, California. MIKOVITS currently resides in Carlsbad, California.

3. Defendant, F. Harvey Whittemore ("HW") was an attorney duly licensed to practice law before the bar of the Supreme Court of Nevada, and who is a Citizen of the State of Nevada, although he is currently residing in a Federal Correctional Institution in California. H. Whittemore was at all times material herein the President of the UNR Foundation, a controlling equity owner of Defendant UNEVX, a registered lobbyist and the spouse of Defendant AW, *infra*. HW, widely described during that period as the most powerful lobbyist in Nevada, and is currently serving time in connection with an illegal campaign contribution scheme, where his illegal contributions were given to the Campaign Committee for U.S. Senator Harry Reid.

4. Defendant. Annette Whittemore (A. Whittemore) was at all times material herein the President of Defendant WPI and, together with her husband H. WHITTEMORE, was a controlling equity owner of UNEVX. A. Whittemore is a citizen of the state of Nevada.

5. Defendant Carli West KINNE ("KINNE") was at all times material herein a Vice President of WP Biotechnologies, Inc., Legal Counsel for Defendant WPI, a registered attorney admitted to practice in the State of Nevada, and the WHITTEMORE'S niece. H. WHITTEMORE, A. WHITTEMORE and KINNE are sometimes referred to here as the "WHITTEMORE PRINCIPALS."

6. Defendant Michael Hillerby ("HILLERBY") was at all times material herein a corporate officer of WPI and an agent of HW, AW, WPI (*infra),* and UNEVX.

7. Defendant The Whittemore-Peterson Institute, is a Nevada corporation ("WPI"), which was at all times material herein housed within, shared employees with, and was subject to an Affiliation Agreement with UNR.

8. Defendant UNEVX, Inc., a Nevada corporation, formerly known as VIPdx Inc. ("UNEVX"), was at all times material herein a for-profit enterprise associated with the WHITTEMORE PRINCIPALS.

9. Defendant Adam Garcia ("GARCIA") was at all times material herein a duly appointed and acting officer and Chief of Police of the Police Services Department of the University of Nevada at Reno ("UNR"). Garcia is a resident of the State of Nevada. At all times relevant hereto, Garcia was acting under color of the law, pursuant to his duties as a law enforcement officer.

10. Defendant Jaime McGuire ("McGUIRE") was at all times herein a duly appointed agent and officer of the Police Services Department of UNR. McGuire is a resident of the State of Nevada. At all times relevant hereto, McGuire was acting under color of the law, pursuant to his duties as a law enforcement officer.

11. Defendant Richard Gammick ("GAMMICK") was at all times material herein the District Attorney of Washoe County, Nevada. Gammick is a resident of the State of Nevada. At all times relevant hereto, Gammick was acting under color of the law, pursuant to his duties as an elected law enforcement officer and prosecutor.

12. Defendant Geoff Dean ("DEAN") was at all times material herein the Sheriff of Ventura County, California. Dean is a resident of the State of California. At all times relevant hereto, Dean was acting under color of the law, pursuant to his duties as a duly elected law enforcement officer.

13. Defendants Three Unidentified Ventura County Deputy Sheriffs ("DEPUTIES") were at all times material herein, duly appointed and acting as deputies of the Sheriff's Department of Ventura County. The Deputies are residents of the State of California. At all times relevant hereto, the Deputies were acting under color of the law, pursuant to their duties as a law enforcement officers.

14. Defendant Kenneth Hunter, Sc.D. ("HUNTER") was at all times material herein a Professor of Immunology at UNR School of Medicine, and was the Chairman of the Scientific Advisory Board of WPI. At all times relevant hereto, Hunter was acting under color of the law, and as an employee and agent of UNR and as an agent and/or employee of WPI.

15. Defendant Vincent Lombardi, Ph.D. ("LOMBARDI") was at all times material herein an employee of WPI and Director of Operations for UNEVX.

16. Defendant Greg Pari, Ph.D. ("PARI") was at all times material herein is a Professor of Immunology at UNR, Chairman of that Department, and a member of the Scientific Advisory Board of WPI. At all times relevant hereto, Hunter was acting under color of the law, and as an employee and agent of UNR and as an agent and/or employee of WPI.

17. At all times relevant to the allegations of this Complaint, and in all of their actions alleged herein, Defendants GARCIA, McGUIRE, DEAN, GAMMICK, H. WHITTEMORE, A. WHITTEMORE, KINNE, UNEVX, WPI, HUNTER, PARI, LOMBARDI and HILLERBY were acting in active conspiracy with one another to cause the unlawful arrest, false imprisonment, unlawful detention, commission of fraud, intentional and negligent infliction of emotional distress, infliction of pain and suffering of mind and body, and other illegal and tortious actions claimed hereinbelow.

18. Each of the above-named Defendants is being sued in both their individual and official capacities.

JURISDICTION AND VENUE

19. Jurisdiction is conferred upon this Court by Federal Question Jurisdiction, 28 U.S.C. §§ 1331, 1332 and 1343(3), inasmuch as it alleges violation of the Plaintiff's Civil Rights, under 42 U.S.C. §1983, which explicitly authorizes a private remedy for acts that are taken under color of state law and violate rights secured by federal law. This Complaint alleges breaches of the Plaintiff's rights under the First, Fourth, Fifth, Sixth, Seventh and Eighth Amendments to the Constitution of the United States.

20. Jurisdiction over this matter is further granted under 28 U.S.C. § 1367, Supplemental Jurisdiction, as the additional non-federal question vested tort and common law causes of action contained hereinbelow are so related as to form part of the same case or controversy and arise from the same set of operative facts as the statutory causes of action alleged in this case. This case does not raise a novel issue of state law; the common law counts do not substantially predominate over the statutory causes of action; and there are no compelling reasons for declining jurisdiction.

21. Jurisdiction over all parties is conferred in this Honorable Court by virtue of the fact that various acts alleged to have been committed below were in furtherance of one or another conspiratorial acts by two or more of the below parties, which occurred in this Judicial District, and the out of state parties traveld across the state borders, and into this District to commit the violations of Civil, Constitutional and common law rights of the Plaintiff. The fact that some of the acts complained of below occurred outside this District is without consequence, as the predicate acts causing harm to the Plaintiff were brought to fruition in this District. Conspiratorial actors are saddled by the bad acts of their co-conspirators.

22. This Court is the proper venue for this action as the culmination of the civil rights violations occurred within the Central District of California.

FACTUAL RECITATION

23. Prior to the events leading to this lawsuit, Plaintiff was among the elite of our country's molecular virologists. Her work in genomic diversity at the National Cancer Institute is the foundation of much of today's notorious cancer research. Her work on HIV is the cornerstone of today's HIV/AIDS treatment.

24. Her notoriety in the scientific community attracted the attention of the Whittemores, who were searching desperately for a cure for their daughter's illness. Mikovits met AW and Dr. Peterson at a medical conference in Barcelona, Spain. With the release of several papers on the link between xenotropic murine retrovirus (XMRV) and chronic fatigue syndrome (CFS), Dr. Mikovits had been noticed by the Whittemores who were on a mission to find the cure for their daughter.

25. A meeting was set up for the Plaintiff to meet HW at an office of the Wingfield Nevada Group, a company co-owned by HW and two members of the Seeno Family, with whom HW was co-venturing a massive real estate deal.

26. On or about November 6, 2006, Plaintiff accepted a position as Director of Research at the Whittemore Peterson Institute, a research facility to be housed on the campus of the University of Nevada – Reno (UNR), which the Whittemores were a major benefactor to.

27. As Research Director at WPI, the Plaintiff was also given an adjunct professorship at the UNR in the Department of Microbiology. The term of this position was originally intended to run from April of 2007 to May of 2012.

28. Under her direction, WPI grew to a position of international renown in the study of neuro-immune disease, and was awarded grants by the National Institutes of Health, the National Institute of Allergy and Infectious Disease and the Department of Defense.

29. Upon joining WPI, the Plaintiff brought certain personal property, including intellectual property with her to WPI, including her scientific journals going back as far as her graduate studies, her library, and papers she had written. Those were housed in her office at room 320 in the UNR Applied Research Facility, in her office at the center for molecular medicine, and elsewhere at WPI. These documents were the product of over 30 years of her work.

30. Defendant Harvey Whittemore was an attorney and a lobbyist for the gaming industry as well as the tobacco and alcohol industries in Nevada. His representation of these clients gave him the reputation of "one of the most powerful men in Nevada." HW was known as an aggressive and highly respected, yet feared member of the legal community in Reno. HW was a political force, which led to his downfall and eventual present incarceration in the US Bureau of Prisons.

31. Among closest friends of HW was U.S. Senator Harry Reid, to whose political campaigns HW contributed the maximum amounts. Upon information and belief,

Senator Reid promised AW in writing on at least one occasion, tens of millions of dollars in funds to support the work of WPI.

32. Upon information and belief, he was indicted on charges that he made unlawful campaign contributions to an elected member of Congress, caused false statements to be made to the Federal Election Commission (FEC) and lied to the FBI.

33. According to various sources including the U.S. Department of Justice, HW allegedly caused an employee to transmit $138,000 in contributions to Senator Harry Reid's campaign committee, the vast majority of which were conduit contributions that Whittemore had personally funded through various employees and family members as his conduit, in order to satisfy his pledge. Dr. Mikovits was one of the unwitting conduits for HW's scheme, which he assured her, as a member of the Bar of the State of Nevada, was totally legal. The campaign committee then unknowingly filed false reports with the FEC stating that the conduits had made the contributions, when in fact Whittemore had made them. Upon his conviction on three of the four charges brought against him, Whittemore was sentenced to two years in prison and was also given a $100,000 fine, along with two years supervision after his incarceration and 100 hours community service.

34. HW became involved n a major real estate deal, into which he poured massive personal resources. He had business partners who were extremely tough businessmen, and whose methods were less than conventional. This venture consisted of developing a $30 Billion golf community just outside of Las Vegas. His plan was to erect a community of 160,000 homes, 12 golf courses and several casino hotel complexes on a 43,000 acre stretch of desert. The project was fraught with regulatory issues.

35. Whittemore obtained land in the Coyote Springs Valley from a private owner but was unable to acquire all of the land or build on what he owned because of regulatory obstacles. The desert land included a sanctuary for the desert tortoise, an endangered species, and some of the adjacent land was designated a wilderness study area. A federal easement for utilities was also present, and the United States Environmental Protection Agency (EPA) would not allow building due to the presence of

stream beds in the area. Water rights agreements were also needed to procure large amounts of water It would take a monstrous effort to navigate the hallways of the various regulatory agencies, and there was much speculation that it was only Whittemore's strong ties to his U.S. Senator, that was able to erase so many roadblocks.

36. The United States Environmental Protection Agency initially refused to grant permits based on the projected environmental impact of destroying stream beds in the Coyote Springs Valley. In what EPA officials called an "unusual" move, Senator Harry Reid contacted the EPA administrator after a process including a phone call from his son Leif, Whittemore's personal attorney. Soon thereafter, the EPA came to an agreement witHW and also awarded Whittemore's company an environmental sensitivity award. The prize was accepted by Leif Reid. Senator Reid's office denied any wrongdoing, but acknowledged that Leif Reid should not have called his father on behalf of his employer.

37. In order to find a cure for his daughter, HW founded a research laboratory and clinic at his and his wife's *alma mater*, University of Nevada – Reno (UNR), and endowed the Whittemore-Peterson Institute. He stocked the laboratories with the best minds he could entice, including the very virologist who was credited with discovering that there was a retrovirus found in rodents that appeared to be the – if not one of the – causes of CFS, the Plaintiff in this case. He made Dr. Mikovits his Institute's first Research Director.

38. In addition to the above referenced duties as director, the plaintiff was responsible for establishing a translational research program aimed at identifying biomarkers and underlying causes of chronic fatigue syndrome and other debilitating neuro-immune diseases with overlapping symptoms such as fibromyalgia, chronic Lyme disease, atypical multiple sclerosis and autism spectrum disorder.

39. As research director she was responsible for planning, establishing and directing the institute's scientific research program including the selection training and supervision of staff, writing, and managing grants and collaborating with other scientific organizations. The WPI under her direction grew from a small foundation to an internationally recognized center for the study of neuro-immune diseases in which she

obtained investigator-initiated grant money as described above, and brought international attention to chronic fatigue syndrome as a physiological disease.

40. Dr. Mikovits' work was heralded in the media across the globe. The media had frenzy as she began to link her newly discovered XMRV to many of the world's most perplexing and insidious diseases. Mr. & Mrs. Whittemore's investment appeared to be working out. Their daughter was improving on a daily basis, and patients came great distances to participate in the seemingly successful studies.

41. Unbeknownst to the Plaintiff, HW, AW, Lombardi, Hillerby, Kinne, Hunter, and Pari were taking her research and misusing the grants that were awarded to her, to commercialize and sell her work under the name of a different company, UNEVX. The Whittemore greed got in the way of scientific integrity, and in this case, integrity had no chance of prevailing.

42. All was wonderful with one notable exception. In the summer of 2011, Dr. Mikovits discovered that the experiments that her work could not be replicated. This is usually the death knell to a scientific hypothesis.

43. Dr. Mikovits shared her concern with defendant Lombardi, a collaborator in her research and a scientist under her supervision. He could not account for the discrepancies in his numbers and Dr. Mikovits attempted to terminate him from the study.

44. Plaintiff told HW about her concerns about the potential for the WPI being charged with scientific fraud on or about July 8, 2011. HW threatened her, if she were to tell anyone else.

45. Her decision to terminate Lombardi was immediately over-ridden by AW. When she confronted AW with the impropriety of protecting Lombardi, the person responsible for the statistical breakdown, AW instructed Dr. Mikovits to change the

numbers in her assumptions. When Dr. Mikovits refused to participate in this scientific fraudulent scheme, she was immediately terminated by AW.

46. Unbeknownst to Dr. Mikovits, the Whittemores and Lombardi were taking her research and misusing the grants that were awarded to her, to commercialize and sell her work under the name of a different company, UNEVX. UNEVX and its agents have defrauded the U.S. Government in the misdirection of various grant monies, and has harmed the Plaintiff by continuing to utilize federal moneys improperly, and attributing the improper use to the Plaintiff, as she id the Principal Investigator listed on those grants.

47. Dr. Mikovits began to take steps to publicize the flaws in her scientific model, in order to maintain her impeccable standing in the scientific community.

48. HW was depending upon the proceeds of the commercialization of Mikovits's work to invest in the Coyote Springs development.

49. Unbeknownst to Mikovits, HW had been accused of embezzling tens of millions of dollars from the Coyote Springs development project by his partners, the Seeno family. According to a lawsuit filed against his partners, Albert J. Seeno, Jr. and his son, Albert J. Seeno III, threatened his life, and had engaged in racketeering, extortion, grand larceny and making threats. According to HW's lawsuit against the Seeno Family, the Seenos broke into HW and AW's home, forced a safe open and threatened to break both of HW's legs if he did not repay the debt.

50. HW was depending on the proceeds of the commercialization of Plaintiff's research in part to finance the Coyote Springs real estate development, and in part to repay the Seeno family, in order to remain alive and healthy.

51. Upon information and belief, On March 6, 2011, Whittemore reported to the Reno police that he was afraid of being killed; there was a phone call from Albert Seeno III who threatened Whittemore physically. Reno police took recorded statements from

Whittemore in March and November. None of this was known to the Plaintiff at that time.

52. Having the scientific community invalidate the work his Institute had just invested in and which was helping his daughter cope with her illness would have been catastrophic. HW had to stop Mikovits however he could as he was in fear for his life, and without the asset of the product of the Mikovits'work, HW feared the Seenos would make good on their promises.

53. During the exit process, Dr. Mikovits confronted Lombardi, whom she believed to be her laboratory assistant, but came to learn was also the Director of Operations for UNEVX; Mr. & AW; Carli Kinne who was a Vice President and general counsel to WPI; and Michael Hillerby, an employee of WPI; and informed them that she intended to report the misappropriation of the grant money which was awarded to her and for which she was accountable, to the NIH and the Department of Defense. The defendants mentioned here, fought her as if at least one of their lives depended upon it.

54. Dr. Mikovits discovered the scientific discrepancies and the fact that the Whittemores were profiting from her research at the same time that HW was being threatened. The key to repaying the allegedly embezzled money was to be found in the potentially astronomical profits the XMRV treatments would have generated. The news of the scientific uncertainty could not have come at a worse time for HW, who was in fear for his life. She was terminated by AW, the President of the WPI, on September 30, 2011, during this turbulent period for the Whittemores.

55. From and after September 29, 2011, at the time she was informed that she was terminated by AW, Plaintiff never set foot in any facility owned or operated by WPI.

56. At the time of her termination, Plaintiff had certain intellectual property, including without limitation laboratory notebooks that she had been maintaining throughout her career as a scientist which predated her involvement at WPI by

decades. Those notebooks were stored on the premises under the control of WPI, Lombardi, Hillersby, Kinne, HW and AW.

57. Upon her termination from WPI, Plaintiff was denied any further access to the premises where her intellectual property was stored.

58. Lombardi, HW and AW falsely accused the Plaintiff of stealing materials from the WPI facility including various computer hardware, software and her laboratory notebooks.

59. They brought their political influence to the District Attorney, Richard Gammick, who allowed the charade to be given face value with no due diligence to ascertain the veracity of the information. Gammick allowed Garcia and Maguire to travel to California and to advance a false case, that would never have been allowed had Gammick looked into the full circumstances prior to complying with the wishes of Garcia and Maguire, who was acting in concert with AW, HW, Kinne, Lombardi, Hillerby, Hunter and Pari.

60. Kinne, Hillerby, Lombardi, AW and HW combined and conspired to fabricate falsities about and against the Plaintiff, by intentionally falsely and fraudulently spreading the word amongst themselves and to third parties that Plaintiff had stolen materials and secreted them from WPI and the defendants named in this paragraph.

61. During the Fall of 2011, Plaintiff began to uncover evidence of misappropriation of government grant funds and improper use of those funds. She concluded that Hillerby, Lombardi, Kinne, HW and AW were colluding and conspiring to defraud the US. Department of Defense, NIAID and NIH by misdirecting the grants from those agencies.

62. The defendants named in the above paragraph refused to comment about their misuse of the funds and stonewalled the presently-departing Plaintiff.

63. In addition to defendants Hillerby, Lombardi, Kinne, HW and AW conspiring to defraud the Plaintiff and the Federal Government, Defendants Pari and Hunter were also complicit in the misdirection and cover-up of the use of the Federal Funds.

64. As professors at UNR they participated in the Scientific Advisory Board of WPI. As such, they were in a position to avert the activities of the other Nevada based defendants. They could have chosen to team up with Dr. Mikovits and those who were concerned by the newly discovered breaches of scientific integrity when Dr. Mikovits first questioned the validity of their work. Instead, these two defendants decided to turn a deaf ear on the crucial issues, and joined the conspiracy to cover up the questionable findings, and to continue to move forward with what amounted to a fraud on the FDA/NIH and the DoD.

65. Had Pari and Hunter objected to what was transpiring, they would have incurred the wrath of the Whittemores, but they showed that they lacked courage to do that which was right and that they were willing to throw Dr. Mikovits under the bus. Their credentials were utilized to attempt to keep the flow of government grants coming, and to lend some measure of credibility to the commercial venture, and they knowingly participated in this dishonest scheme.

66. This was the beginning of an interstate conspiracy to do anything it took to stop Mikovits from destroying the name of WPI. HW, AW, Kinne, Hillerby and Lombardi combined their ideas and set out to destroy Mikovits before she could credibly end their charade.

67. Because of her desire to keep her reputation as an ethical scientist, Dr. Mikovits retracted her scientific paper on XMRV and CFS.

68. On or about November 2, 2011, Plaintiff was notified that a lawsuit would be filed against her for her allegedly fraudulent conduct, and for return of all copies of all data during her tenure.

69. Plaintiff replied stating that, in fact, Defendants had locked down her lab and taken control of its contents within an hour of her termination. She had no access to her office, lab or her notebooks or other intellectual property, and kept nothing. Plaintiff also provided evidence that she had returned to her home within 12 hours of her termination and never returned to her lab or offices. This lawsuit is discussed in greater detail below.

70. Upon her return to her home in California, the actions of the defendants focused upon her in that location, and the acts of all defendants subject them to the *in personam* jurisdiction of this Court as set forth below.

71. Defendants Hillerby, Lombardi, AW and/or HW by acts and statements of two or more of them, conspired to give mis and disinformation to the UNR police department (UNRPD) about the actions and possessions of the Plaintiff.

72. Members of the UNRPD, including Defendant Garcia and Jaime McGuire traveled to Ventura CA, and stalked Plaintiff for several days in an obvious manner intended to harass and scare her.

73. Members of the Ventura City Police Department and/or Ventura County Sheriff's Department agents or employees under the supervision of defendant Dean; then obtained a search warrant based upon representations made by Garcia and Maguire, which representations Defendants knew to be false.

74. Garcia and Maguire obtained a search warrant from a Ventura Justice of the Peace, went to Plaintiff's home, and then, at approximately 1:00 PM on Friday, November 18, 2011, with at least one Ventura County Deputy and one Ventura City policeman overseeing the search, placed the Plaintiff under arrest and handcuffed her hands behind her back and took her to a detention facility of the Ventura County Sheriff's Office ("VCSO") on Todd Road in Ventura.

75. At no time was Plaintiff shown an Arrest Warrant or a Search Warrant. Nor was Plaintiff's husband ever shown such documents at the time of the search and arrest.

76. The Plaintiff was never told what her charges were, was denied reasonable access to counsel and to a judicial tribunal, and until the hearing on her release five days after her warrantless arrest, was unaware of what she was charged with.

77. During her incarceration, the Plaintiff's husband spoke to a bail bondsman who told him that he had never seen a situation like this in his life.

78. Plaintiff's husband, then 73 years of age, was placed upon a chair in his and Plaintiff's home and ordered by a UNRPD policeman not to move. He was forced to watch as the UNRPD completely ransacked their home, finally taking all of their personal electronic items, which were then held by the Ventura Police for almost a year.

79. On several occasions, Plaintiff's husband was told that HW would have the "charges" against her dropped if she would return her laboratory notebooks. He was informed that the keys to the jail cell were in his hands in the form of the "stolen" laboratory notebooks.

80. The Plaintiff and her husband could not return the notebooks, as they were not in their custody or control. The Plaintiff's husband reiterated that he would give the notebooks up in exchange for his wife's release, but that he did not have them at all. This series of conversations with HW, AW, Kinne, Lombardi and Hillersby's representative continued through the weekend, as the Plaintiff's husband continued cleaning up items strewn all over the house in the warrantless search.

81. The clean-up process was slow and methodical, as Plaintiff's Husband attempted to return everything to the correct place. He was paying close attention to details.

82. On November 21, 2011, The Plaintiff's husband received a phone call from the representative of HW, AW, Kinne, Lombardi and Hillersby, to discuss the fact that the Plaintiff would likely remain in jail through the Thanksgiving Holiday, which was in two days, unless he returned the notebooks.

83. Having nearly completed the entire task of reorganizing all the materials, clothing, books, papers, and other possessions that had been strewn about the house by the UNRPD officers in the warrantless and illegal search, the Plaintiff's husband assured the representative of HW, AW, Kinne, Lombardi and Hillersby, that he had been through the entire house and that the notebooks were not there. He assured the representative that if the Plaintiff had the notebooks, neither she nor he were aware of it, and that they were not in the house.

84. At that time, the representative of HW, AW, Kinne, Lombardi and Hillersby told the Plaintiff's husband, "David, listen very close to what I am about to tell you. Those notebooks are in your house. You DO have them, I am telling you. Now go and find them and return them to get Judy out of jail!"

85. The men hung up the phone and the Plaintiff's husband sat in complete perplexity at the entire conversation, knowing that he had scoured the entire house as he replaced items in drawers, closets, shelves and table tops.

86. The following morning, the Plaintiff's husband awoke and reinitiated his search, looking for places that the Plaintiff may have secreted the notebooks, all the while replaying the conversation with the representative of HW, AW, Kinne, Lombardi and Hillersby,in his mind.

87. As the Plaintiff's husband began to look through cabinets, book shelves and drawers for the notebooks that the representative of HW, AW, Lombardi and Hillersby insisted were in their house, he came up empty. Repeatedly doubting his sanity as he continued the same search that he and the police had each previously conducted, somehow expecting or hoping for a different outcome, he was rapidly becoming

disheartened as he began to dread the following day – Thanksgiving – which he knew would be the loneliest day of his life.

88. While searching through one of the guest room closets, the Plaintiff's husband discovered a canvass beach bag with JAM embroidered on the side, that he had not seen previously, and that was not inventoried as part of the search. Even more suspicious was the fact that the bag was sitting in the front and center of the closet as if it were the last item placed therein. Inside the bag were all of the Plaintiff's notebooks.

89. The notebooks were planted in the closet by the representative of HW, AW, Kinne, Lombardi and Hillersby, or by other agents of HW, AW, Lombardi and Hillersby.

90. After five days without access to a criminal attorney or a judge, Plaintiff was charged with being a fugitive from justice.

91. While the Plaintiff was in Reno working at WPI, she was living in a condo that was owned by HW in the same building as the penthouse suite that the Whittemores lived in. When she was terminated by AW, as set forth above, she returned to her condo and packed up her belongings and left for California. While packing, she literally threw many items into bags, boxes, bins and suitcases. She owned two canvass beach bags with her initials "JAM" embroidered on them. As she left the condo for the last time, she left several items in the place that she no longer needed, wanted or had room for in hr already fully packed car. Among the items that were left in the condo was one of the two embroidered canvass beach bags. That was to be the very last time that she saw that bag.

92. In addition to that condo, the Plaintiff owned her own condo in Reno, but it had problems requiring mold remediation and she was unable to live there. That was how she came to live in HW's extra condo, as the Whittemores had an empty condo that they wanted her to move into to remain healthy. She had a lab assistant who was living in her condo, as he was not sensitive to the mold spores.

93. On or about October 17, 2011, upon returning from a trip to Ireland, the Plaintiff was picked up in the early morning hours by her assistant, at the airport, and driven to her condo that he was living in. She observed her notebooks in a striped birthday gift bag, in his possession. The plaintiff tod her assistant that she wanted the notebooks back and he insisted that if she were to take them, they would both be killed by HW in order for him to get them from her. They discussed the plan for her to take them to Kinko's after they slept for a while, and get them photocopied in the morning. The assistant protested telling her that HW would have her killed if he saw her with them, and he could not allow that to happen.

94. The Plaintiff went to her room and slept for a couple of hours.

95. When she awoke, the assistant and the notebooks were gone. The gift bag was there still, but empty. The associate returned home before 7 AM and refused to discuss the whereabouts of the notebooks.

96. The Plaintiff assumed that they had been taken out of the bag and buried among the boxes of clothing and possessions she was to put into a car and drive back to California in.

97. Upon returning to her house in California later on October 17, 2011, she discovered that the notebooks were not there, that her lab assistant had retained them in Reno.

98. To this day, the last time the Plaintiff saw her notebooks was October 17, 2011, in her assistant's apartment.

99. Upon her termination, Dr. Mikovits was accused of stealing a laptop and 19 laboratory notebooks which were all her own property. She would have refused to return any of these items to WPI, inasmuch as they were her intellectual property, there was no claim to that property by WPI, and the laboratory notebooks represented the totality of her work including that while at NIH, which preceded her employment at WPI

– except they were already in the hands of WPI, as she left them in her desk before she knew she would be forever locked out of her office.

100. On November 4, 2011, two days after the notice of intent to sue, supra, WPI filed a lawsuit against Dr. Mikovits. In that suit they alleged breach of contract, trade secret misappropriation, conversion, breach of implied covenant of good faith and fair dealing, seeking specific performance and replevin against Dr. Mikovits.

101. On November 7, 2011, WPI filed a motion for a TRO seeking the return of the computer and lab books. Judge Brent Adams entered a TRO against her.

102. On November 9, 2011, service was made of the complaint and TRO. Dr. Mikovits was not home, she was away taking care of her elderly mother. She returned to her home on November 13, 2011, to find the summons and complaint taped to the wall on the porch of her house. The next morning she contacted Atty. Dennis Jones and hired him.

103. On November 18, 2011, while on her way to meet with her new attorney, she was arrested as set forth above.

104. On that same day her attorneys filed in opposition to the motion for preliminary injunction asserting that she did not have possession or control of any misappropriated property. In fact, when the Ventura County officers searched her house and took her family members' computers, tablets and phone, they did not find a single notebook. As set forth above, her former lab assistant, who was an agent of HW, AW, Lombardi, Kinne and Hillersby was holding them in his possession without informing any of the WPI principals.

105. On November 22, 2011, there was a hearing on her civil case while she was in jail and unrepresented. At this time she and her attorney, Dennis Jones, had never spoken personally to one another so he could not take any steps to bind or make any representations for her in open court. In addition Dr. Mikovits did not have counsel

retained yet for the criminal proceedings. She eventually retained an attorney by the name of Scott Freeman, who is now a sitting judge in Reno.

106. At the November 22, 2011, hearing, Dr. Mikovits was not present as she was in jail and while her attorney was clear that he could not speak for her until he met her, there was an in chambers "agreement" struck. She was ordered to return seven categories of documents.

107. On that same evening at about 7:00pm, Dr. Mikovits was released from custody in Ventura County California.

108. At that time the judge in Ventura County who ordered her release on bail denied the opportunity to a reporter by the name of Jon Cohen from *Science Magazine*, to attain a mug shot or photograph of Dr. Mikovits. Cohen argued that a message needed to be sent to scientists so this doesn't happen again and urged the judge to allow him access to the mug shot so he could publish it in *Science*. This request was denied if for no other reason than the fact that there was no mug shot because Dr. Mikovits was never charged, never photographed, not fingerprinted and never properly processed before going into the jail cell for five days.

109. The civil case charade continued for some time. After some motion practice over the next month, on December 15, 2011, there was an order entered by the court denying Dr. Mikovits' emergency motion to stay and for reconsideration.

110. Hearing on the show cause order occurred on December 19, 2011. At that hearing, her attorney, Mr. Freeman, told the court that any and all of the apparent missteps and misdeeds of the client were done on his advice. In addition, Dr. Mikovits refused to give up her personal Gmail as it would have put thousands of study participants at risk for confidentiality issues impacting bias, losing jobs and/or insurance.

111. Mr. Freeman made an offer of proof that Dr. Mikovits was only following the advice of counsel and that if that advice was erroneous she could still fully comply with the preliminary injunction within days. Judge Adams struck her answer, and entered the default over the protest of Mr. Freeman.

112. On January 24, 2012, the judge entered the default judgment, stating that he was doing so for willful and wanton disregard of the orders of this court in a manner which flaunts and otherwise mocks and ignores the essential discovery of the very information which is the subject of this lawsuit.

113. He issued a permanent injunction and scheduled a damages hearing for January 25, 2012. That hearing did not go forward.

114. Notwithstanding the fact tjat the damages assessment hearing did not go forward, HW, who is an attorney and knows the process well, has repeatedly and fraudulently asserted that Judge Adams assessed a $5.5 million dollar sanction on Dr. Mikovits.

115. Dr. Mikovits heard this from HW and not fathoming that an attorney who was litigating a case against her and who was well acquainted with judicial process would make this up, she believed him that he had a judgment against her.

116. As a result of this fraudulent misrepresentation, and because she believed that she owed HW $5,500,000.00, and that he had a judgment and intended to collect what he could from it, filed for bankruptcy protection on March 1, 2013.

117. It is on that date and in furtherance of his conspiracy with AW, Kinne, Lombardi, Hillerby, that Mr. & Mrs. Whittemore filed a fraudulent claim in the Bankruptcy Court asserting a judgment that was false, fraudulent and fictitious against Dr. Mikovits.

118. This fraudulent act, committed on March 1, 2013, has triggered the statute of limitations as of that date, and has mooted all defenses by WPI, Mr. & Mrs.

Whittemore, Vincent Lombardi, Carli Kinne, and Michael Hillerby, each of whom conspired to defraud Dr. Mikovits through their wrongful acts.

119. On March 14, 2012, Judge Adams, just prior to hearing a Motion for Reconsideration, recused himself on this case.

120. Prior to going on record there was a long conversation between the judge and the attorney for Whittemore. The judge began his commentary by stating that he had seen a television story about the Congressman who warned anyone who ever accepted a campaign contribution from Harvey Whittemore to donate that contribution immediately to charity within two weeks. He added that these statements presented a problem for him personally because he lives on his salary and he used the contributions from Harvey Whittemore, his family members and the affiliated Whittemore companies on his campaign as a judge.

121. A discussion ensued in which the judge asked Dr. Mikovits' lawyers whether they were planning on filing a motion to disqualify. When they answered in the affirmative, he asked them not to file that motion immediately as he was going on vacation and he did not want to disturb his vacation with this issue. That was all mooted the next day when the judge issued a decision recusing himself.

122. As a result of the conspiracy between Garcia, Gammick, HW, AW, Kinne, Hillerby, Hunter and Pari, Dr. Mikovits has very recently been forced to liquidate all of her property and to turn over the proceeds to the WPI, by order of the US Bankruptcy Court, in March of 2013, all based upon a fraudulent filing.

123. Neither HW, AW, Lombardi, Gammick, Dean, the Three Unidentified VCSD Deputies, Kinne, the WPI, Hillersby, Hunter or Pari have ever made a public statement that the Plaintiff was terminated for no good cause; had ownership of the laboratory notebooks; owned the intellectual property, hardware and software she was accused of stealing; was falsely accused of committing criminal acts; was not a fugitive from justice; was unlawfully arrested; was unlawfully detained in jail with no charges;

was held in jail without due process; had not misspoken about the scientific validity of the work of WPI; or had otherwise wronged any of the defendants.

124. This failure to retract statements, actions, and false assertions has, and will continue to cause harm to the Plaintiff every day, until her name is cleared and she is once again eligible to participate in procurement and execution of US. Government and other governmental unit grants and support. At this time, because of the failures of the defendants in the above paragraph, as more fully described hereinabove, the Plaintiff is an unemployable scientific treasure.

125. The harm to the Plaintiff, as an ongoing tort, does not avail itself to a measurement of a start and stop date of a statute of limitations, and all claims asserted below are timely and ongoing under prevailing California law of "Continuing Violation."

COUNT ONE
Civil Rights and Constitutional Claims

126. Plaintiff repeats, realleges, reavers and incorporates all statements above, as if specifically set forth herein.

127. This allegation runs against the above named defendants, insofar as they are not entitled to protection of the Eleventh Amendment to the US Constitution.

128. All actors involved in this Count acted under color of state law or the Constitution of the United States in the deprivation of the Plaintiff's rights under the First, Fourth, Fifth, Sixth, and Eighth Amendments to the Constitution of the United States, by imposition of incarceration upon her, and detaining her without cause.

a. First Amendment: by prohibiting the petitioning for a governmental redress of grievances, and forbidding her to express concerns about fraud upon the FDA, DOD and NIAID.

b. Fourth Amendment: by an unreasonable search and seizure of the Plaintiff and her property, the issuance of a judicial warrant without probable cause, and exceeding the bounds of permissible search.

c. Fifth Amendment: by depriving the Plaintiff of her due process, and failing to inform her of her charges and rights, and thereafter denying those rights. This violation continues to this day, unabated, as her "charges" which were never formally filed were never dismissed with prejudice, and the Plaintiff continues to live in fear of being re-arrested on whatever the unknown charges are.

d. Sixth Amendment: She has never been properly informed of her charges, which issue persists to the present day; has been denied an opportunity to defend herself in a court of law at trial, which still persists; has been deprived of her right to confront witnesses; has been denied her right to a jury trial of her criminal "charges;"and was denied effective counsel in her criminal proceeding.

e. Eighth Amendment: The Plaintiff has been denied an opportunity to meet bail, when she provided not a scintilla of being a flight risk. She was held for 5 days in a jail cell with no charges, no explanation and no perceptible end of her term.

129. The deprivation of the rights complained hereinabove was carried out under color of state law and this deprived the Plaintiff of her rights, privileges and immunities under state law.

130. Furthermore, the Plaintiff alleges that Garcia, McGuire, Dean's Agents including the Three Unknown Deputies used force in arresting and detaining her.

131. The Plaintiff further alleges that the force used by Garcia, McGuire, Dean, Dean's Agents including the Three Unknown Deputies was excessive.

132. That Garcia, McGuire, Dean, Dean's Agents including the Three Unknown Deputies were acting in furtherance of their official duties.

133. That the Plaintiff was harmed.

134. That the acts if Garcia, McGuire, Dean, Dean's Agents including the Three Unknown Deputies in the use of excessive force was a substantial factor in causing Plaintiff harm.

135. That the above referenced acts were done in furtherance of intense political power yieded by HW, AW, Lombardi, Kinne, Gammick and Hillerby as part of their conspiratorial activity.

COUNT TWO
Unreasonable Search and Seizure Without a Warrant

136. The Plaintiff repeats, realleges, reavers and incorporates all statements above, as if specifically set forth herein.

137. Garcia, McGuire, Dean, Dean's Agents including the Three Unknown Deputies, and as controlled by HW, AW, Lombardi, Hillerby and Gammick searched the Plaintiff's home and home office without producing or obtaining a valid search warrant.

138. Garcia, McGuire, Dean, Dean's Agents including the Three Unknown Deputies, and as controlled by HW, AW, Lombardi, Hillerby and Gammick conducted an unreasonable search, knowing that the objects of the search were either not present or were the lawful property of the Plaintiff.

139. Garcia, McGuire, Dean, Dean's Agents including the Three Unknown Deputies, and as controlled by HW, AW, Lombardi, Hillerby and Gammick were acting or purporting to act while performing their official duties.

140. The Plaintiff was harmed.

141. That Garcia, McGuire, Dean Dean's Agents including the Three Unknown Deputies, and as controlled by HW, AW, Lombardi, Hillerby and Gammick's unreasonable search was a substantial factor in causing Plaintiff's harm.

142. At all times incident to the Warrant, HW, AW, Kinne, Lombardi and Hillerby knew or should have known that the Plaintiff was not in possession of most of the materials being sought.

COUNT THREE
False Arrest With a Warrant (Alternatively pled Cause of Action)

143. The Plaintiff repeats, realleges, reavers and incorporates all statements above, as if specifically set forth herein.

144. Garcia, McGuire, Dean, Dean's Agents including the Three Unknown Deputies, and as controlled by HW, AW, Lombardi, Hillerby and Gammick arrested and/or intentionally caused the Plaintiff to be arrested and/or to be wrongfully arrested.

145. As set forth with particularity in the Factual Recitations in this Complaint, there was a fraudulently procured warrant, if there was one at all, inasmuch as no warrant was served before, at or around the time of the search, and all elements of the warrant that would have given it validity were based on falsities and fraudulent statements calculated to harass the Plaintiff.

146. The Plaintiff was harmed by the arrest complained of herein.

147. The actions of Garcia, McGuire, Dean, Dean's Agents including the Three Unknown Deputies, and as controlled by HW, AW, Lombardi, Hillerby and Gammick as described in the Factual Recitations were a substantial factor in causing the Plaintiff harm.

COUNT FOUR
Unnecessary Delay in Processing and Releasing

148. Plaintiff repeats, realleges, reavers and incorporates all statements above, as if specifically set forth herein.

149. Defendants Garcia, McGuire, Dean, Dean's Agents including the Three Unknown Deputies, and as controlled by HW, AW, Lombardi, Hillerby and Gammick held or caused the Plaintiff to be held in custody.

150. There was an unreasonable and unnecessary delay in taking the Plaintiff before a judge or in releasing the Plaintiff from custody, as set forth above.

151. The conduct of Garcia, McGuire, Dean, Dean's Agents including the Three Unknown Deputies, and as controlled by HW, AW, Lombardi, Hillerby and Gammick was a substantial factor in causing the Plaintiff harm.

COUNT FIVE
False Arrest Without a Warrant by a Peace Officer (Alternatively Pled Cause of Action)

152. Plaintiff repeats, realleges, reavers and incorporates all statements above, as if specifically set forth herein.

153. Garcia, McGuire, Dean, Dean's Agents including the Three Unknown Deputies, and as controlled by HW, AW, Lombardi, Hillerby and Gammick arrested Plaintiff without a warrant;

154. Plaintiff was actually harmed; and

155. That Garcia, McGuire, Dean, Dean's Agents including the Three Unknown Deputies, and as controlled by HW, AW, Lombardi, Hillerby and Gammick's conduct was a substantial factor in causing Plaintiff's harm.

COUNT SIX
False Arrest Without a Warrant by Private Citizens

156. Plaintiff repeats, realleges, reavers and incorporates all statements above, as if specifically set forth herein.

Exhibit "2"

157. HW, AW, Lombardi, Hillerby and Gammick caused the Plaintiff to be arrested without a warrant.

158. The Plaintiff was actually harmed as set forth above, by this arrest.

159. The wrongful acts as set forth in the factual recitations above, of HW, AW, Lombardi, Hillerby and Gammick were a substantial factor in causing Plaintiff's harm.

COUNT SEVEN
Abuse of Process

160. Plaintiff repeats, realleges, reavers and incorporates all statements above, as if specifically set forth herein.

161. The defendants, HW, AW, WPI and UNEVX initiated process against the Plaintiff in Nevada for purposes of harassment and defamation through court process, knowing that certain privileges attach in litigation.

162. The within defendants used this abusive process as a means to disparage and destroy the career of the Plaintiff intentionally and with malice.

163. The Plaintiff was harmed by this abuse.

164. The abuses as described in the recitation of facts above, were a substantial factor in causing the Plaintiff's harm.

COUNT EIGHT
Fraud

165. Plaintiff repeats, realleges, reavers and incorporates all statements above, as if specifically set forth herein.

166. As set forth in the recitation of facts in great particularity and detail, the Defendants in this action acted in concert in a false and fraudulent manner. They hatched a scheme that would cast the Plaintiff in a poor light and that would forever discredit her as a scientist.

167. The Acts constituting this fraud were calculated to overwhelm the Plaintiff in such a manner as to cause her to seek bankruptcy protection, to sell her assets and to cease employability.

168. The within defendants used this fraudulent scheme as a means to disparage and destroy the career of the Plaintiff intentionally and with malice.

169. The Plaintiff was harmed by this abuse.

170. The fraudulent acts as described in the recitation of facts above, were a substantial factor in causing the Plaintiff's harm.

COUNT NINE
Civil Conspiracy

171. Plaintiff repeats, realleges, reavers and incorporates all statements above, as if specifically set forth herein.

172. There was an agreement between all defendants in this case to break the law as set forth in the recitation of facts hereinabove.

173. As co-conspirators, each defendant became an agent of each other defendant in the furtherance of the activities calculated to harm the plaintiff.

174. The acts of the co-conspirators were calculated to deceive the Plaintiff and to carry out illegal objectives as set forth in the Factual Recitations.

175. The Plaintiff was harmed by this conspiracy.

176. The conspiracy related acts as described in the recitation of facts above, were a substantial factor in causing the Plaintiff's harm.

COUNT TEN
Infliction of Emotional DIstress

177. Plaintiff repeats, realleges, reavers and incorporates all statements above, as if specifically set forth herein.

178. The actions of the defendants have caused the Plaintiff to suffer great emotional and resulting physical damage, as set forth in the recitation of facts hereinabove.

179. The Plaintiff was harmed by the actions of the defendants.

180. The wrongful acts as described in the recitation of facts above, were a substantial factor in causing the Plaintiff's harm.

COUNT ELEVEN
Defamation

181. Plaintiff repeats, realleges, reavers and incorporates all statements above, as if specifically set forth herein.

182. Each defendant in this case spoke, wrote or acted in such a way as to defame the name, reputation and standing of the plaintiff.

183. Those statements were false and defamatory.

184. Those statements were published in an unprivileged publication to one or more third persons.

185. The Plaintiff was harmed by this defamation.

186. The defamation related acts as described in the recitation of facts above, were a substantial factor in causing the Plaintiff's harm.

PRAYER FOR RELIEF

WHEREFORE, The Plaintiff seeks the following relied from this Honorable Court:

1. injunctive relief in the immediate return of all her intellectual property including, without limitation, her scientific notebooks and journals as described above;
2. Judgment in an amount sufficient to compensate her for the emotional harm caused by the defendants;
3. A retraction of all statements that have defamed the Plaintiff, by each defendant, to the extent that defendant caused the harm;
4. Judgment in an amount sufficient to compensate the Plaintiff for her loss of Civil Rights, and her loss of dignity;
5. Judgment in an amount sufficient to compensate the Plaintiff for her loss of opportunity to perform work;
6. Punitive damages in an amount sufficient to punish the defendants for their wrongful, negligent and intentional acts; and
7. Such other relief as this Honorable Court shall deem just.

PLAINTIFF DEMANDS TRIAL BY JURY

DATED July 27, 2015.

LAW OFFICES OF HUGO & ASSOCIATES, LLC

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Attorneys for Defendant
GEOFF DEAN

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

JUDY ANNE MIKOVITS,

Plaintiff,

vs.

ADAM GARCIA, JAIME MCGUIRE, RICHARD GAMMICK, GEOFF DEAN, THREE UNIDENTIFIED VENTURA COUNTY SHERIFFS, F. HARVEY WHITTEMORE, ANNETTE F. WHITTEMORE, CARLIE WEST KINNE, WHITTEMORE-PETERSON INSTITUTE, a Nevada Corporation, UNEVX INC., a Nevada Corporation, MICHAEL HILLERBY, KENNETH HUNTER, GREG PARI and VINCENT LOMBARDI,

Defendants.

CASE NO. CV14-08909-SVW (PLA)

DEFENDANT DEAN'S NOTICE OF HEARING OF MOTION AND MOTION FOR SUMMARY JUDGMENT; MEMORANDUM OF POINTS AND AUTHORITIES AND DECLARATION OF JEFFREY MILLER IN SUPPORT

[Statement of Uncontroverted Facts and Conclusions of Law and Proposed Judgment In Support Filed Concurrently Herewith]

Date: September 21, 2015
Time: 1:30 p.m.
Place: 312 Spring Street, Second Floor, Courtroom 6

TO: PLAINTIFF, JUDY ANNE MIKOVITS, AND TO HER COUNSEL OF RECORD, MICHAEL R. HUGO AND ROBERT J. LISKEY:

Please take notice that Defendant Geoff Dean hereby moves the Honorable Stephen V. Wilson, United States District Judge, for an order granting him summary judgment as to the plaintiff's first amended complaint, claims one through eleven.

Exhibit "3"

This motion is based upon this notice of hearing, the attached memorandum of points and authorities and declaration of Jeffrey Miller, and the concurrently filed Statement of Uncontroverted Facts and Conclusions of Law.

The above-entitled Court is located at 312 North Spring Street, Second Floor, Courtroom 6, Los Angeles, California, 90012.

This motion is made following the conference of counsel pursuant to Central District Local Rule 7-3 which took place on June 24, 2015 and July 1, 2015.

On June 24, 2015, moving party's counsel, Jeffrey Held, e-mailed both attorneys for plaintiff, Michael Hugo and Robert Liskey, a two page letter attaching the declaration of Captain Jeffrey S. Miller establishing that neither Sheriff Geoff Dean nor anyone in the Ventura County Sheriff's Office, played any role in the operative events of the complaint in that it was entirely the operation of a separate local police agency, the City of Ventura police department.

The letter and attached declaration further explained that the only role of the Sheriff's Office was to fulfill its statutory obligation to receive Ms. Mikovits for booking and processing her in a routine manner involving photographing, fingerprinting and access to telephones, with free local calls. The letter also asserted the time-bar, explaining that the events at issue concluded with Ms. Mikovits' bail and extradition hearing on November 22, 2011, but the present suit was not filed until November 23, 2013[sic]. This latter date was erroneous- the present suit was actually filed on November 17, 2014. But whether filed a day late, as erroneously stated in the letter, or almost a year late, as is correct considering the actual filing date of the complaint originating the present action, the suit is nevertheless time-barred.

On July 1, 2015, moving party's counsel, Jeffrey Held, telephoned lead counsel for Ms. Mikovits, Michael Hugo, asking him if he had received and read the letter of June 24, 2015 and the Miller declaration. Mr. Hugo acknowledged that he had. Mr. Held asked whether the non-involvement of the Sheriff or his Office or the time bar convinced the plaintiff to omit Sheriff Dean and his Office from the first amended

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Exhibit "3"

complaint. Mr. Hugo stated that he was in the process of drafting the first amended complaint, would consider the letter and declaration, but was disinclined to omit Sheriff Dean from the first amended complaint.

DATED: August 13, 2015

WISOTSKY, PROCTER & SHYER

By: _____
Jeffrey Held
Attorneys for Defendant
GEOFF DEAN

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MEMORANDUM OF POINTS AND AUTHORITIES

I.

INTRODUCTION

Neither Geoff Dean, the Sheriff of Ventura County, nor anyone in his agency, the Ventura County Sheriff's Office, played any part in the events alleged in the complaint relating to Ventura County law enforcement on November 18, 2011. These events involve plaintiff's arrest on November 18, 2011, pursuant to what the complaint characterizes as a search warrant obtained with false information. First Amended Complaint, paragraphs 73 and 74. The officers serving the search warrant did not show it or an arrest warrant to plaintiff. Paragraph 75. Later paragraphs of the complaint challenge the search of plaintiff's home and intimidation of her husband, e.g., paragraph 78. The alleged objective was to force plaintiff's husband to reveal the location of some notebooks sought by the Nevada co-defendants. Paragraph 79.

The operation was entirely that of another, separate local law enforcement agency, the City of Ventura police department. This is explained in the declaration of Captain Jeffrey Miller of the Ventura County Sheriff's Office, paragraphs 3 through 17, 29 and 30, attached to this motion. It was also attached to the June 24, 2015 e-mail to plaintiffs' counsel and explained in that letter; that is evident from the allegation in the first amended complaint in paragraph 73 that there was involvement by the City of Ventura police department, an allegation which is absent from the original complaint.

The second ground of this motion is the expiration of the statute of limitation. The plaintiff was present in a hearing of her case with Ventura Superior Court Judge Bruce Young, on November 22, 2011. He informed her of the charges against her, scheduled bail(which was posted on her behalf later that day) and set an extradition hearing to take place on December 19, 2011. Miller Declaration, paragraphs 25 through 28 and first amended complaint, paragraphs 76, 90, 106-107.

/ / /

Exhibit "3"

But the original complaint in this action was not filed until November 17, 2014. The statute of limitation for actions arising in California is two years. The filing deadline was November 22, 2013. The suit was therefore 360 days late and is time-barred.

II.

ENABLING AUTHORITY

Federal Rule of Civil Procedure 56(a) authorizes summary judgment motions resolving all or part of any claim or defense. The Court is to state on the record the reasons for granting or denying the motion.

Subdivision (b) provides that the motion may be filed until 30 days after the close of all discovery, unless the Court orders otherwise. The moving party is to identify each claim on which summary judgment is sought. In this proceeding, moving party Geoff Dean seeks summary judgment as to all eleven claims.

The facts are to be viewed favorably to the non-moving party "only if there is a genuine dispute as to those facts." *Scott v. Harris*, 550 U.S. 372, 380 (2007). When the moving party carries its burden of producing some argument and evidence demonstrating the absence of a valid case, the opponent "must do more than simply show that there is some metaphysical doubt as to the material facts." *Id.*

The mere existence of a scintilla of evidence in support of the non-moving party's position is insufficient. *Arpin v. Santa Clara*, 261 F.3d 912, 919 (9th Cir. 2001). Inconsistencies not outcome determinative are irrelevant to the resolution of the motion. *Id.*

A district court has no obligation to search for evidence creating a factual dispute. *Bias v. Moynihan*, 508 F.3d 1212, 1219 (9th Cir. 2007). If the plaintiff bears the burden of proof at trial, it is sufficient for the defendant to point to the absence of evidence to support the opponent's case under substantive law. In Re Oracle Securities, 627 F.3d 376, 387 (9th Cir. 2010).

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The opposing party cannot rely upon conclusory allegations unsupported by factual data to create an issue of material fact. *Hansen v. United States*, 7 F.3d 137, 138 (9th Cir. 1993). Conclusory allegations are insufficient to raise a question of material fact. *Head v. Glacier*, 413 F.3d 1053, 1059 (9th Cir. 2005).

"To survive summary judgment, a plaintiff must set forth non-speculative evidence of specific facts, not sweeping conclusory allegations." *United States ex re Cafasso v. General Dynamics*, 637 F.3d 1047, 1061 (9th Cir. 2011).

III.

HAVING PLAYED NO ROLE IN THE OPERATIVE EVENTS OF THE CHARGES AGAINST PLAINTIFF, OBTAINING A SEARCH WARRANT OR EXECUTING IT, DEFENDANT DEAN IS NOT LIABLE

The following facts are taken from the Miller Declaration, attached to this motion.

Sheriff Dean is the elected head of the Ventura County Sheriff's Office; this agency is associated with the County of Ventura, not the City of Ventura. The law enforcement agency associated with the City of Ventura is the Ventura Police Department. Paragraph 3.

Captain Miller was requested to ascertain the involvement, if any, of the Ventura County Sheriff's Office or Sheriff Dean in the events involving Ms. Mikovits in November of 2011. In order to do that, he utilized a county-wide computer database known by its acronym, VCIJIS, Ventura County Integrated Justice Information System. It contains all references to Ventura County Sheriff's Office law enforcement contacts. It is an important an integral item in the operation of the Sheriff's Office and is treated seriously and information is carefully entered by authorized Sheriff's personnel. VCIJIS came on line in June of 2002. Paragraphs 5 through 10.

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Captain Miller utilized VCIJIS to conduct a name search of Judy Mikovits, but found no record of any patrol contacts. If anyone in the Sheriff's Office had had any law enforcement contact with Judy Mikovits, such as an arrest or the issuance of a citation, documentation would have been required and VCIJIS would have revealed such a contact. Paragraphs 11-12.

The absence of any Sheriff's Office records involving Judy Mikovits indicated that no Sheriff's Office personnel, deputy sheriffs or higher ranking personnel, had any law enforcement contacts with her. Paragraph 13.

Captain Miller next conducted a search of Sheriff's jail bookings under that name, Judy Mikovits. He found one recorded instance involving that name under booking number 1259336. That record shows that Ms. Mikovits was arrested on November 18, 2011 pursuant to an out of state arrest warrant- not by Ventura County Sheriff's Office personnel, but rather by the City of Ventura Police Department, which is a completely separate agency from the Sheriff's Office. The City of Ventura police department arresting officer was Todd Hourigan, identification number 353. Paragraphs 14-17.

The absence of involvement is a recognized ground of dismissal.

The Ninth Circuit decision in *Barren v. Harrington*, 152 F.3d 1193 (9th Cir. 1998), requires that a plaintiff must plead and prove facts, not conclusions, showing that a person was involved in the alleged deprivation of civil rights. 152 F.3d at 1194. "Liability under Section 1983 must be based on the personal involvement of the defendant." *Id.*

A public official is entitled to qualified immunity if he had no role in the preparation of a warrant affidavit or its execution. *KRL v. Moore*, 384 F.3d 1105, 1118 (9th Cir. 2004). No 1983 liability exists absent personal participation. *Taylor v. List*, 880 F.2d 1040, 1045 (9th Cir. 1997). If a law enforcement officer's moving declarations establish that he or she was unassociated with the challenged conduct, though in close physical proximity, there is no liability. *Liston v. County of*

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Riverside, 120 F.3d 965, 981 (9th Cir. 1997). If the moving declaration substantiates that the law enforcement official was not present at the time of the events in question, he is likewise not liable. *Id.*

Undisputed evidence that a law enforcement officer was not present when the challenged conduct occurred and did not instruct other law enforcement officers to carry out the challenged conduct means that there is no evidence of the required "integral participation" in the alleged constitutional violation. *Torres v. City of Los Angeles*, 548 F.3d 1197, 1206 (9th Cir. 2008). Although that law enforcement officer is in charge of the investigation, an absence of evidence of acting as supervisor of the events themselves does not allow liability. A supervisor can only be liable under 1983 if he or she sets in motion a series of acts by others which he actually or constructively knows will cause them to inflict the challenged constitutional injury. *Id.*

In this action, Defendant Sheriff Geoff Dean had no involvement in the events of November 18, 2011. He is therefore not liable and is entitled to dismissal.

IV.

FALSITY OF INCARCERATION ALLEGATIONS

Paragraph 108 of the first amended complaint alleges that plaintiff was never charged, never photographed, not fingerprinted and never properly processed in the jail. Lines 7-8.

These allegations are contradicted by other allegations of the first amended complaint and by Jeffrey Miller's declaration.

Paragraph 76 alleges that "The Plaintiff was never told what her charges were . . . and until the hearing on her release five days after her warrantless arrest, was unaware of what she was charged with." That concession that she was made aware of her charges five days after her arrest belies the allegation of never having been charged.

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Paragraph 90 alleges that plaintiff was charged with being a fugitive from justice five days after her arrest. This allegation further contradicts the allegation that plaintiff "was never charged."

The allegation that she was never photographed or fingerprinted, if these are assumed to be constitutional rights, are refuted by the Miller Declaration, paragraphs 18 through 24. She was accepted for booking at the Ventura County Sheriff's Office's Pre-trial Detention Facility on November 18, 2011. She was released on November 22, 2011. While in custody, there is no documentation to suggest that anything atypical occurred regarding Ms. Mikovits. When inmates are received for booking, they are electronically fingerprinted, photographed and provided access to a telephone cell. This phone cell gives inmates access to make free local calls, so they can contact bail bonds companies, for example. The phone cell also allows inmates in the booking process to place collect or toll calls. During her incarceration, Ms. Mikovits was transferred to the Todd Road Jail and housed in the general jail population for female inmates. This housing provided her with access to day rooms in which telephones are located.

The Miller Declaration establishes that Ms. Mikovits appeared in court before Judge Bruce A. Young on November 22, 2011. Paragraph 25. She was represented by attorney Paul B. Tyler in that proceeding. Paragraph 26. Judge Young ordered that Ms. Mikovits be remanded to the custody of the Sheriff's Office on $100,000 bail. He ordered her case continued to December 19, 2011, for an extradition hearing. Paragraph 27. She posted bail on that same date and was released from custody on that date. Miller Declaration, paragraphs 19 and 28. The first amended complaint concurs. Paragraph 107.

These facts prove that the allegations of paragraph 108 are false. Plaintiff was properly processed.

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V.

ALL OF THE ALLEGATIONS ARE BARRED BY THE EXPIRATION OF THE STATUTE OF LIMITATIONS

It is undisputed that plaintiff was arrested on November 18, 2011. Paragraph 74 of the first amended complaint and paragraphs 16-17 of Miller Declaration. It is also undisputed that plaintiff was released from the custody of the Ventura County Sheriff's Office once and for all on November 22, 2011. First amended complaint, paragraphs 106-107 and paragraphs 19 and 28 of Miller Declaration.

These undisputed facts render the entire action time-barred. The forum state's limitation period is two years, which expired on November 18, 2013 for the search claims. It expired on November 22, 2013 for the arrest and imprisonment claims. At the time of the court hearing on that date, plaintiff had been given a bail amount, informed of the charges against her and her court date scheduled for the extradition hearing. First amended complaint, paragraphs 76, 90 and 106-107; Miller declaration, paragraphs 25-28.

Section 1983 provides a federal cause of action, but in several respects federal law looks to the law of the State in which the cause of action arose. *Wallace v. Kato,* 549 U.S. 384, 387 (2007). This is so for the length of the statute of limitations: It is that which the State provides for personal-injury torts. *Id.* The accrual date of a Section 1983 action is a question of federal law not resolved by reference to state law. *Id.* at 388. Federal courts refer to state law for tolling rules, just as they do for the length of statutes of limitations. *Id.* at 394.

The statute of limitations upon a Section 1983 claim seeking damages for false arrest in violation of the Fourth Amendment, where the arrest is followed by criminal proceedings, begins to run at the time the claimant is detained pursuant to legal process. *Id.* at 397.

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California's statute of limitations for personal injury claims is two years. Code of Civil Procedure Section 335.1. A Section 1983 action arising in California is governed by the two year statute of limitations. *Jackson v. Barnes,* 749 F.3d 755, 761 (9th Cir. 2014).

Plaintiff's statute of limitations for the false arrest and imprisonment claim therefore expired on November 22, 2013. The statute of limitations for search and seizure claims accrues at the time of the search and seizure. *Matthews v. Macanas,* 990 F.2d 467, 469 (9th Cir. 1993); *Venegas v. Wagner,* 704 F.2d 1144, 1146 (9th Cir. 1983)[Recognized as valid authority by *Kamar v. Krolczyk,* 2008 WL 2880414 *6 (E.D. Cal. 2008); unpublished cases after January 1, 2007 are citable as persuasive authority, Fed.R.App.Proc. 32.1(a)].

The search and seizure claims expired four days earlier, on November 18, 2013. Since the present action was originally filed on November 17, 2014, it was 360 days too late to preserve the false arrest and imprisonment claims and 364 days too late to preserve the search and seizure claims.

There are five potential tolling theories, none of which apply to save plaintiff's claims.

One tolling doctrine is that the pendency of criminal charges tolls the statute of limitations. That is not a rule of constitutional law. *Wallace v. Kato,* 393-394. The Ninth Circuit has held that such tolling may apply under California Government Code Section 945.3. *Harding v. Galceran,* 889 F.2d 906 (9th Cir. 1989).

That statute provides that "no person charged . . . in a criminal offense may bring a civil action for money or damages against a peace officer or the public entity employing a peace officer based upon conduct of the peace officer relating to the offense for which the accused is charged, including an act or omission in investigating or reporting the offense or arresting or detaining the accused, while the charges against the accused are pending before a superior court." *Harding* held that the statute was unconstitutional as far as barring a federal civil rights suit but was

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valid in allowing tolling.

The statutory language only applies if the defendant against whom the tolling is asserted played some role in investigating or reporting the offense. In order to be subject to tolling under 945.3, the law enforcement official must have been responsible for or involved in the criminal charges. Section 945.3 was enacted to prevent a criminal defendant from suing a peace officer, or his or her employer, for conduct of the peace officer relating to the criminal offense while charges were pending against the criminal defendant. *Damjanovic v. Ambrose*, 3 Cal. App. 4th 503, 508 (1992).

In that case, a person arrested for battery on a peace officer brought a tort action against a peace officer and civilian defendants for false arrest. The California appellate court held that the Government Code provision which tolled the limitations period for commencement of civil actions by a criminal defendant against a peace officer while related criminal charges were pending did not toll the period within which to file suit against the civilian defendants. The statutory language did not so provide.

Correspondingly, defendant Dean played no role in bringing the out of state criminal charges against the plaintiff. The entire complaint is a lengthy explanation of how those Nevada charges were brought by the co-defendants against the plaintiff- not by defendant Dean. Nor did he or his agency play any role in bringing the extradition proceedings, obtaining or executing the search warrant or arresting plaintiff. Miller declaration, paragraphs 3 through 17, 29 and 30.

Since Dean played no part in investigating or reporting the offense for which plaintiff was arrested, he is analogous to the civilian defendants in *Damjanovic*. Plaintiff's suit here is not based upon any conduct of Dean relating to the offense for which she was charged. Government Code Section 945.3 therefore does not apply to toll the statute of limitation as to Dean.

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A second tolling doctrine involves a previous timely claim or action substantially related to the same subject matter against the same defendant. Where the first proceeding does not seek relief against the defendant in the second proceeding, equitable tolling does not apply. *Apple Valley Unified v. Vavrinek,* 98 Cal. App. 4th 934, 954 (2002). A worker's compensation claim against an employer would not toll the statute of limitations against a third party who might also be liable for the injury. *Collier v. City of Pasadena,* 142 Cal. App. 3d 917, 924-25 (1983). In *Garabedian v. Skochko,* 232 Cal. App. 3d 836, 847 (1991), the court held that the doctrine of equitable tolling does not save an untimely claim merely because the later defendant obtained timely knowledge within the statute of limitation of a claim against another defendant for which the second defendant knows or believes he may share liability.

Plaintiff's first amended complaint alleges no previous suit or administrative action against defendant Dean. Therefore the doctrine of equitable tolling is inapplicable.

A third tolling doctrine, federal equitable tolling, applies when extraordinary circumstances beyond the plaintiff's control make it impossible to file suit on time. *Stoll v. Runyon,* 165 F.3d 1238, 1242(9th Cir. 1999). But plaintiff has alleged no impossibility facts or theory. She was released from jail on November 22, 2011. After that, she was functional, as described in paragraph 110 of the first amended complaint. She was refusing to give up her personal Gmail as it would put thousands of study participants at risk for confidentiality issues. She was rational and coherent, involved in decision making.

A fourth tolling doctrine would be incarceration. That can be, under certain limited circumstances, a tolling disability. Code of Civil Procedure Section 352.1 (a)-(c) provides that there is a tolling period of up to two years for incarceration if the injury occurred during incarceration and the claim is not against a public entity or its employees. Subdivision (b) provides that the statute does not apply to an action

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against a public entity or public employee upon a cause of action for which a claim is required to be presented; all claims for money or damages require the presentation of a government claim(with 15 exceptions, none of which are applicable here). Government Code section 905. Subdivision (c) renders the tolling provision inapplicable to actions requesting an alteration of the conditions of confinement, but makes it applicable to damages actions relating to the conditions of confinement.

Plaintiff's injury did not occur during the time of her confinement. Even if it did, that tolling would only apply to private parties, not public entity defendants, unless the action sought to modify or redress the conditions of incarceration- which this suit does not. Therefore, disability by reason of confinement does not trigger tolling in this action.

The fifth and final tolling doctrine is continuous or repeated conduct of the same nature. But there is no continuing violation here. The Miller declaration establishes that this incarceration of four days was the one and only contact of the Ventura County Sheriff's Office with plaintiff. Paragraphs 11 through 15 and 30.

VI.

CONCLUSION

Defendant Geoff Dean therefore respectfully requests that this summary judgment motion be granted and that he be dismissed with prejudice from this action and its 11 claims.

DATED: August 13, 2015 WISOTSKY, PROCTER & SHYER

By: _____
Jeffrey Held
Attorneys for Defendant
GEOFF DEAN

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Mikovits v. Garcia, et al.,
USDC Case No. CV14-08909-SVW (PLA)

DECLARATION OF JEFFREY S. MILLER IN SUPPORT OF GEOFF DEAN'S SUMMARY JUDGMENT MOTION

I, Jeffrey S. Miller, declare as follows:

1. I make this declaration based upon information which is personally known to me. If called to testify as a witness to the information contained in this declaration, I would competently and accurately do so under penalty of perjury of the laws of the United States.

2. I have been employed by the Ventura County Sheriff's Office (hereinafter referred to as "VCSO") as a sworn law enforcement officer continuously and full time since March of 1995.

3. VCSO is an agency associated with the County of Ventura, not the City of Ventura. The law enforcement agency associated with the City of Ventura is the Ventura Police Department (hereinafter referred to as "VPD").

4. I am currently a captain assigned to the Professional Standards Bureau/Internal Affairs Unit, and I have held that position since March of 2014.

5. The attorney for Geoff Dean, the Sheriff and head of VCSO, requested my assistance in evaluating the complaint filed by Judy Anne Mikovits. He asked me to determine whether VCSO had any involvement in the arrest of Judy Mikovits in November of 2011.

6. In order to research this information, on June 19, 2015, I utilized a comprehensive computer database containing records documenting all VCSO contacts. The database is called the Ventura County Integrated Justice Information System, known by its acronym, VCIJIS (pronounced "vuh-see-jus").

7. VCIJIS contains records of all VCSO law enforcement contacts and jail bookings. It also provides access to the records of other County agencies, such as the

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Ventura Superior Court, exclusively in a read-only capacity. Sheriff's personnel can input data into the VCSO aspect of VCIJIS.

8. VCIJIS is an important and integral item in the operation of VCSO and as such, is treated seriously and information is carefully entered by authorized VCSO personnel.

9. VCIJIS came on line in June of 2002.

10. In fulfilling my assignment regarding VCSO's involvement, if any, with Judy Mikovits, I first attempted to ascertain whether VCSO personnel were involved in Judy Mikovits' arrest.

11. I utilized VCIJIS to conduct a name search of Judy Mikovits, but found no records of any patrol contacts.

12. If anyone in the organization, VCSO, had any enforcement contact with Judy Mikovits, such as an arrest or the issuance of a citation, documentation would be required. VCIJIS would have then divulged such a contact.

13. The lack of any of these records involving Judy Mikovits indicates that no deputy sheriffs, or higher ranking VCSO personnel working in the field (that is, not in the Custody Division), had had any contacts with her.

14. I next conducted a search of VCSO jail bookings under that name, Judy Mikovits.

15. I found one recorded instance involving Judy Mikovits, booking number 1259336.

16. That record indicated that Judy Mikovits was arrested, for an out of state arrest warrant, not by VCSO personnel, but rather by VPD, which is a completely separate agency from VCSO, on November 18, 2011.

17. That same record shows that the VPD officer who arrested Judy Mikovits was Officer Todd Hourigan, identification number 353.

18. Judy Mikovits was accepted for booking at the VCSO Pre-trial Detention Facility (hereinafter referred to as PTDF) on that same date, November 18,

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2011.

19. Judy Mikovits was released from VCSO custody on November 22, 2011, having been incarcerated for four days and two hours.

20. While in the custody of VCSO, no documentation was generated suggesting that anything atypical occurred regarding Judy Mikovits.

21. When inmates are received for booking, they are electronically fingerprinted, photographed and provided access to a telephone cell.

22. The telephone cell gives inmates access to make free local calls - so they can contact a bail bonds company, for example, even if they have no money.

23. The telephone cell also allows inmates in the booking process to place collect or toll calls.

24. During her incarceration, Judy Mikovits was transferred to the Todd Road Jail (hereinafter referred to as TRJ) and housed in the general jail population for female inmates. This housing provided her with additional phone access in what are known as day rooms.

25. My VCIJIS search of the Ventura County Superior Court records established that Judy Mikovits appeared in court before the Honorable Bruce A. Young on November 22, 2011.

26. Judy Mikovits was represented by attorney Paul B. Tyler in that proceeding.

27. The Honorable Bruce A. Young ordered that Judy Mikovits be remanded to the custody of VCSO in lieu of $100,000.00 bail. Her case was continued to December 19, 2011, for an extradition hearing.

28. According to VCSO jail records, bail for Judy Mikovits was posted on that same date, November 22, 2011, and she was released from VCSO custody on that same date.

29. The lawsuit names the head of VCSO, Sheriff Geoff Dean. Everything I have said in my declaration applies to the Sheriff as well as to all VCSO personnel.

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30. My records of VCJIS did not reveal any contact with Judy Mikovits, other than her incarceration as a result of her arrest by VPD. Therefore, I can represent that Sheriff Dean, as well as other VCSO patrol personnel, did not arrest Judy Mikovits on November 18, 2011, or any other date preceding June 19, 2015.

I declare under penalty of perjury under the laws of the United States of America that the foregoing information is true and correct.

Executed this 23rd day of June, 2015, at Ventura, California.

Jeffrey S. Miller

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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

: JUDY ANNE MIKOVITS *Plaintiff,* vs. ADAM GARCIA, Et Al, *Defendants.*	**Case No. 2:14-cv-08909-SVW-PLA** **PLAINTIFF'S OPPOSITION TO MOTION FOR SUMMARY JUDGMENT OF DEFENDANT GEOFF DEAN AND CROSS MOTION PURSUANT TO F.R. Civ. P. 56(d)**

Plaintiff, Judy Anne Mikovits (Plaintiff), respectfully opposes the Motion for Summary Judgment of defendant Geoff Dean on the following grounds.

I. PRELIMINARY STATEMENT

Defendant, Geoff Dean (Dean) has moved for Summary Judgment wherein this Honorable Court would dismiss all counts of the complaint as to him. Upon reviewing the merits and contentions of Dean's counsel, there are counts which the Plaintiff would assent to a dismissal without prejudice to later determine whether the evidence supports those claims. The Plaintiff is moving pursuant to F.R.Civ. P 56(d) as to several of the claims against this

defendant, as the facts of this case must be clarified and developed through further discovery. As to those claims, summary judgment at this point would be premature and require factual development through testimony and admissible evidence. And still other positions taken by the defendant are without merit, and summary judgment is to be denied on those issues.

To that end, the Plaintiff is willing to voluntarily dismiss the following counts *without prejudice*: Count Six, false arrest without a warrant by a private party; Count Seven, abuse of process; and Count Eleven, defamation. Plaintiff cannot dismiss the following counts without the benefit of discovery, and is asking that the ruling be delayed as to the following counts, as provided by Fed. R. Civ. P. 56(d): Counts Two, Three, Five, Eight, and Ten. As set forth hereinbelow, the Plaintiff vigorously opposes the entry of Summary Judgment as to Counts One, Four, and Nine.

In its motion, Dean has attempted to confuse several issues, and it is crucial that the fact that this case *may* be about a false arrest, and *may* be about illegal search and seizure and Dean *may* have fraudulently conspired with other law enforcement personnel as a result of being influenced by very powerful and very corrupt external forces, but it is certain that his actions and those of his deputies and agents *did* abrogate the civil rights of the Plaintiff by unlawfully detaining her for an excessive time while depriving her of the most basic rights afforded to even violent and dangerous defendants in the criminal system.

As set forth in the complaint, this case involves political corruption at the highest levels of our federal government, ties to organized crime, and deliberate distortion of scientific integrity. The Plaintiff was a pawn in a game of survival, political influence and scientific misconduct, which she was not attempting to reveal, but was only attempting to escape. She was – in the truest sense of the term – a political prisoner. Those who put her into the position she is now living in truly believed that they were above the law, too powerful to be doubted, too rich to be accountable, and but for our civil justice system, would have gotten away with it. The kingpin and architect of the entire scheme is currently a guest of the US Bureau of Prisons in California. His belief in his infallibility was grossly exaggerated.

II. THE COURT SHOULD GRANT THE PLAINTIFF'S RULE 56(d) MOTION AND DENY DEFENDANT'S SUMMARY JUDGMENT MOTION IN ORDER TO ALLOW ADEQUATE TIME FOR DISCOVERY

A. The Summary Judgment Standard Favors the Plaintiff's Position at this time.

Summary judgment is appropriate when it is demonstrated that there exists no genuine issue as to any material fact, and that the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c)); *Adickes v. S.H. Kress & Co*., 398 U.S. 144, 157 (1970). If there is "any evidence in the record from any source from which a reasonable inference in the [nonmoving party]'s favor may be drawn, the moving party simply cannot obtain a summary judgment ..." *In re Japanese Electronic Products Antitrust Litigation*, 723 F.2d 238, 258 (1983) (*rev'd. on other grounds sub nom*. *Matsushita Elec. Indus. Co. v. Zenith Radio Corp*., 475 U.S. 574 (1986).)

The moving party bears the responsibility of informing the district court of the basis for its motion, and identifying those portions of "the pleadings, depositions, answers to interrogatories, and admissions on file together with the affidavits, if any," which it believe demonstrate the absence of a genuine issue of material fact. *Chelates Corp. v. Citrate*, 477 U.S. 317, 323 (1986) (quoting Rule 56(c)).

The movant must establish a right to summary judgment by showing that the pretrial record demonstrates the movant is entitled to judgment as a matter of law. Therefore, the movant must show that no reasonable fact-finder at trial could fail to regard the claimant as having discharged its preponderance of the evidence burden. *See, Edison v. Reliable Life Ins. Co,* 664 F.2d 1130, 1131 (9th Cir. 1981) (to obtain summary judgment in its favor, insurer claimant must

prove no realistic possibility that fact-finder will find policy language at issue, and dispute must resolve around legal effects of language.)

B. Plaintiffs' Summary Judgment Motion Is Premature Because It Was Filed Soon After the Complaint and Before Adequate Time for Discovery

Dean has ignored the general rule that "summary judgment is premature unless all parties have 'had a full opportunity to conduct discovery.'" *Anderson v. Liberty Lobby, Inc.,* 477 U.S. 242, 257 (1986). Due process requires courts to "afford the parties a full opportunity to present their respective cases" before ruling on the merits. *Univ. of Tex. v. Camenisch*, 451 U.S. 390, 395 (1981); *see also* Edward Brunet, *The Timing of Summary Judgment*, 198 F.R.D. 679, 687 (2001) ("[I]t would be patently unfair to permit a judgment to be entered against a person without affording that party the opportunity to gather and submit evidence on his or her behalf.").

Numerous Federal Rules of Civil Procedure embody the bedrock requirement that parties must have an adequate opportunity to gather evidence to defend themselves. Rule 56(b) sets the default deadline for filing a motion for summary judgment at "30 days after the close of all discovery." Rule 56(d)(2) expressly contemplates deferring summary judgment in order to "allow time" for the non-movant "to take discovery." Also, upon converting a motion to dismiss to a motion for summary judgment under Rule 12(d), a district court must give the parties "a reasonable opportunity to present all the material that is pertinent to the motion" before ruling, including the opportunity to "pursue reasonable discovery." *Taylor v. FDIC*, 132 F.3d 753, 765 (D.C. Cir. 1997); *Cal. Med. Ass'n v. FEC*, 453 U.S. 182, 192 n.14 (1981) ("[I]mmediate adjudication of constitutional claims . . . would be improper in cases where the

resolution of such questions required a fully developed factual record."); *Colorado I*, 518 U.S. at 618 (plurality opinion) (discussing importance of record evidence in reviewing constitutionality of limits on political-party expenditures).

Fed. R. Civ. P. 56(d) says:

> (d) **When Facts Are Unavailable to the Nonmovant**. If a nonmovant shows by affidavit or declaration that, for specified reasons, it cannot present facts essential to justify its opposition, the court may:
>
> (1) defer considering the motion or deny it;
>
> (2) allow time to obtain affidavits or declarations or to take discovery; or
>
> (3) issue any other appropriate order.

In this Circuit, where a summary judgment motion is filed so early in the litigation, before a party has had a chance to pursue discovery relating to the theory of the case, District Courts should grant motions to allow such discovery "fairly freely." *Burlington v. Assiniboine Sioux Tribes,* 323 F.3d 767 (9th Cir. 2003), *citing, Metabolife Int'l, Inc. v. Wornick,* 264 F.3d 832, 846 (9th Cir. 2001) ("Although Rule 56[d] facially gives judges the discretion to disallow discovery when the non-moving party cannot yet submit evidence supporting its opposition, the Supreme Court has related the rule as requiring, rather than merely permitting, discovery 'where the non-moving party has not had the opportunity to discover information that is essential to its opposition.'" *Citing Liberty Lobby* @250, *supra.*

As the 9th Circuit clearly stated recently:

In ruling on a 56(d) motion, a district court considers:

- whether the movant had sufficient opportunity to conduct discovery. *See Qualls By and Through Qualls v. Blue Cross of Calif., Inc.*, 22F.3d 839, 844 (9th Cir. 1994);

- whether the movant was diligent. *See Pfingston v. Ronan Eng'g Co.*, 284 F.3d 999, 1005 (9th Cir. 2002); *see also Bank of Am. v. Pengwin*, 175 F.3d 1109, 1118 (9th Cir. 1999);

- whether the information sought is based on mere speculation. *See Nordstrom, Inc. v. Chubb & Son, Inc.*, 54 F.3d 1424, 1436-37 (9th Cir. 1995); *see also State of Cal., ex. rel. Cal. Dep't of Toxic Substances Control v. Campbell*, 138 F.3d 772, 779-80 (9th Cir. 1998); and

- whether allowing additional discovery would preclude summary judgment. *See Michelman v. Lincoln Nat. Life Ins. Co.*, 685 F.3d 887, 892 (9th Cir. 2012).

Martinez v. Columbia Sportswear USA Corp, d/b/a Columbia Sportswear Company 446, C.A. Doc. 12-16331 (9th Cir. 2014).

Addressing the above criteria, it is clear that the first prong favors the Plaintiff, as there has been no time whatsoever afforded to conduct any discovery at all, inasmuch as the defendant filed his motion prior to filing an answer and any discovery even being permitted by the Federal Rules. As for the second prong of the Martinez analysis, once again, the Plaintiff is favored. There can be no lack of diligence, where there is no opportunity for it. The plaintiff in the Martinez case allowed discovery to close before adding discovery demands. Such is clearly not the case here. The issue of mere speculation is addressed in the supporting declaration of Dr. Judy A. Mikovits, and the totality of the statements in that declaration show that her suspicion rises to more than mere speculation. The final Martinez prong is clearly in the Plaintiff's favor. To say otherwise would be to say that discovery doesn't matter.

In judging evidence at the summary judgment stage, the court does not make credibility determinations or weigh conflicting evidence. *See*, *T.W. Elec. v. Pacific Elec. Contractors Ass'n*, 809 F.2d 626, 630-31 (9th Cir. 1987) (citing *Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp.,* 475 U.S. 574, 587 (1986)). Because it must present specific facts to show the existence of

a genuine dispute, the opponent must be given time to conduct discovery to enable it to meet that burden. Rule 56(d) permits the Plaintiff to obtain more time for discovery by submitting an affidavit stating why she "cannot for reasons stated present by affidavit facts essential to justify the party's opposition." The court may then grant a continuance for further discovery. A Rule 56(d) motion must set out the nature of the discovery to be undertaken, the kinds of evidence likely to be uncovered, and how this new evidence will create a material factual dispute.

1. Discovery needed to establish factual issues to be tried by the jury.

At his juncture, the easiest statement to make as to which discovery is needed to sustain her burden of allowing time to develop her case, would be to say that "**any** discovery is needed." Since the Amended Complaint was filed only days before the within Motion for Summary Judgment was filed by the defendant, it is clear that this defendant is attempting to escape liability for a variety of acts. Since there are issues of statute of limitations raised by this as well as other defendants in other motions, and since the Plaintiff has alleged conspiracy, there is discovery needed to allow her to prove that this defendant conspired with various other defendants for purposes of holding her in jail without charges and without due process, or any process at all.

In order to sustain her burden in this Opposition and under Rule 56(d), the Plaintiff must show more than conjecture and conclusions. To put it in its most succinct terms, the Plaintiff has alleged that Dean was part of a conspiracy to hold her in jail knowing that there were no valid charges against her, and that she was being held by political forces in an attempt to

destroy her reputation in the scientific community. These are, admittedly, very strong charges to allege, and would require unheard of political forces to perpetuate.

To prove this, she would need to take depositions of several people, including:

- Mr. Whittemore, who is now in Federal Penitentiary in California;
- Mrs. Whittemore, who is in Reno, Nevada;
- U.S. Senator Harry Reid and his staff, who participated in influencing various forces to carry out the alleged conspiracy;
- Lieff Reid, Senator Reid's son who was employed by Mr. Whittemore in his law office;
- Mr. Whittemore's son who was on the staff of the U.S. Bankruptcy Judge at the relevant time that the Plaintiff was going through a bankruptcy and at which time Mr. Whittemore committed a fraud on the Bankruptcy Court, by falsely claiming that he had an enforceable judgment in excess of Five Million ($5,000,000.00) Dollars against the Plaintiff, and which Court refused to entertain a motion to reopen the bankruptcy to explore the fraud the Plaintiff was alleging;
- Any of Dean's deputies that had participated in the unlawful jailing and deprivation of the Plaintiff's civil rights;
- Deputy Steve De Cesari, who visited the Plaintiff at her cell and apologized for the way she was being held without her due process and in a way he had never seen;
- Deputy Gary Pentis, who accompanied Mr. De Cesari, making similar statements;
- Max Pfost, her laboratory assistant who was still employed by Whittemore at the time of the Plaintiff's incarceration, and who, although he was an employee and agent of the Whittemore Peterson Institute, knew that the Plaintiff was not in possession of the laboratory notebooks that are the centerpiece of this litigation and what are what were being sought as a precondition to her release from jail, because he had them in his possession at the time of the "arrest;"
- Bail bondsman who claimed that he had never seen anything like this in all his years as a bail bondsman; and
- Others whose identity will become known during the above depositions.

The substance of testimony to be sought is that very powerful political forces were able to hold the Plaintiff in jail with no charges brought, and with an inability to exercise her constitutional rights, in order to extricate herself from the situation. The various defendants have maintained that the Plaintiff stole certain laboratory notebooks, and that she was holding them in her possession. The truth is that those defendants knew that the Plaintiff could not have removed her notebooks, because she was not allowed access to the building or her office

from and after the time of her termination from employment at WPI. The security system at WPI included video surveillance, and the defendants well knew from watching videotapes that they were setting Dr. Mikovits up to make it sound as though she had acted in a nefarious manner, when it was those defendants, and not the Plaintiff that had acted unlawfully. Various defendants also knew that the Plaintiff was the rightful owner of the computer that she had "stolen," and she even produced a gift receipt to the police officers who stormed her home, which showed that various defendants had given her the computer as a gift.

In order to prevent summary judgment on Counts Two, Three, Five, Eight, and Ten from entering, the Plaintiff moves that This Honorable Court allow her to take the discovery needed to sustain her burden of proof. To enter Summary Judgment at this time would allow Dean to get away with a gross miscarriage of justice.

More specifically examining each of the counts affected by this portion of the memorandum, there is adequate justification for additional discovery prior to ruling on the defendant's motion.

Count 2, unreasonable search and seizure without a warrant: The defendant has taken the position that he and his deputies were not involved in the search and seizure that took place at the Plaintiff's home. The Plaintiff specifically has no knowledge at this time to either accept or refute this position. She was without knowledge that Dean's deputies were at her home, and had assumed that it was those officers that had entered her home and searched it on November 18, 2011. Because discovery consisting of interrogatory questions to co-defendants, or a deposition of a representative of the Ventura County Police Department could easily clear up this issue, it is respectfully urged that this Honorable Court allow extremely limited discovery

to test and ascertain the veracity of Dean's position. That discovery could not be unique to this issue, as it would have a bearing on the development of the factual basis of many aspects of the remaining parts of this case. This analysis strictly applies only to this particular defendant, as the same counts clearly are the basis of claims against others.

Count Three, false arrest with a warrant: This determination would be nearly identical with the prior inquiries. If there were no personnel from the Sheriff's Office present, and there was no participation of that department, then this count would be ripe for dismissal, as is the case with Count Two.

Count Five, false arrest without a warrant by a peace officer: This determination would be nearly identical to the prior inquiries. Again, if were no personnel from the Sheriff's Office present, and there was no participation of that department, then this count would be ripe for dismissal.

Count Eight, Fraud: This inquiry would be far more in-depth and would require several depositions and would be developed with the remaining claims as to the other defendants. Fraud is a key element to the claims that would allow the case to proceed notwithstanding the statute of limitations claims raised by this and other defendants. The testimony would develop the fact of nearly unimaginable political participation by the then-Senate Majority Leader of the United States. If the Plaintiff were unable to link the highly unusual events to Senator Reid himself, she would be attempting to prove that his influence was used to pressure Dean to hold a detainee without charges and without access to a judicial tribunal. This count would implicate Mr. and Mrs. Whittemore in a scheme to politically corrupt the sheriff's office through pressure brought across state borders, and with the aid of the District Attorney of Washoe County,

Nevada, and the University of Nevada Police Department. It defies logic as to how Dean could have acted with such disregard for the civil rights of such a celebrated scientist had he not been influenced to do so by outside actors as part of a fraudulent scheme. Adequate discovery is needed to develop these theories.

Count Nine: civil conspiracy: This count is the crux of the case and, like the previously discussed count, requires detailed discovery and investigation. The Plaintiff states that there is ample evidence of a conspiracy which reaches Dean, and if the Court is inclined to grant summary judgment as to this count, the Plaintiff respectfully asks for an opportunity to develop her evidence as to this count. It is this theory that would bind all acts of all co-defendants to Dean, should he be proven to be a member of the alleged conspiracy. In California, it is well settled that by participation in a civil conspiracy, a coconspirator effectively adopts as his or her own the torts of other coconspirators within the ambit of the conspiracy. In this way, a coconspirator incurs tort liability co-equal with the immediate tortfeasors." *Applied Equipment Corp. v. Litton Saudi Arabia Ltd.* (1994) 7 Cal.4th 503. "While criminal conspiracies involve distinct substantive wrongs, civil conspiracies do not involve separate torts. The doctrine provides a remedial measure for affixing liability to all persons who have 'agreed to a common design to commit a wrong.' " *Choate v. County of Orange* (2000) 86 Cal.App.4th 312, 333. "As long as two or more persons agree to perform a wrongful act, the law places civil liability for the resulting damages on all of them, regardless of whether they actually commit the tort themselves. 'The effect of charging . . . conspiratorial conduct is to implicate all . . . who agree to the plan to commit the wrong as well as those who actually carry it out.' " *Wyatt v. Union Mortgage Co.* (1979) 24 Cal.3d 773, 784.

The elements of a civil conspiracy are;

(1) the formation and operation of the conspiracy;

(2) the wrongful act or acts done pursuant thereto; and

(3) the damage resulting.' "

Mosier v. Southern California Physicians Insurance Exchange (1998) 63 Cal.App.4th 1022, 1048.

The major significance of the conspiracy lies in the fact that it renders each participant in the wrongful act responsible as a joint tortfeasor for all damages ensuing from the wrong, irrespective of whether or not he was a direct actor and regardless of the degree of his activity.' *Applied Equipment Corp., supra.*

The requisite concurrence and knowledge for the Plaintiff to sustain this part of the Cause of Action, 'may be inferred from the nature of the acts done, the relation of the parties, the interests of the alleged conspirators, and other circumstances.' Tacit consent as well as express approval will suffice to hold a person liable as a coconspirator. *Wyatt, supra,* 24 Cal.3d at p. 785. Proof of the conspiracy may be inferred from circumstances, and that the conspiracy need not be the result of an express agreement but may rest upon tacit assent and acquiescence. *Holder v. Home Savings & Loan Assn. of Los Angeles* (1968) 267 Cal.App.2d 91, *Peterson v. Cruickshank* (1956) 144 Cal.App.2d 148, 163. "[A]ctual knowledge of the planned tort, without more, is insufficient to serve as the basis for a conspiracy claim. Knowledge of the planned tort must be combined with intent to aid in its commission. 'The sine qua non of a conspiratorial agreement is the knowledge on the part of the alleged conspirators of its unlawful objective and their intent to aid in achieving that objective.' 'This rule derives from the principle that a

person is generally under no duty to take affirmative action to aid or protect others.' *Kidron v. Movie Acquisition Corp.* (1995) 40 Cal.App.4th 1571, 1583.

It is fundamental to doctrines of conspiracy that in order to sustain her case under conspiracy doctrine, the Plaintiff must be able to point to specific instances comprising the conspiracy. While she may allege such, in order to prevail at trial, the Plaintiff needs detailed discovery upon which she can base this cause of action. Justice requires that the Plaintiff be given all procedural advantages that are available to her in the civil justice system under the Constitution.

Count Ten: Infliction of emotional distress: If the actions of Dean and his deputies are deemed to be ripe for adjudication, as an element of her damages, Dr. Mikovits is entitled to seek redress for her emotional harm caused by this defendant. In California, if a tortfeasor's actions are outrageous, as would be the case in a civil rights case, such as this, then the plaintiff is entitled to an instruction that the conduct may have caused emotional harm, and she should be compensated for that. Discovery is needed to develop this cause of action properly.

III. SHERIFF DEAN VIOLATED THE PLAINTIFF'S CIVIL RIGHTS

A. Processing Irregularities

When the Plaintiff was taken to jail, there were many irregularities in her processing as a prisoner. She was never properly processed as an incoming inmate. She was not photographed, and was never informed of her charges, was denied counsel, refused the right to contact an attorney, and while it was early enough in the day to go in front of a magistrate of a judge, the Sheriff made no attempt to secure her release before the impending weekend. Furthermore, Dean and his deputies failed to abide by the California Penal Code. When asked

why she was there, she was told that she was a "fugitive from justice." When she attempted to ask how that could be, inasmuch as she has never had any contact with law enforcement and never committed a crime, she was told that she is a fugitive and cannot be bailed out.

Upon entry to the jail, Dr. Mikovits was placed in a holding cell. She was denied her eyeglasses, without which she cannot see. As a result of not accommodating her needs, she was not capable of making any calls. She was not allowed to place an outgoing call to a cellular telephone, therefore was unable to effectively communicate with anyone whose number she knew from memory. She was not allowed any form of communication with the outside world, including her husband. To further emphasize the irregularities of the booking process, the Plaintiff was never even photographed as part of the standard processing procedure!

The Plaintiff was arrested at approximately 1:00 PM on November 18, 2011. Under the terms of the California Penal Code as well as the Constitution of the State of California, she was to have been brought before a magistrate within 48 hours of her arrest, excluding Sunday. Therefore, she was to have been brought to the magistrate at or before 1:00 PM on Monday, November 21, 2011. The applicable provision in the Penal Code states:

> 825. (a) (1) Except as provided in paragraph (2), the defendant shall in all cases be taken before the magistrate without unnecessary delay, and, in any event, within 48 hours after his or her arrest, excluding Sundays and holidays.

In addition to the Penal Code, Article I, Sec. 14 of the Constitution of the State of California states:

> SEC. 14. Felonies shall be prosecuted as provided by law, either by indictment or, after examination and commitment by a magistrate, by information.
>
> **A person charged with a felony by complaint subscribed under penalty of perjury and on file in a court in the county where the felony is triable shall be taken without unnecessary delay before a magistrate of that court. The magistrate shall immediately give the defendant a copy of the complaint, inform the defendant of the defendant's**

> **right to counsel, allow the defendant a reasonable time to send for counsel, and on the defendant's request read the complaint to the defendant. On the defendant's request the magistrate shall require a peace officer to transmit within the county where the court is located a message to counsel named by defendant.**
>
> A person unable to understand English who is charged with a crime has a right to an interpreter throughout the proceedings. (Emphasis Added)

None of the events in bold letters transpired. The Plaintiff was totally denied her constitutional rights by Dean, while he was acting under color of his authority.

Furthermore, on the Monday following the weekend the Sheriff continued to refuse to allow any contact with the outside world. She was eventually brought before a magistrate on Tuesday November 22, 2011, a full day after the prescribed time allowed by the Penal Code, and was remanded to the jail again. Finally, later that night, she was released as mysteriously as she was apprehended. As of today, there is still no logical explanation or apology by Sheriff Dean for the misfeasance of his deputies and the denial of her Constitutional Rights.

On Tuesday, November 22, 2011, the notebooks which were not in her house when the law enforcement authorities searched on November 18th, and totally tossed every closet, drawer, shelf and cabinet in the Plaintiff's house, appeared in the front center of a closet in her house, in a bag that she had left in Reno in an apartment controlled by Mr. Whittemore. This mysterious event begs deep and detailed discovery, as there was literally no possible way for that bag to have been in the house at any time the Plaintiff was there, and it mysteriously appeared in a closet totally inspected by the authorities!

B. Indicia of conspiratorial activity

Several calls ensued while Dr. Mikovits was incarcerated. Her husband and one of her scientific collaborators, Dr. Frank Ruscetti, received several phone calls from Mr. Whittemore. He told them both that he can get Dr. Mikovits released from Sheriff Dean's Jail in Ventura

County if she would sign an "apology" letter – in which she would confess to stealing the notebooks which were: 1.) hers, and 2.) already in the possession of Mrs. Whittemore and not in Dr. Mikovits' possession. He explained that he alone controlled whether she stays in jail through the Thanksgiving holiday, and boasted that he could get her released whenever he wanted to. Of course she wouldn't sign such a false statement. The other condition was that Mr. Whittemore wanted access to some scientific samples from Dr. Lipkin's study, which Dr. Mikovits could access. He wanted those samples because three days earlier, the NIH pulled a $350,000 grant from WPI, and the Whittemores were feeling that their daughter's treatment may be compromised and that her CFS would relapse**. He again let it be known that he was in total control of whether Dr. Mikovits would remain in Ventura County Jail.** This is a strong implication that he and Sheriff Dean had conspired to deprive the Plaintiff of her civil rights. If Sheriff Dean was not a co-conspirator with the other parties, how could Mr. Whittemore have been the holder of the keys to the jail house from a state away? This all amounts to more than negligence on the part of Sheriff Dean, and traditional defenses are not available to him under this fact pattern.

IV. STATUTE OF LIMITATION

According to Dean's memorandum, the applicable statute of limitations expired on November 22, 2013, and this action is time barred. This triggers an analysis based upon the viability of the conspiracy claims in the complaint, as well as the application of a California Government Code section which the defendant neglects to mention in his briefs.

If the conspiracy is determined to exist, and if the within defendant is deemed to be a conspirator by the jury in this case, then the applicable statute does not run until two years

after Mr. Whittemore and the Whittemore Peterson Institute committed fraud on the Bankruptcy Court, by filing a claim which Whittemore knew to be false and fraudulent in the amount of $5,565,745.52, on July 25, 2013, tolling the statute of limitations as to all conspirators until July 22, 2015, which was eight months *after the* complaint was filed in this case.

Should Dean not be deemed a co-conspirator in this case, that still fails to take into account that the charges brought against Dr. Mikovits in Nevada were dismissed without prejudice on or about June 11, 2012, and she was advised by the Court and her counsel in Nevada that those charges would remain open against her until they expire as a matter of law – four years after the date of the alleged offense, October 16, 2015 – which has not happened yet!

According to California Government Code:

> 945.3. No person charged by indictment, information, complaint, or other accusatory pleading charging a criminal offense may bring a civil action for money or damages against a peace officer or the public entity employing a peace officer based upon conduct of the peace officer relating to the offense for which the accused is charged, including an act or omission in investigating or reporting the offense or arresting or detaining the accused, while the charges against the accused are pending before a superior court.
>
> Any applicable statute of limitations for filing and prosecuting these actions shall be tolled during the period that the charges are pending before a superior court.

If this provision is applicable, then this case may be ripe for dismissal against the Sheriff and his Deputies, until October 16, 2015, at which time the Plaintiff could move to amend the case to add the Sheriff as a party, as well as the Ventura County Police Department.

In his brief, Dean attempts to characterize himself as akin to a civilian. Such a reading of the case *Damjanovic v. Ambrose,* 3 Cal. App. 4th 503 (1992), is simply a mischaracterization and of no weight in this case.

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V. CONCLUSION

For the reasons enumerated above, This Honorable Court is asked to allow the Plaintiff's Rule 56(d) Cross Motion to allow discovery prior to considering the defendant's Motions for Summary Judgment as to Counts 2, 3, 5, 8, 9, and. 10. Further, to DENY the Summary Judgment motion as to counts 1, 4 and 9.

Furthermore, the issue of statute of limitations requires the logical conduct of discovery to determine whether there are underlying facts that would warrant a finding in the Plaintiff's favor.

Dated: September 9, 2015

The Plaintiff,
By her Counsel

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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

: JUDY ANNE MIKOVITS *Plaintiff,* vs. ADAM GARCIA, Et Al, *Defendants.*	**Case No. 2:14-cv-08909-SVW-PLA** **PLAINTIFF'S STATEMENT OF GENUINE DISPUTES, PURSUANT TO LOCAL RULE 56-2**

The Plaintiff files the following Statement of Genuine Dis0putes, pursuant to L.R. 56-2.

1. The operative events described in the First Amended Complaint, transpiring on November 18, 2011 and involving obtaining a search warrant, plaintiff's arrest and the search of her home, were not conducted by nor did they involve the Ventura County Sheriff's Office or the Sheriff, Geoff Dean, himself. The entire course of events was exclusively a City of Ventura police department operation.
    a. This statement requires discovery to controvert or agree with, but at this time the Plaintiff is not able to refute or admit.

2. The only involvement of the Sheriff's Office, of whom Geoff Dean is the elected head and the Sheriff, was in a custodial capacity as the jail.

a. This statement requires discovery to controvert or agree with, but at this time the Plaintiff is not able to refute or admit.

3. No jail documentation suggests that plaintiff's incarceration varied from the norm: When inmates are received for booking, they are electronically fingerprinted, photographed and provided access to a telephone cell. The telephone cell gives inmates access to make free local calls to contact anyone they wish, even if they have no money. After her housing in the general jail population at the Todd Road facility, plaintiff had further telephone access in the day rooms there.
   a. The Plaintiff refutes this claim. As set forth in her Memorandum in Opposition, she was not properly received and processed, and the fact that she made it known that she could not read the numbers n the wall without her glasses, and that she was refused assistance renders the free local call offer useless. This was part of the claim for deprivation of her civil rights.

4. Plaintiff was released from custody by the Ventura County Sheriff's Office on November 22, 2011, following her appearance with her attorney Paul Tyler before the Honorable Bruce A. Young of the Ventura Superior Court. Judge Young advised Ms. Mikovits of the charges against her, ordered that she be remanded to the custody of the Sheriff's Office in lieu of $100,000 bail and continued plaintiff's extradition hearing to December 19, 2011.
   a. As stated in the Memorandum in Opposition and the declaration of Judy A. Mikovits, she was unable to hear any of the proceedings in court, so has no basis to refute of admit
5. November 18 through November 22, 2011, was plaintiff's only incarceration by the Ventura County Sheriff's Office.
   a. Not refuted

II. CONCLUSIONS OF LAW

1. In that neither Sheriff Dean nor his agency, the Ventura County Sheriff's Office, played any role in the events described in the complaint as having occurred on November 18, 2011, issuance of a search warrant, her arrest, the search of her home, improper execution of the search warrant and intimidation of her husband, Sheriff Dean is entitled to prejudicial dismissal of all federal claims.

   a. This statement requires discovery to controvert or agree with, but at this time the Plaintiff is not able to refute or admit.

2. Plaintiff's claims of not having received the standard incidents of incarceration are refuted by the Miller declaration as well as by the allegations of plaintiff's own complaint.
   a. As set forth in the Memorandum in Opposition, filed herewith, this is refuted.
3. Plaintiff's action is barred by the expiration of the statute of limitation because her appearance and hearing in the Ventura Superior Court occurred on November 22, 2011 and she was released from jail on the same date, yet the present action was not filed

until November 17, 2014, almost one year beyond California's two year statute of limitation.

a. As set forth in the Memorandum in Opposition, filed herewith, this is refuted

III. REVIEW BY DISTRICT JUDGE

Received and reviewed by the Honorable Stephen V. Wilson, United States District Judge.

DATED:

_____

Stephen V. Wilson,
United States District Judge

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

JUDY ANNE MIKOVITS

Plaintiff,

vs.

ADAM GARCIA, Et Al,

Defendants.

Case No. 2:14-cv-08909-SVW-PLA

AFFIDAVIT OF JUDY ANNE MIKOVITS IN OPPOSITION TO SUMMARY JUDGMENT

JUDY A. MIKOVITS, deposes and states as follows:

1. I am the Plaintiff in the above captioned civil action.

2. I am an adult, and reside at 140 Acacia Avenue. Carlsbad, California.

3. I have read the Memorandum in Opposition to Summary Judgment, filed herewith, and all statements in that Memorandum are verified as true and accurate.

4. I incorporate by reference all statements and arguments made in that Memorandum herein, as if stated in this Affidavit.

5. When I was terminated as an employee of the Whittemore-Peterson Institute, I was forever barred from entry into that facility.

6. At the time of my termination, all of my laboratory notebooks going back in time to the beginning of my professional career were in my office as alleged in the Amended Complaint in this action. They were locked in drawers in my desks in my two offices both of which were on the UNR campus. The keys to those drawers were in a place known to my laboratory staff.

7. As of the date and time of my termination, it would have been impossible for me to gain lawful entry to the WPI facility on the campus of the University of Nevada-Reno (UNR), which was my principle office. There were video cameras monitoring the inside and outside of that facility.

8. I did not bring my notebooks back to my California residence at the time of my termination.

9. At the time of my termination, I was living in a condominium owned by Mr. Harvey Whittemore. I returned to my condo, packed as many of my belongings as I could carry and as had any value to me, and drove back to California.

10. Among items that I left in the Condominium, was a cloth beach bag with my initials on it. It was a duplicate, and I had no need for it, as I took the other one with me.

11. During the days leading up to my November 18, 2011, arrest, I became increasingly disturbed by the repeat appearance of certain people who were unknown to me, but seemed to be everywhere that I went. I became so concerned that I took certain steps to ascertain the identities of these people.

12. As part of this inquiry, I began to suspect that I was being trailed by law enforcement officers. Because of this, I asked my civil attorney, Dennis Jones to check to see if there were any warrants for my arrest. He told me to not be ridiculous, that I was involved in a civil case, and that would not have implicated law enforcement. At 11:00 AM on November 18, 2011, Mr. Jones informed me that he had checked to see if there were any warrants, and that there were none.

13. Two hours later, I was placed under arrest by Ventura County law enforcement working with UNR police forces.

14. Upon my arrest, I observed a law enforcement officer push my elderly husband into a chair forcefully. He was forced to sit and watch as the officer placed me in handcuffs and escorted me out of the house. He was also forced to sit and watch as other officers virtually ransacked our home, dumping out drawers, emptying closets, cabinets and all our book shelves.

15. During this day, nobody would tell me what I was charged with or why I was being arrested, other than the fact that the officers were looking for a computer, which I told the officers I had a gift receipt for, as it was purchased for me as a gift by Mrs. Whittemore.

16. I was taken to the county lockup under the courthouse and placed in a holding cell, I was without my glasses and was unable to read the numbers on the wall for bail bondsmen. I asked for assistance and was told that it was not their problem but mine, and no assistance was given. I could not reach my husband as he only has a cell phone, and no calls are allowed to go to cell phones from the jail.

17. After approximately 12 hours, at 2:00 AM, I was transferred to the facility on Todd Road, and was moved a cell where I was held over the weekend, until the following Tuesday.

18. At no time was I photographed while in the Ventura County Jail or lockup.

19. Nobody there would tell me what I was being held for or what I was charged with. I was only told that I would not be able to be bailed out, that there was a "bail hold"on me.

20. Upon information and belief, Mr. Whittemore had a conversation with my husband, during which he told my husband that if I would sign a confession that I had the notebooks and that I took them; and if I could get him the materials for a $350,000.00 grant, he would have me released then and there.

21. Upon being told this, I became very emotional, as I knew for a fact that when I left Reno, I did not have the books, but I knew that Max Pfost, my lab assistant who remained in the employ of WPI at that time, had secured the notebooks. I refused to sign a false confession. And, I refused to participate in defrauding the United States Government by assisting Whittemore and WPI in fraudulently obtaining an interest in the research grant being worked on by Dr. Lipkin, one of my colleagues.

22. It was clear to me that there was an open line of communication from Whittemore or one of his colleagues or employees, to the Sheriff of Ventura County, as I was being told that Whittemore could get me out as soon as I did what he demanded.

23. On Monday afternoon, November 21st, I received a visit at my cell by two of the sheriff deputies, Mr. Steve De Cesari, and Mr. Gary Pentis. They apologized to me for how things were happening and asked me how they could do things differently in the future to avoid this from happening! To this day, I have no idea what they were referring to.

24. I am aware that on Monday afternoon, I was entitled to appear before a magistrate, and I was not allowed to do so.

25. On Tuesday, November 22, 2011, I was shackled to other women and loaded into a prison bus and taken to the Court house. I stood with the other women, as the clerk mumbled my charges inaudibly, so I still had no idea what I was being charged with. A lawyer entered a plea that I couldn't hear, and bail was set at $100,000.

26. The bail bondsman told me that he had never seen anything like what had been happening to me in all his years working in that profession. He told me that there were many strange events associated with my incarceration.

27. After my arraignment, I was returned to the jail for several hours with no explanation and no discussion of when I would be released, having already made bail.

28. I was released at approximately 8:00 PM, with instructions to return to Reno, Nevada and to go to the Sheriff's office there and turn myself in on the following Monday, November 28, 2011.

29. Somewhere in the bail process, I left my driver's license on a photocopy machine, when a worker failed to return it to me.

30. My husband and I left Ventura County to travel to Sonoma for a family Thanksgiving dinner. While en route, I was stopped for speeding by the California Highway Patrol. I explained that I had misplaced my license and he went to run me through his dispatcher. I thought for sure there would be trouble when he determined that I had a fugitive warrant from Nevada. To my total shock, he returned to my car and confirmed that I had a clean record!

31. This was very curious, as if there was – in fact – a legitimate warrant, the police officer would have found it and would not have told me I had a clean record. This is an issue that my counsel will be exploring fully in discovery, and is likely to implicate Sheriff Dean as being part of a contrived ploy.

32. Upon appearing in Nevada, I went to my lawyer's office with instructions to appear at my lawyer's office no later than 11:00 AM, under the threat of immediate arrest if I was late.

33. We then travelled together to the Washoe County Courthouse and I was booked, printed, photographed and released in under three hours.

34. I returned to my home in California immediately upon leaving the courthouse.

35. On or about January 8, 2012, my attorney answered for me entering a plea for a crime I am not even sure of in the Superior Court in Reno. I was advised by my counsel that I was in his custody, and from that time on there were to be meetings with D.A. Gammick, which were never held.

36. On March 12, 2012, I went to my lawyer's office with proof of my innocence, and proffered that to him.

37. On March 14, 2012, Judge Adams, who presided over my criminal action so far, recused himself, citing extremely large campaign donations from Mr. Whittemore as the reason.

38. Two weeks later, my lawyer was appointed to the bench, and told me that everything was going to be fine.

39. On or about June 11, 2012, all charges were dismissed without prejudice.

40. I was told by my lawyer that I needed to do nothing illegal at all until October 16, 2015, at which time all charges would be expunged automatically. She warned me that if I did not drop all actions as to Mr. Whittemore, I would end up back in jail, but this time in Reno and I would never get out.

41. All above statements are true and based upon my personal knowledge, unless otherwise stated herein.

Dated: September 7, 2015

SIGNED UNDER THE PAINS AND PEMNATIES OF PERJURY.

____/S/ Judy a. Mikovits, Plaintiff___
Notarized Copy to be filed separately

Sworn and subscribed before me this 8th day of September, 2015.

_____
Notary Public

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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

JUDY ANNE MIKOVITS, Plaintiff, vs. ADAM GARCIA, JAMIE MCGUIRE, RICHARD GAMMICK, GEOFF DEAN, THREE UNIDENTIFIED VENTURA COUNTY DEPUTY SHERIFFS, F. HARVEY WHITTEMORE, ANNETTE F. WHITTEMORE, CARLI WEST KINNE, WHITTEMORE-PETERSON INSTITUTE, a Nevada corporation, UNEVX INC., a Nevada corporation, MICHAEL HILLERBY, KENNETH HUNTER, GREG PARI and VINCENT LOMBARDI, Defendants.	Case No. CV 14-08909 SVW (PLAx) Honorable Stephen V. Wilson **REPLY TO PLAINTIFF'S OPPOSITION TO MOTION OF DEFENDANT SHERIFF GEOFF DEAN FOR SUMMARY JUDGMENT; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF** Date: November 16, 2015 Time: 1:30 p.m. Crtm: 6 *[Response to and Request to Strike Plaintiff's Separate Statement in Opposition to Defendant's Motion for Summary Judgment, Evidentiary Objections, and Declaration of James S. Eicher, Jr. filed concurrently herewith]*

TO THE HONORABLE COURT AND TO ALL INTERESTED PARTIES AND THEIR ATTORNEYS OF RECORD:

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Exhibit "7"

Defendant Sheriff Geoff Dean hereby submits his reply to Plaintiff's Opposition to Defendant's Motion for Summary Judgment.

Dated: November 2, 2015

LAWRENCE BEACH ALLEN & CHOI, PC

By /s/ Paul B. Beach
Paul B. Beach
James S. Eicher, Jr.
Attorneys for Defendant
Geoff Dean

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION.

Given the patently defective nature of Plaintiff's claims, at this early stage of these proceedings, Defendant Dean has sought summary judgment based on two narrow issues: First, that Plaintiff's claims against Sheriff Dean are barred by the statute of limitations; and, second, that Sheriff Dean had no involvement in the arrest of Plaintiff or search of her residence on November 18, 2011. Given the briefing and admissible evidence, Defendant Dean's Motion should be granted for any or all of the following reasons.[1]

First, in opposition to the Motion, Plaintiff has failed to comply with the Federal Rules of Civil Procedure and this Court's Local Rules to proffer competent, admissible evidence establishing a triable issue of material fact and to present her arguments and evidence to this Court and Defendant in the form of a proper Separate Statement. The long-standing law is that on this basis alone, this Court can and should grant summary judgment.

Second, even if one were to accept as true the bizarre, unsupported conspiracy contentions alleged (without any evidentiary support) by Plaintiff, her purported claims against Defendant Dean are barred by the statute of limitations. In short, it is undisputed that on the same day that Plaintiff posted bail on November 22, 2011, she was released from the custody of the Ventura County Sheriff's Department. The relevant statute of limitations regarding her time in custody is, at most, two years. However, Plaintiff did not file suit until November 17, 2014, almost three years later. But even if the cause of action accrual date was extended out to the date that the Nevada charges against her were dismissed (June 11, 2012), her claims were still filed four months after the expiration of the

[1] In her Opposition, Plaintiff concedes that the following claims should be dismissed: Count 6 (false arrest without a warrant by a Private Party), Count 7 (Abuse of Process), and Count 11 (Defamation). *See*, Opp. at p. 2, para. 2.

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limitations period. Thus, despite Plaintiff's bizarre accusations, her claims are barred as a matter of law.

Third, even if Plaintiff's claims were not time barred, based on the admissible evidence, there is no basis for personal liability against Defendant Dean. There is no competent evidence of any actionable conduct by Defendant Dean. In fact, the only admissible evidence is that Defendant Dean had no personal involvement in either Plaintiff's arrest or incarceration. Moreover, much of what Plaintiff claims constituted a violation of her civil rights are either irrelevant, not supported by competent evidence, or contradicted by Plaintiff's own admissions. Thus, any or all of these reasons supports summary judgment in favor of Defendant Dean.

Accordingly, Defendant Dean respectfully requests that this Court grant his Motion for Summary Judgment.

II. BRIEF RECAP OF THE RELEVANT FACTS.

Plaintiff was arrested by the City of Ventura Police Department on November 18, 2011, at her residence in Ventura County. Her arrest was based on a criminal investigation that began in Washoe County in the State of Nevada, which culminated in a criminal complaint being filed against Plaintiff by the Washoe County District Attorney's Office and an arrest warrant signed by a Nevada judge.

Once in custody, Plaintiff was transported to the Ventura County Jail and remained there up until her arraignment on November 22, 2011.[2] The Superior Court allowed Plaintiff to post bail on her Fugitive Complaint and she was released from custody that same day. Plaintiff later returned to Nevada to

[2] Under California law, county sheriffs are required to accept into their jails those persons arrested by local law enforcement agencies like the Ventura Police Department. *See*, Cal. Penal Code Section 4015(a).

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respond to her criminal charges. Plaintiff's criminal charges were ultimately dismissed on June 11, 2012.

III. PLAINTIFF'S CLAIMS AGAINST DEFENDANT DEAN ARE TIME-BARRED.

A Section 1983 cause of action in California is governed by a two-year statute of limitations. *Jackson v. Barnes*, 749 F. 3d 755, 761 (9th Cir. 2014). Viewed in the light most favorable to Plaintiff, her baseless claims against Defendant Dean pertain to her incarceration in the Ventura County jail between November 18 and 22, 2011. Thus, Plaintiff had until November 22, 2013 to file suit on any claims against Defendant Dean. She did not do so. Instead, Plaintiff did not initiate her suit until November 17, 2014, almost a year after the limitations period expired.

Even though lacking in any factual or legal support, even if the limitations period were extended out until the date of the eventual dismissal of the criminal charges out of Reno, Nevada on June 11, 2012, Plaintiff's claims against Defendant Dean are time barred.

In her Opposition, Plaintiff claims that California Government Code Section 945.3 would toll the limitations period until the threat of any potential charges was exhausted. Essentially, Plaintiff argues that the State of Nevada's dismissal without prejudice of her criminal offenses on June 11, 2012, was insufficient to begin the running of the statute of limitations. Not surprisingly, Plaintiff cites no legal authority in support of her novel assertion. Moreover, her position defies common sense and would lead to absurd results. For example, the statute of limitations would never run against anyone who could be charged with homicide because, in California, there is no statute of limitations for such an offense. Obviously, that is not the law and this Court should reject Plaintiff's request to create a new, unsupported, and absurd interpretation of California law.

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IV. EVEN IF NOT TIME-BARRED, THE UNDISPUTED, COMPETENT, AND ADMISSIBLE MATERIALS IN THIS COURT'S FILE MANDATES SUMMARY JUDGMENT IN FAVOR OF DEFENDANT DEAN.

Despite the fact that Plaintiff has failed to properly oppose this Motion, as well as the undisputed fact that her claims against Defendant Dean are barred by the statute of limitations, the undisputed evidence establishes that Defendant Dean is entitled to summary judgment on the merits. Specifically, and despite the conclusory assertions of some type of continuous conspiratorial conduct within her Opposition, the undisputed facts are as follows:

1) *Plaintiff was arrested on November 18, 2011.* (Declaration of Captain Jeff Miller, paragraphs 15-18; Plaintiff's First Amended Complaint, para. 74; Affidavit of Judy Anne Mikovits, Doc. No. 121, para. 11.)

2) *Sheriff Dean and his Department had no involvement in the original decision to seek criminal charges against Plaintiff in the State of Nevada, on or about November 17, 2011.* (Declaration of Captain Jeffrey S. Miller, paragraphs 11-13, 16-17; Second Criminal Complaint out of County of Washoe, State of Nevada, for Plaintiff, Judy Mikovits, attached to Co-Defendant Garcia's Motion to Dismiss First Amended Complaint, as Doc. No. 79-3.; Arrest Warrant for Judy Mikovits, Justice Court of Reno Township, County of Washoe, State of Nevada, attached to Co-Defendant Garcia's Motion to Dismiss First Amended Complaint, as Doc. No. 79-2).

3) *After Plaintiff's arrest, a Fugitive Complaint was filed in Ventura County Superior Court, pursuant to California Penal Code Section 1551.1, on November 21, 2011.* (Online Docket for Superior Court, County of Ventura, appended to Co-Defendant Garcia's Motion to Dismiss First Amended Complaint, as Doc. No. 79-4).

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4) *Plaintiff was represented by counsel at the November 22, 2011 arraignment on the Fugitive Complaint.* (Online Docket for Superior Court, County of Ventura, appended to Co-Defendant Garcia's Motion to Dismiss First Amended Complaint, as Doc. No. 79-4).

5) *Plaintiff was fully aware after her November 22, 2011, release on bail on the Fugitive Complaint, that she was to return to Reno, Nevada and turn herself in to law enforcement authorities in that jurisdiction.* (Affidavit of Judy Anne Mikovits, Doc. No. 121, paragraphs 25-28; First Amended Complaint, para. 76).

6) *The criminal charges filed pursuant to the criminal complaint out of Washoe County, Nevada (the genesis of Plaintiff's November 18, 2011 arrest and subsequent hearing in Ventura County Superior Court) were dismissed without prejudice on or about June 11, 2012.* (Affidavit of Judy Anne Mikovits, Doc. No. 121, paragraph 39; Notice of Dismissal, The State of Nevada v. Judy Mikovits, Case No. RCR 2011-064661, appended to Co-Defendant Gammick's Motion to Dismiss First Amended Complaint, Doc. No. 109-3).

Therefore, given the lack of personal involvement of Sheriff Geoff Dean in the investigation, arrest of Plaintiff, and search of her residence on November 18, 2011, Defendant Dean's Motion should be granted.

V. PLAINTIFF'S REQUEST FOR ADDITIONAL TIME TO CONDUCT MORE DISCOVERY IS WITHOUT MERIT.

Lastly, in her Opposition, Plaintiff asks that this Court permit her additional time to conduct additional discovery in support of her claims. Plaintiff's request should be denied for several reasons.

A. No Amount Of Discovery Will Cure The Fatal Defect That Plaintiff's Claims Against Defendant Dean Are Time-Barred.

As explained in Section III above, Plaintiff's causes of action as to Sheriff Dean are time-barred. No amount of discovery will cure this threshold fatal

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defect. Permitting additional discovery will only waste public resources and should be rejected, and Plaintiff has not made any argument, much less a compelling argument, to the contrary.

B. <u>There Was No Undue Delay In Plaintiff's Arraignment By The Superior Court, And No Amount Of Discovery Will Cure This Defective Claim.</u>

Plaintiff asserts that following her Friday afternoon arrest on November 18, 2011, she should have been arraigned on Monday, November 21, 2011, instead of when she was arraigned, on the morning of Tuesday, November 22, 2011. Plaintiff is incorrect, and she was properly processed thorough the Ventura County Superior Court based on her wanted status out of the State of Nevada.

Plaintiff's assertion was raised and rejected almost 30 years ago. Specifically, California Penal Code § 825 states, in pertinent part, that a defendant "shall in all cases be taken before the magistrate without unnecessary delay, and, in any event, within 48 hours after his or her arrest, excluding Sundays and holidays." Here, Plaintiff was arrested on Friday and arraigned the following Tuesday. She claims that this did not satisfy the rule in Penal Code § 825.

Unfortunately for Plaintiff, the California courts held in *Youngblood v. Gates*, 200 Cal.App.3d 1302 (1988) that, "[t]he correct rule is that a defendant arrested at any time on one day must be arraigned on the second court day thereafter." *Id*. at 1309. Based on the California Supreme Court's holdings in *People v. Powell*, 67 Cal.2d 32 (1967) and *People v. Hall*, 62 Cal.2d 104 (1964), the *Youngblood* court further held that "[a] defendant arrested at any time on a Friday, Saturday, or Sunday must, at the outside, be arraigned on a Tuesday." *Id*. at 1313.[3]

[3] When *Youngblood* was decided, Saturdays were excluded as a municipal court holiday under California Government Code § 71345. Though this statute was repealed in 1989, Saturdays are still not counted as court days. *See*, Cal. C.C.P. §

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Here, it is undisputed that Plaintiff was arraigned on the second court day following her arrest. Thus, this claim by Plaintiff fails as a matter of law and no amount of discovery can cure this defect.

C. Plaintiff's Unsupported Conspiracy Claim Cannot Be Aided By Additional Discovery.

Plaintiff in her Opposition asserts that Defendant Dean may have been involved in some vague conspiracy that somehow ended only after Mr. Whittemore and the Whittemore Peterson Institute committed fraud on the Bankruptcy Court through the filing of a false claim. However, this baseless assertion is without any competent proof or relevancy, especially since Mr. Whittemore's alleged conduct directed toward the Bankruptcy Court has no nexus with Defendant Dean.

D. Plaintiff's Defective "Booking Irregularities" Claims, Even If Not Time-Barred And Even If They Were True – And They Are Patently False – Cannot Be Cured By Additional Discovery.

Most of Plaintiff's claims against Defendant Dean are based on purported "irregularities in her processing as a prisoner." However, Plaintiff has not, because she cannot, established that her assertions support a viable claim against Defendant Dean.

For example, Plaintiff originally alleged in her First Amended Complaint that her finger prints were not taken when she was booked into the Ventura County jail. Of course, whether she was printed or not is irrelevant because an inmate does not have a constitutional right to have their prints taken.

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135 ("Every Saturday . . . is a judicial holiday"); *Lamanna v. Vognar*, 17 Cal.App.4th Supp. 4, 8 (1993) ("Legal holidays are every Saturday"); *McAvoy v. Harvey L. Lerer, Inc.*, 35 Cal.App.4th 1128 (1995) (defining the term "holiday" to include "all day on Saturdays" and every Sunday); *Gans v. Smull*, 111 Cal.App.4th 985, 988 (2003) ("Holidays include Saturdays"); *Purifoy v. Howell*, 183 Cal.App.4th 166, 184 (2010) ("Saturday is not a business day").

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Nevertheless, when confronted with her fingerprints that were, in fact, taken during her booking, she tried to excuse her false accusation by then claiming that she had "forgot" that she had been printed.

Similarly, Plaintiff has failed to offer any legal authority to support her premise that she had a constitutional right to be photographed while in custody. Of course, there is no such right, so Plaintiff's request for discovery is without merit.

Nevertheless, in the spirit of discovery, both counsel for Plaintiff were provided copies of: a) Plaintiff's fingerprint card; b) her booking photographs; and c) the audio recordings of her multiple telephone calls made on the day she was booked as well as those made up until she was released. These recorded calls included conversations with her bail bondsmen and husband that show that Plaintiff clearly knew why she was in custody, what her charge was, and that she was facing extradition back to Nevada for a criminal complaint involving theft filed by prosecutors from that jurisdiction.

Instead of recognizing and retreating from her false assertions that no booking photograph was ever taken and that she purportedly had no access to the outside world (*see*, Affidavit of Judy Anne Mikovits, Doc. No. 121, paragraphs 16 and 18; Opp. at p. 14, para. 2.), Plaintiff has instead continued to advocate known inaccuracies before this Court. As recently as October 10, 2015, through her opposition to Co-Defendants' Motion to Dismiss (Doc. No. 128, set for hearing on the same day as Defendant Dean's Motion for Summary Judgment), Plaintiff represented to this Court that her irrelevant booking photograph is a "forgery." This despite the fact, that in her book "Plague" which purports to be a true story addressing many of the factual allegations contained within the First Amended Complaint, contains Plaintiff's admission that, "After about two hours

Exhibit "7"

Mikovits was taken to the Ventura County Jail, booked, and told to stand for a mug shot."[4]

Of course, Plaintiff's irrelevant accusations are not material to disposition of Defendant Dean's Summary Judgment Motion. They are briefly raised here to refute Plaintiff's assertion that Defendant Dean should be made to suffer through expensive, time-consuming discovery for no legitimate purpose. In fact, this Court has the inherent authority to ask Plaintiff and both of her counsel to show cause why they should not be held jointly and severally liable for the costs and burdens imposed upon this Court and Defendant Dean for their improper factual and legal arguments in this action. That proceeding can and should be had after this Court grants the instant Motion.

VI. CONCLUSION.

For the reasons set forth above, Defendant Geoff Dean respectfully requests that his Motion for Summary Judgment be granted.

Dated: November 2, 2015

LAWRENCE BEACH ALLEN & CHOI, PC

By /s/ Paul B. Beach
Paul B. Beach
James S. Eicher, Jr.
Attorneys for Defendant
Geoff Dean

[4] Kent Heckenlively, JD & Judy Mikovits, PhD, Plague-One Scientist's Intrepid Search for the Truth about Human Retroviruses and Chronic Fatigue Syndrome (ME/CFS), Autism, and Other Diseases (2014) , Prologue – The Arrest.

Exhibit "7"

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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

JUDY ANNE MIKOVITS, Plaintiff, vs. ADAM GARCIA, JAMIE MCGUIRE, RICHARD GAMMICK, GEOFF DEAN, THREE UNIDENTIFIED VENTURA COUNTY DEPUTY SHERIFFS, F. HARVEY WHITTEMORE, ANNETTE F. WHITTEMORE, CARLI WEST KINNE, WHITTEMORE-PETERSON INSTITUTE, a Nevada corporation, UNEVX INC., a Nevada corporation, MICHAEL HILLERBY, KENNETH HUNTER, GREG PARI and VINCENT LOMBARDI, Defendants.	Case No. CV 14-08909 SVW (PLAx) Honorable Stephen V. Wilson **DEFENDANT'S RESPONSE TO AND REQUEST TO STRIKE PLAINTIFF'S SEPARATE STATEMENT IN OPPOSITION TO DEFENDANT'S MOTION FOR SUMMARY JUDGMENT; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF** Date: November 16, 2015 Time: 1:30 p.m. Crtm: 6 *[Reply; Evidentiary Objections; and Declaration of James. S. Eicher, Jr. filed concurrently herewith]*

TO THE CLERK OF COURT, ALL PARTIES, AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that Defendant Sheriff Geoff Dean ("Defendant") hereby opposes and requests, pursuant to Local Rule 83-7, that the Court strike

Exhibit "8"

Plaintiff's "Statement of Genuine Disputes, Pursuant to Local Rule 56-2," filed in opposition to Defendant's Motion for Summary Judgment. Specifically, Plaintiff's Separate Statement fails to comply with Local Rules 56-2 and 56-3.

Dated: November 2, 2015

LAWRENCE BEACH ALLEN & CHOI, PC

By /s/ Paul B. Beach
Paul B. Beach
James S. Eicher, Jr.
Attorneys for Defendant
Geoff Dean

Exhibit "8"

MEMORANDUM OF POINTS AND AUTHORITIES

I. THE EFFECT OF PLAINTIFF'S DEFICIENT SEPARATE STATEMENT IS TO ADMIT THE TRUTH OF THE MATERIAL FACTS IDENTIFIED IN DEFENDANT'S SEPARATE STATEMENT.

Despite the clear obligations imposed by this Court's Local Rules, Plaintiff has not submitted "a concise 'Statement of Genuine Issues' setting forth all material facts as to which it is contended there exists a genuine issue necessary to be litigated," as required by Local Rule 56-2. This simple requirement must also be read in conjunction with Local Rule 56-3, which states that:

> "the Court will assume that the material facts as claimed and adequately supported by the moving party or admitted to exist without controversy except to the extent that such material facts are (a) included in the 'statement of genuine issues' and (b) controverted by the creation or other written evidence filed in opposition to the motion."

Here, **none** of the specific material facts set forth and supported by evidence by Defendant in his Separate Statement were included in Plaintiff's Separate Statement, and nor were these material facts controverted by Plaintiff by competent declaration or other evidence.

Numerous cases have recognized the inappropriateness of placing the burden of scouring a voluminous record on the Court when a motion for summary judgment is involved, and that such tactics would not be tolerated. Nevertheless, Plaintiff has done exactly that by making numerous nonspecific and vague references to purported facts. Without the Court *sua sponte* scrutinizing the contents of the entire court file, it is impossible to determine whether anything contained in the record actually supports the assertions in Plaintiff's Separate Statement. Plaintiff has ignored the fundamental purpose of a proper Separate Statement—to identify purported material facts and the corresponding evidence

Exhibit "8"

specifically so that the Court and the opposing party are not forced to hunt through the record for triable issues of fact.

Thus, despite the basic obligation to prepare a proper Statement of Genuine Issues, Plaintiff has not done so. Instead, Plaintiff has put together a haphazard collection of purported controverted facts which does not comply with the very basic procedural requirements. Accordingly, the Court should reject the Separate Statement and rule on the pending summary judgment motion on the remaining papers.

II. CONCLUSION.

For the reasons set forth above, Plaintiff's "Separate Statement" is improper and should be stricken. Alternatively, Plaintiff's failure to comply with the applicable Local Rules, in and of itself, warrants the granting of summary judgment in favor of Defendant, in accordance with Local Rule 56-3. *See, Nilsson, Robbins, Dalgarn, Berliner, Carson & Wurst v. Louisiana Hydrolec*, 854 F.2d 1538, 1545 (9th Cir. 1988) (Ninth Circuit affirmed summary judgment because non-moving party failed to comply with Local Rule 7.14.3 (the predecessor to Local Rule 56-3), which provides that all "material facts as claimed and adequately supported by the moving party are admitted to exist without controversy" unless the nonmoving party submits a proper "Statement of Genuine Issues" which controverts the material facts "by declaration or other written evidence"). Finally, at the very least, Plaintiff has failed to contest with admissible evidence the issues set forth in Defendant's Separate Statement, entitling Defendant to summary judgment.

Dated: November 2, 2015

LAWRENCE BEACH ALLEN & CHOI, PC

By /s/ Paul B. Beach
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Exhibit "8"

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Geoff Dean

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

JUDY ANNE MIKOVITS,

Plaintiff,

vs.

ADAM GARCIA, JAMIE MCGUIRE, RICHARD GAMMICK, GEOFF DEAN, THREE UNIDENTIFIED VENTURA COUNTY DEPUTY SHERIFFS, F. HARVEY WHITTEMORE, ANNETTE F. WHITTEMORE, CARLI WEST KINNE, WHITTEMORE-PETERSON INSTITUTE, a Nevada corporation, UNEVX INC., a Nevada corporation, MICHAEL HILLERBY, KENNETH HUNTER, GREG PARI and VINCENT LOMBARDI,

Defendants.

Case No. CV 14-08909 SVW (PLAx)

Honorable Stephen V. Wilson

DEFENDANT DEAN'S EVIDENTIARY OBJECTIONS IN SUPPORT OF HIS MOTION FOR SUMMARY JUDGMENT

Date: November 16, 2015
Time: 1:30 p.m.
Crtm: 6

[Reply; Response to Separate Statement; and Declaration of James S. Eicher, Jr. filed concurrently herewith]

TO THE CLERK OF COURT, ALL PARTIES, AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that Defendant Sheriff Geoff Dean ("Defendant") in connection with his Motion for Summary Judgment, hereby submits his objections to the evidence submitted by Plaintiff in support of her

Exhibit "9"

Opposition to Defendant's Motion.

Dated: November 2, 2015

LAWRENCE BEACH ALLEN & CHOI, PC

By /s/ Paul B. Beach
Paul B. Beach
James S. Eicher, Jr.
Attorneys for Defendant
Geoff Dean

Exhibit "9"

I. OBJECTIONS TO THE AFFIDAVIT OF JUDY ANNE MIKOVITS, DOC. NOS. 120-2 AND 121.

Objection to the entire Affidavit:

The subject affidavit/declaration does not comply with the Federal Code, does not state that it is signed under penalty of perjury under the laws of the United States of America. Thus, the entire document is inadmissible.

A. Paragraph 3: Vague, ambiguous, compound, lacks foundation, irrelevant, and inadmissible hearsay.

B. Paragraph 4: Vague, ambiguous, compound, lacks foundation, irrelevant, and inadmissible hearsay.

C. Paragraph 12: Irrelevant, inadmissible hearsay, lacks foundation for the conclusion it reaches/implies. It makes no difference whether on November 18, 2011, Plaintiff's civil attorney checked to see if there were any outstanding warrants for her arrest and found none. It is undisputed that an arrest warrant for Plaintiff existed at the time of her arrest on November 18, 2011.

D. Paragraph 13 ("Ventura County law enforcement working with UNR police forces."): Vague, ambiguous, irrelevant, speculative, lacks foundation for the conclusion it reaches/implies. There is no foundation that Sheriff Dean or any Ventura County Sheriff Deputies were present at the time of Plaintiff's arrest.

E. Paragraph 14: Irrelevant, argumentative. Plaintiff's husband is not a party to this action.

F. Paragraph 16 ("I could not reach my husband as he only has a cell phone, and no calls are allowed to go to cell phones from the jail."): Irrelevant, lack of foundation as to the telephone system of the Ventura County Jail and any limitations on calls to the public.

G. Paragraph 18: Irrelevant. There is no constitutional right to be photographed while in custody.

Exhibit "9"

H. **Paragraph 19**: Irrelevant, argumentative. There is no evidence that Sheriff Dean had any involvement or contact with Plaintiff at any time during her arrest and incarceration. Also, the only admissible evidence is to the contrary. (See Declaration of Jeffrey S. Miller.)

I. **Paragraph 20**: Irrelevant, lack of foundation, inadmissible hearsay, argumentative, assumes facts not in evidence. The statement "upon information and belief" regarding a purported conversation between Plaintiff's husband and Mr. Whittemore is inadmissible hearsay without any exception. The alleged statement of Mr. Whittemore is not admissible as a party admission since it was apparently relayed to Plaintiff through her husband.

J. **Paragraph 21**: Irrelevant, lack of foundation, argumentative, assumes facts not in evidence.

K. **Paragraph 22:** Irrelevant, lack of foundation, argumentative, assumes facts not in evidence. (The portion "as I was being told that Whittemore could get me out as soon as I did what he demanded" is also inadmissible hearsay.)

L. **Paragraph 23**: Irrelevant, argumentative, inadmissible hearsay. The alleged apology delivered by non-parties to Plaintiff during her incarceration is inadmissible hearsay and irrelevant.

M. **Paragraph 24**: Irrelevant, lack of foundation, speculative, argumentative, assumes facts not in evidence, improper legal opinion. The Plaintiff's belief that she was entitled to an earlier arraignment date is not evidence and "I am aware" does not form the requisite foundation.

N. **Paragraph 25:** Irrelevant, argumentative, lack of foundation.

O. **Paragraph 26:** Irrelevant, lack of foundation, inadmissible hearsay.

P. **Paragraph 29**: Irrelevant.

Q. **Paragraph 30:** Irrelevant, lacks foundation and authentication regarding California Highway Patrol warrant check system and dispatch process

Exhibit "9"

and whether that actually ever occurred. The purported statements from the unidentified California Highway Patrol Officer are inadmissible hearsay.

R. **Paragraph 31**: Irrelevant, lacks proper foundation and authentication, speculative, improper legal argument, and argumentative.

S. **Paragraph 35**: ("I was advised by my counsel that I was in his custody, and from that time on there were to be meetings with D.A. Gammick, which were never held.") Irrelevant, inadmissible hearsay, assumes facts not in evidence, lacks foundation.

T. **Paragraph 36**: Irrelevant, vague and ambiguous, argumentative, lacks foundation, assumes facts not in evidence.

U. **Paragraph 37**: Irrelevant, argumentative, lacks foundation, assumes facts not in evidence.

V. **Paragraph 38**: Irrelevant, argumentative, lacks foundation, assumes facts not in evidence, hearsay.

W. **Paragraph 40**: Irrelevant, hearsay, lacks foundation, assumes facts not in evidence, argumentative.

X. **Paragraph 41**: Lack of foundation, argumentative.

II. CONCLUSION.

Defendant hereby requests that the Court rule on each of Defendant's Evidentiary Objections when ruling on the instant Motion for Summary Judgment.

Dated: November 2, 2015

LAWRENCE BEACH ALLEN & CHOI, PC

By /s/ Paul B. Beach
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Exhibit "9"

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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

JUDY ANNE MIKOVITS ***Plaintiff,*** **vs.** **ADAM GARCIA, JAMIE MCGUIRE, RICHARD GAMMICK, GEOFF DEAN, THREE UNIDENTIFIED VENTURA COUNTY DEPUTY SHERRIFFS, F. HARVEY WHITTEMORE, ANNETTE F. WHITTEMORE, CARLI WEST KINNE, WHITTEMORE-PETERSON INSTITUTE, a Nevada corporation, UNEVX INC., a Nevada corporation, MICHAEL HILLERBY, KENNETH HUNTER, and VINCENT LOMBARDI,** ***Defendants.***	**Case No. 2:14-cv-08909-SWV-PLA** **PLAINTIFF'S SECOND AMENDED COMPLAINT And JURY TRIAL DEMAND**

Plaintiff, Judy A. Mikovits, complains and alleges as follows:

NATURE OF THE ACTION

1. This is a civil action brought as a claim for breach of Civil Rights, pursuant to 28 USC §§ 1981 and 1983, violation of the Plaintiff's First, Fourth, Fifth, Sixth, Seventh and Eighth Amendments to the Constitution of the United States and other ancillary tort claims including unreasonable search and seizure without a warrant, false arrest with a warrant, unnecessary delay in processing and release from detention, false arrest without a warrant by a peace officer, false arrest without a warrant by private citizens, abuse of process, fraud, civil conspiracy, intentional infliction of motional distress, and defamation.

THE PARTIES

2. Plaintiff Judy Mikovits, Ph.D. ("MIKOVITS" or "PLAINTIFF") was at all times material herein a citizen of the United Stated and a resident of Oxnard, California. MIKOVITS currently resides in Carlsbad, California.

3. Defendant, F. Harvey Whittemore ("FHW") was an attorney duly licensed to practice law before the bar of the Supreme Court of Nevada, and who is a Citizen of the State of Nevada, although he is currently residing in a Federal Correctional Institution in California. FHW was at all times material herein the President of the UNR Foundation, a controlling equity owner of Defendant UNEVX, a registered lobbyist and the spouse of Defendant Annette Whittemore (AW), *infra*. FHW, widely described during that period as the most powerful lobbyist in Nevada, and is currently serving time in connection with an illegal campaign contribution scheme, where his illegal contributions were given to the Campaign Committee for U.S. Senator Harry Reid.

4. Defendant. Annette Whittemore (AW) was at all times material herein the President of Defendant WPI and, together with her husband FHW, was a controlling equity owner of UNEVX. AW is a citizen of the state of Nevada.

5. Defendants FHW and AW were the motivating parties who set the various acts in motion that give rise to this Complaint. FHW was the major benefactor behind the Whittemore Peterson Institute, a member of the Board of the University of Nevada-Reno, Carli Kinne West's Employer, a significant campaign donor to the state court judge who facilitated the misuse of court process on FHW's behalf, the owner of UNEVX, and Lombardi's employer. AW was the CEO of the Whittemore-Peterson Institute, and was responsible for the various misdeeds alleged below as to any party under the WPI entity.

6. Defendant Carli West KINNE ("KINNE") was at all times material herein a Vice President of WP Biotechnologies, Inc., Legal Counsel for Defendant WPI, an attorney duly admitted to practice in the State of Nevada, and the WHITTEMORE'S niece

7. Defendant Michael Hillerby ("HILLERBY") was at all times material herein a corporate officer of WPI and an agent of FHW, AW, WPI (*infra),* and UNEVX.

8. Defendant The Whittemore-Peterson Institute, is a Nevada corporation ("WPI"), which was at all times material herein housed within, shared employees with, and was subject to an Affiliation Agreement with UNR.

9. Defendant UNEVX, Inc., a Nevada corporation, formerly known as VIPdx Inc. ("UNEVX"), was at all times material herein a for-profit enterprise associated with the WHITTEMORE PRINCIPALS.

10. Defendant Adam Garcia ("GARCIA") was at all times material herein a duly appointed and acting officer and Chief of Police of the Police Services Department of the University of Nevada at Reno ("UNR"). Garcia is a resident of the State of Nevada. At all times relevant hereto, Garcia was acting under color of the law, pursuant to his duties as a law enforcement officer.

11. Defendant Jaime McGuire ("McGUIRE") was at all times herein a duly appointed agent and officer of the Police Services Department of UNR. McGuire is a resident of the State of Nevada. At all times relevant hereto, McGuire was acting under color of the law, pursuant to his duties as a law enforcement officer.

12. Defendant Richard Gammick ("GAMMICK") was at all times material herein the District Attorney of Washoe County, Nevada. Gammick is a resident of the State of Nevada. At all times relevant hereto, Gammick was acting under color of the law, pursuant to his duties as an elected law enforcement officer and prosecutor.

13. Defendant Geoff Dean ("DEAN") was at all times material herein the Sheriff of Ventura County, California. Dean is a resident of the State of California. At all times relevant hereto, Dean was acting under color of the law, pursuant to his duties as a duly elected law enforcement officer.

14. Defendants Three Unidentified Ventura County Deputy Sheriffs ("DEPUTIES") were at all times material herein, duly appointed and acting as deputies of the Sheriff's Department of Ventura County. The Deputies are residents of the State of California. At all times relevant hereto, the Deputies were acting under color of the law, pursuant to their duties as a law enforcement officers.

15. Defendant Kenneth Hunter, Sc.D. ("HUNTER") was at all times material herein a Professor of Immunology at UNR School of Medicine, and was the Chairman of the Scientific Advisory Board of WPI. At all times relevant hereto, Hunter was acting under color of the law, and as an employee and agent of UNR and as an agent and/or employee of WPI.

16. Defendant Vincent Lombardi, Ph.D. ("LOMBARDI") was at all times material herein an employee of WPI and Director of Operations for UNEVX. . FHW, AW LOMBARDI and KINNE are sometimes referred to here as the "WHITTEMORE PRINCIPALS."

17. At all times relevant to the allegations of this Complaint, and in all of their actions alleged herein, Defendants GARCIA, McGUIRE, DEAN, GAMMICK, FHW, AW, KINNE, UNEVX, WPI, HUNTER, LOMBARDI and HILLERBY were acting in active conspiracy with one another to cause the unlawful arrest, false imprisonment, unlawful detention, commission of fraud, intentional and negligent infliction of emotional distress, infliction of pain and suffering of mind and body, and other illegal and tortious actions claimed hereinbelow.

18. Each of the above-named Defendants is being sued in both their individual and official capacities.

JURISDICTION AND VENUE

19. Jurisdiction is conferred upon this Court by Federal Question Jurisdiction, 28 U.S.C. § 1331, inasmuch as it alleges violation of the Plaintiff's Civil Rights, under 42 U.S.C. §1983, which explicitly authorizes a private remedy for acts that are taken under color of state law and violate rights secured by federal law. This Complaint alleges breaches of the Plaintiff's rights under the First, Fourth, Fifth, Sixth, Seventh and Eighth Amendments to the Constitution of the United States.

20. Jurisdiction over this matter is further granted under 28 U.S.C. § 1367, Supplemental Jurisdiction, as the additional non-federal question vested tort and common law causes of action contained hereinbelow are so related as to form part of the same case or controversy and arise from the same set of operative facts as the statutory causes of action alleged in this case. This case does not raise a novel issue of state law; the common law counts do not substantially predominate over the statutory causes of action; and there are no compelling reasons for declining jurisdiction.

21. Jurisdiction over all parties is conferred in this Honorable Court by virtue of the fact that various acts alleged to have been committed below were in furtherance of one or another conspiratorial acts by two or more of the below parties, which occurred in this Judicial District, and the out of state parties traveled across the state borders, and into this District to commit the violations of Civil, Constitutional and common law rights of the Plaintiff. The fact that some of the acts complained of below occurred outside this District is without consequence, as the predicate acts causing harm to the Plaintiff were brought to fruition in this District. Conspiratorial actors are saddled by the bad acts of their co-conspirators.

FACTUAL BACKGROUND

22. Plaintiff is a well known molecular virologist. Her work in genomic diversity at the National Cancer Institute is the foundation of much of today's notorious cancer research. Her work on HIV is the cornerstone of today's HIV/AIDS treatment.

23. Her notoriety in the scientific community attracted the attention of the Whittemores, who were searching desperately for a cure for their daughter's illness. Mikovits met AW and Dr. Peterson at a medical conference in Barcelona, Spain. With the release of several papers on the link between xenotropic murine retrovirus (XMRV) and chronic fatigue syndrome (CFS), Dr. Mikovits had been noticed by the Whittemores who were on a mission to find the cure for their daughter.

24. On or about November 6, 2006, Plaintiff accepted a position as Director of Research at the Whittemore Peterson Institute, a newly established research facility to be housed on the campus of the University of Nevada – Reno (UNR).

25. Upon joining WPI, the Plaintiff brought certain personal property, including intellectual property with her to WPI, including her scientific journals going back as far as her graduate studies, her library, and papers she had written. Those were housed in her office at room 320 in the UNR Applied Research Facility, in her office at the center for molecular medicine, and elsewhere at WPI. These documents were the product of over 30 years of her work and were her personal property.

26. As Research Director at WPI, the Plaintiff was also given an adjunct professorship at the UNR in the Department of Microbiology. The term of this position was originally intended to run from April of 2007 to May of 2012.

27. Under her direction, WPI was awarded grants by the National Institutes of Health, the National Institute of Allergy and Infectious Disease and the Department of Defense.

28. As research director she was responsible for planning, establishing and directing the institute's scientific research program including the selection training and supervision of staff, writing, and managing grants and collaborating with other scientific

organizations. The WPI under her direction grew from a small foundation to an internationally recognized center for the study of neuro-immune diseases in which she obtained investigator-initiated grant money as described above.

29. During the summer of 2011, Dr. Mikovits discovered that her work could not be replicated. This is usually the death knell to a scientific hypothesis.

30. Dr. Mikovits shared her concern with defendant Lombardi, a collaborator in her research and a scientist under her supervision. He could not account for the discrepancies in his numbers and Dr. Mikovits attempted to terminate him from the study.

31. Plaintiff told FHW about her concerns about the potential for the WPI being charged with scientific fraud on or about July 8, 2011. FHW threatened her, if she were to tell anyone else.

32. Plaintiff's decision to terminate Lombardi was immediately over-ridden by AW.

33. When she confronted AW with the impropriety of protecting Lombardi, the person responsible for the statistical breakdown, AW instructed Dr. Mikovits to change the numbers in her assumptions. When Dr. Mikovits refused to participate in this scientific fraudulent scheme, she was immediately terminated by AW.

34. Dr. Mikovits began to take steps to publicize the flaws in her scientific model, in order to maintain her impeccable standing in the scientific community.

35. Having the scientific community invalidate the work his Institute had just invested in and which was helping his daughter cope with her illness would have been catastrophic to FHW and AW as set forth below.

36. To protect the commercial value of the product of UNEVX, AW terminated the Plaintiff from her employment at WPI, resulting in her termination from UNR and harming her name and reputation in the scientific community.

37. During the exit process, Dr. Mikovits informed the Whittemore principals that she intended to report the misappropriation of the grant money which was awarded to her and for which she was accountable, to the NIH and the Department of Defense.

38. At the time of her termination, Plaintiff had certain intellectual property, including without limitation laboratory notebooks that she had been maintaining throughout her career as a scientist which predated her involvement at WPI by decades. Those notebooks were stored on the premises under the control of WPI, Lombardi, Hillersby, Kinne, FHW and AW.

39. Upon her termination from WPI, Plaintiff was denied any further access to the premises where her intellectual property was stored, and as a result was separated from her laboratory notebooks and other intellectual property belonging to her.

40. The Whittemore principals falsely accused the Plaintiff of stealing materials from the WPI facility including certain computer hardware, software and her laboratory notebooks. The notebooks were under the control of the Whittemore principals exclusively, as they were locked into the Plaintiff's offices, which were under lockdown from at least the time of her termination and separation.

FACTS SPECIFIC TO THE WHITTEMORE PRINCIPALS

41. Defendant Harvey Whittemore was an attorney and a lobbyist for the gaming industry as well as the tobacco and alcohol industries in Nevada. His representation of these clients gave him the reputation of "one of the most powerful men in Nevada." FHW was known as an aggressive and highly respected, yet feared member of the legal community in Reno. FHW was a political force, which led to his downfall and eventual present incarceration in the US Bureau of Prisons.

42. Among closest friends of FHW was U.S. Senator Harry Reid, to whose political campaigns FHW contributed the maximum amounts. Upon information and belief, Senator Reid promised AW in writing on at least one occasion, tens of millions of dollars in funds to support the work of WPI.

43. FHW was indicted on charges that he made unlawful campaign contributions to an elected member of Congress, caused false statements to be made to the Federal Election Commission (FEC) and lied to the FBI.

44. According to various sources including the U.S. Department of Justice, FHW allegedly caused an employee to transmit $138,000 in contributions to Senator Harry Reid's campaign committee, the vast majority of which were conduit contributions that Whittemore had personally funded through various employees and family members as his conduit, in order to satisfy his pledge. Dr. Mikovits was one of the unwitting conduits for FHW's scheme, which he assured her, as a member of the Bar of the State of Nevada, was totally legal. The campaign committee then unknowingly filed false reports with the FEC stating that the conduits had made the contributions, when in fact Whittemore had made them. Upon his conviction on three of the four charges brought against him, Whittemore was sentenced to two years in prison and was also given a $100,000 fine, along with two years supervision after his incarceration and 100 hours community service.

45. FHW became involved n a major real estate deal, into which he poured massive personal resources. He had business partners who were extremely tough businessmen, and whose methods were less than conventional. This venture consisted of developing a $30 Billion golf community just outside of Las Vegas. His plan was to erect a community of 160,000 homes, 12 golf courses and several casino hotel complexes on a 43,000 acre stretch of desert. The project was fraught with regulatory issues.

46. Whittemore obtained land in the Coyote Springs Valley from a private owner but was unable to acquire all of the land or build on what he owned because of regulatory obstacles. The desert land included a sanctuary for the desert tortoise, an endangered species, and some of the adjacent land was designated a wilderness study area. A federal easement for utilities was also present, and the United States Environmental Protection Agency (EPA) would not allow building due to the presence of stream beds in the area. Water rights agreements were also needed to procure large

amounts of water It would take a monstrous effort to navigate the hallways of the various regulatory agencies, and it was only through Whittemore's strong ties to his U.S. Senator, that he was able to erase so many roadblocks.

47. The United States Environmental Protection Agency initially refused to grant permits based on the projected environmental impact of destroying stream beds in the Coyote Springs Valley. In what EPA officials called an "unusual" move, Senator Harry Reid contacted the EPA administrator after a process including a phone call from his son Leif, Whittemore's personal attorney. Soon thereafter, the EPA came to an agreement with FHW and also awarded Whittemore's company an environmental sensitivity award. The prize was accepted by Leif Reid. Senator Reid's office denied any wrongdoing, but acknowledged that Leif Reid should not have called his father on behalf of his employer.

48. At the time that the Plaintiff discovered the discrepancy in her statistical analysis, FHW was accused of embezzling tens of millions of dollars from the Coyote Springs development project by his partners, the Seeno family. According to statements made by FHW in litigation against his partners, Albert J. Seeno, Jr. and his son, Albert J. Seeno III, they threatened his life, and had engaged in racketeering, extortion, grand larceny and making threats. According to allegations in a lawsuit against the Seeno Family by FHW, the Seenos broke into FHW and AW's home, forced a safe open and threatened to break both of FHW's legs if he did not repay the debt.

49. FHW was depending on the proceeds of the commercialization of Plaintiff's research through his investment in UNEVX, in part to finance the Coyote Springs real estate development, and in part to repay the Seeno family, in order to remain alive and healthy.

50. On March 6, 2011, Whittemore reported to the Reno police that he was afraid of being killed; there was a phone call from Albert Seeno III who threatened Whittemore physically. Reno police took recorded statements from Whittemore in March and November. None of this was known to the Plaintiff at that time.

51. In order to protect his various investments, and to protect his and his family's well being, FHW had no choice but to terminate and character-assassinate the Plaintiff. Should she have been allowed to retract her paper and maintain scientific credibility, the value of UNEVX would have depleted, and the Seenos would have carried out their threats, at least in the mind of FHW and AW.

52. Kinne, Hillerby, Lombardi, AW and FHW combined and conspired to fabricate falsities about and against the Plaintiff, by intentionally falsely and fraudulently spreading the word amongst themselves and to third parties including at least one national publication, that Plaintiff had stolen materials and secreted them from WPI and the defendants named in this paragraph.

53. During the Fall of 2011, Plaintiff began to uncover evidence of misappropriation of government grant funds and improper use of those funds. She concluded that Hillerby, Lombardi, Kinne, FHW and AW were colluding and conspiring to defraud the US. Department of Defense, NIAID and NIH by misdirecting the grants from those agencies.

54. The defendants named in the above paragraph refused to comment about their misuse of the funds and stonewalled the presently-departing Plaintiff.

55. In addition to defendants Hillerby, Lombardi, Kinne, FHW and AW conspiring to defraud the Plaintiff and the Federal Government, Defendant Hunter was also complicit in the misdirection and cover-up of the use of the Federal Funds.

56. As a professor at UNR he participated in the Scientific Advisory Board of WPI. As such, he was in a position to avert the activities of the other Nevada based defendants. He could have chosen to team up with Dr. Mikovits and those who were concerned by the newly discovered breaches of scientific integrity when Dr. Mikovits first questioned the validity of their work. Instead, Hunter decided to turn a deaf ear on the crucial issues, and joined the conspiracy to cover up the questionable findings, and

to continue to move forward with what amounted to a fraud on the FDA/NIH and the DoD.

57. Had Hunter objected to what was transpiring, he would have incurred the wrath of the Whittemores, but he showed that he lacked courage to do that which was right and that he was willing to throw Dr. Mikovits under the bus. He allowed his credentials to be utilized in order to keep the flow of government grants coming, and to lend some measure of credibility to the commercial venture, and knowingly participated in this dishonest scheme.

58. This was the beginning of an interstate conspiracy to do anything it took to stop Mikovits from destroying the name of WPI. FHW, AW, Kinne, Hillerby and Lombardi combined their ideas and set out to destroy Mikovits before she could credibly end their charade.

59. Because of her desire to keep her reputation as an ethical scientist, Dr. Mikovits retracted her scientific paper on XMRV and CFS.

60. As a result of making good on her commitment to scientific integrity, on or about November 2, 2011, Plaintiff was notified that a lawsuit would be filed against her for her allegedly fraudulent conduct, and for return of all copies of all data during her tenure.

61. Plaintiff replied through counsel, stating that, in fact, Defendants had locked down her lab and taken control of its contents at the time of her termination. She had no access to her office, lab or her notebooks or other intellectual property, and kept nothing. Plaintiff also provided evidence that she had returned to her home within 12 hours of her termination and never returned to her lab or offices.

62. Upon her return to her home in California, the actions of the defendants focused upon her in that location, and the acts of all defendants subject them to the *in personam* jurisdiction of this Court as set forth below.

FACTS SPECIFIC TO UNEVX

63. Defendants FHW, AW, Lombardi, Hillerby, Kinne, and Hunter, were taking Plaintiff's research and misusing the grants that were awarded to her, to commercialize and sell her work under the name of a different company, UNEVX.

64. UNEVX and its agents have defrauded the U.S. Government in the misdirection of various grant monies, and has harmed the Plaintiff by continuing to utilize federal moneys improperly, and attributing the improper use to the Plaintiff, as she was the Principal Investigator listed on those grants.

65. In order to effectuate his plan to destroy the Plaintiff's reputation, preserve his health and investment in UNEVX and protect the commercial value of the Plaintiff's work, FHW had to use every resource available to him, which included the expenditure of considerable political capital.

FACTS SPECIFIC TO THE INVOLVEMENT OF D.A. GAMMICK AND UNR

66. The Whittemore Principals brought their political influence to the District Attorney, Richard Gammick, who allowed the charade to be given face value with no due diligence to ascertain the veracity of the information.

67. The Whittemore Principals told the District Attorney and the UNR Police that the Plaintiff "stole" her laboratory notebooks from her office after they terminated her, knowing that this was a total fabrication, and was easily verifiable by reviewing surveillance videotapes, and knowing that it was the Whittemore Principals that had possession of Dr. Mikovits's notebooks all along.

68. Without any verification and without charging the Plaintiff with any crime and without application to a judge or magistrate, Gammick sent Garcia and McGuire to California to have the Plaintiff arrested as a "fugitive from justice." This was a violation of her Civil Rights under Article IV, § 2 of the United States Constitution.

69. Gammick allowed Garcia and Maguire to travel to California and to advance a false case that would never have been allowed had Gammick looked into the full circumstances prior to complying with the wishes of Garcia and Maguire, who were acting in concert with AW, FHW, Kinne, Lombardi, Hillerby, and Hunter.

70. Defendants Hillerby, Kinne, Lombardi, AW and/or FHW by acts and statements of two or more of them, conspired to give mis and disinformation to the UNR police department (UNRPD) about the actions and possessions of the Plaintiff.

71. Members of the UNRPD, including Defendant Garcia and Jaime McGuire traveled to Ventura CA, and stalked Plaintiff for several days in an obvious manner intended to harass and scare her.

72. Members of the Ventura City Police Department and/or Ventura County Sheriff's Department agents or employees under the supervision of defendant Dean; then obtained a search warrant based upon representations made by Garcia and Maguire, which representations Defendants knew to be false.

FACTUAL ALLEGATIONS AS TO SHERIFF DEAN AND THE THREE UNIDENTIFIED VENTURA COUNTY SHERIFF DEPUTIES

73. Garcia and Maguire obtained a search warrant from a Ventura Justice of the Peace, went to Plaintiff's home, and then, at approximately 1:00 PM on Friday, November 18, 2011, with at least one Ventura City policeman overseeing the search, placed the Plaintiff under arrest and handcuffed her hands behind her back and took her to a detention facility of the Ventura County Sheriff's Office ("VCSO") on Todd Road in Ventura.

74. At no time was Plaintiff shown an Arrest Warrant or a Search Warrant. Nor was Plaintiff's husband ever shown such documents at the time of the search and arrest.

75. The Plaintiff was never told what her charges were, was only informed that she was a "fugitive from justice," was denied reasonable access to counsel and to a judicial tribunal, and until the hearing on her release five days after her warrantless arrest, was unaware of what she was charged with, as she has never been charged with a predicate crime, upon which the "fugitive from justice" warrant was issued, if any warrant was, in fact, issued.

76. Plaintiff's husband, then 73 years of age, was placed upon a chair in his and Plaintiff's home and ordered by a UNRPD policeman not to move. He was forced to watch as the UNRPD completely ransacked their home, finally taking all of their personal electronic items, which were then held by the Ventura Police for almost a year.

77. On several occasions, in several unlawful interstate telephone and wire communications, Plaintiff's husband was told that FHW would have the "charges" against her dropped if she would return her laboratory notebooks. He was informed that the keys to the jail cell were in his hands in the form of the "stolen" laboratory notebooks.

78. The Plaintiff and her husband could not return the notebooks, as they were not in their custody or control. The Plaintiff's husband reiterated that he would give the notebooks up in exchange for his wife's release, but that he did not have them at all. This series of conversations with FHW, AW, Kinne, Lombardi and Hillersby's representative continued through the weekend, as the Plaintiff's husband continued cleaning up items strewn all over the house in the warrantless and unlawful search and seizure.

79. The clean-up process was slow and methodical, as Plaintiff's Husband attempted to return everything to the correct place. He was paying close attention to details.

THE APPEARANCE OF THE "MISSING" LABORATORY NOTEBOOKS

80. On November 21, 2011, The Plaintiff's husband received a phone call from the representative of FHW, AW, Kinne, Lombardi and Hillersby, to discuss the fact that the Plaintiff would likely remain in jail through the Thanksgiving Holiday, which was in two days, unless he returned the notebooks.

81. Having nearly completed the entire task of reorganizing all the materials, clothing, books, papers, and other possessions that had been strewn about the house by the UNRPD officers in the warrantless and illegal search, the Plaintiff's husband assured the representative of FHW, AW, Kinne, Lombardi and Hillersby, that he had been through the entire house and that the notebooks were not there. He assured the representative that if the Plaintiff had the notebooks, neither she nor he were aware of it, and that they were not in the house.

82. At that time, the representative of FHW, AW, Kinne, Lombardi and Hillersby told the Plaintiff's husband, "David, listen very close to what I am about to tell you. Those notebooks are in your house. You DO have them, I am telling you. Now go and find them and return them to get Judy out of jail!"

83. The men hung up the phone and the Plaintiff's husband sat in complete perplexity at the entire conversation, knowing that he had scoured the entire house as he replaced items in drawers, closets, shelves and table tops.

84. The following morning, the Plaintiff's husband awoke and reinitiated his search, looking for places that the Plaintiff may have secreted the notebooks, all the while replaying the conversation with the representative of FHW, AW, Kinne, Lombardi and Hillersby, in his mind.

85. As the Plaintiff's husband began to look through cabinets, book shelves and drawers for the notebooks that the representative of FHW, AW, Lombardi and Hillersby insisted were in their house, he came up empty. Repeatedly doubting his sanity as he

continued the same search that he and the police had each previously conducted, somehow expecting or hoping for a different outcome, he was rapidly becoming disheartened as he began to dread Thanksgiving, which he knew would be the loneliest day of his life.

86. While searching through one of the guest room closets, the Plaintiff's husband discovered a canvass beach bag with JAM embroidered on the side that he had not seen previously, and that was not inventoried as part of the search. Even more suspicious was the fact that the bag was sitting in the front and center of the closet as if it were the last item placed therein. Inside the bag were all of the Plaintiff's notebooks.

87. The notebooks were planted in the closet by the representative of FHW, AW, Kinne, Lombardi and Hillersby, or by other agents of FHW, AW, Lombardi and Hillersby.

88. While the Plaintiff was in Reno working at WPI, she was living in a condo that was owned by FHW in the same building as the penthouse suite that the Whittemores lived in. When she was terminated by AW, as set forth above, she returned to her condo and packed up her belongings and left for California. While packing, she literally threw many items into bags, boxes, bins and suitcases. She owned two canvass beach bags with her initials "JAM" embroidered on them. As she left the condo for the last time, she left several items in the place that she no longer needed, wanted or had room for in her already fully-packed car. Among the items that were left in the condo was one of the two embroidered canvass beach bags. That was to be the very last time that she saw that bag.

89. The Plaintiff's husband notified the authorities that the notebooks had been located, and the process was begun to have the Plaintiff released from jail.

90. Upon the turning over of the notebooks, the Plaintiff was released from jail on a $100,000.00 bond. She was ordered to turn herself in on the following Monday, November 28, 2011, in Reno, Nevada, per order of the Washoe County District Attorney, Gammick.

91. At the time she left the bail bondsman's office, she left her driver's license on the Bondsman's photocopy machine. On her drive to Reno, she was stopped for speeding and had no license to present to the trooper. He took her registration and her personal information and ran them in his computer for outstanding warrants.

92. When the trooper returned to her car he told her that her record was totally clean, and that she needs to watch her speed and get her license back.

93. This is further evidence of the fraudulent acts of the co-conspiratorial defendants. Had there actually been a "fugitive from justice" warrant, it would have appeared in the trooper's computer.

94. Upon her arrest and being remanded to the custody of the VCSO, the Plaintiff was not properly processed as there was no charge upon which to legally hold her.

PARTICIPATION IN THE CONSPIRACY BY SHERRIF DEAN AND THE VCSO

95. While she may or may not have been fingerprinted, she was denied access to a telephone while in the holding cell, and was not photographed at that time.

96. As part of the post-filing discussions between counsel for Dean and the Plaintiff, counsel for Dean threatened certain disciplinary action and criminal charges against the plaintiff unless she dismissed the claims against Dean. It was in this context that the most solid evidence of a conspiracy and wire fraud carried out by Dean was presented.

97. In his proffer of proof that the Plaintiff had been properly booked and processed by Dean, his counsel produced a copy of her booking "mug shot." Dean's counsel represented that his client supplied that photograph as proof that the Plaintiff had been properly processed.

98. The photograph produced by Dean's counsel did not even exist at the time of her initial arrest, and was not taken by the VCSO at all, but was taken nearly a full week

after her release from that facility. It was taken in Reno, Nevada on November 28, 2011.

99. The only way that the photograph proffered by Dean as coming from his facility could have gotten into the Plaintiff's booking file was through fraudulent means and as the result of interstate wire fraud committed on two or more occasions, as part of the conspiracy involving all defendants in this action.

THE LAST TIME THE PLAINTIFF SAW THE "STOLEN" NOTEBOOKS

100. On or about October 17, 2011, upon returning from a trip to Ireland, the Plaintiff was picked up at the airport in the early morning hours by her former lab assistant, who was still employed by WPI, and driven to his condominium that he was living in.

101. At that time, she observed her notebooks in a striped birthday gift bag, in his possession. The plaintiff told her assistant that she wanted the notebooks back.

102. The assistant, who was employed by WPI insisted that if she were to take them, they would both be killed by FHW in order for him to get them from her. They discussed the plan for her to take them to Kinko's after they slept for a while, and get them photocopied in the morning. The assistant protested telling her that FHW would have her killed if he saw her with them, and he could not allow that to happen.

103. The Plaintiff went to her room and slept for a couple of hours.

104. When she awoke, the assistant and the notebooks were gone. The gift bag was there still, but empty. The associate returned home before 7 AM and refused to discuss the whereabouts of the notebooks.

105. To this day, the last time the Plaintiff saw her notebooks was October 17, 2011, in her former assistant's apartment.

STATE COURT LAWSUIT BY WPI FOR RETURN OF PROPERTY

106. On November 4, 2011, WPI filed a lawsuit against Dr. Mikovits. In that suit they alleged breach of contract, trade secret misappropriation, conversion, breach of implied covenant of good faith and fair dealing, seeking specific performance and replevin against Dr. Mikovits.

107. On November 7, 2011, WPI filed a motion for an *ex parte* TRO seeking the return of the computer and lab books. Judge Brent Adams entered a TRO against her.

108. On November 9, 2011, service was made of the complaint and TRO. Dr. Mikovits was not home, she was away taking care of her elderly mother. She returned to her home on November 13, 2011, to find the summons and complaint taped to the wall on the porch of her house. The next morning she contacted Atty. Dennis Jones and hired him.

109. On November 18, 2011, while on her way to meet with her new attorney, she was arrested as set forth above.

110. On that same day her attorneys filed an opposition to the motion for preliminary injunction asserting that she did not have possession or control of any misappropriated property. In fact, when the Ventura County officers searched her house and took her family members' computers, tablets and phone, they did not find a single notebook. As set forth above, her former lab assistant, who was an agent of FHW, AW, Lombardi, Kinne and Hillersby was holding them in his possession.

111. On November 22, 2011, there was a hearing on her civil case in Nevada while she was in jail in California, and unrepresented. At this time she and her attorney, Dennis Jones, had never spoken personally to one another so he could not take any steps to bind or make any representations for her in open court. In addition Dr. Mikovits did not have counsel retained yet for the criminal proceedings. She eventually

retained an attorney by the name of Scott Freeman, who is now a sitting Superior Court Judge in Reno.

112. At the November 22, 2011, hearing, Dr. Mikovits was not present as she was in jail and while her attorney was clear that he could not speak for her until he met her, there was an in chambers "agreement" struck. She was ordered to return seven categories of documents.

113. On that same evening at about 7:00pm, Dr. Mikovits was released from custody in Ventura County California.

114. At that time the judge in Ventura County who ordered her release on bail denied the opportunity to a reporter by the name of Jon Cohen from *Science Magazine*, to attain a mug shot or photograph of Dr. Mikovits. Cohen argued that a message needed to be sent to scientists so this doesn't happen again and urged the judge to allow him access to the mug shot so he could publish it in *Science*. This request was denied if for no other reason than the fact that there was no mug shot because Dr. Mikovits was never charged with an actual crime, never photographed, and never properly processed before going into the jail cell for five days.

115. The civil case charade continued for some time. After some motion practice over the next month, on December 15, 2011, there was an order entered by the court denying Dr. Mikovits' emergency motion to stay and for reconsideration.

116. Hearing on the show cause order occurred on December 19, 2011. At that hearing, her attorney, Mr. Freeman, told the court that any and all of the apparent missteps and misdeeds of the client were done on his advice. In addition, Dr. Mikovits refused to give up her personal Gmail as it would have put thousands of study participants at risk for confidentiality issues impacting bias, losing jobs and/or insurance.

117. Mr. Freeman made an offer of proof that Dr. Mikovits was only following the advice of counsel and that if that advice was erroneous she could still fully comply with the preliminary injunction within days. Judge Adams struck her answer, and entered the default over the protest of Mr. Freeman.

118. On January 24, 2012, the judge entered the default judgment, stating that he was doing so for willful and wanton disregard of the orders of this court in a manner which flaunts and otherwise mocks and ignores the essential discovery of the very information which is the subject of this lawsuit.

119. He issued a permanent injunction and scheduled a damages hearing for January 25, 2012. That hearing did not go forward.

120. Notwithstanding the fact that the damages assessment hearing did not go forward, FHW, who is an attorney and knows the process well, has repeatedly and fraudulently asserted that Judge Adams assessed a $5.5 million dollar sanction on Dr. Mikovits.

121. On March 14, 2012, Judge Adams, just prior to hearing a Motion for Reconsideration, recused himself on this case.

122. Prior to going on record there was a long conversation between the judge and the attorney for Whittemore. The judge began his commentary by stating that he had seen a television story about the Congressman who warned anyone who ever accepted a campaign contribution from Harvey Whittemore to donate that contribution immediately to charity within two weeks. He added that these statements presented a problem for him personally because he lives on his salary and he used the contributions from Harvey Whittemore, his family members and the affiliated Whittemore companies on his campaign as a judge.

123. A discussion ensued in which the judge asked Dr. Mikovits' lawyers whether they were planning on filing a motion to disqualify. When they answered in

the affirmative, he asked them not to file that motion immediately as he was going on vacation and he did not want to disturb his vacation with this issue. That was all mooted the next day when the judge issued a decision recusing himself.

BANKRUPTCY FRAUD COMMITTED BY FHW IN FURTHERANCE OF THE CONSPIRACY

124. As a result of this fraudulent misrepresentation, and because she believed that she owed FHW $5,500,000.00, and that he had a judgment and intended to collect what he could from it, filed for bankruptcy protection on March 1, 2013.

125. It is on that date and in furtherance of his conspiracy with AW, Kinne, Lombardi, Hillerby, that Mr. & Mrs. Whittemore filed a fraudulent claim in the Bankruptcy Court asserting a judgment that was false, fraudulent and fictitious against Dr. Mikovits, in the amount of Five Million Five Hundred Thousand ($5,500,000.00) Dollars.

126. This fraudulent act, committed on March 1, 2013, has tolled the beginning of the running of the statute of limitations until that date, and has mooted all defenses by WPI, Mr. & Mrs. Whittemore, Vincent Lombardi, Carli Kinne, and Michael Hillerby, each of whom conspired to defraud Dr. Mikovits through their wrongful acts.

127. As a result of the conspiracy between Garcia, Gammick, FHW, AW, Kinne, Hillerby, Hunter and Pari, Dr. Mikovits has very recently been forced to liquidate all of her property and to turn over the proceeds to the WPI, by order of the US Bankruptcy Court, in March of 2013, all based upon a fraudulent filing.

128. Neither FHW, AW, Lombardi, Gammick, Dean, the Three Unidentified VCSD Deputies, Kinne, the WPI, Hillersby, or Hunter have ever made a public statement that the Plaintiff was terminated for no good cause; had ownership of the laboratory notebooks; owned the intellectual property, hardware and software she was accused of stealing; was falsely accused of committing criminal acts; was not a fugitive from justice; was unlawfully arrested; was unlawfully detained in jail with no charges; was

held in jail without due process; had not misspoken about the scientific validity of the work of WPI; or had otherwise wronged any of the defendants.

129. This failure to retract statements, actions, and false assertions has, and will continue to cause harm to the Plaintiff every day, until her name is cleared and she is once again eligible to participate in procurement and execution of US. Government and other governmental unit grants and support. At this time, because of the failures of the defendants in the above paragraph, as more fully described hereinabove, the Plaintiff is an unemployable scientific treasure.

130. The harm to the Plaintiff, as an ongoing tort, does not avail itself to a measurement of a start and stop date of a statute of limitations, and all claims asserted below are timely and ongoing under prevailing California law of "Continuing Violation."

COUNT ONE
Civil Rights and Constitutional Claims

131. Plaintiff repeats, realleges, reavers and incorporates all statements above, as if specifically set forth herein.

132. This allegation runs against the above named defendants, insofar as they are not entitled to protection of the Eleventh Amendment to the US Constitution.

133. All actors involved in this Count acted under color of state law or the Constitution of the United States in the deprivation of the Plaintiff's rights under the First, Fourth, Fifth, Sixth, and Eighth Amendments to the Constitution of the United States, by imposition of incarceration upon her, and detaining her without cause.

a. First Amendment: by prohibiting the petitioning for a governmental redress of grievances, and forbidding her to express concerns about fraud upon the FDA, DOD and NIAID.

b. Fourth Amendment: by an unreasonable search and seizure of the Plaintiff and her property, the issuance of a judicial warrant without probable cause, and exceeding the bounds of permissible search.

c. Fifth Amendment: by depriving the Plaintiff of her due process, and failing to inform her of her charges and rights, and thereafter denying those rights. This violation continues to this day, unabated, as her "charges" which were never formally filed were never dismissed with prejudice, and the Plaintiff continues to live in fear of being re-arrested on whatever the unknown charges are.

d. Sixth Amendment: She has never been properly informed of her charges, which issue persists to the present day; has been denied an opportunity to defend herself in a court of law at trial, which still persists; has been deprived of her right to confront witnesses; has been denied her right to a jury trial of her criminal "charges;"and was denied effective counsel in her criminal proceeding.

e. Eighth Amendment: The Plaintiff has been denied an opportunity to meet bail, when she provided not a scintilla of being a flight risk. She was held for 5 days in a jail cell with no charges, no explanation and no perceptible end of her term.

134. The deprivation of the rights complained hereinabove was carried out under color of state law and this deprived the Plaintiff of her rights, privileges and immunities under state law.

135. Furthermore, the Plaintiff alleges that Garcia, McGuire, Dean's Agents including the Three Unknown Deputies used force in arresting and detaining her.

136. The Plaintiff further alleges that the force used by Garcia, McGuire, Dean, Dean's Agents including the Three Unknown Deputies was excessive.

137. That Garcia, McGuire, Dean, Dean's Agents including the Three Unknown Deputies were acting in furtherance of their official duties.

138. That the Plaintiff was harmed.

139. That the acts if Garcia, McGuire, Dean, Dean's Agents including the Three Unknown Deputies in the use of excessive force was a substantial factor in causing Plaintiff harm.

140. That the above referenced acts were done in furtherance of intense political power yielded by HW, AW, Lombardi, Kinne, Gammick and Hillerby as part of their conspiratorial activity.

COUNT TWO
Unreasonable Search and Seizure Without a Warrant

141. The Plaintiff repeats, realleges, reavers and incorporates all statements above, as if specifically set forth herein.

142. Garcia, McGuire, Dean, Dean's Agents including the Three Unknown Deputies, and as controlled by HW, AW, Lombardi, Hillerby and Gammick searched the Plaintiff's home and home office without producing or obtaining a valid search warrant.

143. Garcia, McGuire, Dean, Dean's Agents including the Three Unknown Deputies, and as controlled by HW, AW, Lombardi, Hillerby and Gammick conducted an unreasonable search, knowing that the objects of the search were either not present or were the lawful property of the Plaintiff.

144. Garcia, McGuire, Dean, Dean's Agents including the Three Unknown Deputies, and as controlled by HW, AW, Lombardi, Hillerby and Gammick were acting or purporting to act while performing their official duties.

145. The Plaintiff was harmed.

146. That Garcia, McGuire, Dean Dean's Agents including the Three Unknown Deputies, and as controlled by HW, AW, Lombardi, Hillerby and Gammick's unreasonable search was a substantial factor in causing Plaintiff's harm.

147. At all times incident to the Warrant, HW, AW, Kinne, Lombardi and Hillerby knew or should have known that the Plaintiff was not in possession of most of the materials being sought.

COUNT THREE
False Arrest With a Warrant (Alternatively pled Cause of Action)

148. The Plaintiff repeats, realleges, reavers and incorporates all statements above, as if specifically set forth herein.

149. Garcia, McGuire, Dean, Dean's Agents including the Three Unknown Deputies, and as controlled by HW, AW, Lombardi, Hillerby and Gammick arrested and/or intentionally caused the Plaintiff to be arrested and/or to be wrongfully arrested.

150. As set forth with particularity in the Factual Recitations in this Complaint, there was a fraudulently procured warrant, if there was one at all, inasmuch as no warrant was served before, at or around the time of the search, and all elements of the warrant that would have given it validity were based on falsities and fraudulent statements calculated to harass the Plaintiff.

151. The Plaintiff was harmed by the arrest complained of herein.

152. The actions of Garcia, McGuire, Dean, Dean's Agents including the Three Unknown Deputies, and as controlled by HW, AW, Lombardi, Hillerby and Gammick as described in the Factual Recitations were a substantial factor in causing the Plaintiff harm.

COUNT FOUR
Unnecessary Delay in Processing and Releasing

153. Plaintiff repeats, realleges, reavers and incorporates all statements above, as if specifically set forth herein.

154. Defendants Garcia, McGuire, Dean, Dean's Agents including the Three Unknown Deputies, and as controlled by HW, AW, Lombardi, Hillerby and Gammick held or caused the Plaintiff to be held in custody.

155. There was an unreasonable and unnecessary delay in taking the Plaintiff before a judge or in releasing the Plaintiff from custody, as set forth above.

156. The conduct of Garcia, McGuire, Dean, Dean's Agents including the Three Unknown Deputies, and as controlled by HW, AW, Lombardi, Hillerby and Gammick was a substantial factor in causing the Plaintiff harm.

COUNT FIVE
False Arrest Without a Warrant by a Peace Officer (Alternatively Pled Cause of Action)

157. Plaintiff repeats, realleges, reavers and incorporates all statements above, as if specifically set forth herein.

158. Garcia, McGuire, Dean, Dean's Agents including the Three Unknown Deputies, and as controlled by HW, AW, Lombardi, Hillerby and Gammick arrested Plaintiff without a warrant;

159. Plaintiff was actually harmed; and

160. That Garcia, McGuire, Dean, Dean's Agents including the Three Unknown Deputies, and as controlled by HW, AW, Lombardi, Hillerby and Gammick's conduct was a substantial factor in causing Plaintiff's harm.

COUNT SIX
False Arrest Without a Warrant by Private Citizens

161. Plaintiff repeats, realleges, reavers and incorporates all statements above, as if specifically set forth herein.

162. HW, AW, Lombardi, Hillerby and Gammick caused the Plaintiff to be arrested without a warrant.

163. The Plaintiff was actually harmed as set forth above, by this arrest.

164. The wrongful acts as set forth in the factual recitations above, of HW, AW, Lombardi, Hillerby and Gammick were a substantial factor in causing Plaintiff's harm.

COUNT SEVEN
Abuse of Process

165. Plaintiff repeats, realleges, reavers and incorporates all statements above, as if specifically set forth herein.

166. The defendants, HW, AW, WPI and UNEVX initiated process against the Plaintiff in Nevada for purposes of harassment and defamation through court process, knowing that certain privileges attach in litigation.

167. The within defendants used this abusive process as a means to disparage and destroy the career of the Plaintiff intentionally and with malice.

168. The Plaintiff was harmed by this abuse.

169. The abuses as described in the recitation of facts above, were a substantial factor in causing the Plaintiff's harm.

COUNT EIGHT
Fraud

170. Plaintiff repeats, realleges, reavers and incorporates all statements above, as if specifically set forth herein.

171. As set forth in the recitation of facts in great particularity and detail, the Defendants in this action acted in concert in a false and fraudulent manner. They hatched a scheme that would cast the Plaintiff in a poor light and that would forever discredit her as a scientist.

172. The Acts constituting this fraud were calculated to overwhelm the Plaintiff in such a manner as to cause her to seek bankruptcy protection, to sell her assets and to cease employability.

173. The within defendants used this fraudulent scheme as a means to disparage and destroy the career of the Plaintiff intentionally and with malice.

174. The Plaintiff was harmed by this abuse.

175. The fraudulent acts as described in the recitation of facts above, were a substantial factor in causing the Plaintiff's harm.

COUNT NINE
Civil Conspiracy

176. Plaintiff repeats, realleges, reavers and incorporates all statements above, as if specifically set forth herein.

177. There was an agreement between all defendants in this case to break the law as set forth in the recitation of facts hereinabove.

178. As co-conspirators, each defendant became an agent of each other defendant in the furtherance of the activities calculated to harm the plaintiff.

179. The acts of the co-conspirators were calculated to deceive the Plaintiff and to carry out illegal objectives as set forth in the Factual Recitations.

180. The Plaintiff was harmed by this conspiracy.

181. The conspiracy related acts as described in the recitation of facts above, were a substantial factor in causing the Plaintiff's harm.

COUNT TEN
Infliction of Emotional DIstress

182. Plaintiff repeats, realleges, reavers and incorporates all statements above, as if specifically set forth herein.

183. The actions of the defendants have caused the Plaintiff to suffer great emotional and resulting physical damage, as set forth in the recitation of facts hereinabove.

184. The Plaintiff was harmed by the actions of the defendants.

185. The wrongful acts as described in the recitation of facts above, were a substantial factor in causing the Plaintiff's harm.

COUNT ELEVEN
Defamation

186. Plaintiff repeats, realleges, reavers and incorporates all statements above, as if specifically set forth herein.

187. Each defendant in this case spoke, wrote or acted in such a way as to defame the name, reputation and standing of the plaintiff.

188. Those statements were false and defamatory.

189. Those statements were published in an unprivileged publication to one or more third persons.

190. The Plaintiff was harmed by this defamation.

191. The defamation related acts as described in the recitation of facts above, were a substantial factor in causing the Plaintiff's harm.

PRAYER FOR RELIEF

WHEREFORE, The Plaintiff seeks the following relied from this Honorable Court:

1. injunctive relief in the immediate return of all her intellectual property including, without limitation, her scientific notebooks and journals as described above;
2. Judgment in an amount sufficient to compensate her for the emotional harm caused by the defendants;
3. A retraction of all statements that have defamed the Plaintiff, by each defendant, to the extent that defendant caused the harm;
4. Judgment in an amount sufficient to compensate the Plaintiff for her loss of Civil Rights, and her loss of dignity;
5. Judgment in an amount sufficient to compensate the Plaintiff for her loss of opportunity to perform work;
6. Punitive damages in an amount sufficient to punish the defendants for their wrongful, negligent and intentional acts; and
7. Such other relief as this Honorable Court shall deem just.

PLAINTIFF DEMANDS TRIAL BY JURY

DATED December 15, 2015.

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Exhibit "10"
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