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Attorneys for Defendant  
 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 GEOFF DEAN'S  
 OPPOSITION TO PLAINTIFF'S  
 SEPTEMBER 4, 2015 EX PARTE  
 APPLICATION TO CONTINUE  
 MOTION SUMMARY  
 JUDGEMENT OPPOSITION AND  
 HEARING DATES**

Hearing Date: September 21, 2015  
 Time: 1:30 p.m.  
 Crtm: 6

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

Defendant Geoff Dean ("Defendant") hereby submits his Memorandum of  
 Points and Authorities and Declaration of James S. Eicher, Jr. in opposition to

1 Plaintiff's defective *Ex Parte* Application for an extension of time to file her  
2 opposition to Defendant's Motion for Summary Judgment, stylized as a  
3 "Request/Motion For Continuance."  
4

5 Dated: September 8, 2015

LAWRENCE BEACH ALLEN & CHOI, PC

7 By /s/ James S. Eicher, Jr.  
8 James S. Eicher, Jr.  
9 Attorneys for Defendant  
10 Geoff Dean  
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## MEMORANDUM OF POINTS AND AUTHORITIES

### I. ARGUMENT.

Plaintiff's deficient *Ex Parte* Application should be denied because it is untimely and procedurally defective but, even if it was not, it lacks good cause. If anything, because Plaintiff filed her opposition papers four days late, Defendant Dean should be afforded at least four additional days (i.e., until Monday September 14, 2015) to file his reply papers. Alternatively, if the Court is going to postpone the hearing on the Motion substantially, then the reply papers should be due two weeks before the new hearing date.

This is a civil rights action arising out of the execution of an out-of state arrest warrant on November 18, 2011, in the City of Ventura.

Approximately three years after the subject incident (and well after the expiration of the applicable statute of limitations), Plaintiff filed suit against certain private parties and the Sheriff of the County of Ventura **although the County and its Sheriff had absolutely nothing to do with the execution of the subject arrest and search warrants**, which was executed by the City of Ventura. (Declaration of Jeffrey S. Miller in Support of Geoff Dean's Summary Judgment ("Miller Declaration"), p. 2, paragraphs 10-17, Docket No. 100.)

In June 2015, counsel for the Sheriff graciously informed counsel for Plaintiff that she sued the incorrect public official, even assuming that her claims were not plainly barred by the statute of limitations, which they clearly are. Plaintiff flatly ignored this information, forcing the Sheriff to file a motion for summary judgment on August 13, 2015.

On July 27, 2015, Plaintiff filed her First Amended Complaint, amazingly repeating her patently frivolous and untimely allegations against the Sheriff. (Docket No. 92.) In response, the Sheriff filed a very simple, straightforward summary judgment motion on the two grounds raised months before: lack of any

1 personal involvement and the expiration of the statute of limitations. (Docket No.  
2 100.)

3 On August 28, 2015, this Court granted Plaintiff an extension until  
4 September 4, 2015, to file her opposition to the Summary Judgment Motion filed  
5 by the Sheriff. The Court's order cautioned, however, "There shall be no further  
6 continuances." (Docket No. 108.)

7 Instead of withdrawing her untimely claims against the wrong defendant or  
8 complying with this Court's August 28, 2015 order, on the day her opposition  
9 papers were due, counsel for Plaintiff asked defense counsel to stipulate to  
10 another extension of time to oppose the Sheriff's Summary Judgment Motion.  
11 Mr. Hugo claimed that vision problems prevented him from using his computer  
12 for a couple of days, and that the hearing date of September 21, 2015, would  
13 make it difficult for him to travel from the east coast and return in time to  
14 participate in a religious holiday. (Eicher Decl., para. 8.)

15 Plaintiff's counsel offered no explanation why his co-counsel, Robert J.  
16 Liskey, could not assist with the preparation of the papers so that they could be  
17 filed by the extended deadline. Plaintiff's counsel also did not explain why he did  
18 not raise his purported difficulties with the hearing date when he sought his initial  
19 extension of time.

20 Most disturbing was Plaintiff's counsel's positions concerning the two very  
21 simple issues raised by the Motion. With respect to the undisputed fact that  
22 Plaintiff has sued the wrong defendant—the Sheriff—Mr. Hugo acknowledged  
23 that various claims should be dismissed but expressed his belief that there must be  
24 some vague "conspiracy" between the Sheriff and the Ventura Superior Court  
25 because Plaintiff was arraigned on a Tuesday even though he had been arrested  
26 the preceding Friday afternoon.

27 Putting aside the absurdity of Plaintiff's first position, with respect to the  
28 second issue, the expiration of the statute of limitations, Mr. Hugo stated that he

1 was still trying to come up with an argument in opposition thereto. This is  
 2 despite the fact that this basic issue should have been addressed when Plaintiff  
 3 filed her original complaint, it was specifically brought to her attention months  
 4 before, and Plaintiff's papers were due to be filed later that same day.

5 At the end of the communication, counsel for the Sheriff advised counsel  
 6 for Plaintiff that, given the circumstances, defense counsel could not agree to a  
 7 continuance of the briefing and hearing dates on the Sheriff's Summary Judgment  
 8 Motion, which should have never had to have been filed in the first place. (Eicher  
 9 Decl. para. 12.) Plaintiff never advised Defendant of her intention to file her *Ex*  
 10 *Parte* Application. (*Id.*)

11 Given the above, there exists absolutely no good cause for the further  
 12 continuance of the briefing on the Sheriff's Motion.<sup>1</sup> Certainly, there is no reason  
 13 why the hearing date should be further delayed. After all, co-counsel (Mr.  
 14 Liskey) could certainly appear at the hearing or, alternatively, Mr. Hugo could  
 15 appear telephonically.

16 Rule 1 of the Federal Rules of Civil Procedure entitles the Sheriff to a  
 17 prompt and efficient adjudication of the frivolous claims asserted against him by  
 18 Plaintiff. Accordingly, and because it is not supported by good cause, Plaintiff's  
 19 *Ex Parte* Application should be denied in all respects.

## 20 21 **II. CONCLUSION.**

22 For all the foregoing reasons, Plaintiff's *Ex Parte* Application should be  
 23 denied and the hearing on Sheriff's Motion for Summary Judgment should  
 24 proceed as previously ordered. If anything, because Plaintiff filed her opposition  
 25 papers four days late, Defendant Dean should be afforded at least four additional  
 26 \_\_\_\_\_

27 <sup>1</sup> In violation of the Court's August 28, 2015, order, Docket No. 108, Plaintiff's  
 28 Opposition to Sheriff Geoff Dean's Motion for Summary Judgment was filed on  
 September 7, 2015, at 11:46 p.m., Docket No. 120.

1 days (i.e., until Monday September 14, 2015) to file his reply papers.  
2 Alternatively, if the Court is going to postpone the hearing on the Motion  
3 substantially, then the reply papers should be due two weeks before the new  
4 hearing date.

5  
6 Dated: September 8, 2015

LAWRENCE BEACH ALLEN & CHOI, PC

7  
8 By /s/ James S. Eicher, Jr.  
James S. Eicher, Jr.  
9 Attorneys for Defendant Geoff Dean  
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**DECLARATION OF JAMES S. EICHER, JR.**

I, James S. Eicher, Jr., declare as follows:

1. The following is based upon my personal knowledge and if called upon as a witness, I could and would competently testify thereto. I am an attorney at law duly licensed to practice before this Court and all the courts of the State of California. I am an associate in the law firm of Lawrence Beach Allen & Choi, PC, attorneys for Defendant Geoff Dean, Sheriff of Ventura County.

2. On September 3, 2015, at 6:00 p.m. (Pacific Standard Time), an email was sent to me from Plaintiff's counsel requesting that I contact him to discuss the case.

3. On September 4, 2015, at approximately 10:00 a.m., Paul B. Beach and I contacted Mr. Hugo and participated in a phone conference.

4. Mr. Beach reminded Mr. Hugo of the factual basis for Geoff Dean's Motion for Summary Judgment and that Sheriff Dean, was not a proper party to this action. Mr. Beach highlighted the fact that neither Sheriff Dean nor any member of his Department, had anything to do with the decision to arrest the Plaintiff on November 18, 2011. (Declaration of Jeffrey S. Miller in Support of Geoff Dean's Summary Judgment ("Miller Declaration"), p. 2, paragraphs 10-17, Docket No. 100.)

5. Plaintiff's counsel was also advised that the only role of the Ventura County Sheriff's Office was to fulfill its statutory duty to receive Plaintiff for booking and processing her at the jail in the normal course.

6. Mr. Beach likewise reminded Plaintiff's counsel that any allegations against Sheriff Dean are barred by the expiration of the statute of limitations, in light of her arrest date, release from custody date, and filing of the original Complaint on November 17, 2014.

1           7.     Instead of withdrawing Plaintiff's untimely claims against the wrong  
2 defendant or complying with this Court's August 28, 2015 order, counsel for  
3 Plaintiff asked defense counsel to stipulate to another extension of time to oppose  
4 the Sheriff's Summary Judgment Motion.

5           8.     Mr. Hugo claimed that vision problems prevented him from using  
6 his computer for a couple of days, and that the hearing date of September 21,  
7 2015, would make it difficult for him to travel from the east coast and return in  
8 time to participate in a religious holiday.

9           9.     Mr. Hugo offered no explanation as to why his co-counsel, Robert J.  
10 Liskey, could not assist with the preparation of the papers so that they could be  
11 filed by the extended deadline. Mr. Hugo also did not explain why he did not  
12 raise his purported difficulties with the hearing date when he sought his initial  
13 extension of time.

14           10.    With respect to the undisputed fact that Plaintiff has sued the wrong  
15 defendant—Sheriff Dean—Mr. Hugo acknowledged that various claims should  
16 be dismissed but expressed his belief that there must be some vague “conspiracy”  
17 between the Sheriff and the Ventura Superior Court because Plaintiff was  
18 arraigned on a Tuesday even though she had been arrested the preceding Friday  
19 afternoon.

20           11.    With respect to the second issue, the expiration of the statute of  
21 limitations, Mr. Hugo stated that he was still trying to come up with an argument  
22 in opposition thereto.

23           12.    At the end of the communication, counsel for Plaintiff was advised  
24 that given the circumstances, defense counsel could not agree to a continuance of  
25 the briefing and hearing dates on Sheriff Dean's Summary Judgment Motion.  
26 Before ending the call, Mr. Hugo never advised us of his intention to file an *Ex*  
27 *Parte* Application.



1 I declare under penalty of perjury under the laws of the State of California  
2 and of the United States that the foregoing is true and correct.

3 Executed on September 8, 2015 at Glendale, California.  
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5 s/ James S. Eicher, Jr.  
6 James S. Eicher, Jr.  
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