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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
LOS ANGELES DIVISION**

JUDY ANNE MIKOVITS,
Plaintiff,

v.

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. CV14-08909 SVW (PLA)

**ADAM GARCIA'S AND JAMIE
MCGUIRE'S NOTICE OF MOTION
AND MOTION TO DISMISS
PLAINTIFF'S COMPLAINT
PURSUANT TO RULE 12(b)(6);
SUPPORTING MEMORANDUM
OF POINTS AND AUTHORITIES;
DECLARATION OF ROBERT M.
DATO**

Date: April 13, 2015 [to be vacated]
Time: 1:30 p.m. [to be vacated]
Judge: Hon. Paul L. Abrams,
Magistrate Judge

TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE that Defendants Chief Adam Garcia and Detective
Jaime McGuire (sued as "Jamie McGuire") will and hereby do move the Court to
dismiss Plaintiff Judy Anne Mikovits' Complaint pursuant to Federal Rule of Civil
Procedure 12(b)(6) on the following grounds:

1 1. The statute of limitations bars all of Mikovits's claims in the
2 Complaint.

3 2. The Complaint fails to state any claim for relief against Defendants
4 Chief Garcia and Detective McGuire as they are protected by the doctrine of
5 qualified immunity for any of the conduct alleged in the Complaint.

6 The Motion is based on this Notice, the Supporting Memorandum of Points
7 and Authorities, the Declaration of Robert M. Dato, all other pleadings on file with
8 the Court in this matter and on any oral argument that the Court may consider at the
9 hearing on the motion.

10 Counsel for Chief Garcia and Detective McGuire attempted to meet and
11 confer with Mikovits pursuant to Local Rule 7-3 on February 11, 2015, but
12 received no response. See Declaration of Robert M. Dato.

13 Other defendants in this action have filed their own motions to dismiss. (See,
14 e.g., Dock. Nos. 48, 52, 55.) Magistrate Judge Paul L. Abrams has issued orders
15 setting forth the time within which to file opposition and reply papers, and
16 indicating that the Court will take the matter under submission without oral
17 argument. (See, e.g., Dock. Nos. 51, 54, 59.) Chief Garcia and Detective McGuire
18 bring the present motion and request the Court for a similar order.

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20 DATED: February 18, 2015

BUCHALTER NEMER
A Professional Corporation

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23 By: /s/ Robert M. Dato

Robert M. Dato
Sarah A. Syed

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25 Attorneys for Defendants
ADAM GARCIA and JAIME MCGUIRE,
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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

By her Complaint, Plaintiff Judy Anne Mikovits (“Mikovits”) seeks to hold the defendants liable for an alleged unlawful arrest and related false imprisonment pursuant to 42 U.S.C. §1983.

The fatal flaw in Mikovits’s Complaint is that her action is barred by the statute of limitations. Under Section 1983, the applicable statute of limitations is the California personal injury residual provision, which provides for a two-year statute of limitations. Mikovits waited until nearly 3 years to bring her claims. As such, her Complaint is time-barred.

Moreover, Mikovits fails to state a claim against Chief Garcia and Detective McGuire. First, she fails to plead her purported judicial deception claim with the requisite specificity under Federal Rule of Civil Procedure 9(b) regarding her contention that the arrest warrant was fraudulently obtained. Second, she cannot overcome the application of the qualified immunity doctrine and the fact that both Chief Garcia and Detective McGuire had probable cause to engage in the conduct complained of.

Under either of these bases, the Court should dismiss Chief Garcia and Detective McGuire from this action with prejudice.

II. ALLEGATIONS IN THE COMPLAINT

Adam Garcia is the Chief of Police of the Police Services Department located at the University of Nevada, Reno. Complaint ¶6.

Jaime McGuire is a detective at the Police Services Department located at the University of Nevada, Reno. Complaint ¶7.

Mikovits held an adjunct faculty appointment in the Department of Immunology at the University of Nevada, Reno. Complaint ¶25.

Mikovits claims that on November 18, 2011, Chief Garcia and Detective McGuire, along with Ventura County police officers, appeared at Mikovits’s home in

1 California and arrested her. Complaint ¶31. She was then taken to the sheriff's
2 station at the Ventura County courthouse. Complaint ¶31.

3 Mikovits contends that the warrant used to arrest her was defective, fatally
4 vague and invalid. Complaint ¶48. Mikovits's contention is based "on information
5 and belief" that Chief Garcia and Detective McGuire obtained the warrant by
6 making knowingly fraudulent statements to the Ventura Superior Court in an
7 alleged conspiracy with Defendants F. Harvey Whittemore, Annette F. Whittemore
8 and Carli West Kinne. Complaint ¶48. Mikovits believes that Chief Garcia and
9 Detective McGuire failed to use good judgment as law enforcement officials when
10 arresting her. Complaint ¶48. Mikovits also claims that Chief Garcia and
11 Detective McGuire conspired with various defendants to cause the false
12 imprisonment of Mikovits. Complaint ¶¶20, 53-54.

13 **III. MIKOVITS'S COMPLAINT AGAINST CHIEF GARCIA AND**
14 **DETECTIVE MCGUIRE MUST BE DISMISSED BECAUSE SHE**
15 **FAILED TO STATE A CLAIM AGAINST THEM**

16 **A. Legal Standard On Motion To Dismiss**

17 A motion to dismiss for failure to state a claim may be granted pursuant to
18 Federal Rule of Civil Procedure 12(b)(6) where it appears that plaintiff can prove
19 no set of facts in support of his or her claim which would entitled him or her to
20 relief. *Fidelity Financial Corp. v. Fed. Home Loan Bank of San Francisco*, 792
21 F.2d 1432, 1435 (9th Cir. 1986). Dismissal can be based on a lack of cognizable
22 legal theory or the lack of sufficient facts alleged under a cognizable legal theory.
23 *In re U.S. Aggregates, Inc. Securities Litigation*, 235 F.Supp.2d 1063, 1068 (N.D.
24 Cal. 2002).

25 Although a complaint need only provide a short and plain statement for
26 relief, a plaintiff is obligated to provide more than "labels and conclusions" or a
27 formulaic recitation of elements of a claim. See *Bell Atlantic Corp. v. Twombly*,
28 550 U.S. 544, 555 (2007); *Williston Basin Interstate Pipeline Co. v. Exclusive Gas*

1 *Storage Leasehold & Easement in the Cloverly Subterranean Geological*
 2 *Formation*, 524 F.3d 1090, 1096 (9th Cir. 2008) (affirming dismissal of complaint
 3 where complaint failed to state a claim to relief that was plausible on its face). To
 4 survive a motion to dismiss, “a complaint must contain sufficient factual matter,
 5 accepted as true, to ‘state a claim to relief that is plausible on its face.’” *Ashcroft v.*
 6 *Iqbal*, 556 U.S. 662, 678 (2009). Thus, factual allegations must be enough to raise
 7 a right to relief that rises above a “speculative level.” *Twombly*, 550 U.S. at 555.

8 Furthermore, courts are not required to cull a “tangled web” of allegations to
 9 determine whether a plaintiff has articulated a meritorious claim. See, e.g., *United*
 10 *States v. Dunkel*, 927 F.2d 955, 956 (7th Cir. 1991). Nor is it the court’s duty to
 11 rewrite a plaintiff’s complaint. *Peterson v. Atlanta Housing Authority*, 998 F.2d
 12 904, 912 (11th Cir. 1993) (complaint devoid of reference to any injury inflicted on
 13 plaintiff by defendant, which fails to give “fair notice” of claim and grounds on
 14 which it rests) (quoting *Conley v. Gibson*, 355 U.S. 41, 47 (1957)).

15 **B. Mikovits’s Claims Are Barred By The Statute of Limitations**

16 There is no federal statute of limitation for claims brought under 42 U.S.C. §
 17 1983. As such, federal courts must borrow the state personal injury statute of
 18 limitation to determine if a Section 1983 claim is time barred. *Wallace v. Kato*,
 19 549 U.S. 384, 387 (2007). *Wilson v. Garcia*, 471 U.S. 261, 280 (1985). For
 20 purposes of the present case, California’s two-year personal injury residual statute
 21 of limitations applies. *Owens v. Okure*, 488 U.S. 235, 236 (1989); see also
 22 *Canatella v. Van De Kamp*, 486 F.3d 1128, 1132-1133 (9th Cir. 2007).¹

23 The crux of Mikovits’s claims are that she was unlawfully arrested and
 24 detained on November 18, 2011. Complaint ¶¶ 31 and 32. The Complaint contains
 25 no allegations of any conduct occurring after November of 2011. However,
 26 Mikovits did not file her complaint until November 17, 2014, approximately three

27 ¹ The Nevada residual statute of limitation under N.R.S. 11.190(4)(e) is also two
 28 years. For that reason, Mikovits’s Section 1983 suit would also be barred, were
 Nevada law deemed applicable, and subject to dismissal under F.R.C.P. 12(b)(6).

1 years after the alleged events occurred. This is one year too late making Mikovits's
2 claims time-barred.

3 **C. The Complaint Fails to State a Valid Claim for Judicial Deception**
4 **Under Section 1983**

5 Although not titled as such, Mikovits's Count IV against Chief Garcia and
6 Detective McGuire is essentially one for "judicial deception" under Section 1983.
7 See Complaint ¶48 (alleging that the Ventura Superior Court warrant was
8 purportedly "issued on the basis of knowledgably fraudulent statements" made to
9 the court by Chief Garcia and Detective McGuire).

10 The Ninth Circuit has recognized that liability may exist under Section 1983
11 where an arrest warrant was issued based upon allegedly false information supplied
12 by a police officer. See, e.g., *KRL v. Moore*, 384 F.3d 1105, 1117 (9th Cir. 2004)
13 ("To support a § 1983 claim of judicial deception, a plaintiff must show that the
14 defendant deliberately or recklessly made false statements or omissions that were
15 material to the finding of probable cause."); *United States v. Stanert*, 762 F.2d 775,
16 781 (9th Cir. 1985) ("the Fourth Amendment mandates that a defendant be
17 permitted to challenge a warrant affidavit valid on its face when it contains
18 deliberate or reckless omissions of facts that tend to mislead").

19 However, to state a valid claim for judicial deception under Section 1983, a
20 plaintiff "must establish both (1) a substantial showing of the deliberate falsity or
21 reckless disregard of the truth of the statements in the affidavit and (2) the
22 materiality of those statements to the ultimate determination of probable cause."
23 *Hervey v. Estes*, 65 F.3d 784, 789 (9th Cir. 1995); see also *Smith v. Almada*, 640
24 F.3d 931, 937 (9th Cir. 2011) (stating that materiality "requires the plaintiff to
25 demonstrate that the magistrate would not have issued the warrant with false
26 information redacted, or omitted information restored"). Mikovits's Complaint
27 here fails to state a valid claim for judicial deception under Section 1983.

28 As noted above, Mikovits's Complaint contains a vague, conclusory

1 allegation, made “[o]n information and belief,” that Chief Garcia and Detective
 2 McGuire allegedly made “fraudulent statements directly to the Ventura Superior
 3 Court,” and that such alleged fraudulent statements resulted in the issuance of the
 4 purportedly defective warrant. Complaint ¶48. However, Federal Rule of Civil
 5 Procedure 9(b) requires all averments of fraud to be pled with specificity. To
 6 satisfy Rule 9(b), a plaintiff must allege “the who, what, when, where, and how” of
 7 the alleged fraud. *Vess v. Ciba-Geigy Corp. USA*, 317 F.3d 1097, 1106 (9th Cir.
 8 2003). Indeed, “a plaintiff must set forth *more* than the neutral facts necessary to
 9 identify the transaction. The plaintiff must set forth what is false or misleading
 10 about a statement, and why it is false.” *Id.* Mikovits’s vague allegations here
 11 regarding the alleged “fraudulent statements” by Chief Garcia and Detective
 12 McGuire fall well short of the Rule 9(b) standard—there are no assertions as to
 13 precisely what false statements were made, when they were made, nor does
 14 Mikovits allege why the purported statements were false. Mikovits’s failure to
 15 satisfy Rule 9(b)’s pleading requirements warrants dismissal of Chief Garcia and
 16 Detective McGuire from this action. See *Wise v. Nordell*, No. 12-CV-1209 IEG
 17 (BGS), 2012 WL 3959263, *9 (S.D. Cal. Sept. 10, 2012) (dismissing judicial
 18 deception claim where the plaintiffs failed to “allege what information [in the
 19 affidavit used to secure the search warrant] was fraudulent, why it was fraudulent,
 20 or that [the officer] knew or should have known that it was fraudulent”); see also
 21 *Howard v. Dalisay*, No. 10-5655 LB, 2014 WL 186304, *10 (N.D. Cal. Jan. 16,
 22 2014) (failure to allege sufficient facts to demonstrate that the officer “committed
 23 deliberate falsity or acted with reckless disregard of the truth of the statements in
 24 the arrest warrant affidavit” necessitated dismissal).

25 **C. Chief Garcia and Detective McGuire Are Immune From**
 26 **Mikovits’s Section 1983 Claims**

27 In *Harlow v. Fitzgerald*, 457 U.S. 800 (1982), the United States Supreme
 28 Court held “that government officials performing discretionary functions, generally

1 are shielded from liability for civil damages insofar as their conduct does not
 2 violate clearly established statutory or constitutional rights of which a reasonable
 3 person would have known.” *Harlow*, 457 U.S. at 816 (citations omitted). The
 4 Ninth Circuit reiterated that “regardless of whether [a] constitutional violation
 5 occurred, the officer should prevail if the right asserted by the plaintiff was not
 6 ‘clearly established’ or the officer could have reasonably believed that his particular
 7 conduct was lawful.” *Romero v. Kitsap Cnty.*, 931 F.2d 624, 627 (9th Cir. 1991).

8 Importantly, the entitlement recognized in *Harlow* “is an immunity from suit
 9 rather than a mere defense to liability; and like an absolute immunity, it is
 10 effectively lost if a case is erroneously permitted to go to trial.” *Mueller v. Auker*,
 11 576 F.3d 979, 992 (9th Cir. 2009) (citation omitted); see also *Iqbal, supra*, 556 U.S.
 12 at 685 (“The basic thrust of the qualified-immunity doctrine is to free officials from
 13 the concerns of litigation, including ‘avoidance of disruptive discovery’”); *Hunter*
 14 *v. Bryant*, 502 U.S. 224, 227 (1991) (“we repeatedly have stressed the importance
 15 of resolving immunity questions at the earliest possible stage in litigation”).

16 In the context of an unlawful arrest or false imprisonment,² as alleged here,
 17 the two prongs of the qualified immunity that must be satisfied are (1) whether
 18 there was probable cause for the arrest; and (2) whether it is reasonably arguable
 19 that there was probable cause for arrest. *Rosenbaum v. Washoe Cnty.*, 663 F.3d
 20 1071, 1076 (9th Cir. 2011). As discussed further below, Chief Garcia and
 21 Detective McGuire should further be dismissed on the basis of qualified immunity,
 22 because Mikovits’s Complaint demonstrates that there was probable cause for her
 23 arrest, or alternatively, that it was objectively reasonable for these officers to
 24 believe that probable cause existed.

25 1. The Existence Of Probable Cause Is An Absolute Defense

26 The Ninth Circuit has recognized that the existence of probable cause for an

27 ² False arrest is a form of false imprisonment (or a warrantless arrest). “Under the
 28 Fourth Amendment, a warrantless arrest requires probable cause.” *United States v. Lopez*, 482 F.3d 1067, 1072 (9th Cir. 2007).

1 arrest is a complete defense to claims for false arrest under Section 1983. See, e.g.,
 2 *Smith v. Almada*, 640 F.3d 931, 944 (9th Cir. 2011); *Beauregard v. Wingard*, 362
 3 F.2d 901, 903 (9th Cir. 1966) (“[I]t should in any event be clear that where
 4 probable cause does exist civil rights are not violated by an arrest even though
 5 innocence may subsequently be established.”); see also *Mustafa v. City of Chicago*,
 6 442 F.3d 544, 547 (7th Cir. 2006) (“Probable cause to arrest is an absolute defense
 7 to any claim under Section 1983 against police officers for wrongful arrest, false
 8 imprisonment, or malicious prosecution. . . . This is so even where the defendant
 9 officers allegedly acted upon a malicious motive”).

10 A police officer has probable cause to effect an arrest if “at the moment the
 11 arrest was made . . . the facts and circumstances within [his] knowledge and of
 12 which [he] had reasonably trustworthy information were sufficient to warrant a
 13 prudent man in believing” that the suspect had violated a criminal law. *Orin v.*
 14 *Barclay*, 272 F.3d 1207, 1218 (9th Cir. 2001) (quoting *Beck v. Ohio*, 379 U.S. 89,
 15 91 (1964)).

16 Here, Mikovits’s Complaint demonstrates that probable cause existed for her
 17 arrest. Specifically, Mikovits acknowledges that the Whittemore-Peterson Institute
 18 (“WPI”) Defendants claimed Mikovits “removed copies of certain NIH Grant
 19 Journals and NIH Grant Personal Health Data from the WPI lab” located on the
 20 UNR campus. Complaint ¶¶ 35, 37 (acknowledging that the WPI Defendants
 21 presented contracts “as evidence that the WPI Key Materials were subject to some
 22 proprietary confidentiality interests.”). Although Mikovits alleges that the contracts
 23 and claims of theft presented by the WPI Defendants were false, probable cause
 24 does not turn on the ultimate truth of the victim’s allegations, but rather whether the
 25 officer had reasonably trustworthy information at the time of arrest such that a
 26 prudent person would believe a crime had been committed. See *Orin*, 272 F.3d at
 27 1218; see also *Spiegel v. Cortese*, 196 F.3d 717, 723 (7th Cir. 1999) (“as long as a
 28 reasonably credible witness or victim informs the police that someone has

1 committed, or is committing, a crime, the officers have probable cause to place the
 2 alleged culprit under arrest, and their actions will be cloaked with qualified
 3 immunity if the arrestee is later found innocent”). Mikovits’s Complaint is devoid
 4 of any non-generic or non-conclusory allegations demonstrating that either Chief
 5 Garcia or Detective McGuire knew or should have known that the information
 6 supplied by the WPI Defendants was not reasonably trustworthy at the time of
 7 Mikovits’s arrest. There is a similar dearth of allegations regarding the “false
 8 imprisonment.” Rather, Mikovits essentially admits that there was probable cause
 9 for Chief Garcia to take her to Reno because she was required to appear before the
 10 Nevada state court. Complaint ¶53. Thus, Mikovits has failed to provide sufficient
 11 factual allegations to cross the line from possibility into plausibility concerning the
 12 alleged lack of probable cause for her arrest, and her claim under Section 1983
 13 fails. See *Iqbal*, 556 U.S. at 678.

14 2. At A Minimum, The Officers Have Qualified Immunity Because
 15 They Had “Arguable Probable Cause”

16 “Even law enforcement officials who ‘reasonably but mistakenly conclude
 17 that probable cause is present’ are entitled to immunity.” *Hunter, supra*, 502 U.S.
 18 at 227. Thus, where an arrest was made without probable cause, “the officer may
 19 still be immune from suit if it was objectively reasonable for him to believe that he
 20 had probable cause.” *Rosenbaum, supra*, 663 F.3d at 1078 (citing *Ramirez v. City*
 21 *of Buena Park*, 560 F.3d 1012, 1024 (9th Cir. 2009)). In determining whether there
 22 is “arguable probable cause” and thus immunity from suit, the court must determine
 23 “whether all reasonable officers would agree that there was no probable cause in
 24 [the subject] instance.” *Id.* (citing *Ashcroft v. al-Kidd*, 563 U.S. ___, 131 S.Ct.
 25 2074, 2083 (2011)).

26 As discussed above, Mikovits’s Complaint fails to allege sufficient facts to
 27 demonstrate that Chief Garcia and Detective McGuire lacked at least arguable
 28 probable cause. As acknowledged in the Complaint, Chief Garcia and Detective

1 McGuire were presented with contract documents evidencing that the “WPI Key
 2 Materials” were the proprietary and confidential property of WPI, not Mikovits, and
 3 that Mikovits had purportedly removed the materials from the WPI lab without
 4 permission. *See* Complaint ¶¶ 35, 37. Mikovits has not set forth any factual
 5 allegations from which the Court could conclude that “every reasonable official”
 6 presented with such information would have understood that seeking a warrant for
 7 Mikovits’s arrest based upon such information would be unlawful. The same is
 8 true of Mikovits’s claim for false imprisonment against Chief Garcia. Thus, again,
 9 Mikovits has failed to state a viable Section 1983 claim against Chief Garcia and
 10 Detective McGuire, because each of those officers are entitled to qualified
 11 immunity from such claims. Accordingly, both Chief Garcia and Detective
 12 McGuire should be dismissed.

13 **V. CONCLUSION**

14 Based on the foregoing, Chief Garcia and Detective McGuire respectfully
 15 request that the Court grant this motion and dismiss them from this action with
 16 prejudice.

17 DATED: February 18, 2015

BUCHALTER NEMER
 A Professional Corporation

By: /s/ Robert M. Dato
 Robert M. Dato
 Sarah A. Syed

Attorneys for Defendants
 ADAM GARCIA, JAIME MCGUIRE,
 KENNETH HUNTER, and GREG PARI

DECLARATION OF ROBERT M. DATO

I, the undersigned Robert M. Dato, declare as follows:

1. I am an attorney at law admitted to this Court. I am employed by Buchalter Nemer, PC, counsel of record for defendants Adam Garcia, Jaime McGuire, Kenneth Hunter, and Greg Pari in this action. I have personal knowledge of the facts contained in this declaration and am competent to testify about them.

2. On February 11, 2015, I sent the following e-mail to Plaintiff Judy Mikovits at the e-mail address she listed on her Complaint, jamikovits@me.com:

“Ms. Mikovits:

“This email serves as meet and confer efforts with you pursuant to Central District Local Rule 7-3 as to defendants Garcia, McGuire, Hunter and Pari. We have reviewed your complaint and have found various issues that warrant dismissal of these defendants in this action. If these defendants are not dismissed from this action, they will move to dismiss your claims pursuant to Federal Rule of Civil Procedure 12(b)(2) and/or 12(b)(6) as follows:

“1. The Central District of California does not have personal jurisdiction over defendants Hunter or Pari. Neither Hunter nor Pari have the minimum contacts sufficient to establish general jurisdiction nor have they purposefully availed themselves of California for purposes of special jurisdiction.

“2. None of the complaint’s six counts identify Hunter or Pari in any wrongful conduct. In fact, other than being identified as party defendants, the only two allegations against them are that they were consulted regarding termination and a vague, unsupported assertion that they engaged in active conspiracy with other defendants. These two allegations are insufficient to state a claim.

“3. The statute of limitations bars all your claims against all of these defendants. With respect to a section 1983 claim, the state personal injury statute of limitations, which in California is two years, applies. All of the alleged

1 events occurred on November 18, 2011. The complaint was not filed until
2 November 17, 2014, three years later, and one year too late.

3 “4. Neither Hunter nor Pari were acting under color of state law for
4 purposes of a section 1983 claim. The allegations of a conspiracy are conclusory
5 and do not satisfy pleading requirements. Even if Hunter and Pari were somehow
6 acting under color of state law, they along with Garcia and McGuire are all
7 protected by the qualified immunity doctrine. The complaint does not contain any
8 allegations that Hunter or Pari violated any constitutional or statutory right or that
9 no reasonable official would have believed that the purported conduct was lawful.
10 As to Garcia and McGuire, probable cause, and even arguable probable cause, is a
11 defense to liability for an alleged unlawful arrest.

12 “5. The complaint does not comply with the heightened pleading
13 standards set forth in Rule 9 of the Federal Rules of Civil Procedure regarding
14 allegations of fraud, particularly with respect to count IV, which is essentially a
15 judicial deception claim.

16 “Finally, Defendants Garcia, McGuire, Hunter and Pari also intend to
17 move to strike the complaint’s punitive damages claim as it is not pleaded with the
18 requisite specificity demanded by both the United States and California Supreme
19 Courts.

20 “If you have any questions regarding the above issues or would like to
21 discuss these matters further, please let me know and we can arrange a time to
22 discuss. In the alternative, if you intend to oppose these defendants’ motions to
23 dismiss, you may so state in a return e-mail.”

24 3. As of the filing of my clients’ motions to dismiss and to strike, I have
25 received no response to my e-mail.

26 I declare under penalty of perjury under the laws of the United States of
27 America that the foregoing is true and correct.
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1 Executed at Irvine, California on February 18, 2015.

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3 /s/Robert M. Dato
4 Robert M. Dato
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PROOF OF SERVICE

I am employed in the County of Orange, State of California. I am over the age of 18 and not a party to the within action. My business address is at BUCHALTER NEMER, A Professional Corporation, 18400 Von Karman Avenue, Suite 800, Irvine, California 92612-0514.

On the date set forth below, I served the foregoing document described as:

**ADAM GARCIA'S AND JAIME MCGUIRE'S NOTICE OF MOTION AND
MOTION TO DISMISS PLAINTIFF'S COMPLAINT PURSUANT TO RULES
12(b)(2) AND 12(b)(6); SUPPORTING MEMORANDUM OF POINTS AND
AUTHORITIES; DECLARATION OF ROBERT M. DATO**

on all other parties and/or their attorney(s) of record to this action as follows:


SEE ATTACHED SERVICE LIST

☒ **BY CM/ECF SYSTEM** I certify that I caused a copy of the above document to be served upon the following counsel via the court CM/ECF System on February 18, 2015.

☒ **BY MAIL** I am readily familiar with the business' practice for collection and processing of correspondence for mailing with the United States Postal Service. The address(es) shown above is(are) the same as shown on the envelope. The envelope was placed for deposit in the United States Postal Service at Buchalter Nemer in Irvine, California on February 18, 2015. The envelope was sealed and placed for collection and mailing with first-class prepaid postage on this date following ordinary business practices.

☒ I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made. Executed on February 18, 2015 at Irvine, California.

Susie Lamarr


(Signature)

UNITED STATES DISTRICT COURT – LOS ANGELES DIVISION
JUDY ANNE MIKOVITS vs. ADAM GARCIA, et al.
CASE NO. CV14-08909 SVW (PLA)

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