

1 PAUL B. BEACH, State Bar No. 166265
pbeach@lbaclaw.com
2 JAMES S. EICHER, State Bar No. 213796
jeicher@lbaclaw.com
3 LAWRENCE BEACH ALLEN & CHOI, PC
100 West Broadway, Suite 1200
4 Glendale, California 91210-1219
Telephone No. (818) 545-1925
5 Facsimile No. (818) 545-1937

6 Attorneys for Defendant
Geoff Dean

7
8 **UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**

10
11 JUDY ANNE MIKOVITS,

12 Plaintiff,

13 vs.

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

21 Defendants.
22

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]*

23
24 TO THE HONORABLE COURT AND TO ALL INTERESTED
25 PARTIES AND THEIR ATTORNEYS OF RECORD:

26 //

27 //

1 Defendant Sheriff Geoff Dean hereby submits his reply to Plaintiff's
2 Opposition to Defendant's Motion for Summary Judgment.
3
4

5 Dated: November 2, 2015

LAWRENCE BEACH ALLEN & CHOI, PC

6
7 By /s/ Paul B. Beach
8 Paul B. Beach
9 James S. Eicher, Jr.
10 Attorneys for Defendant
11 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.

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

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

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

14 **II. BRIEF RECAP OF THE RELEVANT FACTS.**

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

21 Once in custody, Plaintiff was transported to the Ventura County Jail and
22 remained there up until her arraignment on November 22, 2011.² The Superior
23 Court allowed Plaintiff to post bail on her Fugitive Complaint and she was
24 released from custody that same day. Plaintiff later returned to Nevada to
25

26
27 ² Under California law, county sheriffs are required to accept into their jails those
28 persons arrested by local law enforcement agencies like the Ventura Police
Department. *See*, Cal. Penal Code Section 4015(a).

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

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

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

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

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

1 **IV. EVEN IF NOT TIME-BARRED, THE UNDISPUTED,**
 2 **COMPETENT, AND ADMISSIBLE MATERIALS IN THIS**
 3 **COURT’S FILE MANDATES SUMMARY JUDGMENT IN FAVOR**
 4 **OF DEFENDANT DEAN.**

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

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

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

23 3) *After Plaintiff’s arrest, a Fugitive Complaint was filed in Ventura*
 24 *County Superior Court, pursuant to California Penal Code Section 1551.1, on*
 25 *November 21, 2011.* (Online Docket for Superior Court, County of Ventura,
 26 appended to Co-Defendant Garcia’s Motion to Dismiss First Amended
 27 Complaint, as Doc. No. 79-4).
 28

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

5 5) *Plaintiff was fully aware after her November 22, 2011, release on bail*
 6 *on the Fugitive Complaint, that she was to return to Reno, Nevada and turn*
 7 *herself in to law enforcement authorities in that jurisdiction.* (Affidavit of Judy
 8 Anne Mikovits, Doc. No. 121, paragraphs 25-28; First Amended Complaint, para.
 9 76).

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

17 Therefore, given the lack of personal involvement of Sheriff Geoff Dean in
 18 the investigation, arrest of Plaintiff, and search of her residence on November 18,
 19 2011, Defendant Dean's Motion should be granted.

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

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

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

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

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

4 **B. There Was No Undue Delay In Plaintiff's Arraignment By The**
 5 **Superior Court, And No Amount Of Discovery Will Cure This**
 6 **Defective Claim.**

7 Plaintiff asserts that following her Friday afternoon arrest on November 18,
 8 2011, she should have been arraigned on Monday, November 21, 2011, instead of
 9 when she was arraigned, on the morning of Tuesday, November 22, 2011.

10 Plaintiff is incorrect, and she was properly processed thorough the Ventura
 11 County Superior Court based on her wanted status out of the State of Nevada.

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

18 Unfortunately for Plaintiff, the California courts held in *Youngblood v.*
 19 *Gates*, 200 Cal.App.3d 1302 (1988) that, "[t]he correct rule is that a defendant
 20 arrested at any time on one day must be arraigned on the second court day
 21 thereafter." *Id.* at 1309. Based on the California Supreme Court's holdings in
 22 *People v. Powell*, 67 Cal.2d 32 (1967) and *People v. Hall*, 62 Cal.2d 104 (1964),
 23 the *Youngblood* court further held that "[a] defendant arrested at any time on a
 24 Friday, Saturday, or Sunday must, at the outside, be arraigned on a Tuesday." *Id.*
 25 at 1313.³

26
 27 ³ When *Youngblood* was decided, Saturdays were excluded as a municipal court
 28 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. §

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.

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").

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

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

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

16 Instead of recognizing and retreating from her false assertions that no
17 booking photograph was ever taken and that she purportedly had no access to the
18 outside world (*see*, Affidavit of Judy Anne Mikovits, Doc. No. 121, paragraphs
19 16 and 18; Opp. at p. 14, para. 2.), Plaintiff has instead continued to advocate
20 known inaccuracies before this Court. As recently as October 10, 2015, through
21 her opposition to Co-Defendants’ Motion to Dismiss (Doc. No. 128, set for
22 hearing on the same day as Defendant Dean’s Motion for Summary Judgment),
23 Plaintiff represented to this Court that her irrelevant booking photograph is a
24 “forgery.” This despite the fact, that in her book “Plague” which purports to be a
25 true story addressing many of the factual allegations contained within the First
26 Amended Complaint, contains Plaintiff’s admission that, “After about two hours
27
28

1 Mikovits was taken to the Ventura County Jail, booked, and told to stand for a
2 mug shot.”⁴

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

12 **VI. CONCLUSION.**

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

15
16 Dated: November 2, 2015

LAWRENCE BEACH ALLEN & CHOI, PC

17
18 By /s/ Paul B. Beach

19 Paul B. Beach

20 James S. Eicher, Jr.

21 Attorneys for Defendant

22 Geoff Dean
23
24
25

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