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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.

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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