

No. 18-56202

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

GAVIN B. DAVIS,

Appellant and Plaintiff,

vs.

SAN DIEGO DISTRICT ATTORNEY (SDDA) ET. AL.,

Appellees and Defendants.

Appeal From the United States District Court for the Southern District of California

Case No.: 3:17-cv-00654-JLS-BGS

Hon. Janis L. Sammartino, District Judge

EXCERPTS OF RECORD

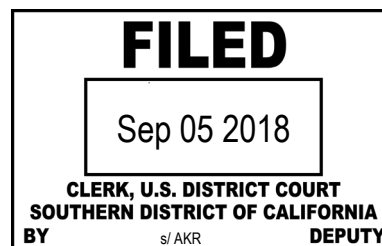
Appellant-Plaintiff

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7
 8 UNITED STATES DISTRICT COURT
 9 FOR THE SOUTHERN DISTRICT OF CALIFORNIA

10
 11 GAVIN B. DAVIS,

12 Plaintiff,

13 v.

14 SDDA et. al.

15 Defendants.

Case No.: 17-cv-00654-JLS (BGS)

Notice of Appeal of Judgment (Doc. 95)
 Dismissing the Amended Complaint (Doc. 72)

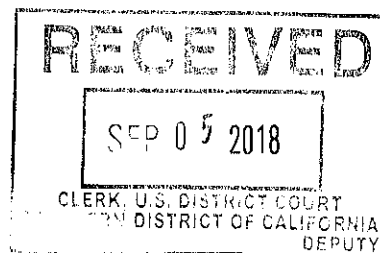
Date:
 Time:
 Dept: 4A, Hon. Janis L. Sammartino

17 Notice is hereby given that the Plaintiff in the above named case hereby timely
 18 appeals to the United States Court of Appeals for the Ninth Circuit from the lower court's
 19 Order (Doc. 95, September 4, 2018) Denying the Plaintiff's Amended Complaint, and
 20 improperly claiming Immunity for State of California, or municipal employees
 21 (Defendants herein), violating federal laws actionable under 42 U.S.C. section 1983.

22 The lower court has erred in its ruling (Doc. 95), and subject to appeal.

23 Under Rule 3(c)(1)(A), the parties are as named in the header of the filing.

24 Under Rule 3(d), the district court clerk must serve notice of the filing of this
 25 Notice of Appeal of Order on all parties.



1
2 **Certification and Closing**

3 Under FRCP 11, by signing below, I certify to the best of my knowledge,
4 information, and belief that this filing: (a) is not being presented for an improper purpose,
5 such as to harass, cause unnecessary delay, or needlessly increase the cost of
6 litigation; (b) is supported by existing law or by a non-frivolous argument for extending,
7 modifying or reversing existing law; (c) the factual contentions have evidentiary support
8 of, if specifically so identified, will likely have evidentiary support after a reasonable
9 opportunity for further investigation or discovery; and (d) the filing otherwise complies
10 with the requirements of FRCP 11.

11
12 DATED: September 4, 2018

13 
14 /s/ Gavin B Davis
15 Gavin B. Davis, Pro Per
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United States District Court
SOUTHERN DISTRICT OF CALIFORNIA

Gavin B. Davis

Plaintiff,

V.

San Diego District Attorney; Mr.
Leonard Trinh; John Does; Mr. David T.
Grapilon; Ms. Bonnie Dumanis;
(See attachment for addt'l Defendants)

Defendant.

Civil Action No. 17-cv-0654-JLS-BGS

JUDGMENT IN A CIVIL CASE

Decision by Court. This action came to trial or hearing before the Court. The issues have been tried or heard and a decision has been rendered.

IT IS HEREBY ORDERED AND ADJUDGED:

The Court GRANTS Defendants' Motion to Dismiss, (ECF No. 76). Accordingly, the Court DISMISSES WITH PREJUDICE Plaintiff's Third Amended Complaint, (ECF No. 72). Because Defendants have absolute immunity, further amendment of Plaintiff's claims would be futile. See *Cahill v. Liberty Mut. Ins. Co.*, 80 F.3d 336, 339 (9th Cir. 1996) (noting denial of leave to amend is not an abuse of discretion where further amendment would be futile). Additionally, the Court DENIES Plaintiff's pending motions, (ECF Nos. 77, 81, 94). The Clerk SHALL close the file.

Date: 9/4/18

CLERK OF COURT

JOHN MORRILL, Clerk of Court

By: s/ A. Corsello

A. Corsello, Deputy

United States District Court

SOUTHERN DISTRICT OF CALIFORNIA

(ATTACHMENT)

Civil Action No. 17-cv-0654-JLS-BGS

Mr. John Gregory Unruh; San Diego County District Attorney, (SDDA); Leonard N. Trinh

Defendants.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

GAVIN B. DAVIS,

Plaintiff,

v.

SAN DIEGO DISTRICT ATTORNEY;
MR. LEONARD TRINH; SAN DIEGO
POLICE DEPARTMENT; JOHN DOES,

Defendants.

Case No.: 17-CV-654 JLS (BGS)

**ORDER: (1) GRANTING MOTION
TO DISMISS; (2) DISMISSING
COMPLAINT; (3) DENYING
MOTION FOR SUMMARY
JUDGMENT; (4) DENYING
MOTION FOR DECLARATORY
JUDGMENT; AND (5) DENYING EX
PARTE MOTION FOR JOINDER**

(ECF Nos. 76, 77, 81, 94)

Presently before the Court are Defendants Leonard Trinh and San Diego District Attorney's Motion to Dismiss Third Amended Complaint, ("MTD," ECF No. 76). Also before the Court are Plaintiff Gavin B. Davis's Response in Opposition, ("Opp'n," ECF No. 84), and Defendants' Reply in Support of, ("Reply," ECF No. 85), the Motion to Dismiss.¹ Additionally, Plaintiff filed a Motion for Summary Judgment, (ECF No. 77), to

¹ Plaintiff filed a sur-reply in response to Defendants' Reply, (ECF No. 87). The Local Rules do not allow for sur-replies. "District courts have the discretion to either permit or preclude the filing of a sur-reply." *Estate of Alvarado v. Tackett*, No. 13-CV-1202 W (JMA), 2018 WL 1141502, at *1 (S.D. Cal. Mar. 2, 2018) (citing *Johnson v. Wennes*, No. 08-CV-1798-L (JMA), 2009 WL 1161620, at *2 (S.D. Cal. Apr. 28, 2009)). Courts generally exercise discretion when a valid reason exists, such as where the movant

1 which Defendants filed a Response in Opposition, (ECF No. 79), and Plaintiff filed a
 2 Reply, (ECF No. 83). The Court vacated the hearing on both motions and took them under
 3 submission without oral argument pursuant to Civil Local Rule 7.1(d)(1). (ECF No. 88.)
 4 Finally, Plaintiff filed a motion requesting the Court judicially notice certain facts and
 5 further requesting declaratory relief, (ECF No. 81), as well as an *ex parte* “Motion for
 6 FRCP 19 Compulsory Joinder,” (ECF No. 94). Having considered the parties’ arguments
 7 and the law, the Court rules as follows.

8 BACKGROUND

9 This case arises out of allegations that Defendant District Attorney Trinh “is
 10 Vindictively and Maliciously Prosecuting the Plaintiff” in a state criminal case currently
 11 pending before the Superior Court of San Diego: *State of California v. Gavin B. Davis*, No.
 12 SCD266332. (Third Am. Compl. (“TAC”), ECF No. 72, ¶ 10.) Plaintiff further alleges
 13 that Defendant Trinh has attempted to remand Plaintiff to the San Diego County Sheriff’s
 14 Department on an unreasonable and excessive bail. (*Id.*)

15 In March 2016, the San Diego police department arrested Plaintiff for reasons not
 16 disclosed by Plaintiff. (*Id.* ¶ 13.) He does state, however, that he posted bail and Defendant
 17 San Diego District Attorney’s Office brought a case against him—*State v. Davis*, No.
 18 SCD266332. (*Id.*) Then, in June 2016, Plaintiff was arrested again by the San Diego police
 19 for perjury and fraud; Plaintiff was released on \$50,000 bail. (*Id.* ¶ 14.) Plaintiff alleges
 20 that a case was opened against him with respect to these charges as case number
 21 SCD267655, which was later consolidated with case number SCD266332. (*Id.*) Plaintiff
 22 states that the charges for the June 2016 arrest were subsequently dropped in August 2017.
 23 (*Id.*)

24 On October 5, 2016, Defendant Trinh moved the state trial court to remand Plaintiff
 25 to custody without bail, which the court granted. (*Id.* ¶ 15.) On October 18, 2016, the San
 26

27 raises new arguments in the Reply brief. *Id.* (citation omitted). Here, Defendants do not advance any new
 28 arguments in their Reply brief and the Court declines to exercise its discretion to consider Plaintiff’s sur-
 reply. Accordingly, the Court **STRIKES** the document from the record, (ECF No. 87).

1 Diego Sheriff's Department transferred Plaintiff from George Baily Donovan Facility to
2 San Diego Central Jail. (*Id.* ¶ 19.) On October 19, 2016, Plaintiff alleges that he was given
3 a "1368 Examination,"² which Plaintiff says he passed "with flying colors." (*Id.* ¶¶ 20–
4 21.) On November 2, 2016, Defendant Trinh requested bail in the amount of \$200,000,
5 but Plaintiff states that the state trial court set bail at \$10,000. (*Id.* ¶ 22.) In November
6 2016, Plaintiff retained counsel for his two criminal cases, (*id.* ¶ 24), but his counsel
7 withdrew on January 27, 2017, citing a conflict of interest, (*id.* ¶ 25). Plaintiff alleges that
8 at the same January 27th hearing, Mr. Trinh requested Plaintiff be remanded to custody
9 without bail, which the trial court denied. (*Id.* ¶ 26.)

10 Plaintiff did not attend his next court appearance on April 17, 2017, which resulted
11 in the trial court issuing two bench warrants and increasing Plaintiff's bail, at Defendant
12 Trinh's request, from \$10,000 to \$50,000 in No. SCD266332 and from \$50,000 to
13 \$100,000 in No. SCD26765. (*Id.* ¶ 28.) Plaintiff traveled to Vermont in April 2017 and
14 the U.S. Marshal Service arrested him there in May 2017. (*Id.* ¶ 30.) Plaintiff states that
15 he posted bail in Vermont, (*id.*), as well as posting the \$50,000 bond in No. SCD266332
16 and retaining new counsel, (*id.* ¶ 31). Plaintiff appeared before the trial court in California
17 on July 7, 2017, where the court ordered Plaintiff to post a \$100,000 bond or be remanded
18 to custody the same day. (*Id.* ¶ 32.) Plaintiff states he was able to post the \$100,000 bond.
19 (*Id.*)

20 In August 2017, the San Diego District Attorney's Office notified Plaintiff's new
21 counsel that Plaintiff was to be arraigned on a new criminal charge for failing to appear at
22 the April 2017 hearing. (*Id.* ¶ 34.) Plaintiff appeared for the new criminal charge and was
23 released on his own recognizance. (*Id.*) Plaintiff's next hearing was October 10, 2017,
24 and Plaintiff alleges that he appeared for the morning court session, but was unable to
25 attend the afternoon session having been admitted to the University of California, San
26

27
28 ² The Court assumes a 1368 examination refers to California Penal Code § 1368, which generally allows
the court to suspend criminal proceedings if the court doubts the mental competence of the defendant.

1 Diego's Emergency Department. (*Id.* ¶ 37.) As a result, Defendant Trinh requested bail
2 be increased to \$1,000,000. (*Id.*) Plaintiff offered to surrender to the District Attorney's
3 office several times throughout October 2017. (*Id.* ¶ 39.) Instead, Plaintiff alleges he was
4 arrested on November 1, 2017, (*id.*), and remained in custody until April 23, 2018, (*id.*
5 ¶ 40). While in custody, Plaintiff alleges he was not allowed access to the law library and
6 was denied access to his attorney. (*Id.*) Plaintiff entered a plea agreement and was released
7 on his own recognizance on April 23, 2018. (*Id.* ¶¶ 41–42.) Plaintiff filed his Third
8 Amended Complaint on May 15, 2018.

9 Plaintiff brings six claims. First, Plaintiff brings a claim under 42 U.S.C. § 1983
10 against both Defendant Trinh and his employer the San Diego District Attorney's office
11 for violation of Plaintiff's Fourth Amendment rights. (*Id.* ¶ 11.) Second, Plaintiff brings
12 § 1983 claim against Defendant Trinh for violating his Eighth Amendment rights due to
13 excessive bail as well as an alleged beating Plaintiff suffered while in detention on October
14 20, 2016. (*Id.*) Third, Plaintiff brings the same claims against Defendant San Diego
15 District Attorney's office. Fourth, Plaintiff alleges a § 1983 claim for deprivation of his
16 Fifth and Fourteenth Amendment rights based on Defendant Trinh's denial of his access to
17 the courts. (*Id.*) Plaintiff's fifth cause of action is for the same allegations against
18 Defendant San Diego District Attorney's office. (*Id.*) Plaintiff's sixth cause of action is
19 against both Defendants for § 1983 malicious prosecution.

20 This lawsuit has been lingering in this Court for more than a year. Plaintiff filed his
21 original forty-four-page Complaint in March 2017. (ECF No. 1.) In response, Defendants
22 San Diego District Attorney and Leonard Trinh filed a motion to dismiss, (ECF No. 5), as
23 did Defendant City of San Diego (erroneously sued as San Diego Police Department),
24 (ECF No. 6). Plaintiff filed a motion for preliminary injunction. (ECF No. 9.) The Court
25 denied the preliminary injunction, (ECF No. 19), which Plaintiff appealed to the Ninth
26 Circuit, (ECF No. 22). In the interim, this Court granted Defendants' motions to dismiss
27 and dismissed Plaintiff's complaint without prejudice. Plaintiff filed a First Amended
28 Complaint, (ECF No. 32), and then filed a Second Amended Complaint, (ECF No. 37), but

1 labeled the latter as his “First Amended Complaint.” The Ninth Circuit affirmed this
 2 Court’s Order denying preliminary injunctive relief. (ECF No. 64.) The Court granted
 3 Defendants’ motion and dismissed Plaintiff’s Second Amended Complaint. Plaintiff filed
 4 his Third Amended Complaint, which only named Defendants Trinh and San Diego
 5 District Attorney’s Office. Defendants responded with the current Motion to Dismiss
 6 based under Rules 12(b)(1) and 12(b)(6).

7 LEGAL STANDARD

8 Federal Rule of Civil Procedure 12(b)(6) permits a party to raise by motion the
 9 defense that the complaint “fail[s] to state a claim upon which relief can be granted,”
 10 generally referred to as a motion to dismiss. The Court evaluates whether a complaint
 11 states a cognizable legal theory and sufficient facts in light of Federal Rule of Civil
 12 Procedure 8(a), which requires a “short and plain statement of the claim showing that the
 13 pleader is entitled to relief.” Although Rule 8 “does not require ‘detailed factual
 14 allegations,’ . . . it [does] demand more than an unadorned, the-defendant-unlawfully-
 15 harmed-me accusation.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl.*
 16 *Corp. v. Twombly*, 550 U.S. 544, 555 (2007)). In other words, “a plaintiff’s obligation to
 17 provide the ‘grounds’ of his ‘entitle[ment] to relief’ requires more than labels and
 18 conclusions, and a formulaic recitation of the elements of a cause of action will not do.”
 19 *Twombly*, 550 U.S. at 555 (citing *Papasan v. Allain*, 478 U.S. 265, 286 (1986)). A
 20 complaint will not suffice “if it tenders ‘naked assertion[s]’ devoid of ‘further factual
 21 enhancement.’” *Iqbal*, 556 U.S. at 677 (citing *Twombly*, 550 U.S. at 557).

22 In order to survive a motion to dismiss, “a complaint must contain sufficient factual
 23 matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” *Id.* (quoting
 24 *Twombly*, 550 U.S. at 570); *see also* Fed. R. Civ. P. 12(b)(6). A claim is facially plausible
 25 when the facts pled “allow the court to draw the reasonable inference that the defendant is
 26 liable for the misconduct alleged.” *Iqbal*, 556 U.S. at 677 (citing *Twombly*, 550 U.S. at
 27 556). That is not to say that the claim must be probable, but there must be “more than a
 28 sheer possibility that a defendant has acted unlawfully.” *Id.* Facts “‘merely consistent

with’ a defendant’s liability” fall short of a plausible entitlement to relief. *Id.* (quoting *Twombly*, 550 U.S. at 557). Further, the Court need not accept as true “legal conclusions” contained in the complaint. *Id.* This review requires context-specific analysis involving the Court’s “judicial experience and common sense.” *Id.* at 678 (citation omitted). “[W]here the well-pleaded facts do not permit the court to infer more than the mere possibility of misconduct, the complaint has alleged—but it has not ‘show[n]’—‘that the pleader is entitled to relief.’” *Id.*

Additionally, while the court “ha[s] an obligation where the petitioner is pro se, particularly in civil rights cases, to construe the pleadings liberally and to afford the petitioner the benefit of any doubt,” *Hebbe v. Pliler*, 627 F.3d 338, 342 & n.7 (9th Cir. 2010) (citing *Bretz v. Kelman*, 773 F.2d 1026, 1027 n.1 (9th Cir. 1985)), it may not “supply essential elements of claims that were not initially pled.” *Ivey v. Bd. of Regents of the Univ. of Alaska*, 673 F.2d 266, 268 (9th Cir. 1982).

ANALYSIS

Defendants move to dismiss Plaintiff’s complaint on four grounds. They argue Plaintiff’s claims are barred by both absolute immunity and the *Younger* abstention doctrine. (See MTD 4–5.)³ Defendants further contend that to the extent Plaintiff’s allegations are not intimately associated with the judicial phase of the criminal process, he fails to meet the Rule 8 pleading requirement. (*Id.* at 6–7.) Finally, they argue Plaintiff is abusing the legal process. (*Id.* at 7.)

I. Absolute Immunity for Defendant Trinh

Defendants contend that all of Plaintiff’s claims arise from the prosecution of his criminal charges and both state and federal law grant prosecutors immunity from civil suits arising from criminal prosecutions. (*Id.* at 4 (citing *Imbler v. Pachtman*, 424 U.S. 409, 430–31 (1976); and Cal. Gov. Code § 821.6).) Defendants point out that a criminal

³ Pin citations to docketed material refer to the CM/ECF page numbers electronically stamped at the top of each page.

1 defendant who feels aggrieved by a prosecutor's conduct in a criminal prosecution must
2 seek recourse in the criminal proceedings, not a collateral civil lawsuit.

3 Plaintiff responds that cases concerning a Fourth Amendment false imprisonment
4 claim, brought under 42 U.S.C. § 1983, are immediately actionable. (Opp'n 6 (citing
5 *Wallace v. Kato*, 549 U.S. 384, 389–93 (2007)).)

6 State prosecutors, like Defendant Trinh, are entitled to absolute prosecutorial
7 immunity for acts taken in their official capacity. *See Van de Kamp v. Goldstein*, 555 U.S.
8 335, 341 (2009); *Imbler*, 424 U.S. at 430–31 (holding prosecutors absolutely immune from
9 civil suits for damages under § 1983 for initiating criminal prosecutions and presenting
10 cases). “[A]bsolute immunity may not apply when a prosecutor is not acting as ‘an officer
11 of the court,’ but is instead engaged in other tasks, say investigative or administrative
12 tasks.” *Van de Kamp*, 555 U.S. at 342 (quoting *Imbler*, 424 U.S. at 431 n.33). The burden
13 of showing absolute immunity falls on the official seeking to assert it and the Supreme
14 Court has emphasized that courts are “quite sparing” in recognition of absolute immunity.
15 *Burns v. Reed*, 500 U.S. 478, 486–87 (1991) (quoting *Forrester v. White*, 484 U.S. 219,
16 224 (1988)).

17 Courts take a functional approach to determining whether immunity applies; thus,
18 the Supreme Court has applied absolute immunity where a prosecutor initiates a judicial
19 proceeding or appears in court to present evidence for a search warrant. *Van de Kamp*, 555
20 U.S. at 343 (citations omitted). Conversely, absolute immunity does not apply when a
21 prosecutor gives advice to police during a criminal investigation, when a prosecutor makes
22 statements to the press, or when a prosecutor acts as a complaining witness in support of a
23 warrant. *Id.* (citations omitted).

24 The decisions taken by Defendant Trinh in Plaintiff's state criminal cases all fall
25 within the traditional scope of absolute immunity. Actions such as requesting a criminal
26 defendant be remanded to custody, adding or dropping criminal charges, and requesting
27 significant bail amounts are all prosecutorial decisions and not investigative or
28 administrative. *See Ismail v. Cnty. of Orange*, 917 F. Supp. 2d 1060, 1068 (C.D. Cal.

2012), *aff'd* 676 Fed. App'x 690, 691 (9th Cir. 2017). These actions encompass every claim Plaintiff alleges against Defendant Trinh. (See TAC ¶ 11 (alleging the following against Defendants: attempting to remand Plaintiff to custody, requesting excessive bail amounts, placing Plaintiff in custody, and engaging in malicious prosecution).)

Plaintiff's argument to the contrary is unavailing. *Wallace v. Kato*, 549 U.S. at 387, dealt with whether a petitioner's § 1983 suit was time barred, not with absolute immunity. Absolute immunity is, by definition, absolute and is not limited by the type of § 1983 suit. See *Imbler*, 424 U.S. at 429 (discussing remedies for prosecutorial misconduct other than § 1983). Accordingly, the Court **GRANTS** the Motion to Dismiss and **DISMISSES WITH PREJUDICE** all claims against Defendant Trinh.

II. Supervisory Absolute Immunity

In *Van de Kamp v. Goldstein*, 555 U.S. at 340, the question before the Supreme Court was whether absolute immunity applied to allegations against the supervisors of trial prosecutors for failure to “adequately [] train and [] supervise” their subordinate prosecutors. The plaintiff in the case did not argue the supervisory prosecutors themselves erred in the criminal trial; instead, he argued the supervisors were liable because their “general methods of supervision” caused a “consequent error by an individual prosecutor” at trial. *Id.* at 346. The Supreme Court held that absolute immunity barred the plaintiff's claims against the supervisory prosecutors. *Id.* at 344–46.

In *Torres v. Goddard*, 793 F.3d 1046, 1049 (9th Cir. 2015), the Ninth Circuit dealt with a case where the Arizona Attorney General's office issued seizure warrants for money wire transfers that enabled human trafficking over the U.S.-Mexico border. Specifically, the court addressed an allegation that the Attorney General ratified seizure warrants and whether the Attorney General had absolute immunity for his subordinate's actions. The plaintiffs in *Torres* argued that their claims arose from the Attorney General's acquiescence and ratification of his subordinate's procurement of particular seizure warrants. *Id.* at 1058. The court applied *Van de Kamp*'s absolute immunity rule to the Attorney General because there was

1 no functional difference between a civil forfeiture prosecutor's
2 preparation and application for seizure warrants, and his
3 supervisor's decision to allow him to engage in those activities.
4 A supervisor's decision to permit a subordinate prosecutor to
5 prepare and apply for seizure warrants is an "act[] undertaken by
6 [the supervisor] in preparing for the initiation of judicial
7 proceedings," and "occur[s] in the course of [the supervisor's]
8 role as an advocate for the [s]tate."

9 *Id.* (alterations in original) (quoting *Kalina v. Fletcher*, 522 U.S. 118, 126 (1997)).

10 Here, Plaintiff's TAC does not clearly distinguish between the actions taken by
11 Defendant Trinh and those taken by San Diego District Attorney's Office. He alleges, for
12 example, that he is bringing a § 1983 claim "related to Defendant Leonard [Trinh]'s clear
13 pattern of attempting to remand the Plaintiff (defendant therein) to custody, pre-trial, in his
14 prosecution (SCD2666332) of the Plaintiff, on behalf of Defendant SDDA." (TAC ¶ 11.)
15 Plaintiff also alleges that after his March 2016 arrest, "Defendant SDDA brought case no:
16 SCD266332, [*State of California*] v. *Gavin B. Davis*, against the Plaintiff." (*Id.* ¶ 13
17 (alteration in original).) Later in the complaint, Plaintiff alleges that after his May 2017
18 arrest in Vermont, "Defendant Leonard [Trinh] and Defendant SDDA aggressively sought
19 extradition." (*Id.* ¶ 30.) In August 2017, Plaintiff alleges that the San Diego District
20 Attorney's Office notified Plaintiff's counsel that he would be arraigned on a new criminal
21 charge. (*Id.* ¶ 34.) When Plaintiff appeared for arraignment, "Defendant [San Diego
22 District Attorney], with a reasonable attorney of its employ at the arraignment, agreed to
23 grant the Plaintiff (defendant therein), release on his Own Recognizance." (*Id.*)

24 At their core, Plaintiff's allegations against the San Diego District Attorney's Office
25 are essentially a placeholder for actions by prosecutors other than Defendant Trinh.
26 Whether those attorneys are fellow trial attorneys who appeared in lieu of Defendant Trinh
27 or are supervisory attorneys who directed or ratified Trinh's trial related decisions, the
28 outcome is the same. The foregoing allegations demonstrate that all actions and decisions
by the District Attorney's office related to the initiation of judicial proceedings or occurred

1 in the course of a supervisor's role as an advocate for the state.⁴ *See Torres*, 793 F.3d at
2 1058. Absolute immunity applies here.

3 “Indeed, if the rule were otherwise, a plaintiff could just ‘restyle a complaint
4 charging a trial failure so that it becomes a complaint charging a failure of training or
5 supervision’ and thereby ‘eviscerate *Imbler*.’” *Id.* (quoting *Van de Kamp*, 555 U.S. at 347).
6 Accordingly, the Court finds Plaintiff's claims against Defendant Trinh and the San Diego
7 District Attorney's Office are barred by absolute immunity. Because absolute immunity
8 bars the entirety of Plaintiff's claims, the Court need not reach Defendants' remaining
9 arguments. The Court **GRANTS** Defendants' Motion and **DISMISSES WITH**
10 **PREJUDICE** Plaintiff's claims with regard to the San Diego District Attorney's Office.

11 **III. Plaintiff's Pending Motions**

12 Plaintiff has filed several motions that the Court briefly addresses. First, Plaintiff
13 filed a motion for summary judgment, (ECF No. 77). Defendants filed an Opposition brief,
14 (ECF No. 79), in which they argue, *inter alia*, that Plaintiff's motion cannot succeed
15 because he is not entitled for judgment as a matter of law, (*id.* at 3 (citing Fed. R. Civ. P.
16 56(a))). The Court agrees; Plaintiff's claims are barred by absolute immunity and he cannot
17

18
19 ⁴ Even if the Court were to construe Plaintiff's allegations as a *Monell* theory of liability, *see Monell v.*
20 *Dep't of Soc. Servs. of the City of N.Y.*, 436 U.S. 658 (1978), they cannot succeed. “An agency or
21 department of a municipal entity is not a proper defendant under § 1983.” *Boyd v. City of Oceanside*
22 *Police Dep't*, No. 11-CV-3039 LAB WMC, 2012 WL 993402, at *4 (S.D. Cal. Mar. 23, 2012) (citing
23 *Vance v. Cnty. of Santa Clara*, 928 F. Supp. 993, 996 (N.D. Cal. 1996)). Plaintiff cannot maintain a
24 section 1983 suit against the San Diego District Attorney's Office; he could only maintain a § 1983 claim
25 against the County of San Diego. To plead municipality liability, Plaintiff must allege: (1) he was deprived
26 of a constitutional right; (2) the municipality had a policy; (3) the policy amounted to deliberate
27 indifference to plaintiff's constitutional right; and (4) the policy was the “moving force behind the
28 constitutional violation.” *Van Ort v. Estate of Stanewich*, 92 F.3d 831, 835 (9th Cir.1996). Here, Plaintiff
has not alleged any policy; instead, he alleges that the San Diego District Attorney's Office made
prosecutorial decisions in his case, which is why the Court applies *Van de Kamp* in the first instance.

A separate reason for absolute immunity also applies in this case. When a county district attorney
acts in her prosecutorial capacity then she acts on behalf of the State. *See Weiner v. San Diego Cnty.*, 210
F.3d 1025, 1030 (9th Cir. 2000). And, therefore, California district attorneys possess Eleventh
Amendment immunity when “acting in [their] prosecutorial capacity.” *Del Campo v. Kennedy*, 517 F.3d
1070, 1073 (9th Cir. 2008) (alteration in original) (quoting *Weiner*, 210 F.3d at 1028; and citing *Pitts v.*
Cnty. of Kern, 17 Cal. 4th 340 (1998)).

1 prevail as a matter of law. The Court **DENIES** Plaintiff's motion for summary judgment,
 2 (ECF No. 77). Second, Plaintiff filed an *ex parte* motion for FRCP 201 Judicial Notice
 3 and FRCP 57 Declaratory Decree, (ECF No. 81). Plaintiff requests declaratory relief in
 4 addition to his requested relief in his complaint. However, Plaintiff cannot maintain a civil
 5 lawsuit against Defendants and the Court **DENIES** his *ex parte* motion, (ECF No. 81).

6 Third, Plaintiff filed an *ex parte* motion for FRCP 19 Compulsory Joinder of San
 7 Diego City Attorney, (ECF No. 94). Plaintiff requests to join as new party the San Diego
 8 Office of the City Attorney under Federal Rule of Civil Procedure 19. (*Id.* at 2.) Plaintiff
 9 states that a non-party John Gregory Unruh,⁵ his former father-in-law, is providing false or
 10 misleading statements to the City Attorney's Office, which have resulted in further criminal
 11 proceedings initiated against him. (*See id.* at 3 ("Defendant Greg, through the San Diego
 12 City Attorney, has now brought a Ca [Penal Code] § 166a charge against the
 13 Plaintiff").) Because absolute immunity bars maintenance of a suit in its entirety,
 14 Plaintiff cannot join a party to claims against Defendants. If the Court were to construe
 15 Plaintiff's motion as a request for leave to amend, such an amendment would be futile.
 16 The City Attorney is functionally performing prosecutorial functions. Adding a defendant
 17 who is performing prosecutorial functions would be barred under absolute immunity. *See*
 18 *King v. Nat'l Futures Ass'n*, 189 F.3d 473, 1999 WL 510945, at *1 (9th Cir. 1999)
 19 (unpublished decision) ("In any event, his proposed addition of [a National Future
 20 Association] attorney as a defendant would have been futile because officials performing
 21 quasi-judicial functions are entitled to absolute immunity." (citing *Fry v. Melaragno*, 939
 22 F.2d 832, 836 (9th Cir. 1991))); *Shapiro v. City of Carlsbad*, No. 11-cv-1080 DMS (MDD),
 23 2011 WL 6099565, at *2 (S.D. Cal. Dec. 7, 2011) (finding amendment would be futile to
 24

25 ⁵ Plaintiff's motion describes Mr. Unruh as a defendant. (*See generally* ECF No. 94.) Mr. Unruh was a
 26 defendant in Plaintiff's prior complaints, but was removed from his operative third amended complaint.
 27 Therefore, he is not a named defendant. *See* Fed. R. Civ. P. 10(a) ("The title of the complaint must name
 28 all the parties"). Claims that are voluntarily dismissed are considered waived if not repudiated in a
 subsequent complaint. *See Lacey v. Maricopa Cnty.*, 693 F.3d 896, 928 (9th Cir. 2012) (en banc). By
 failing to name Mr. Unruh in his third amended complaint, Plaintiff waived his claim against him.

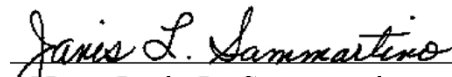
add individual defendants where they would be absolutely immune from malicious prosecution claims (citing Cal. Gov't Code §821.6; and *Asgari v. City of Los Angeles*, 15 Cal. 4th 744, 753 n.7 (1997))). Accordingly, the Court **DENIES** Plaintiff's *ex parte* motion, (ECF No. 91).

CONCLUSION

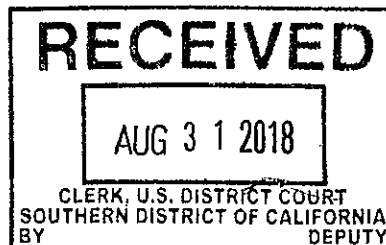
For the reasons stated above, the Court **GRANTS** Defendants' Motion to Dismiss, (ECF No. 76). Accordingly, the Court **DISMISSES WITH PREJUDICE** Plaintiff's Third Amended Complaint, (ECF No. 72). Because Defendants have absolute immunity, further amendment of Plaintiff's claims would be futile. *See Cahill v. Liberty Mut. Ins. Co.*, 80 F.3d 336, 339 (9th Cir. 1996) (noting denial of leave to amend is not an abuse of discretion where further amendment would be futile). Additionally, the Court **DENIES** Plaintiff's pending motions, (ECF Nos. 77, 81, 94). The Clerk **SHALL** close the file.

IT IS SO ORDERED.

Dated: September 4, 2018


 Hon. Janis L. Sammartino
 United States District Judge

Gavin B. Davis
615 C Street, #325
San Diego, CA 92101
Phone 858.876.4346
gbdproper@mail.com



UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF CALIFORNIA

GAVIN B. DAVIS,

Plaintiff,

vs.

SAN DIEGO COUNTY DISTRICT ATTORNEY
(SDDA),

LEONARD N. TRINH

Defendants.

Case No.: 17-cv-000654-JLS-BGS

NOTICE

**FRCP 19 COMPULSUORY JOINDER OF
PLAINTIFF H-FIN CAPITAL ADVISORS, INC., A
CALIFORNIA S-CORPORATION**

Date:

Time:

Courtroom: 4D, Hon. Janis L. Sammartino

PLEASE TAKE NOTICE pursuant to FRCP 19 in the U.S. District Court, Southern District of California, case no. 17-654, before the Hon. Janis L. Sammartino, Plaintiff, is adding H-Fin Capital Advisors, Inc., a California S-Corporation, as a plaintiff. Counterparties in this litigation, directly or indirectly, have attempted an unlawful "bust out" of the plaintiffs, in violation of applicable law, in attempt to place such plaintiffs in bankruptcy, and thereafter attempt a stay of federal proceedings; where such has been foreseen, and is expressly prohibited for a stay of proceedings by authority.

This request and Motion will be based on this Notice of Motion, the Memorandum of Points and Authorities, statements, facts, argument, and all accompanying pertinent information admitted with this filing, in its pursuit or as otherwise relevant, now or in the future.

DATED: August 31, 2018


/s/ Gavin B. Davis

Gavin B. Davis, Pro Per

1 Gavin B. Davis
615 C Street, #325
2 San Diego, CA 92101
Phone 858.876.4346
3 gbdproper@mail.com

4 UNITED STATES DISTRICT COURT

5 FOR THE SOUTHERN DISTRICT OF CALIFORNIA
6
7

8 GAVIN B. DAVIS,

9 Plaintiff,

10 vs.

11 SAN DIEGO COUNTY DISTRICT ATTORNEY
(SDDA),

12 LEONARD N. TRINH

13 Defendants.
14
15

Case No.: **17-cv-000654-JLS-BGS**

MEMORANDUM IN SUPPORT OF

**FRCP 19 COMPULSUORY JOINDER OF
PLAINTIFF H-FIN CAPITAL ADVISORS, INC., A
CALIFORNIA S-CORPOATION**

Date:

Time:

Courtroom: 4D, Hon. Janis L. Sammartino
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POINTS AND AUTHORITIES**Cases**

| | |
|---|---|
| <i>A. E. Cook Co. v. KS Racing Enterprises, Inc.</i> [(1969)] 274 Cal.App.2d 499, 500 [79 Cal.Rptr. 123] | 2 |
| <i>Committee on Children's Television, Inc. v. General Foods Corp.</i> , 35 Cal.3d 197, 213-4, (1983)..... | 4 |
| <i>Del E. Webb Corp. v. Structural Materials</i> , 123 Cal.App.3d 593, 604, (1981)..... | 4 |
| <i>Diverco Constructors, Inc. v. Wilstein</i> [(1970)] 4 Cal.App.3d 6, 12 [85 Cal.Rptr. 851]..... | 2 |
| <i>Duncan v. Sunset Agricultural Minerals</i> [(1969)] 1 273 Cal .Anr.2d 489.493 [78 Cal.Rotr. 3391)..... | 2 |
| <i>Lawlor v. National Screen Service Corp.</i> , 349 U.S. 322 (1955)..... | 5 |
| <i>Schwartz v. Magyar House, Inc.</i> (1959) 168 Cal.App.2d 182, 190 [335 P.2d 487] | 2 |
| <i>Traub Co. v. Coffee Break Service, Inc.</i> [(1967)] 66 Cal.2d 368, 370 [57 Cal.Rptr. 846, 425 P.2d 790] | 2 |

Statutes

| | |
|------------------------|------|
| 26 U.S.C. § 7201 | 4 |
| 28 U.S.C. § 1397 | 1 |
| 28 U.S.C. § 1401 | 1 |
| Ca PC § 422 | 2, 3 |

Rules

| | |
|----------------|------|
| FRCP 19 | 1, 4 |
| FRCP 201 | 3 |

A. INTRODUCTION

1. Plaintiff is adding the following party as an additional Plaintiff under FRCP 19, H-Fin Capital Advisors, Inc. ("Plaintiff H-Fin"), a California S-Corporation, Entity No.: C3615420, registered on October 30, 2013, and active through September 2016, until the actions of one or more Defendants contributed to a liquidity 'crunch' and whereby the entity has been suspended during the controversy between the parties to this litigation. H-Fin Capital Advisors, Inc., is engaged in principally in the area of hotel real estate financing advisory services across the United States (e.g. Plaintiff's detainment in May 2017 (see Doc. 72, ¶ 30, 32) in the State of Vermont, he was actively working on business that later closed in November 2017, approximating Twenty Million Dollars (\$20,000,000.00). Service of Process can be completed via its Chief Executive Officer Mr. Gavin B. Davis, Plaintiff, at 615 C Street, #325, San Diego, California 92101; and, only one (1) copy, is therefore required. This Court's authority to join is also expressly reserved under 28 U.S.C. § 1397 (Interpleader) and 28 U.S.C. § 1401 (Stockholder's derivative action).

2. Plaintiff notes that in the Amended Complaint (Doc. 72, Damages, ¶ 66) he has cited to certain Damages including but not limited to each of: (i) lost earnings (individually as an employee of Plaintiff H-Fin); (ii) lost profits (for Plaintiff H-Fin, in which Plaintiff is a majority shareholder); and, (iii) loss of earning capacity, for each of Plaintiff (e.g. during unlawful detainment, he is unable to work), and Plaintiff H-Fin, as the latter has active business engagements, for which the Plaintiff is a key employee and asset of the California S-Corporation. For example, during Plaintiff's approximate six (6) month unlawful pretrial detention on Excessive, and Punitive bail (see Doc. 72, ¶¶ 10, 11(b), 22, 26, 28, 32, 37, 39 (g-h), 40, 52, 55, 59, 67) from November 2017 to April 2018, at the time of detainment in this instance, Plaintiff, on behalf of Plaintiff H-Fin, was formally engaged via contract on two (2) material transactions: (a) generally, for the procurement of over One Hundred Million Dollars (\$100,000,000.00) of financing for the development of a four-diamond Peabody Hotel (one of the most historic hotels in the United States (Memphis, Tennessee)) in the greater Dallas, Texas area; and, (b) for acquisition and renovation financing of a full-service hotel property on behalf of a client, in the Northeast from RLJ Lodging Trust, a publicly traded hotel Real Estate Investment Trust (REIT) (NYSE: RLJ), with total capitalization approximating Forty-Six Million Dollars (\$46,000,000.00). Upon release from unlawful pretrial detention and custody in April 2018, these are no longer engagements of H-Fin Capital Advisors, Inc., causing irreparable harm to each of Plaintiff, and Plaintiff H-Fin, prima facie. Also of note, as cited to in the August 29, 2018, FRCP 201 Notice,

1 which updates the Court on the passage of California Senate Bill No. 10, and Bail Reform, targeting predominantly
2 at the elimination of monetary conditions of bail, Plaintiff's claims, and damages stemming from such claims (e.g.
3 Doc. 72), in part, are a good illustration of why pre-trial detention and custody, are not to be utilized as financial
4 and political weapons by prosecutors, such as the Defendants (e.g. DDA Leonard N. Trinh, Defendant SDDA),
5 have clearly done.

6
7 **B. STATEMENT OF FACTS REGARDING PLAINTIFF H-FIN AND AUTHORITIES IN SUPPORT**

8 3. H-Fin Capital Advisors, Inc., a California S-Corporation, is a going concern.

9 4. H-Fin Capital Advisors, Inc., is legally permitted to operate as a going concern during this
10 pending litigation, as the corporation is unable to effect reinstatement (*Schwartz v. Magyar House, Inc.* (1959) 168
11 Cal.App.2d 182, 190 [335 P.2d 487]) and had initially only been suspended based on a rather minor missed annual
12 payment to the State of California, though given the circumstances, material to the Plaintiff, and to H-Fin. H-Fin is
13 now also delinquent on tax filings given the circumstances created by others impacting its operations and cash flow
14 (also see Damages in Doc. 72 as further cited to herein below). Being in custody, pre-trial, on Excessive and
15 Punitive bail, has serious impact to individuals (e.g. Plaintiff), and others (e.g. Plaintiff H-Fin).

16 5. H-Fin Capital Advisors, Inc. if and when it pays its State of California delinquencies, as it intends
17 to, is able to validate any actions deemed invalid during any period of suspension. (*Traub Co. v. Coffee Break*
18 *Service, Inc.* [(1967)] 66 Cal.2d 368, 370 [57 Cal.Rptr. 846, 425 P.2d 790]; *Diverco Constructors, Inc. v. Wilstein*
19 [(1970)] 4 Cal.App.3d 6, 12 [85 Cal.Rptr. 851]; *A. E. Cook Co. v. KS Racing Enterprises, Inc.* [(1969)] 274
20 Cal.App.2d 499, 500 [79 Cal.Rptr. 123]; *Duncan v. Sunset Agricultural Minerals* [(1969)] 1273 Cal.1.Anr.2d
21 489.493 [78 Cal.Rptr. 3391]. As such, such intentions, and authorities, also provide its basis to operate in an
22 ongoing capacity. Plaintiff has previously accused parties of attempting a "bust out", with an intention of avoiding,
23 or staying, federal litigation; which under a "bust out" such proceedings are unable to be stayed.

24 6. Plaintiff cites to the Amended Complaint (Doc. 72, "TAC") at ¶ 14, "In June 2016, the Plaintiff
25 was arrested by plain clothes detectives immediately preceding a financial hearing in the marriage dissolution (San
26 Diego, D555614, a non-true adversary proceeding under Ca Fam. Code §§ 2107(d)(1) and (2), for Perjury and
27 Fraud (willing suppression of assets), by the same false accusers). Plaintiff was released on Fifty Thousand Dollars
28 (\$50,000) of bail for a Ca PC § 422 (felony) for case no. SCD267655 (later consolidated into SCD266332). This

1 charge, the most serious charge, and a false charge, was entirely dropped (grounds for: a reduction in bail; and
2 proof of Vindictiveness and Malicious Prosecution) [pre-trial] by Defendant SDDA and Defendant Leonard in
3 August 2017.” The party providing false, partial, and/or misleading information to authorities such as Defendant
4 Leonard, and Defendant SDDA (as well as tolled defendant San Diego Police Department (“SDPD”) is tolled
5 defendant, and Fugitive from Summons (Doc. 94), convicted felon, John Gregory Unruh (Henderson, Nevada)
6 (also cited to in the most recent FRCP 201 Notice filed on August 29, 2018 (not yet imaged)).

7 7. Plaintiff also cited to this party in the Amended Complaint (Doc. 72 at ¶ 50-51), “In May 2016,
8 the Plaintiff’s ex-father-in-law, member of organized crime, convicted felon, (Mr. John Gregory Unruh, of the
9 greater Las Vegas area), made false, partial and/or misleading statements to the SDPD intending to induce the
10 arrest of the Plaintiff. Unruh told the SDPD, with specificity, where and when to have the Plaintiff arrested:
11 immediately preceding a financial hearing, in which Unruh’s alleged interests were at stake, in a marriage
12 dissolution (San Diego, case no.: D555614, a non-true adversary proceeding under Ca Fam. Code §§ 2107(d)(1)
13 and (2), for Perjury and Fraud of Unruh and the Plaintiff’s ex-wife, unlawfully suppressing assets required to be
14 disclosed).Plaintiff has accused this party of directly, or indirectly, attempting a “bust-out” of the Plaintiff,
15 personally, and professionally (e.g. H-Fin Capital Advisors, Inc.; Plaintiff H-Fin). Plaintiff was arrested in June
16 2016, and charged with an extraordinarily serious felony charge, CA PC § 422, criminal threats (formerly known as
17 terrorist threats): for example, when a party threatens to kill or physically cause great bodily harm someone. Of
18 highly relevant note, such a threat has to be, “so unequivocal, unconditional, immediate, and specific as to convey
19 to the person threatened, a gravity of purpose and an immediate prospect of execution of the threat, and thereby
20 causes that person reasonably to be in sustained fear for his or her own safety or for his or her immediate family’s
21 safety,” – obviously, if an accuser (or false accuser in this case), directly indicates to the SDPD a time and place to
22 arrest an alleged criminal making serious criminal threats, then there is nothing that is immediate about such
23 prospect. Therefore, it is held as evidentiary in other capacities.”¹ Plaintiff notes that such is known, in part, as an
24 unlawful Abuse of Process, though not developed, yet, as a claim in this litigation, against one or more Defendants.

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27 ¹ “Plaintiff has previously made claims against SCD267655, False Accuser, ex-father-in-law, Mr.
28 John Gregory Unruh (Henderson, Nevada), who has evaded legal process service on twelve (12) occasions; while
also refusing U.S. Mail, rendering him a de facto Fugitive from Summons. Plaintiff, for the purposes of simplifying

1 8. Plaintiff holds the notion of a "bust out," whether directly via tolled defendant John Gregory
2 Unruh, or indirectly, via derivative actions stemming there from, such as those of Defendant Leonard, Defendant
3 SDDA, or others, is unlawful under 26 U.S.C. § 7201. Plaintiff notes that he, personally, and Plaintiff H-Fin, do
4 not have liability there from; that, the deliberate actions of these parties have created liability for them under this
5 statute, and otherwise. Plaintiff has formally accused John Gregory Unruh of attempting a "bust out" dating to
6 2016 (i.e. this is not the first instance of making such claim). While not brought forth, herein, Plaintiff notes that,
7 he has accused convicted felon, and delicensed Certified Public Accountant (CPA), and money launderer, John
8 Gregory Unruh of, Negligence, Breach of Duty & Good Faith, Embezzlement, Breach of Confidence, Negligent
9 Misrepresentation, Constructive Fraud. At present, herein, this remains an allegation, and is provided for context.

10 9. Even if the Plaintiff's claims seem unlikely or improbable, the facts must be accepted as true for
11 purposes of ruling on an action or Motion. (*Del E. Webb Corp. v. Structural Materials*, 123 Cal.App.3d 593, 604,
12 (1981)) Furthermore, the Plaintiff's ability to prove the allegations is also irrelevant. (*Committee on Children's*
13 *Television, Inc. v. General Foods Corp.*, 35 Cal.3d 197, 213-4, (1983)) Additional facts may be implied or inferred
14 from those facts expressly set forth in such action or Motion, and construed in the larger context of a case, where in
15 this case, such facts, allegations and arguments are significantly complex.

16 17 **C. STANDARD OF REVIEW**

18 10. Under FRCP 19, the Compulsory Joinder of Plaintiff H-Fin is permissible for several reasons
19 including but not limited to: (a) Under FRCP 19 (a)(1)(A), whereby absence of such party to the complaint, the
20 court cannot accord complete relief, prima facie; (b) Under FRCP 19 (a)(B)(i) absence of the joinder of such
21 plaintiff, would separately impair and impede the Plaintiff, and Plaintiff H-Fin, as a practical matter, from
22 protecting each of their interests and claims, extrinsic in nature, and separately intrinsic.

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26 the TAC, has simplified the claims and complaint; however, Plaintiff preserves his claim of Unruh's improper
27 purpose (element) and Abuse of Process in bringing the Ca PC 422 charge based on his partial, false, and/or
28 misleading statements, intending a collateral advantage in D555614. This is supported, prima facie, by Defendant
 SDDA's outright, dropping of the charge, pre-trial in August 2017. Further, Abuse of Process claims need not
 required the establishment of probable cause. Plaintiff intends to add such claim in the proper court of law in time."
 (Doc. 72, fn. 3)

11. The Court should consider: (a) that under Rule 19 (b)(1), whereby absence of ordering the joinder of such plaintiff to the federal case, would prejudice such plaintiff; that under FRCP 19 (b)(2), whereby the federal court has jurisdiction despite attempts by local government authorities, to create collateral estoppels directly or indirectly at the local or state levels; and (c) that under FRCP 19 (b)(4), the Plaintiff has attempted an adequate remedy of law already by separately previously noticing one or more municipal defendants of their liability.

12. Under FRCP 19 (b)(2), whereby the federal court has jurisdiction despite attempts by local government authorities, to create collateral estoppels directly or indirectly at the local or state levels; and

13. Under FRCP 19 (b)(4), the Plaintiff has attempted an adequate remedy of law already by separately previously noticing one or more municipal defendants of their liability.

14. Absence of the joinder of such plaintiff would likely expose one or more parties to double or inconsistent outcomes, or worse, create collateral estoppels, and lead to the loss of liberty of the Plaintiff, and H-Fin, each, in false proceedings directly or indirectly influenced by multiple Defendants.

15. Defendants have previously noted that Plaintiff has brought claims against them (e.g. 9th Cir., 16-56306), which this Court has not commented on. As the Supreme Court explained more than 50 years ago in *Lawlor v. National Screen Service Corp.*, 349 U.S. 322 (1955), res judicata does not bar a suit, even if it involves the same course of wrongful conduct as alleged earlier, so long as the suit alleges new facts or a worsening of the earlier conditions.

D. REQUEST FOR RELIEF

16. Enter judgment for the Plaintiff, add Plaintiff H-Fin as a additional Plaintiff, though such, a priori, is deemed as Compulsory by the Plaintiff.

17. Grant any other relief that the Court deems appropriate.

E. CERTIFICATION AND CLOSING

18. Under FRCP 11, by signing below, I certify to the best of my knowledge, information, and belief that this Filing and accompaniments: (a) is not being presented for an improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation; (b) is supported by existing law; (c) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a

1 reasonable opportunity for further investigation or discovery; and (d) the complaint otherwise complies with the
2 requirements of Rule 11.

3
4 **DATED:** August 31, 2018

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6 */s/ Gavin B. Davis*

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8 Gavin B. Davis, Pro Per
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UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF CALIFORNIA

GAVIN B. DAVIS,

Plaintiff,

vs.

SAN DIEGO COUNTY DISTRICT ATTORNEY
(SDDA),

LEONARD N. TRINH

Defendants.

Case No.: 17-cv-000654-JLS-BGS

CERTIFICATE OF SERVICE**FRCP 19 COMPULSUORY JOINDER OF
PLAINTIFF H-FIN CAPITAL ADVISORS, INC., A
CALIFORNIA S-CORPOATION**

I certify, under Penalty of Perjury, that a copy of:

**FRCP 19 COMPULSUORY JOINDER OF PLAINTIFF H-FIN CAPITAL ADVISORS, INC., A
CALIFORNIA S-CORPOATION**Deposited via Mail on or before August 31, 2018, and any Attachments (e.g. Memo of P&A), was served, by mail,
on the person, listed below:**Defendant, San Diego County District Attorney (SDDA), a municipal entity****Defendant, Mr. Leonard N. Trinh, DDA of SDDA**

"Tolled" Defendant, Ms. Bonnie Dumanis (former DA of SDDA)

"Tolled" Defendant, Mr. David Grapilon (of the SDDA)

c/o Mr. Ronald Lenert

County of San Diego Office of County Counsel

1600 Pacific Highway

Room 355

San Diego, CA 92101-2469

619-531-4860

Fax: 619-531-6005

Email: ronald.lenert@sdcounty.ca.gov

DATED: August 31, 2018*/s/ Gavin B. Davis*

Gavin B. Davis, Pro Per

UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF CALIFORNIA

GAVIN B. DAVIS,

Plaintiff,

vs.

SAN DIEGO COUNTY DISTRICT ATTORNEY
(SDDA),

LEONARD N. TRINH

Defendants.

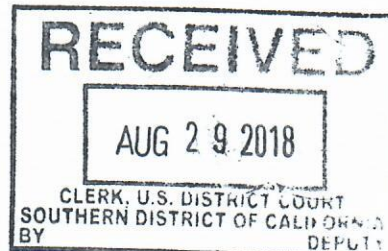
Case No.: 17-cv-000654-JLS-BGS

CERTIFICATE OF SERVICE**FRCP 19 COMPULSUORY JOINDER OF
PLAINTIFF H-FIN CAPITAL ADVISORS, INC., A
CALIFORNIA S-CORPOATION**

I certify, under Penalty of Perjury, that a copy of:

**CALIFORNIA SENATE BILL NO. 10
(AUGUST 28, 2018),
BAIL REFORM ACT & OTHER**Deposited via Mail on or before August 31, 2018, and any Attachments (e.g. Memo of P&A), was served, by mail,
on the person, listed below:**Office of the Attorney General of California**
Mr. Xavier Becerra, Attorney General of California
300 S Spring St #1700,
Los Angeles, CA 90013
(213) 897-2000Fax:
Email:**DATED:** August 31, 2018*/s/ Gavin B. Davis*

Gavin B. Davis, Pro Per



Gavin B. Davis
 615 C Street, #325
 San Diego, CA 92101
 Phone 858.876.4346
 gbdproper@mail.com

UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF CALIFORNIA

GAVIN B. DAVIS,

Plaintiff,

vs.

SAN DIEGO COUNTY DISTRICT ATTORNEY
 (SDDA),

LEONARD N. TRINH

Defendants.

Case No.: 17-cv-000654-JLS-BGS

FRCP 201(b)(2) NOTICE

**CALIFORNIA SENATE BILL NO. 10
 (AUGUST 28, 2018),
 BAIL REFORM ACT & OTHER**

Date:

Time:.

Courtroom: 4D, Hon. Janis L. Sammartino

PLEASE TAKE NOTICE pursuant to FRCP 201(b)(2) in the U.S. District Court, Southern District of California, case no. 17-654, before the Hon. Janis L. Sammartino, Plaintiff, in good faith, has provided additional clarity for the opposition, and the Court, regarding the Defendants; and, separately, the passage of California State Senate Bill No. 10 (SB 10) on August 28, 2018, regarding Bail Reform, Monetary Bail (removed generally), and, otherwise.

Plaintiff does not yet Move under, but expressly reserves his rights with prejudice, FRCP 201(e).

DATED: August 29, 2018

/s/ Gavin B. Davis

Gavin B. Davis, Pro Per

1 Gavin B. Davis
615 C Street, #325
2 San Diego, CA 92101
Phone 858.876.4346
3 gbdproper@mail.com

4 UNITED STATES DISTRICT COURT

5 FOR THE SOUTHERN DISTRICT OF CALIFORNIA
6
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8 GAVIN B. DAVIS,

9 Plaintiff,

10 vs.

11 SAN DIEGO COUNTY DISTRICT ATTORNEY
(SDDA),

12 LEONARD N. TRINH

13 Defendants.
14
15

Case No.: **17-cv-000654-JLS-BGS**

FRCP 201(b)(2) NOTICE

STATEMENT OF FACTS

**CALIFORNIA SENATE BILL NO. 10
(AUGUST 28, 2018),
BAIL REFORM ACT & OTHER**

Date:

Time:

Courtroom: 4D, Hon. Janis L. Sammartino

1 **A. INTRODUCTION**

2 1. Plaintiff has brought forth six (6) FRCP 8 compliant claims in the Amended Complaint (Doc. 72,
3 pg. 8-10, ¶¶ 11(a-d)) for deprivation of civil rights under 42 U.S.C. § 1983; and, demonstrated each of federal and
4 constitutional standing (e.g. see Jurisdiction, Doc. 72, pg. 6-7, ¶¶ 5-6). Defendant San Diego County District
5 Attorney's Office ("SDDA"); and, Deputy District Attorney ("DDA"), Mr. Leonard Nyugen Trinh ("Defendant
6 Leonard," "Trinh," or, "DDA Trinh," collectively referred to herein, as either the "Defendant", or "Defendant
7 SDDA-Trinh" for simplicity) have filed a "kitchen sink" Motion to Dismiss (Doc. 76, "MTD") the Amended
8 Complaint (Doc. 72) comprised entirely of conclusions and no engagement on the facts and factual allegations of
9 the Amended Complaint (Doc. 72, pg. 10-22, ¶¶ 13-43) under FRCP 8, 12(b); and, further, this Court's abstention,
10 under *Younger*, which the Plaintiff holds as, a priori, not relevant hereto; though, secondarily, also failing to satisfy
11 the conditions of *Younger*.

12 2. Plaintiff has already suffered irreparable loss; and, injury, of a great variety, prima facie. Further,
13 it is plain to be seen, that Plaintiff's claims in the Amended Complaint do not interfere or enjoin the state criminal
14 proceedings, as Defendant SDDA-Trinh allege in their MTD. The claims, and relief sought, including but not
15 limited to damages, are of the variety that the California state court system, clearly, could not, did not, has not, and
16 cannot afford adequate protection to the Plaintiff. Plaintiff has demonstrated jurisdiction and federal standing in
17 the Amended Complaint (Doc. 72).

18 3. Also, Plaintiff has noted that he was almost killed (Doc. 72, pg. 9, ¶ 11(b)) at the direct actions of
19 Defendant SDDA-Trinh; whose constitutional violations against the Plaintiff where of such a dimension, in such
20 capacity, as clear violations of *Gideon v. Wainwright* 372 U.S. 335 (1963), as affirmed in *Scott v. Illinois*, 440 U.S.
21 367 (1979), states are unable (i.e. they cannot) imprison an unrepresented (i.e. a self- litigant), as Defendant
22 SDDA-Trinh, did to the Plaintiff on October 5, 2016 (see Doc. 72, pg. 11-12, ¶¶ 16-18).

23 4. In this FRCP 201 Notice, Plaintiff cites to: (a) additional relevant actions of certain defendants
24 (e.g. DDA Leonard Trinh; SDDA) in relation to Doc. 72, Doc. 76, and this litigation; and, (b) California Senate
25 Bill No. 10 (SB 10), which passed on August 28, 2018, and may be relevant, in a secondary capacity to federal law,
26 to this case and the claims brought forth.

B. STATEMENT OF FACTS UNDER FRCP 201(B)(1) AND (2), OR DECLARATION**CERTAIN ALLEGATIONS AGAINST DDA TRINH**

5. Defendants have previously noted that Plaintiff has brought claims against them (e.g. 9th Cir., 16-56306), which this Court has not commented on. As the Supreme Court explained more than 50 years ago in *Lawlor v. National Screen Service Corp.*, 349 U.S. 322 (1955), res judicata does not bar a suit, even if it involves the same course of wrongful conduct as alleged earlier, so long as the suit alleges new facts or a worsening of the earlier conditions. Plaintiff contends that this prior suit has only provided evidentiary estoppels in favor of the Plaintiff. For example, DDA Trinh, despite proper Process Service in December 2016 (9th Cir., 16-56306, Doc. 5), never even responded to the litigation—this is held as evidentiary—and in this litigation, continues a pattern of unlawful activities against the Plaintiff (e.g. Doc. 72 claims and support thereof).

6. The appropriate time for DDA Trinh to have dropped the prosecution (per CA PC § 1424) of Mr. Davis in the SD County, State of California (SCD266332 / SCD267655 and otherwise), was when he was served with the very first federal litigation and allegations therein in December 2016 (9th Cir., 16-56306, Doc. 5). Yet, in lieu thereof, he went on again, to request Custody without Bail (a clear form of Excess and violation of Liberty) on January 27, 2017 (Dept. 31, Groch) - which was Denied. Thereafter, DDA Trinh's Vindictive and unlawful actions; have clearly continued (some of which are described in Doc. 72, in 17-654).

7. It has been overheard that Defendant DDA Trinh of Defendant SDDA, is doing everything he possibly can to "case up" the Plaintiff as having some form of psychological issue. "He (Trinh) is doing everything he possibly can to make him (Gavin Davis) look "crazy" again" This is unlawful, on its own, in multiple capacities including but not limited to a federal criminal violation of 18 U.S.C. § 242. "Leonard Trinh is still trying to do everything he possible can to maintain control of him (Gavin Davis)"

8. In good faith, without waiver to healthcare information, HIPAA, or the like, Plaintiff had provided tolled defendant, Bonnie Dumanis; and DDA Trinh, a Personality Test (Praedex) based on thousands of inputs and sophisticated, objective based regression analysis developed over 30 or more years. Plaintiff was found to have No Personality Disorder. Plaintiff notes that there are hundreds if not thousands of people with psychological issues on the streets of San Diego County; but, they are unable to be just 'locked' up in custody at will - or by making up analysis around their psyche; or inducing false and subjective statements from third parties.

1 9. Plaintiff notes that there is a court procedure for outpatient psychological testing inside of
2 California criminal courts, that being C.C.P. § 2032 (its a civil procedure akin to FRCP 45) and nuanced and
3 formal in its pursuit. Plaintiff notes that even if so Ordered; he is able to contest the very procedure; inside of
4 court; and present his own evidence; even going to trial on solely his own evidence. Plaintiff recognizes that his
5 emails can be 'prolific' - but have legal purposes – and if problematic in any capacity, a government agency's only
6 remedy is, a priori, seeking relief inside their agency under Title VII of the EEOC, and offering such remedy
7 thereafter to the outside party.

8 10. In 9th Cir., 16-56306, Doc. 5 (12/1/16), Joinder of DDA Trinh as a Defendant; with Proper
9 Service; which the SDDA did not answer (as it has w/ 17-654), Plaintiff has the following evidentiary estoppels as
10 to the alleged intent of DDA Trinh, and or others, directly or indirectly, as follows (in part):

11 (a) Pg. 14, ¶ 24: "Under Federal Rule 12 (b)(3)(A)(ii), it is believed that Defendant Leonard, or
12 parties he is acting on behalf of, are seeking to remain confidential and hide behind false, misleading or other
13 representations while attempting to preserve illegal Plea Bargains and avoid Discovery including the *Brady*
14 Motion on file." Plaintiff is still due discovery material under each of *Brady* and CA PC § 1054, that was
15 previously withheld, or unlawfully frustrated, by the Defendants, on false accuser and tolled defendant, John
16 Gregory Unruh.

17 (b) Pg. 14, ¶ 25, "Under Federal Rule 12 (b)(3)(A)(iii), it is believed that Defendant Leonard, or
18 parties he is acting on behalf of, are seeking to remain confidential and hide behind false, misleading or other
19 representations and in doing so are directly obstruct the Plaintiff's Due Process and other rights and the pursuit of
20 justice." and, this is exactly as DDA Trinh has done. Such is, generally, part of the essence of the 17-654 Claims
21 #4 and #5, stemming from Claims #1, #2 and #3, and constructively leading to Claim #6 in 17-654, Doc. 72
22 (TAC).

23 (c) Pg. 14, ¶ 26, "Under Federal Rule 12 (b)(3)(A)(iv), it is believed that Defendant Leonard, or
24 parties he is acting on behalf of, are seeking to remain confidential and hide behind false, misleading or other
25 representations in self-interest, though corruptly so, to claim that the Plaintiff is attempting selective or vindictive
26 prosecution, or frivolous litigation or fantasy, while the opposite is true."

27 (d) Pg. 14, ¶ 27, "Under Federal Rule 12 (b)(3)(B)(i) or (ii), it is believed that Defendant Leonard, or
28 parties he is acting on behalf of, are seeking to remain confidential and hide behind false, misleading or other

1 representations in self interest in attempting to claim that the Plaintiff is attempting to claim duplicity or
2 multiplicity, while the opposite is true and Defendant Leonard is attempting to illegally obstruct a parallel
3 proceeding and the pursuit of Justice." Mr. Lenert, himself, seems to take this path in seeking Dismissal in 17-
4 654; though, in a conclusory capacity; without engagement; or express knowledge (in most instances).

5 (e) Pg. 15, ¶ 29, "Under Federal Rule 12 (b)(4)(A) and (B), it is believed that Defendant Leonard, or
6 parties he is acting on behalf of, are seeking to remain confidential and hide behind false, misleading or other in
7 attempting to claim that the Plaintiff is attempting to seek to produce evidence via trial and thereafter Suppress
8 such Evidence in an attempt to subjugate the Plaintiff's rights including but not limited to those under Rule
9 12(b)(3)(c), constructively in an attempt to illegally obstruct a parallel proceeding and the pursuit of justice
10 against a joint conspiracy and government corruption."

11 (f) Pg. 15, ¶ 30, " Under Federal Rule 12 (b)(4)(C)(1), it is believed that Defendant Leonard, or
12 parties he is acting on behalf of, are seeking to remain confidential and hide behind false, misleading or other
13 representations in attempting to provide manifestly unjust restrictions including but not limitations on
14 representation, self-representation, liberty, in an attempt too Set a Deadline for pretrial motions, and thereafter
15 suppress evidence, or rely on such as a collateral estoppel(s) or both, and is constructively held as an illegal
16 attempt to obstruct a parallel proceeding and the pursuit of justice."

17 (g) Pg. 16, ¶ 32, " Under Federal Rule 12 (g), it is believed that Defendant Leonard, or parties he is
18 acting on behalf of, are seeking to remain confidential and hide behind false, misleading or other representations
19 in attempting to take the Plaintiff into Custody, such as illegally happened between October 5, 2016 and
20 November 2, 2016, [also at (17-654, e.g. Doc. 72, ¶¶ 11, 15-21, 63)] and is grounds for moving jurisdiction, and
21 is expressly reserved as such, as well as reasonably requested herein, and seek a Motion to Dismiss based on a
22 defect during such period in self-interest and is held as evidentiary given significant direct or indirect conflicts of
23 interest whereby constructively this would be illegal and another attempt to obstruct a parallel proceeding and the
24 pursuit of justice."

25 (h) Pg. 16, ¶ 33, "Under Federal Rule 12 (h), the Plaintiff alleges, thereafter, under one or more of
26 these events, that parties will attempt a Suppression Hearing subject to Rule 26.2 or otherwise relevant Motion, if
27 the Motion to Dismiss, anticipated, is quashed, as intended if any party to the proceeding, files one.
28

11. Plaintiff continues to assert that DDA Trinh does not act in good faith; acts unlawfully; and, for personal gain, is seeking to frame the Plaintiff in multiple capacities, including but not limited to as having psychological issues.

CALIFORNIA SENATE BILL NO. 10 – BAIL MONEY REFORM ACT

12. On Tuesday, August 28, 2018, the State of California Senate passed Senate Bill No. 10, known informally as the Bail Money Reform Act, and such Act is an Amendment to Section 27771 of the California Government Code, and to add Section 1320.6 to, to add Chapter 1.5 (commencing with Section 1320.7) to Title 10 of Part 2 of, and to repeal Chapter 1 (commencing with Section 1268) of Title 10 of Part 2 of, the Penal Code, relating to pretrial release, and detention. Thereafter, California Senate Bill No. 10 was approved by the Governor and filed with the Secretary of the State of California on August 28, 2018.

13. The bill creates a presumption that the court will release the defendant on his or her own recognizance at arraignment with the least restrictive nonmonetary conditions that will reasonably assure public safety and the defendant's return to court. Notably Plaintiff has previously been released on his Own Recognizance in agreeance (i.e. not disputed on record in court) Defendant San Diego District Attorney (SDDA); and, tolled defendant David Grapilon of Defendant SDDA (in contrast to Defendant DDA Trinh of SDDA, with sole exception to April 23, 2018). Plaintiff has demonstrated that he is clearly beyond any and all reasonable doubt "engaged with the process of the law," actively attending court and court proceedings; and, not "evading the law."

14. The bill, as of October 1, 2019, repeals existing laws regarding bail and requires that any remaining references to bail refer to the procedures specified in the bill. After October 1, 2019, persons arrested and detained to be subject to a pretrial risk assessment conducted by Pretrial Assessment Services (new public entities or contracted entities to be formed for such purpose, most likely to be under the local respective county probation purvey), allowing from the passage of the bill in order to mobilize and train resources, generally. The October 1, 2019 date, was advanced from a previous target of 2020.

15. "States legislative intent to permit preventative detention of pretrial defendants only in a manner that is consistent with the United States (U.S.) Constitution as interpreted by the U.S. Supreme Court, and only to the extent permitted by the California Constitution as interpreted by the state Courts of Appeal and Supreme Court." (California State Assembly Floor Analyses, SB 10, Senate Third Reading, as Amended August 20, 2018,

pg. 1). Plaintiff in the Amended Complaint (Doc. 72) has moved under 42 U.S.C. § 1983, against defendants, for violating the U.S. Constitution in multiple capacities, including the 4th and 8th Amendments regarding the continued and repeated attempts of pre-trial custody and detention of the Plaintiff.

16. “Standard of proof of clear and convincing evidence,” on the prosecution if seeking pre-trial detention (*Id.* at pg. 4)

17. “EXISTING LAW...Prohibits excessive bail” (*Id.* at 4). Plaintiff has moved in USDC SD Cal, 17-654, against certain defendants, for the unlawful utilization of excessive bail (see Amended Complaint, Doc. 72, ¶¶ 10, 11(b), 22, 26, 28, 32, 37, 39(g-h), 40, 52, 55, 59, 67)

18. “States that a person shall be granted release on bail except for the following crimes when the facts are evident or the presumption great...Felonies where the court finds by clear and convincing evidence that the person has threatened another with great bodily harm and that there is a substantial likelihood that the person would carry out the threat if released.” (*Id.* at 4-5). Plaintiff notes that he was charged with a CA PC § 422 in June 2016, and that this charge, was entirely dropped, pre-trial, in September 2017, while the Plaintiff was at liberty, evidencing it as a false charge. Plaintiff has never been a threat to any party including but not limited to the CA PC 422 false accuser.

19. “SB 10 will completely eliminate money bail in California. The current system is both unsafe and unfair. Detention decisions that are based on money and personal wealth are inherently inequitable and does nothing to keep us safer. Right now, release decisions are based solely on your personal wealth, not on whether you are a public safety risk or a flight risk. SB 10 resolves this in our justice system and replaces it with one that will keep us safer and treat individuals more fairly.” (*Id.* at pg. 6) Plaintiff is clearly not a threat, though Defendant DDA Trinh, has attempted to “criminally frame” him for personal gain, someone with no history of violence and no criminal history, relying on false, partial and misleading statements of tolled defendant, ex-father-in-law, member of organized crime (Las Vegas Mafia), John Gregory (“Greg”) Unruh (Henderson, Nevada) (federal criminal records alleged to have been recently declassified in some capacity and held by the Department of Justice / Federal Bureau of Investigation in the State of Arizona per federal case no.: 2:95-mj-05124-MS-1) or as otherwise relevant). Tolled defendant J. Gregory Unruh is cited to in Doc. 94, seeking Joinder subject to FRCP 19 and relief under FRCP 56, and otherwise therein) as a Fugitive from Summons in this litigation, and other litigation. Plaintiff continues to alleged that Greg Unruh (False accuser, convicted felon, mobster)'s PI is Stalking him (18 U.S.C. §

2261(A)) without legal authority on behalf of Greg Unruh; and, potentially taking statements from people trying to assist in the Plaintiff's criminal framing. Plaintiff continues to alleged that DDA Trinh and the SDDA have withheld substantial Discovery in SCD266332/SCD267655 and related matters; including but not limited to the prior Plea Bargain of Greg Unruh (San Diego County, mid-90s); and his FBI records - including detailed Chain of Custody (previously filed Pre-Trial Motion on same) related to such for cross-examination, investigation and interrogatories.

20. "Existing Law.. Prohibits excessive bail." (Senate Rules Committee, SB 10, August 21, 2018, Analyses). Plaintiff has alleged Excessive bail in the Amended Complaint (see same citations as previously in Doc. 72, ¶¶ 10, 11(b), 22, 26, 28, 32, 37, 39(g-h), 40, 52, 55, 59, 67)

21. SB 10, "[p]rovides that if either party flies a writ challenging the preventative detention hearing the appellate court shall expeditiously consider that writ." (Id. at pg. 5, #18)

22. Opposing the Amended SB 10, California Attorneys for Criminal Justice, note, "While we recognized that the bill was not perfect and we disagreed with several provisions, we also recognized it was a balanced approach that provided relief from excessive bail and offered an effective pathway for individuals to return to work and their families. The prior version of SB 10 stayed loyal to the "presumption of innocence" that is the bedrock of our criminal justice system," finding fault with the amendments in the bill that passed, "the recently amended version of SB 10 departs from key legal principles in too many ways. As attorneys who represent the individuals who will be directly impacted by this bill, we believe there is a substantial likelihood that more people will be incarcerated pretrial than under current law. Despite our support for the overarching goals of SB 10, we cannot stand on the sidelines and allow the bill to move forward as is. It is disappointing on many levels that we must oppose this bill. We are familiar and sensitive to the challenges faced by the SB 10 proponents in trying to legislate such titanic shifts in criminal justice policy. However, as drafted, SB 10 creates a byzantine maze of court hearings that will ultimately result in greater pretrial incarceration, and at a minimum, new opportunities to incarcerate someone before he/she is determined to have actually committed a crime....Getting rid of money bail is meritorious; however, doing so by potentially expanding pretrial incarceration is unacceptable. We know too well how often individuals are arrested without proper justification... We fight for them in courtrooms daily to ensure their due process rights, and to preserve their right to be "presumed innocent" even when it may not be popular...Despite its good intentions, SB 10 takes us in the wrong direction and undermines many essential

principles necessary to for a balanced system, due process, and the presumption of innocence” (*Id.* at pg. 8-9).

Also opposing the Amended SB 10 was the American Civil Liberties Union (ACLU). Plaintiff notes that Defendant DDA Trinh (often referred to as Defendant Leonard as well) of Defendant SDDA, directly and indirectly continues repeated attempts at the custody of the Plaintiff abusing powers of the State of California entrusted in him – and – the danger; of mere “subjective” statements and the ability to remand someone to custody that the California Attorneys for Criminal Justice, not endorsing the Amended SB 10, infer, in part.

23. The bill requires a person arrested or detained for a misdemeanor, except as specified, to be booked and released without being required to submit to a risk assessment by Pretrial Assessment Services, thereby ending monetary bail for these individuals absent extraordinary circumstances. A person arrested or detained for a misdemeanor, other than a misdemeanor listed in subdivision (e) of CA PC § 1320.10, may be booked and released without being taken into custody or, if taken into custody, shall be released from custody without a risk assessment by Pretrial Assessment Services within 12 hours of booking. This section shall apply to any person who has been arrested for a misdemeanor other than those offenses or factors listed in subdivision (e) of Section 1320.10, whether arrested with or without a warrant. Plaintiff notes that he has been released on his Own Recognizance (including on April 23, 2018, with no additional requirements including but not limited to any form of monitoring or reporting), and continues to show a pattern of attending court hearings (he is clearly engaged with the process of the law); without being a threat to others (indeed according to San Diego County Probation Department, Plaintiff is classified by them, as “low-risk”).

24. The bill authorizes Pretrial Assessment Services to release a person assessed as being a low risk, as defined, on his or her own recognizance, as specified.

25. The bill requires a superior court to adopt a rule authorizing Pretrial Assessment Services to release persons assessed as being a medium risk, as defined, on his or her own recognizance. Plaintiff notes that therefore, “low-risk” persons shall be provided significant liberty without impediment; as even medium risk are released on their own recognizance.

26. The bill would prohibit Pretrial Assessment Services from releasing persons who meet specified conditions. If a person is not released, the bill would authorize the court to conduct a prearrestment review and release the person. The bill would allow the court to detain the person pending arraignment if there is a substantial

1 likelihood that no condition or combination of conditions of pretrial supervision will reasonably assure public
2 safety or the appearance of the person in court.

3 27. Ca PC § 1320.7 (August 28, 2018, Cal. Senate Bill No. 10), defines “High Risk,” “Medium Risk”,
4 “Low Risk,” and otherwise for additional reference.

5 28. If the court determines that there is a substantial likelihood that no conditions of pretrial
6 supervision will reasonably assure the appearance of the defendant in court or reasonably assure public safety, the
7 bill would authorize the court to detain the defendant pending a preventive detention hearing and require the court
8 to state the reasons for the detention on the record. The bill would prohibit the court from imposing a financial
9 condition.

10 29. In cases in which the defendant is detained in custody, the bill would require a preventive
11 detention hearing to be held no later than 3 court days after the motion for preventive detention is filed. The bill
12 would grant the defendant the right to be represented by counsel at the preventive detention hearing and would
13 require the court to appoint counsel if the defendant is financially unable to obtain representation.

14 30. The bill would create a rebuttable presumption that no condition of pretrial supervision will
15 reasonably assure public safety if, among other things, the crime was a violent felony or the defendant was
16 convicted of a violent felony within the past 5 years. The bill would allow the court to order preventive detention of
17 the defendant pending trial if the court determines by clear and convincing evidence that no condition or
18 combination of conditions of pretrial supervision will reasonably assure public safety or the appearance of the
19 defendant in court. If the court determines there is not a sufficient basis for detaining the defendant, the bill would
20 require the court to release the defendant on his or her own recognizance or supervised own recognizance and
21 impose the least restrictive nonmonetary conditions of pretrial release to reasonably assure public safety and the
22 appearance of the defendant.

23 31. CA PC §§ 1320.10(e)(3)(C), per California Senate Bill No. 10 shall read, “Notwithstanding
24 subdivisions (a) and (b), Pretrial Assessment Services, shall not release...a violation of Section 273.6 if the
25 detained person is alleged to have made threats to kill or harm, engaged in violence against, or gone to the
26 residence or the workplace of, the protected party.” Plaintiff notes that tolled defenant J. Gregory Unruh brought a
27 false CA PC § 422 charge (June 2016, SCD267655 consolidated into SCD266332), that was entirely dropped by
28 the Defendants, pre-trial, in September 2017, evidencing Fraud, and other violations or abuses of law and authority.

1 32. CA PC §§ 1320.10(e)(6), per California Senate Bill No. 10 shall read, “Notwithstanding
2 subdivisions (a) and (b), Pretrial Assessment Services shall not release ... A person arrested for a violation of any
3 type of restraining order within the past five years.” Plaintiff notes that the parties have complained about getting
4 legal emails, but that the California courts have failed in their official capacity, after putting in place protective
5 orders (separately deemed to be fraudulent to avoid litigation and otherwise), to “devise a mechanism of
6 communication” between the courts (i.e. family court, civil court, criminal court); thereby, exacerbating the
7 situation substantially and causing harm. This matter remains under direct attack in the California state
8 proceedings.

9 33. CA PC §§ 1320.10(e)(7), per California Senate Bill No. 10 shall read, “Notwithstanding
10 subdivisions (a) and (b), Pretrial Assessment Services shall not release...A person who has three or more prior
11 warrants for failure to appear [(FTA)] within the previous 12 months.” Plaintiff has not had three or more warrants
12 issued for failure to appear. Plaintiff notes two instances of bench warrants being issued; each faulty warrants and
13 under contest in the California State proceedings. Defendants have brought an FTA charge, which Plaintiff
14 contests; and, is eager to *no longer waives time* on this charge and proceed to trial within the time period afforded
15 in the State of California proceedings.

16 34. CA PC §§ 1320.10(e)(8), per California Senate Bill No. 10 shall read, “Notwithstanding
17 subdivisions (a) and (b), Pretrial Assessment Services shall not release...A person who, at the time of arrest, was
18 pending trial or pending sentencing for a misdemeanor or a felony.” Plaintiff notes, with prejudice, that local
19 authorities, such as the Defendants; and, tolled defendant San Diego Police Department (SDPD), regularly engage
20 in the practice of Targeting individuals and trailing charges and investigations, in joint conspiracy, to continue
21 remanding targets to custody, prison, etc. Plaintiff adds that this is a dangerous provision of SB10 and the
22 forthcoming amendment to this CA statute as it places significantly more power in the hands of the prosecution and
23 police to utilize this tactic unlawfully (they are already doing it to people all the time).

24 35. CA PC §§ 1320.10(e)(9), per California Senate Bill No. 10 shall read, “Notwithstanding
25 subdivisions (a) and (b), Pretrial Assessment Services shall not release...A person who, at the time of arrest, was
26 on any form of postconviction” Plaintiff cites to the inherent danger of such given the general allegation in the
27 previous paragraph. Therefore, it is hoped, that Pretrial Assessment Services is fair once established in the future
28 with regard to this, and does not use this as the basis for “No Bail” situations and pre-trial detentions, which would

1 be held to be unconstitutional, and one of the very concerns of the California Attorneys for Criminal Justice have
2 alluded to or expressed directly in other forum.

3 36. CA PC §§ 1320.10(e)(10), per California Senate Bill No. 10 shall read, “Notwithstanding
4 subdivisions (a) and (b), Pretrial Assessment Services shall not release...A person who has intimidated, dissuaded,
5 or threatened retaliation against a witness or victim of the current crime.” Plaintiff notes how easy it is to induce
6 testimony to this effect; and, the danger, thereafter of whimsically placed parties in pre-trial detention, which would
7 be held to be unconstitutional, and one of the very concerns of the California Attorneys for Criminal Justice

8 37. CA PC §§ 1320.10(f), per California Senate Bill No. 10 shall read, “Review of the person’s
9 custody status and release pursuant to subdivision (b) or (c) shall occur without unnecessary delay, and no later
10 than 24 hours of the person’s booking. The 24-hour period may be extended for good cause, but shall not exceed an
11 additional 12 hours supervision other than informal probation or court supervision.”

12 38. “In California, bail is a constitutional right except when the defendant is charged with: (a) a capital
13 crime; (b) a felony involving violence or sex and the court finds that the person’s release would result in great
14 bodily harm to another; or (c) when the defendant has threatened another and the court finds it likely that the
15 defendant might carry out that threat. The constitution also allows for a defendant to be released upon a written
16 promise to appear, known as release on own recognizance. The constitution also prohibits excessive bail.”
17 (Assembly Committee On Appropriations, SB 10, pg. 2-3, August 15, 2018)

18 39. “The ability to be out of custody while facing criminal charges carries a number of inherent
19 advantages. A defendant who is released on bail is able to carry on with their life while awaiting the disposition of
20 the criminal case. For instance, criminal defendants who are out on bail are able to maintain employment.” (*Id.*)

21 40. The facts brought forth regarding bail in the State of California, remain secondary to federal law,
22 however, provide insight into viewing relevant matters of the Plaintiff’s claims on a real-time basis, in a secondary
23 capacity through recent California state law. Plaintiff believes that the advancement and passing of SB 10, almost
24 entirely provides additional support for his claims (e.g. Doc. 72, ¶ 11 and support thereof)

25
26 **C. REQUEST FOR RELIEF**

27 41. This Court is required pursuant to FRCP 201(c)(2) to take Notice, as presented, herein.
28

D. CERTIFICATION AND CLOSING

DATED: August 29, 2018

Gavin B. Davis, Pro Per

UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF CALIFORNIA

GAVIN B. DAVIS,

Plaintiff,

vs.

SAN DIEGO COUNTY DISTRICT ATTORNEY
(SDDA),

LEONARD N. TRINH

Defendants.

Case No.: 17-cv-000654-JLS-BGS

CERTIFICATE OF SERVICE**FRCP 201(b)(2) NOTICE****CALIFORNIA SENATE BILL NO. 10
(AUGUST 28, 2018),
BAIL REFORM ACT & OTHER**

I certify, under Penalty of Perjury, that a copy of:

**CALIFORNIA SENATE BILL NO. 10
(AUGUST 28, 2018),
BAIL REFORM ACT & OTHER**

Deposited via Mail on or before August 29, 2018, and any Attachments (e.g. Memo of P&A), was served, by mail, on the person, listed below:

Defendant, San Diego County District Attorney (SDDA), a municipal entity**Defendant, Mr. Leonard N. Trinh, DDA of SDDA**

"Tolled" Defendant, Ms. Bonnie Dumanis (former DA of SDDA)

"Tolled" Defendant, Mr. David Grapilon (of the SDDA)

c/o Mr. Ronald Lenert

County of San Diego Office of County Counsel

1600 Pacific Highway

Room 355

San Diego, CA 92101-2469

619-531-4860

Fax: 619-531-6005

Email: ronald.lenert@sdcounty.ca.gov

DATED: August 29, 2018*/s/ Gavin B. Davis*_____
Gavin B. Davis, Pro Per

UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF CALIFORNIA

GAVIN B. DAVIS,

Plaintiff,

vs.

SAN DIEGO COUNTY DISTRICT ATTORNEY
(SDDA),

LEONARD N. TRINH

Defendants.

Case No.: 17-cv-000654-JLS-BGS

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**CALIFORNIA SENATE BILL NO. 10
(AUGUST 28, 2018),
BAIL REFORM ACT & OTHER**Deposited via Mail on or before August 29, 2018, and any Attachments (e.g. Memo of P&A), was served, by mail,
on the person, listed below:**Office of the Attorney General of California**
Mr. Xavier Becerra, Attorney General of California
300 S Spring St #1700,
Los Angeles, CA 90013
(213) 897-2000Fax:
Email:**DATED:** August 29, 2018*/s/ Gavin B. Davis*

Gavin B. Davis, Pro Per

Attorneys for Defendants San Diego District Attorney and Leonard Trinh

| | | |
|------------------------------|---|-------------------------------|
| GAVIN B. DAVIS, |) | No. 17cv0654-JLS(BGS) |
| Plaintiff, |) | |
| v. |) | DEFENDANTS' ADDITIONAL |
| SAN DIEGO DISTRICT ATTORNEY, |) | BRIEFING (ECF Nos. 72, 90) |
| MR. LEONARD TRINH, |) | |
| Defendants. |) | Dept.: 4D - Courtroom of the |
| |) | Honorable Janis L. Sammartino |

I

Among several arguments Defendants make in their Motion to Dismiss the Third Amended Complaint (ECF No. 76-1), Defendants raise the *Younger* abstention doctrine. The Court has requested Defendants provide additional briefing on the status of Plaintiff's criminal matters. (ECF No. 90.)

II

Plaintiff, represented by criminal defense counsel, signed a plea of guilty/no contest to felony charges on April 23, 2018. (Exhibit A.) He thereafter immediately expressed arguments that he wanted to withdraw from his plea. (Exhibits B and C.)

1 Counsel generally understands his argument is that he only entered the plea in order to be
2 released from pre-trial custody. At sentencing, Plaintiff continued his arguments to
3 withdraw his plea, but they were denied by the court. (ECF No. 92, p. 4:24-28.) Plaintiff
4 was sentenced on June 7, 2018.

5 The very next day, June 8, 2018, Plaintiff filed a notice of appeal and request for
6 probable cause. (Exhibit E.) The criminal court confirmed his probable cause certificate
7 on June 19. (*Id.*) Plaintiff describes his argument; “The Appeal, generally and in part, is
8 somewhat simple, it seeks, good cause showing, to Withdraw the Pleas (April 23, 2018),
9 and move back to pre-trial matters.” (ECF No. 92, p. 5:8-16.) Plaintiff may file his
10 appeal of his felony judgment within 60 days of his sentencing. Cal. Rules of Court
11 8.104. Therefore, Plaintiff has until August 6, 2018, to file.

12 Plaintiff’s representations to this Court have been opaque. Plaintiff wishes to
13 appeal in the state courts while leading the federal courts to incorrectly believe his state
14 matters are resolved. His recent brief to this Court actually phrases his argument
15 ‘because the prosecution *believes* the criminal case is resolved’ the abstention doctrine
16 does not apply.¹ In subsequent correspondence to counsel, Plaintiff commented on the
17 Court’s Order for Additional Briefing; “[In Plaintiff’s Opposition Brief he does not state
18 his criminal case is complete]... Plaintiff states that the Defendant believes the criminal
19 case is complete... but [Plaintiff] has not conceded the criminal case.” (Exhibit D.) It is
20 clear Plaintiff intends to continue to litigate his criminal matter in the state court case(s).

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

27 _____

28 ¹ “Plaintiff alleges that Defendant SDDA-Trinh believes that the state-initiated
proceeding was completed on June 7, 2018.” (ECF No. 84, p. 12:9-10.)

III**CONCLUSION**

The criminal matter is an ongoing proceeding. The abstention doctrine articulated in *Younger* should apply, and this Court should avoid interference until there has been a final judgment.

DATED: July 17, 2018

THOMAS E. MONTGOMERY, County Counsel

By: s/ RONALD LENERT, Senior Deputy
Attorneys for Defendants San Diego District
Attorney and Leonard Trinh
E-mail: ronald.lenert@sdcounty.ca.gov

EXHIBIT A

| | | |
|--|---|--------------------|
| SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO | | For Court Use Only |
| PEOPLE vs <u>GAVIN R. DAVIS</u> Defendant | <div style="font-size: 2em; font-weight: bold; letter-spacing: 0.5em;">FILED</div> Clerk of the Superior Court APR 23 2018 | |
| PLEA OF GUILTY/NO CONTEST - FELONY | COURT CASE NUMBER <u>SC026832 / SD 267655</u> DA CASE NUMBER <u>DA NOS AD2964 / AFB052</u> | |

I, the defendant in the above-entitled case, in support of my plea of Guilty/No Contest, personally declare as follows:

1. Of those charges now filed against me in this case, I plead GUILTY to the following gnd offenses and admit the enhancements, allegations and prior convictions as follows:

| COUNT | CHARGE | ENHANCEMENT(S)/ALLEGATION(S) (List all for each count) |
|-------|--|--|
| 1 | P.C. 261(a)(2)(B) P.C. 594(a)(b)(1) | |
| 14/3 | P.C. 16(a)(4) CHARGED | |
| 20 | P.C. 653 M | FIE |
| 3 | P.C. 273.6 (LINDSEY) | |

| PRIOR (SECTION NO.) | CONVICTION DATE | COUNTY | CASE NO. | CHARGE(S) |
|---------------------|-----------------|--------|----------|-----------|
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☐ Additional count(s)/prior(s) listed on Plea of Guilty/No Contest-Felony Attachment Page (SDSC Form #CRM-012A).

2. I have not been induced to enter this plea by any promise or representation of any kind, except: (State any agreement with the District Attorney.) gnd

please read
DEF WILL PLEAD GUILTY TO COUNTS 1, 14/3/20
NOT. IF DEF SUCCESSFULLY 18 MONTHS PROBATION
COUNT 1 WILL BE REDUCED TO A MUDMANSOR
NUNC PRO TUNC TO DATE OF ENTRY OF PLEA. - OTHER CHARGES DISMISSED

3. I am entering my plea freely and voluntarily, without fear or threat to me or anyone closely related to me. gnd

4. I understand that a plea of No Contest is the same as a plea of Guilty for all purposes. gnd

5. I am sober and my judgment is not impaired. I have not consumed any drug, alcohol or narcotic within the past 24 hours. gnd

CONSTITUTIONAL RIGHTS

6a. I understand that I have the right to be represented by a lawyer at all stages of the proceedings. I can hire my own lawyer or the Court will appoint a lawyer for me if I cannot afford one. gnd

I understand that as to all charges, allegations and prior convictions filed against me, and as to any facts that may be used to increase my sentence, now or in the future, I also have the following constitutional rights, which I now give up to enter my plea of guilty/no contest:

6b. I have the right to a speedy and public trial by jury. I now give up this right. gnd

6c. I have the right to confront and cross-examine all the witnesses against me. I now give up this right. gnd

6d. I have the right to remain silent (unless I choose to testify on my own behalf). I now give up this right. gnd

6e. I have the right to present evidence in my behalf and to have the court subpoena my witnesses at no cost to me. I now give up this right. gnd

DEFENDANT

GAVIN B DAVIS

CASE NUMBER

SC0266322/SC02667655

CONSEQUENCES OF PLEA OF GUILTY/NO CONTEST

5 C/MOS

- 7a. I understand that I may receive this maximum punishment as a result of my plea: 5 years imprisonment or imprisonment plus a term of mandatory supervision; \$ 10,000 fine; and 4 years parole or post-release community supervision, with return to custody for every violation of a condition thereof. If I am not sentenced to imprisonment, I may be granted probation for a period up to 5 years or the maximum term of imprisonment, whichever is greater. As conditions of probation I may be given up to a year in jail custody, plus the fine, and any other conditions deemed reasonable by the Court. I understand that if I violate any condition of probation I can be sentenced to imprisonment for the maximum term as stated above.
- 7b. I understand that I must pay a restitution fine (\$300 - \$10,000), that I will also be subject to a suspended fine in the same amount, and that I must pay full restitution to all victims.
- 7c. I understand that my conviction in this case will be a serious/violent felony ("strike") resulting in mandatory denial of probation, substantially increased penalties, and a term in State Prison in any future felony case.
- 7d. **Immigration consequences:** (1) I understand that if I am not a U.S. citizen, this plea of Guilty/No Contest may, and for certain offenses will (see page 4), have the consequences of removal/deportation, exclusion from admission to the United States, and/or denial of naturalization pursuant to the laws of the U.S.; (2) I understand I have the right to request additional time to consider my plea in light of the advisement in this paragraph; (3) I have discussed my immigration status with my attorney and have had sufficient time to consider and discuss the immigration consequences of my plea with him/her or an immigration attorney.
- 7e. I understand that my plea of Guilty/No Contest in this case could result in revocation of my probation, mandatory supervision, parole or post-release supervision in other cases, and consecutive sentences.
- 7f. My attorney has explained to me that other possible consequences of this plea may be:
(Circle applicable consequences.)
- | | | |
|--|---|--|
| (1) Consecutive sentences | (9) Prison prior | a. Limited local credits (290/serious/prior) |
| (2) Loss of driving privileges | (10) Mandatory imprisonment | b. Violent Felony (No credit or max. 15%) |
| (3) Commitment to Youth Authority | (11) Mandatory State Prison | c. Prior Strike(s) (No credit to max. 20%) |
| (4) Lifetime registration as an arson / sex offender | (12) Presumptive imprisonment | d. Murder on/after 6/3/98 (No credit) |
| (5) Registration as a narcotic / gang-offender | (13) Presumptive State Prison | (17) Loss of public assistance |
| (6) Cannot possess firearms or ammunition | (14) Sexually Violent Predator Law | (18) AIDS education program |
| (7) Blood test and saliva sample | (15) Possible/Mandatory hormone suppression treatment | (19) Other: _____ |
| (8) Priorable (increased punishment for future offenses) | (16) Reduced conduct/work credits | |
8. **(Appeal Rights)** I give up my right to appeal the following: 1) denial of my 1538.5 motion, 2) issues related to strike priors (under PC sections 667(b)-(i) and 1170.12), and 3) any sentence stipulated herein.
9. **(Harvey Waiver)** The sentencing judge may consider my prior criminal history and the entire factual background of the case, including any unfilled, dismissed or stricken charges or allegations or cases when granting probation, ordering restitution or imposing sentence.
10. **(Blakely Waiver)** I understand that as to any fact in aggravation that may be used to increase my sentence on any count or allegation to the upper or maximum term provided by law, I have the constitutional rights listed in paragraphs 6b-6e. I now give up those rights and agree that the sentencing judge may determine the existence or non-existence of any fact in aggravation, either at the initial sentencing or at any future sentencing in the event my probation is revoked.
11. **(Cruz Waiver)** Negotiated Disposition pursuant to PC 1192.5: I understand that if pending sentencing I am arrested for or commit another crime, violate any condition of my release, or willfully fail to appear for my probation interview or my sentencing hearing, the sentence portion of this agreement will be cancelled. I will be sentenced unconditionally, and I will not be allowed to withdraw my guilty/no contest plea(s).

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| DEFENDANT <u>Gavin David</u> | CASE NUMBER <u>SCD266332 / SCD267655</u> |
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12. (Arbuckle Waiver) I give up my right to be sentenced by the judge who accepts this plea. ☐ N/A
13. (Probation Report) I give up my right to a full probation report before sentencing. ☐ N/A
14. (Evidence Disposal Waiver) I give up my interest in all non-biological property/evidence impounded during the investigation of this case except _____ and acknowledge that if I listed any property here, I must also file a claim with the impounding agency within 60 days after pronouncement of judgment or my ability to make a claim will expire. ☐ gnd

PLEA

15. I now plead Guilty/No Contest and admit the charges, convictions and allegations described in Item 1. I admit that on the dates charged, I: (Describe facts as to each charge and allegation)

ON 7/10/18 DEF. DAMAGED PROPERTY NOT
HIS OWN IN A VALUE NO EXCESS OF \$500 (COUNT 1)
IN 3/13/18 DEF. VIOLATED A LAWFUL COURT
ORDER BY CONTACTING A PERSON HE WAS ORDERED
TO CONTACT. (COUNT 1B) BETWEEN 3/11/18 AND 6/17/18
DEF. MADE A AGGRESSIVE PHONE CALL (COUNT 2D)

16. I declare under penalty of perjury that I have read, understood, and initialed each item above and any attached addendum, and everything on the form and any attached addendum is true and correct. ☐ gnd

Dated: 4/20/18 ~ 10am

Defendant's Signature [Signature]

Defendant's Address: 615 C Street #325

San Diego

Street

CA

92101

Telephone Number: (858) 876- [unclear]

City

State

Zip

Defendant's Right Thumb Print [Print]

ATTORNEY'S STATEMENT

I, the attorney for the defendant in the above-entitled case, personally read and explained to the defendant the entire contents of this plea form and any addendum thereto. I discussed all charges and possible defenses with the defendant, and the consequences of this plea. I have asked the defendant about his/her immigration status, advised defendant of the immigration consequences of this plea to the best of my ability, and advised defendant of the right to additional time to discuss this matter with an immigration attorney. I personally observed the defendant fill in and initial each item, or read and initial each item to acknowledge his/her understanding and waivers. I observed the defendant date and sign this form and any addendum. I concur in the defendant's plea and waiver of constitutional rights.

Dated: 4/23/18

(Print Name) [Signature]

Attorney for Defendant

(Signature)

(Circle one: PD / APD / OAC / RETAINED)

INTERPRETER'S STATEMENT

I, the sworn _____ language interpreter in this proceeding, truly translated for the defendant the entire contents of this form and any attached addendum. The defendant indicated understanding of the contents of this form and any addendum and then initialed and signed the form and any addendum.

Dated: _____

(Print Name)

Court Interpreter

(Signature)

PROSECUTOR'S STATEMENT

The People of the State of California, plaintiff, by its attorney, the District Attorney for the County of San Diego, concurs with the defendant's plea of Guilty/No Contest as set forth above.

Dated: 4/23/18

(Print Name) [Signature]

Deputy District Attorney

(Signature)

DEFENDANT

CASE NUMBER

COURT'S FINDING AND ORDER

The Court, having questioned the defendant and defendant's attorney concerning the defendant's plea of Guilty/No Contest and admissions of the prior convictions and allegations, if any, finds that: The defendant understands and voluntarily and intelligently waives his/her constitutional rights; the defendant's plea and admissions are freely and voluntarily made; the defendant understands the nature of the charges and the consequences of the plea and admissions; and there is a factual basis for same. The Court accepts the defendant's plea and admissions, and the defendant is convicted thereby.

Dated: APR 23 2018

 Judge of the Superior Court
IMMIGRATION CONSEQUENCES

If you are not a U.S. citizen, you should consult your attorney or an immigration attorney about the immigration consequences of your plea, particularly if your offense might qualify as an "aggravated felony," crime of moral turpitude, controlled substance offense, firearm offense, or domestic violence offense (see below). It is your attorney's obligation to provide you with accurate and affirmative advice about the immigration consequences of your plea, and you have the right to additional time to evaluate those immigration consequences. By entering a plea, you are indicating to the court you know of and understand the specific immigration consequences that will result from your conviction.

Immigration consequences are a matter of federal law. Whether an offense qualifies as one of the "aggravated felonies" listed below is determined by federal statutes and case law. (See *Esquivel-Quintana v. Sessions* (2017) __ U.S. __, 137 S.Ct. 1562, 198 L.Ed.2d 22.) **Certain offenses defined as misdemeanors under State law may be considered "aggravated felonies" under federal law.**

Any conviction of a non-citizen for an "aggravated felony" will result in removal/deportation, exclusion, and/or denial of naturalization. (See 8 U.S.C. § 1227(a)(2)(A)(iii).) "Aggravated felonies" (see 8 U.S.C. § 1101(a)(43)) include but are not limited to:

- (1) Murder, rape, or sexual abuse of a minor;
- (2) A crime of violence, as defined in 18 U.S.C. § 16, but not including a purely political offense;*
- (3) Trafficking of a controlled substance, firearms, destructive devices or explosive materials;
- (4) Money laundering if the amount exceeds \$10,000;
- (5) An explosive materials offense;
- (6) A firearms offense;
- (7) A theft offense, including receipt of stolen property, or burglary offense;*
- (8) Child pornography;
- (9) Pimping, pandering, or operating a prostitution business;
- (10) Human trafficking;
- (11) Fraud or deceit in which the loss to the victim or victims exceeds \$10,000;
- (12) Failure to appear by a defendant for service of a sentence if the underlying offense is punishable by imprisonment for a term of five years or more, or failure to appear to answer or resolve a felony for which a sentence of two years' imprisonment or more may be imposed;
- (13) Commercial bribery, counterfeiting, forgery, or trafficking in vehicles the identification numbers of which have been altered;*
- (14) Obstruction of justice, perjury or subornation of perjury, or bribery of a witness;*
- (15) An attempt or conspiracy to commit any of the above offenses.

*If the term of imprisonment is at least one year.

Other crimes (as defined by federal law) that may result in removal/deportation, exclusion, and/or denial of naturalization or other severe immigration consequences include, but are not limited to:

- (1) A crime of moral turpitude (see 8 U.S.C. §§ 1182(a)(2)(A)(i), 1227(a)(2)(A)(i));
- (2) A controlled substance offense (see 8 U.S.C. §§ 1182(a)(2)(A)(i), 1182(a)(2)(C), 1227(a)(2)(B));
- (3) A firearm or destructive device offense (see 8 U.S.C. § 1227(a)(2)(C));
- (4) A domestic violence, stalking, or child abuse offense (see 8 U.S.C. § 1227(a)(2)(E)(i));
- (5) Violation of a protective order (see 8 U.S.C. § 1227(a)(2)(E)(ii));
- (6) A human trafficking offense (see 8 U.S.C. §§ 1182(a)(2)(H), 1227(a)(2)(F));
- (7) Multiple criminal convictions with an aggregate sentence of five years or more (see 8 U.S.C. § 1182(a)(2)(B));
- (8) A prostitution offense (see 8 U.S.C. § 1182(a)(2)(D));
- (9) A "serious criminal offense," which includes any felony, a crime of violence, and reckless driving or DUI with injury (see 8 U.S.C. § 1182(a)(2)(E)).

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| SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO | | <div style="border: 1px solid black; padding: 5px; display: inline-block;"> FILED <small>For Court Use Only</small> <small>Clerk of the Superior Court</small> APR 23 2018 </div> |
| PEOPLE vs <u>Gavin B Davis</u> Defendant | | |
| PLEA OF GUILTY/NO CONTEST - FELONY | | COURT CASE NUMBER <u>CD 273043</u> DA CASE NUMBER <u>AEF 440</u> |

I, the defendant in the above-entitled case, in support of my plea of Guilty/No Contest, personally declare as follows:

1. Of those charges now filed against me in this case, I plead Guilty to the following offenses and admit the enhancements, allegations and prior convictions as follows:

| COUNT | CHARGE | ENHANCEMENT(S)/ALLEGATION(S) (List all for each count) |
|-------|-------------------------------------|--|
| 1 | P.C. § 1320.5 (PER) P.C. § 17(b) | |
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| PRIOR (SECTION NO.) | CONVICTION DATE | COUNTY | CASE NO. | CHARGE(S) |
|---------------------|-----------------|--------|----------|-----------|
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☐ Additional count(s)/prior(s) listed on Plea of Guilty/No Contest-Felony Attachment Page (SDSC Form #CRM-012A).

2. I have not been induced to enter this plea by any promise or representation of any kind, except: (State any agreement with the District Attorney.)

DEF. WILL PLEAD GUILTY TO P.C. § 1320.5

AS A MISDEMEANOR PER P.C. § 17(b)

OTHER CHARGES DISMISSED. ANY TIME GIVEN TO RUN CONCURRENT WITH TIME IN CASE NOS. SCD 264332 / SCD 264655

3. I am entering my plea freely and voluntarily, without fear or threat to me or anyone closely related to me.

4. I understand that a plea of No Contest is the same as a plea of Guilty for all purposes.

5. I am sober and my judgment is not impaired. I have not consumed any drug, alcohol or narcotic within the past 24 hours.

CONSTITUTIONAL RIGHTS

6a. I understand that I have the right to be represented by a lawyer at all stages of the proceedings. I can hire my own lawyer or the Court will appoint a lawyer for me if I cannot afford one.

I understand that as to all charges, allegations and prior convictions filed against me, and as to any facts that may be used to increase my sentence, now or in the future, I also have the following constitutional rights, which I now give up to enter my plea of guilty/no contest:

6b. I have the right to a speedy and public trial by jury. I now give up this right.

6c. I have the right to confront and cross-examine all the witnesses against me. I now give up this right.

6d. I have the right to remain silent (unless I choose to testify on my own behalf). I now give up this right.

6e. I have the right to present evidence in my behalf and to have the court subpoena my witnesses at no cost to me. I now give up this right.

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|------------------------------------|---------------------------------|
| DEFENDANT DAVID B. DAVID | CASE NUMBER CD 273043 |
|------------------------------------|---------------------------------|

CONSEQUENCES OF PLEA OF GUILTY/NO CONTEST

- 7a. I understand that I may receive this maximum punishment as a result of my plea: 1 years imprisonment or imprisonment plus a term of mandatory supervision; \$ 280 fine; and 3 years parole or post-release community supervision, with return to custody for every violation of a condition thereof. If I am not sentenced to imprisonment, I may be granted probation for a period up to 5 years or the maximum term of imprisonment, whichever is greater. As conditions of probation I may be given up to a year in jail custody, plus the fine, and any other conditions deemed reasonable by the Court. I understand that if I violate any condition of probation I can be sentenced to imprisonment for the maximum term as stated above. gnd
- 7b. I understand that I must pay a restitution fine (\$300 - \$10,000), that I will also be subject to a suspended fine in the same amount, and that I must pay full restitution to all victims. gnd
- 7c. I understand that my conviction in this case will be a serious/violent felony ("strike") resulting in mandatory denial of probation, substantially increased penalties, and a term in State Prison in any future felony case. NA
- 7d. **Immigration consequences:** (1) I understand that if I am not a U.S. citizen, this plea of Guilty/No Contest may, and for certain offenses will (see page 4), have the consequences of removal/deportation, exclusion from admission to the United States, and/or denial of naturalization pursuant to the laws of the U.S.; (2) I understand I have the right to request additional time to consider my plea in light of the advisement in this paragraph; (3) I have discussed my immigration status with my attorney and have had sufficient time to consider and discuss the immigration consequences of my plea with him/her or an immigration attorney. gnd
- 7e. I understand that my plea of Guilty/No Contest in this case could result in revocation of my probation, mandatory supervision, parole or post-release supervision in other cases, and consecutive sentences. gnd
- 7f. My attorney has explained to me that other possible consequences of this plea may be:
(Circle applicable consequences.) gnd
- | | | |
|--|---|--|
| (1) <u>Consecutive sentences</u> | (9) Prison prior | a. Limited local credits |
| (2) Loss of driving privileges | (10) Mandatory imprisonment | (290/serious/prior) |
| (3) Commitment to Youth Authority | (11) Mandatory State Prison | b. Violent Felony (No credit or max. 15%) |
| (4) Lifetime registration as an arson / sex offender | (12) Presumptive imprisonment | c. Prior Strike(s) (No credit to max. 20%) |
| (5) Registration as a narcotic / gang offender | (13) Presumptive State Prison | d. Murder on/after 6/3/98 (No credit) |
| (6) Cannot possess firearms or ammunition | (14) Sexually Violent Predator Law | (17) Loss of public assistance |
| (7) Blood test and saliva sample | (15) Possible/Mandatory hormone suppression treatment | (18) AIDS education program |
| (8) Priorable (increased punishment for future offenses) | (16) Reduced conduct/work credits | (19) Other: _____ |
8. **(Appeal Rights)** I give up my right to appeal the following: 1) denial of my 1538.5 motion, 2) issues related to strike priors (under PC sections 667(b)-(l) and 1170.12), and 3) any sentence stipulated herein. gnd
9. **(Harvey Waiver)** The sentencing judge may consider my prior criminal history and the entire factual background of the case, including any unfiled, dismissed or stricken charges or allegations or cases when granting probation, ordering restitution or imposing sentence. gnd
10. **(Blakely Waiver)** I understand that as to any fact in aggravation that may be used to increase my sentence on any count or allegation to the upper or maximum term provided by law, I have the constitutional rights listed in paragraphs 6b-6e. I now give up those rights and agree that the sentencing judge may determine the existence or non-existence of any fact in aggravation, either at the initial sentencing or at any future sentencing in the event my probation is revoked. gnd
11. **(Cruz Waiver)** Negotiated Disposition pursuant to PC 1192.5: I understand that if pending sentencing I am arrested for or commit another crime, violate any condition of my release, or willfully fail to appear for my probation interview or my sentencing hearing, the sentence portion of this agreement will be cancelled. I will be sentenced unconditionally, and I will not be allowed to withdraw my guilty/no contest plea(s). gnd

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| DEFENDANT <u>Gavin B. Davis</u> | CASE NUMBER <u>CD273043</u> |
|------------------------------------|--------------------------------|

12. (Arbuckle Waiver) I give up my right to be sentenced by the judge who accepts this plea. ☐ NA
13. (Probation Report) I give up my right to a full probation report before sentencing. ☐ NA
14. (Evidence Disposal Waiver) I give up my interest in all non-biological property/evidence impounded during the investigation of this case except _____ and acknowledge that if I listed any property here, I must also file a claim with the impounding agency within 60 days after pronouncement of judgment or my ability to make a claim will expire. ☐ gnd

PLEA

15. I now plead Guilty/No Contest and admit the charges, convictions and allegations described in Item 1. I admit that on the dates charged, I: (Describe facts as to each charge and allegation)

ON AFTER HAVING BEEN ORDERED TO
APPEAR IN COURT DEF. FAILED TO APPEAR
IN ANOTHER CRIMINAL CASE

16. I declare under penalty of perjury that I have read, understood, and initialed each item above and any attached addendum, and everything on the form and any attached addendum is true and correct. ☐ gnd

Dated: 4/20/18 2:10pm Defendant's Signature [Signature]

Defendant's Address: 615 C Street #325
San Diego CA 92101
City State Zip

Telephone Number: (859) 876 H-PIN State Zip

Defendant's Right Thumb Print

ATTORNEY'S STATEMENT

I, the attorney for the defendant in the above-entitled case, personally read and explained to the defendant the entire contents of this plea form and any addendum thereto. I discussed all charges and possible defenses with the defendant, and the consequences of this plea. **I have asked the defendant about his/her immigration status, advised defendant of the immigration consequences of this plea to the best of my ability, and advised defendant of the right to additional time to discuss this matter with an immigration attorney.** I personally observed the defendant fill in and initial each item, or read and initial each item to acknowledge his/her understanding and waivers. I observed the defendant date and sign this form and any addendum. I concur in the defendant's plea and waiver of constitutional rights.

Dated: 4/23/18 JAN EDUARDO ROND [Signature]
(Print Name) Attorney for Defendant (Signature)
(Circle one: PD / APD / OAC / RETAINED)

INTERPRETER'S STATEMENT

I, the sworn _____ language interpreter in this proceeding, truly translated for the defendant the entire contents of this form and any attached addendum. The defendant indicated understanding of the contents of this form and any addendum and then initialed and signed the form and any addendum.

Dated: _____
(Print Name) Court Interpreter (Signature)

PROSECUTOR'S STATEMENT

The People of the State of California, plaintiff, by its attorney, the District Attorney for the County of San Diego, concurs with the defendant's plea of Guilty/No Contest as set forth above.

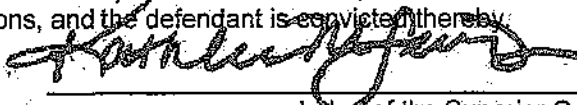
Dated: 4/23/18 TRINA [Signature]
(Print Name) Deputy District Attorney (Signature)

| | |
|-----------------------------------|------------------------------|
| DEFENDANT Gavin B. Davy | CASE NUMBER 273043 |
|-----------------------------------|------------------------------|

COURT'S FINDING AND ORDER

The Court, having questioned the defendant and defendant's attorney concerning the defendant's plea of Guilty/No Contest and admissions of the prior convictions and allegations, if any, finds that: The defendant understands and voluntarily and intelligently waives his/her constitutional rights; the defendant's plea and admissions are freely and voluntarily made; the defendant understands the nature of the charges and the consequences of the plea and admissions; and there is a factual basis for same. The Court accepts the defendant's plea and admissions, and the defendant is convicted thereby.

Dated: **APR 23 2018**



KATHLEEN M. LEWIS Judge of the Superior Court

IMMIGRATION CONSEQUENCES

If you are not a U.S. citizen, you should consult your attorney or an immigration attorney about the immigration consequences of your plea, particularly if your offense might qualify as an "aggravated felony," crime of moral turpitude, controlled substance offense, firearm offense, or domestic violence offense (see below). It is your attorney's obligation to provide you with accurate and affirmative advice about the immigration consequences of your plea, and you have the right to additional time to evaluate those immigration consequences. By entering a plea, you are indicating to the court you know of and understand the specific immigration consequences that will result from your conviction.

Immigration consequences are a matter of federal law. Whether an offense qualifies as one of the "aggravated felonies" listed below is determined by federal statutes and case law. (See *Esquivel-Quintana v. Sessions* (2017) __ U.S. __, 137 S.Ct. 1562, 198 L.Ed.2d 22.) **Certain offenses defined as misdemeanors under State law may be considered "aggravated felonies" under federal law.**

Any conviction of a non-citizen for an "aggravated felony" will result in removal/deportation, exclusion, and/or denial of naturalization. (See 8 U.S.C. § 1227(a)(2)(A)(iii).) "Aggravated felonies" (see 8 U.S.C. § 1101(a)(43)) include but are not limited to:

- (1) Murder; rape; or sexual abuse of a minor;
- (2) A crime of violence, as defined in 18 U.S.C. § 16, but not including a purely political offense;*
- (3) Trafficking of a controlled substance, firearms, destructive devices or explosive materials;
- (4) Money laundering if the amount exceeds \$10,000;
- (5) An explosive materials offense;
- (6) A firearms offense;
- (7) A theft offense, including receipt of stolen property, or burglary offense;*
- (8) Child pornography;
- (9) Pimping, pandering, or operating a prostitution business;
- (10) Human trafficking;
- (11) Fraud or deceit in which the loss to the victim or victims exceeds \$10,000;
- (12) Failure to appear by a defendant for service of a sentence if the underlying offense is punishable by imprisonment for a term of five years or more, or failure to appear to answer or resolve a felony for which a sentence of two years' imprisonment or more may be imposed;
- (13) Commercial bribery, counterfeiting, forgery, or trafficking in vehicles the identification numbers of which have been altered;*
- (14) Obstruction of justice, perjury or subornation of perjury, or bribery of a witness;*
- (15) An attempt or conspiracy to commit any of the above offenses.

*If the term of imprisonment is at least one year.

Other crimes (as defined by federal law) that may result in removal/deportation, exclusion, and/or denial of naturalization or other severe immigration consequences include, but are not limited to:

- (1) A crime of moral turpitude (see 8 U.S.C. §§ 1182(a)(2)(A)(i), 1227(a)(2)(A)(i));
- (2) A controlled substance offense (see 8 U.S.C. §§ 1182(a)(2)(A)(i), 1182(a)(2)(C), 1227(a)(2)(B));
- (3) A firearm or destructive device offense (see 8 U.S.C. § 1227(a)(2)(C));
- (4) A domestic violence, stalking, or child abuse offense (see 8 U.S.C. § 1227(a)(2)(E)(i));
- (5) Violation of a protective order (see 8 U.S.C. § 1227(a)(2)(E)(ii));
- (6) A human trafficking offense (see 8 U.S.C. §§ 1182(a)(2)(H), 1227(a)(2)(F));
- (7) Multiple criminal convictions with an aggregate sentence of five years or more (see 8 U.S.C. § 1182(a)(2)(B));
- (8) A prostitution offense (see 8 U.S.C. § 1182(a)(2)(D));
- (9) A "serious criminal offense," which includes any felony, a crime of violence, and reckless driving or DUI with injury (see 8 U.S.C. § 1182(a)(2)(E)).

EXHIBIT B

Lenert, Ronald

From: GB Davis <gavinprivate96@gmail.com>
Sent: Wednesday, May 23, 2018 2:43 PM
To: Stephan, Summer_SCSDA; Lenert, Ronald
Cc: Manahan, George (USACAS); christopher.combs; jan; gvh; jason; Kristina Davis; hk; Patrick Hennessey
Subject: USDC SD Cal, 17-654 - Mr. Davis Liberty - CEASE and DESIST

Ms. Stephan / Mr. Lenert:

It is understood that in addition to:

1. Mr. Davis oral testimony on April 23, 2018 in [State of CA] v. Gavin B. Davis (SDDA, DDA Trinh matters), direct, specific, unwavering commentary that the Pleas were Conditioned on the ability to be released and regain his liberty;
2. Filing during the week of April 23, 2018, in USDC SD Cal, 17-654, Davis v SDDA et. al., with the unequivocal withdraw of his Plea Bargains from April 23 (as previously cited to and therein)
3. Email and, separately, FAX Notice to the SDDA, counsel thereto, and other parties, with the Unequivocal withdraw of the Plea Bargains
4. Commentary on 5/22 to the SD Probation on the "unequivocal" withdraw of his Plea Bargains

perhaps, the SDDA, and/or DDA Trinh, have specific knowledge and have accepted this legal position.

It is alleged, based on such premise that DDA Trinh, having no other avenue, is seeking to, once again (see claims in TAC (Doc. 72), remand the Plaintiff (me) to Custody, unlawfully).

To wit, Mr. Davis has been granted OR release; that factor holds with or without the status of the Plea - FACT.

Controlling jurisdiction, is federal court (USDC SD Cal, 17-654), Mr. Davis, having timely filed a Writ of Habeas (Doc. 75, 5/22/18), with the District Court being attached (see case law authorities previously provided). Further, in the Writ, it requires the CA AG to opine. Mr. Trinh is unable to remand me to custody or have me re-arrested - without the CA AG's sign off.

Further, he is clearly conflicted, and clearly DQ'd for good cause under CA PC 1424.

I will be at court for the next scheduled appointment on June 7, as planned - while at Liberty.

Mr. Davis is clearly engaged with the law. FACT. Mr. Davis is not a flight risk or safety risk. FACT.

Cease and Desist from any and all influence, actions, or actives, directly or indirectly affecting Mr. Davis federal rights, including but not limited to his personal liberty, in any all affects.

Regards,
 Gavin B. Davis

EXHIBIT C

Lenert, Ronald

From: GB Davis <gavinprivate96@gmail.com>
Sent: Sunday, May 27, 2018 11:02 AM
To: Lenert, Ronald; Stephan, Summer_SCSDA
Cc: Manahan, George (USACAS); christopher.combs; jan; gvh; Patrick Hennessey; Kristina Davis; hk
Subject: USDC SD Cal, 17-654, SCD266332 - Court Dates

Mr. Ronald Lenert / Ms. Summer Stephan:

I have instructed my State of California, criminal defense counsel, Ronis & Ronis, as soon as possible (i.e. Ex Parte), to schedule:

- Withdraw of the FTA Plea and also no Waiver of Time; proceeding to first a Preliminary Hearing, and second, Trial (w/ no Waiver of Time)
- Withdraw of the Pleas entered on 4/23/18, deemed effective already (as previously stated via Notice)

I understand that Vindictive DDA Trinh of the SDDA, will continue trying to make Mr. Davis appear as each of a "threat" (which he is not, prima facie); and, with psychological issue (which he does not have any; you could attempt CCP 2032 - but no one ever has been convicted based on circumstantial third party hate crime statements of being a danger) - and - may request changes to the terms and conditions of bail - yet, again there has been no change since being granted OR release on 4/23. See CA PC 1319.5.

Mr. Davis has no criminal history and no history of violence. Parties have Fraudulent Protective Orders while committing crimes against Mr. Davis (e.g. CA PC 270; Stalking, etc.).

Please expect Court Dates, prior to June 7, 2018, the scheduled date of Sentencing.

Regards,
 Gavin B. Davis

EXHIBIT D

Lenert, Ronald

From: GB Davis <gavinprivate96@gmail.com>
Sent: Friday, July 13, 2018 12:43 PM
To: Montgomery, Thomas E; Lenert, Ronald; Stephan, Summer_SCSDA
Cc: Manahan, George (USACAS); christopher.combs; jan; gvh; jason; hk; Patrick Hennessey; Kristina Davis; news; news@kusi.com
Subject: USDC SD Cal, 17-654 - Davis v. SDDA et. al. - ORDER, Friday, July 13, 2018 - Requesting More Information from Defendants
Attachments: 17-654 Doc90 071318.pdf

Mr. Montgomery / Mr. Lenert:

On Friday, July 13, 2018, the United States District Court for the Southern District of California (USDC SD Cal), in case no.: 17-654, issued an ORDER (Doc. 90, attached) requesting more information from the Defendants, as follows, in part:

"Presently before the Court are Defendants Leonard Trinh, and San Diego District Attorney's Motion to Dismiss Third Amended Complaint, (ECF No. 76). Defendants raise the *Younger* abstention doctrine, (ECF No. 76-1, at 5). See *Younger v. Harris*, 407 U.S. 37 (1971). In his Opposition brief, Plaintiff Gavin Davis contends that his criminal case was completed June 7, 2018. (ECF No. 84-1, at 12.) Defendants do not respond to this argument in their Reply. The Court requests additional briefing from Defendants as to the current status of Plaintiff's state criminal proceedings."

This is not actually what the Plaintiff states. Plaintiff states that **Defendant believes** that the criminal case is complete - and this creates an estoppel in favor of the Plaintiff; irrespective, of what the Plaintiff believes. Plaintiff can be silent to such notion, if it so chooses; but, he has not conceded the criminal case. This is nuanced and technical but important.

Here is the specific paragraph (84-1, at 12, pp 18(a)):

"Irrespective, of the relevance of *Younger*, for posterity, Plaintiff, generally has addressed, the four (4) factors under *Younger*, as follows:

(a) a state-initiated proceeding is ongoing. Plaintiff alleges that Defendant SDDA-Trinh believes that the state-initiated proceeding was completed on June 7, 2018 (Plaintiff's (defendant therein), Sentencing); and, therefore, Defendant SDDA-Trinh is, on its own, estopped, rendering, immediately, any and all discussion of *Younger* by the Defendant, as moot); without prejudice, to the Plaintiff's opposing position regarding the underlying proceedings. Further, and in priority, Plaintiff, has shown how 4th Amendment violations (as opposed to due process 5th and 14th Amendment violations; or the much weaker *Younger* 1 "Amendment claim) can be moved in collateral attack (e.g. this litigation) immediately (i.e. this component of *Younger*, is therefore irrelevant)."

Plaintiff contends that the Priority Claims (i.e. #1, #2, and #3 from TAC, Doc. 72, pp. 11; also, Doc. 77, FRCP 56 Motion for the Priority Claims) can be moved *immediately* on collateral attack; with supporting case law authorities as the Plaintiff has presented in the development of the litigation.

Partial comments, all rights reserved (always) without limitations.

Regards,
Gavin B. Davis


EXHIBIT E

| | | |
|--|--|---|
| SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO <input checked="" type="checkbox"/> CENTRAL DIVISION, CENTRAL COURTHOUSE, 1100 UNION ST., SAN DIEGO, CA 92101 <input type="checkbox"/> CENTRAL DIVISION, COUNTY COURTHOUSE, 220 W. BROADWAY, SAN DIEGO, CA 92101 <input type="checkbox"/> NORTH COUNTY DIVISION, 325 S. MELROSE DR., VISTA, CA 92081 | | FOR COURT USE ONLY FILED Clerk of the Superior Court JUN 19 2018 By: A. Tenorio, Clerk |
| PLAINTIFF | | By: A. Tenorio, Clerk |
| THE PEOPLE | | |
| DEFENDANT | | |
| GAVIN B. DAVIS | | SUPERIOR COURT CASE NUMBER SCD266332 |
| CERTIFICATE OF PROBABLE CAUSE (CRIMINAL) | | |

A judgment of conviction upon a plea of guilty or nolo contendere, or an admission of violation of probation, was entered in the above-entitled case on 4-23-18 and the defendant was sentenced on 6-7-18. The defendant submitted a Notice of Appeal and Request for Certificate of Probable Cause on 6/8/18. The court finds defendant has shown reasonable constitutional, jurisdictional, or other grounds for appeal relating to the legality of the proceedings and certifies that there is probable cause for an appeal from the referenced judgment.

Date: _____

6/19/18


 TIMOTHY R. WALSH, Judge of the Superior Court

| | | | |
|---|--|--|--|
| SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO <input checked="" type="checkbox"/> CENTRAL DIVISION, CENTRAL COURTHOUSE, 1100 UNION ST., RM 218 SAN DIEGO, CA 92101 <input type="checkbox"/> NORTH COUNTY DIVISION, 325 S. MELROSE DR., VISTA, CA 92081 | | FOR COURT USE ONLY <div style="text-align: center;"> F I L E D Clerk of the Superior Court JUN 20 2018 </div> | |
| THE PEOPLE, PLAINTIFF AND RESPONDENT. | | By: M. Danielson, Deputy | |
| GAVIN B. DAVIS, DEFENDANT AND APPELLANT. | | | |
| NOTICE OF FILING | | SUPERIOR COURT CASE NUMBER SCD266332 | |
| | | DA CASE NUMBER ADZ96401 | |

A ☐ Abandonment of Appeal ☒ Notice of Appeal ☐ Notice of Cross-Appeal ☐ Amended Notice of Appeal from the
 6/7/18 JUDGEMENT AND SENTENCING

was filed in this office on 6/8/18 by:

DEFENDANT AND APPELLANT IN PRO PER

Clerk of the Superior Court

Date: 6/20/18

by M. Danielson, Deputy
 M. Danielson

CERTIFICATE OF SERVICE

I certify that I am not a party to the above-entitled cause, that I placed a copy of this form in a sealed envelope addressed to the parties shown with postage prepaid, and deposited it in the United States mail at ☐ San Diego ☐ Vista, California.

Clerk of the Superior Court

Date: 6/20/18

by M. Danielson, Deputy
 M. Danielson

To:

GAVIN B. DAVIS, PRO PER
 615 C STREET, #325
 SAN DIEGO, CA 92101

Office of the Attorney General
 One America Plaza
 600 W. Broadway, Suite 1800
 San Diego, CA 92101

Office of the District Attorney
 Appellate Division
 330 West Broadway, Suite 800
 San Diego, CA 92101

FILED

Jul 16 2018

CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
BY s/ markl DEPUTYNUNC PRO TUNC
7/16/2018

Gavin B. Davis
615 C Street, #325
San Diego, CA 92101
Phone 858.876.4346
gbdproper@mail.com

UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF CALIFORNIA

GAVIN B. DAVIS,

Plaintiff,

vs.

SAN DIEGO COUNTY DISTRICT ATTORNEY
(SDDA),

LEONARD N. TRINH

Defendants.

Case No.: 17-cv-000654-JLS-BGS

FRCP 201(b)(2) NOTICE**PLAINTIFF'S PRELIMINARY GOOD FAITH
RESPONSE TO COURT'S ORDER (DOC. 90)
REQUESTING ADDITIONAL INFORMATION
FROM DEFENDANTS**

Date:

Time:.

Courtroom: 4D, Hon. Janis L. Sammartino

PLEASE TAKE NOTICE pursuant to FRCP 201(b)(2) in the U.S. District Court, Southern District of California, case no. 17-654, before the Hon. Janis L. Sammartino, Plaintiff, in good faith, has provided additional clarity for the opposition, and the Court, from its July 13, 2018 Order (Doc. 90).

Plaintiff does not yet Move under, but expressly reserves his rights with prejudice, FRCP 201(e).

DATED: July 16, 2018

/s/ Gavin B. Davis

Gavin B. Davis, Pro Per

1 Gavin B. Davis
2 615 C Street, #325
3 San Diego, CA 92101
4 Phone 858.876.4346
5 gbdproper@mail.com

6 UNITED STATES DISTRICT COURT

7 FOR THE SOUTHERN DISTRICT OF CALIFORNIA

8 GAVIN B. DAVIS,

9 Plaintiff,

10 vs.

11 SAN DIEGO COUNTY DISTRICT ATTORNEY
12 (SDDA),

13 LEONARD N. TRINH

14 Defendants.

Case No.: 17-cv-000654-JLS-BGS

FRCP 201(b)(2) NOTICE

STATEMENT OF FACTS

**PLAINTIFF'S PRELIMINARY GOOD FAITH
RESPONSE TO COURT'S ORDER (DOC. 90)
REQUESTING ADDITIONAL INFORMATION
FROM DEFENDANTS**

15 Date:

16 Time:

Courtroom: 4D, Hon. Janis L. Sammartino

1 **A. INTRODUCTION**

2 1. Plaintiff has brought forth six (6) FRCP 8 compliant claims in the Amended Complaint (Doc. 72,
3 pg. 8-10, ¶¶ 11(a-d)) for deprivation of civil rights under 42 U.S.C. § 1983; and, demonstrated each of federal and
4 constitutional standing (e.g. see Jurisdiction, Doc. 72, pg. 6-7, ¶¶ 5-6). Defendant San Diego County District
5 Attorney's Office ("SDDA"); and, Deputy District Attorney ("DDA"), Mr. Leonard Nyugen Trinh ("Defendant
6 Leonard," "Trinh," or, "DDA Trinh," collectively referred to herein, as either the "Defendant", or "Defendant
7 SDDA-Trinh" for simplicity) have filed a "kitchen sink" Motion to Dismiss (Doc. 76, "MTD") the Amended
8 Complaint (Doc. 72) comprised entirely of conclusions and no engagement on the facts and factual allegations of
9 the Amended Complaint (Doc. 72, pg. 10-22, ¶¶ 13-43) under FRCP 8, 12(b); and, further, this Court's abstention,
10 under *Younger*, which the Plaintiff holds as, a priori, not relevant hereto; though, secondarily, also failing to satisfy
11 the conditions of *Younger*.

12 2. Plaintiff has already suffered irreparable loss; and, injury, of a great variety, prima facie. Further,
13 it is plain to be seen, that Plaintiff's claims in the Amended Complaint do not interfere or enjoin the state criminal
14 proceedings, as Defendant SDDA-Trinh allege in their MTD. The claims, and relief sought, including but not
15 limited to damages, are of the variety that the California state court system, clearly, could not, did not, has not, and
16 cannot afford adequate protection to the Plaintiff. Plaintiff has demonstrated jurisdiction and federal standing in
17 the Amended Complaint.

18 3. Also, Plaintiff has noted that he was almost killed (Doc. 72, pg. 9, ¶ 11(b)) at the direct actions of
19 Defendant SDDA-Trinh; whose constitutional violations against the Plaintiff where of such a dimension, in such
20 capacity, as clear violations of *Gideon v. Wainwright* 372 U.S. 335 (1963), as affirmed in *Scott v. Illinois*, 440 U.S.
21 367 (1979), states are unable (i.e. they cannot) imprison an unrepresented (i.e. a self- litigant), as Defendant
22 SDDA-Trinh, did to the Plaintiff on October 5, 2016 (see Doc. 72, pg. 11-12, ¶¶ 16-18).

23 4. Plaintiff moves for this Court to deny Defendant's Motion to Dismiss (Doc. 76), good cause
24 showing, herein.

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B. STATEMENT OF FACTS UNDER FRCP 201(B)(1) AND (2), OR DECLARATION

5. On Friday, July 13, 2018, the Court issued Order (Doc. 90) directed solely at the Defendants in requesting additional information of them regarding their Motion to Dismiss (Doc. 76) the Amended Complaint (Doc. 72).

6. In its Order (Doc. 90, pg. 1, ln 22-23), the Court incorrectly states that, "In his Opposition brief, Plaintiff Gavin Davis contends that his criminal case was completed June 7, 2018. (ECF No. 84-1, at 12.) Defendants do not respond to this argument in their Reply." To clarify this point, in Plaintiff's Opposition Brief cited by the Court (Plaintiff also filed a Sur-reply), what is more precisely stated by the Plaintiff therein (Doc. 84-1, at 12, ¶¶ 18(a)) is, "Irrespective, of the relevance of Younger, for posterity, Plaintiff, generally has addressed, the four (4) factors under Younger, as follows: (a) a state-initiated proceeding is ongoing. *Plaintiff alleges that Defendant SDDA-Trinh believes that the state-initiated proceeding was completed¹* on June 7, 2018 (Plaintiff's (defendant therein), Sentencing); and, therefore, Defendant SDDA-Trinh is, on its own, estopped, rendering, immediately, any and all discussion of Younger by the Defendant, as moot); without prejudice, to the Plaintiff's opposing position regarding the underlying proceedings. Further, and in priority, Plaintiff, has shown how 4th Amendment violations (as opposed to due process 5th and 14th Amendment violations; or the much weaker Younger 1 "Amendment claim) can be moved in collateral attack (e.g. this litigation) immediately (i.e. this component of Younger, is therefore irrelevant)."

7. In good faith, Plaintiff also made Defendants aware via email on July 13, 2016 at 12:43 P.M., of the difference cited in the above paragraph, and added in reference to the Court's Order (Doc. 90), "This is not actually what the Plaintiff states. Plaintiff states that Defendant believes that the criminal case is complete - and this creates an estoppel in favor of the Plaintiff; irrespective, of what the Plaintiff believes. Plaintiff can be silent to such notion, if it so chooses; but, he has not conceded the criminal case. This is nuanced and technical but important." On July 13, 2016, Plaintiff received an out-of-office email (through July 18, 2018) auto-responder response from Mr. Thomas E. Montgomery, who has not entered the case via signature, that the Plaintiff is aware, but appears on all Defendants response's as counsel of record, though not lead counsel per the Court's docket.

¹ Emphasis added to highlight the subtle, but distinct and important difference.

1 8. Plaintiff has noted, generally, and partially for purposes of brevity herein, that he has been held
2 against his Constitutional rights by the Defendants actions (e.g. Doc. 72, ¶ 11, Claims #1, #2 and #3, Priority
3 Claims; see also, Doc. 77, moving under FRCP 56 for Court Decree on the Priority Claims) in custody, pre-trial in
4 violation of the 4th and 8th Amendments, moved under 42 U.S.C. § 1983, and that such claims are able to be moved
5 immediately on collateral attack and cross-action, in federal court, without favorable determination of the
6 underlying state criminal proceedings (in contrast to Due Process violation claims under the 5th and 14th
7 Amendments; which the federal court can (under *Younger*), by case law authority, only stay such claims pending
8 the underlying determination of the state cases).

9 9. Plaintiff's Due Process under the 5th and 14th Amendments (Doc. 72, ¶ 11, Claims #4 and #5) was
10 violated in multiple capacities; and, prima facie, the Plaintiff's inability to even file in valid cross-action and
11 collateral attack (e.g. USDC SD Cal, 17-654) to the state criminal proceedings brought by the Defendants,
12 evidenced by a lack of filing in USDC SD Cal, 17-654, from approximately January 12, 2018 through April 23,
13 2018 while in custody of the San Diego County Sheriff's Department. During this period Plaintiff was also
14 unlawfully Denied Access to the Courts. Previously Plaintiff had attempted via FRCP 20 Joinder to added the San
15 Diego County Sheriff's Department as a defendant in 17-654 (Doc. 59, November 20, 2017; and, Doc. 63, January
16 12, 2018, each rendered Moot by the Court's Order (Doc. 66) dismissing the prior complaint with leave to amend).
17 Plaintiff's point, prima facie, is proven, in that subsequent to the dismissal (Doc. 66), while unlawfully held in
18 custody, pre-trial, he could not file an Amended Complaint as granted by the Court in its Order (Doc. 66). Within
19 approximately forty-hours of being released from custody, on April 26, 2018, Plaintiff filed a Motion (Doc. 69)
20 requesting an extension of time to file an Amended Complaint. The Court granted (Doc. 70) Plaintiff's Motion
21 (Doc. 69) on May 9, 2018, allowing until May 25, 2018 to file an Amended Complaint. Plaintiff, as a diligent
22 individual, filed an Amended Complaint (Doc. 72) prior to the Court's deadline, on May 15, 2018.

23 10. In addition to the facts stated in the prior paragraph, also of note, Plaintiff filed in USDC SD Cal,
24 17-1997, *Davis v. Federal Bureau of Investigation, John Gregory Unruh*; filed an FRCP 60(B)(6) Motion (Doc. 8)
25 for relief from the Court's disposition Order (Doc. 6, March 7, 2018, while Plaintiff was unlawfully in custody (17-
26 654 claims); and, Denied Access to the Courts) on June 5, 2018. The Court (BAS-AGS) granted Plaintiff's request
27 therein (Doc. 9) on June 7, 2018, and fully VACATED its Dismissal, and, formally re-opened the case (pending as
28 of July 14, 2018).

1 11. Further, in 17-654, Plaintiff's prior attempt at Joinder of the San Diego County Sheriff's
2 Department as a defendant (Doc. 59, 63), in lieu of adding complexity to 17-654, as in his subsequent refinement
3 of the claims in the Amended Complaints (e.g. Doc. 72), Plaintiff was conscience to take such claims and open
4 them as separate litigation, as he did in 18-866 (pending), against defendant San Diego County Sheriff, for being
5 Denied Access to the Courts. In such case, at least one initial claim he moves for class status and appointment of
6 third party counsel under FRCP 23. This demonstrates, prima facie, how being unlawfully detained (i.e. 17-654,
7 Doc. 72, Claim #1, #2, and #3), can have punitive, irreparable injury—this are the precise types of reasons why
8 Excessive and Punitive bail are unconscionable and expressly against the 4th and 8th Amendments; and, preserved
9 as federal rights (note: Plaintiff has alleged criminal actions of Defendant Leonard under 18 U.S.C. § 242; for his
10 actions; he has previously provided the Department of Justice (now dated and in need of update) a criminal
11 complaint against Defendant Leonard); which, it has not addressed.

12 12. Plaintiff in 17-654 had also filed for Habeas relief (see Doc. 77), which is another form of
13 collateral attack that should always be available to a pre-trial detainee, or a sentenced prisoner; and not prevented.
14 Plaintiff in 17-654, without prejudice as to the timing of the Habeas filing, updated the Habeas filing, and filed a
15 separate petition on June 22, 2018 (USDC SD Cal, 18-1382-MMA-PCL), which also requires the Court to Notice
16 the Attorney General of the State of California (one reason that the Plaintiff expressly moved in such capacity).
17 Plaintiff, on the same day, out of respect for the Court, filed a Notice of Withdraw of Doc. 77 in 17-654, which the
18 Court imaged on July 6, 2018 (Doc. 89). Of note, in part, Plaintiff in his Habeas petition (18-1382), notes that any
19 restraint on a person's liberty that is different than that of a free man, can be moved at any time for habeas relief;
20 and is not Moot, by closing of a case, or cases (see Doc. 1, 18-1382, for additional information as desired).

21 13. As it relates to the underlying California criminal proceedings brought by the Defendants against
22 the Plaintiff (e.g. Superior Court of California, San Diego County, Case No.: SCD266332 / SCD267655), the
23 following is noted, in part, and in good faith:

24 (a) On June 7, 2018, Plaintiff appearing with criminal defense attorney, Mr. Jan E. Ronis (SBN
25 #51450, Ronis & Ronis, Senator Building, San Diego), requested that the Superior Court take Notice of the cross-
26 action (i.e. 17-654), prior to court, and the judge on such day Denied Plaintiff's (defendant therein) request to
27 lodge documents (e.g. Doc. 72 and others). Plaintiff also had prepared a Withdraw of Plea Bargain and requested
28 that be filed with the Superior Court, which the judge also Denied. The Superior Court Judge (Dept. 1104,

Walsh), allowed Plaintiff (defendant therein) to Request to Withdraw his Plea Bargain of April 23, 2018, in which he (importantly) was released on his Own Recognizance, without any other terms or conditions of bail (i.e. FRAUD, actionable under 18 U.S.C. § 242) pending Sentencing (June 7, 2018). Judge Walsh also had a closed session (to the courtroom and Defendants (prosecution therein) allowing the Plaintiff (defendant therein) to briefly describe his reasons for requesting to Withdraw the Plea (April 23, 2018), in which Mr. Ronis, conceded one of the seven reasons formally cited in the prepared filing (rejected) in support of the Plaintiff's request for withdraw. Thereafter, before an open court, Plaintiff's (defendant therein) request for Withdraw was denied by Judge Walsh.

(b) On June 8, 2018, Plaintiff (defendant therein), on his own without counsel (i.e. Ronis & Ronis, filed a Notice of Appeal, Statement of Appeal, and Requested that the trial court (i.e. the Superior Court of California, San Diego County) issue a Certificate of Probable Cause pursuant to Ca PC § 1237.5., with the Appeals Division of the lower court Plaintiff also served these documents via third party process server, along with a Motion for a Stay of Probation (as ordered by the Superior Court of California on June 7, 2018; further, violating his liberty) on the Defendants. The Appeal, generally and in part, is somewhat simple, it seeks, good cause showing, to Withdraw the Pleas (April 23, 2018), and move back to pre-trial matters—and with respect to the Failure to Appear charge (Plaintiff has never willfully missed court and is highly engaged with the process of the law and not evading it) no longer waives time.

(c) On June 19, 2018, the lower court (Superior Court of California) via ORDER issued a Statement of Probable Cause pursuant to Ca PC § 1237.5, responding to the Plaintiff's (defendant therein, Pro Per in such filing), finding grounds for an Appeal.

(d) On June 22, 2018, the 4th District Court, Division 1, Court of Appeals in California, opened case no.: 074186 (lower court SCD266332 and associated matters).

(e) On June 27, 2018, the Plaintiff (Appellant-Defendant therein) filed a Motion for a Stay of Probation with the 4th Dist-Div 1, in case no.: 074186. On June 27, 2018, Plaintiff's filing was 'Rejected' by the 4th Dist-Div 1, citing generally that all criminal appellate defendants (i.e. in no way particular to the Plaintiff (Appellant-Defendant) or a reflection upon him) cannot represent themselves in appeal for California criminal defense matters. The 4th Dist-Div 1 (R. Rodriguez) specifically noted in response to the Plaintiff's filing (does not appear on the public docket) that, "you have no right to represent yourself on an appeal (*Martinez v. Court of Appeal of Cal.*, Fourth Appellate Dist. (2000) 528 U.S. 152, 163-164; *People v. Massie* (1998) 19 Cal.4th 550,

570)." As indicated, these are 'general' case law authorities for ALL criminal *appellants* in the State of California and general practice for the 4th Dist-Div 1.

(f) On June 29, 2018, Plaintiff was recommended five (5) criminal defense appellate attorneys by two (2) attorney sources.

(g) As of July 14, 2018, Plaintiff is reviewing terms and conditions of engagement letters from two (2) of the recommend attorneys (having not made contact with the other three (3)) and reasonably expects to have one of the two parties engaged prior to the lower court's deadline (August 8, 2018) to produce the record for the appellate court (i.e. 4th Dist., Div. 1). Plaintiff is seeking to move forward with his own retained counsel; and, not court assigned counsel. Such parties will be filing for a Stay of Probation pending appeal (074186).

C. REQUEST FOR RELIEF

14. This Court is required pursuant to FRCP 201(c)(2) to take Notice, as presented, herein.

15. In the alternative, if the Court does not take Notice for any reason, it is required (or at a minimum should, so as to not risk an abuse of discretion and reversal upon error), request "the necessary information" from the party (Plaintiff herein) requesting that the Court take Notice if the information supplied in any capacity is found to be insufficient for any reason(s).

16. Plaintiff will timely (estimated at two (2) business days) Respond or Reply (especially in light of an FRCP 11 Sanctions Motion pending against Defendants' counsel in 18-866 (Doc. 5), in which Perjury (18 U.S.C. § 1621) is alleged by the Plaintiff therein stemming from matters known, generally and in part, to the Defendants' counsel in this litigation, as developed through approximately fifteen (15) months) to Defendant's Response due in seven (7) days of the Court's Order (Doc. 90) requesting additional information.

D. CERTIFICATION AND CLOSING

17. Under FRCP 11, by signing below, I certify to the best of my knowledge, information, and belief that this Filing and accompaniments: (a) is not being presented for an improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation; (b) is supported by existing law; (c) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a

1 reasonable opportunity for further investigation or discovery; and (d) the complaint otherwise complies with the
2 requirements of Rule 11.

3
4 **DATED:** July 14, 2018

5
6 */s/ Gavin B. Davis*

7 _____
8 Gavin B. Davis, Pro Per
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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

GAVIN B. DAVIS,

Plaintiff,

v.

SAN DIEGO DISTRICT ATTORNEY;
MR. LEONARD TRINH; SAN DIEGO
POLICE DEPARTMENT; JOHN DOES,

Defendants.

Case No.: 17-CV-654 JLS (BGS)

**ORDER REQUESTING
ADDITIONAL BRIEFING**

(ECF No. 76)

Presently before the Court are Defendants Leonard Trinh, and San Diego District Attorney's Motion to Dismiss Third Amended Complaint, (ECF No. 76). Defendants raise the *Younger* abstention doctrine, (ECF No. 76-1, at 5). *See Younger v. Harris*, 407 U.S. 37 (1971). In his Opposition brief, Plaintiff Gavin Davis contends that his criminal case was completed June 7, 2018. (ECF No. 84-1, at 12.) Defendants do not respond to this argument in their Reply. The Court requests additional briefing from Defendants as to the current status of Plaintiff's state criminal proceedings.

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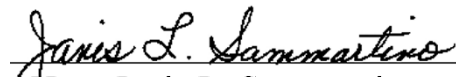
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1 Defendants **SHALL** file a response on or before seven (7) days from the date on which
2 this Order is electronically docketed.

3 **IT IS SO ORDERED.**

4 Dated: July 13, 2018


5 Hon. Janis L. Sammartino
6 United States District Judge
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FILED

Jun 27 2018

CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
BY s/ markl DEPUTY

NUNC PRO TUNC

6/25/2018

Gavin B. Davis
615 C Street, #325
San Diego, CA 92101
Phone 858.876.4346
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UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA

GAVIN B. DAVIS,

Plaintiff,

vs.

SAN DIEGO COUNTY DISTRICT ATTORNEY
(SDDA),

LEONARD N. TRINH

Defendants.

Case No.: 17-cv-000654-JLS-BGS

NOTICE

**PLAINTIFF'S SUR-REPLY TO DEENDANT'S
REPLY (DOC. 85) TO PLAINTIFF'S RESPONSE
(DOC. 83) TO DEFENDANTS' MOTION TO
DISMISS (DOC. 76) PLAINTIFF'S AMENDED
COMPLAINT (DOC. 72)**

Date: July 12, 2018

Time: 1:30 p.m.

Courtroom: 4D, Hon. Janis L. Sammartino

PLEASE TAKE NOTICE on July 12, 2018, at 1:30 p.m., before the Hon. Janis L. Sammartino at the U.S. District Court, Southern District of California, Plaintiff, herein, has provided a Sur-reply to Defendants' Reply (Doc. 85) the Plaintiff's Response (Doc. 84) to Defendants' Motion to Dismiss (Doc. 76) Plaintiff's Amended Complaint (Doc. 72)

This request and Motion will be based on this Notice of Motion, the Memorandum of Points and Authorities, statements, facts, argument, and all accompanying pertinent information admitted with this filing, in its pursuit, or as otherwise relevant, now, or in the future.

DATED: June 25, 2018

Gavin B. Davis, Pro Per

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2 San Diego, CA 92101
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4 UNITED STATES DISTRICT COURT
5 FOR THE SOUTHERN DISTRICT OF CALIFORNIA
6

7 GAVIN B. DAVIS,

8 Plaintiff,

9 vs.

10 SAN DIEGO COUNTY DISTRICT ATTORNEY
(SDDA),

11 LEONARD N. TRINH

12 Defendants.
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Case No.: 17-cv-000654-JLS-BGS

MEMORANDUM OF SUPPORT TO

**PLAINTIFF'S SUR-REPLY TO DEENDANT'S
REPLY (DOC. 85) TO PLAINTIFF'S RESPONSE
(DOC. 83) TO DEFENDANTS' MOTION TO
DISMISS (DOC. 76) PLAINTIFF'S AMENDED
COMPLAINT (DOC. 72)**

Date: July 12, 2018

Time: 1:30 p.m.

Courtroom: 4D, Hon. Janis L. Sammartino

1 **A. INTRODUCTION**

2 1. Defendant has filed a conclusory reply (Doc. 85) to Plaintiff's Response (Doc. 84) to Defendants'
3 Motion to Dismiss (Doc. 76) the Amended Complaint (Doc. 72) devoid of thought; with no new information; and,
4 effectively a large, "fallacy of the composition" and straw man.

5 2. In its Reply (Doc. 85), Defendants assert, incorrectly, that Plaintiff desires to "attack or contest his
6 criminal matters through civil litigation"; and, separately, that such is, "precluded by law." Also, false. Plaintiff is
7 very clear in the six (6) FRCP 8 plain and simple 42 U.S.C. § 1983 claims before this Court; including three (3)
8 (e.g. Doc. 77, FRCP 56 Motion for Partial Summary Judgment); which, as demonstrated, are available for
9 immediate collateral attack, having each of federal and Constitutional standing; as demonstrated (e.g. see Doc. 84,
10 ¶¶ 1, 3, 6-14; which Defendants', once again, do not engage in, seeking preclusion, and abstention, a priori).

11
12 **B. ISSUES WITH DEFENDANT'S FACTS OR MISREPRESENTATIONS IN ITS REPLY (DOC. 85)**

13 3. Defendants' incorrectly state that Plaintiff, "makes several unfounded legal assertions, and
14 presents no substantive argument in opposition to Defendant's Motion to Dismiss." This is a conclusory statement,
15 without factual support in arguing such a position. To wit, Plaintiff has cited in its Response (Doc. 84) to
16 Defendants' Motion to Dismiss (Doc. 76) the Amended Complaint (Doc. 72), a wide body of case law authority;
17 and argument in support of its legal positions (e.g. see Doc. 84, Points and Authorities; and their express utilization
18 in such document (i.e. throughout it); without any engagement thereupon by the Defendants' in their conclusory
19 Reply (Doc. 85)

20 4. Once again, Defendants' assert absolute immunity (Doc. 85, pg. 2, ln 4-8). Plaintiff has shown;
21 how, Defendants' do not enjoy such absolute immunity (e.g. Doc. 84, ¶¶ 13-14).

22 5. Once again, Defendants' assert abstention under *Younger* (Doc. 85, pg. 2, ln 10-15). Plaintiff has
23 shown, again, how *Younger* does not hold (e.g. Doc. 84, ¶¶ 15-23)

24 6. Defendants asserts that Plaintiff's claims are not FRCP 8 compliant. To a reasonable jury, the six
25 (6) claims; are plain and simple (e.g. see Doc. 84, ¶ 1; citing to the Amended Complaint, Doc. 72, pg. 8-10, ¶¶
26 11(a-d)); and, separately, discussion of each of federal and Constitutional standing and jurisdiction.

27 7. Defendant uses, yet, another straw man fallacy (Doc. 85, pg. 2, ln 17-22) in stating, "Plaintiff
28 perpetuates concerns of unclear pleadings by stating that his claims are "tolled"". Plaintiff, for simplicity, has

1 narrowed the claims before the Court; without prejudice, to refining others. Such matter, is not before the Court;
2 nor, should Defendants' misdirect the Court as they repeatedly seek to in seeking summary dismissal; out of a
3 strategy, of attempting to make the self-litigant appear "confused"

4 8. Defendant, again, conclusory, cites to other litigation, or prior instances of dismissal in the
5 refinement and development of this case (i.e. 17-654) as grounds for dismissal; rather, than seeking to substantively
6 engage on the facts (it engages on zero facts) or argument put forth by the Plaintiff; someone, with nearly twenty
7 (20) years of experience, working "shoulder-to-shoulder" with leading global corporate attorneys in designing
8 complex business transactions (i.e. over Four Billion Dollars (\$4,000,000,000); without, ever (once) initiating, or
9 being the subject of litigation, in creating "win-win" solutions between opposing stakeholders with different
10 interests in "great faith"

11 12 **C. CONCLUSION**

13 9. Defendants' Reply (Doc. 85) to Plaintiff's Response (Doc. 84) to Defendants' Motion to Dismiss
14 (Doc. 76) the Amended Complaint (Doc. 72) has, literally, no merit. There is nothing within this filing of the
15 Defendants' (i.e. Doc. 85) worthy of this Court's review. It is the very essence of a frivolous filing.

16 10. Once again, all facts and factual allegations put forth by the Plaintiff in its Response (Doc. 84) are
17 not denied by the Defendants' and therefore to be accepted as true (citing to the same authorities in support thereof,
18 as the Plaintiff has demonstrated in its Response (Doc. 84, ¶ 11)

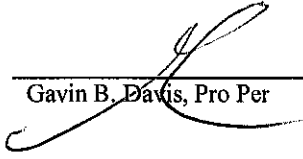
19 11. This Court; should, remain focused on facts, factual allegations and argument; while, if it chooses,
20 engaging on *Younger*; as the Plaintiff has; and avoid, being fallaciously drawn off course by the Defendants.

21 22 23 **D. CERTIFICATION AND CLOSING**

24 Under FRCP 11, by signing below, I certify to the best of my knowledge, information, and belief that this
25 Filing and accompaniments: (a) is not being presented for an improper purpose, such as to harass, cause
26 unnecessary delay, or needlessly increase the cost of litigation; (b) is supported by existing law; (c) the factual
27 contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a
28

1 reasonable opportunity for further investigation or discovery; and (d) the complaint otherwise complies with the
2 requirements of Rule 11.

3
4 **DATED:** June 25, 2018

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7 _____
8 Gavin B. Davis, Pro Per
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Attorneys for Defendants San Diego District Attorney and Leonard Trinh

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

Defendants.

Date: July 12, 2018
Time: 1:30 p.m.
Dept.: 4D - Courtroom of the
Honorable Janis L. Sammartino

I

INTRODUCTION

Plaintiff's desire to attack or contest his criminal matters though civil litigation is precluded by law. Plaintiff makes several unfounded legal assertions, and presents no substantive argument in opposition to Defendants Motion to Dismiss. Defendants request that their Motion be granted and that this Third Amended Complaint be dismissed with prejudice.

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II

ARGUMENT

A. Absolute Immunity.

All of Plaintiff's claims arise from the prosecution of his criminal charges, and Defendants are entitled to immunity. Statements in Plaintiff's Opposition, such as "Defendant's [sic] clearly know that they do not enjoy absolute immunity (that would be a dangerous precedent)" fail to intellectually address Defendants' arguments. (ECF No. 84, p. 5:25-26.)

B. Younger Abstention.

Plaintiff's complaints all revolve around Defendants' actions towards him in an ongoing state court proceeding. Under the abstention doctrine this Court is required to withhold ruling on such matters. Statements in Plaintiff's Opposition are conclusory and unsupported; "Application of *Younger*, hereto this case, in the Plaintiff's opinion, is improper." (*Id.*, p. 10:14-16), "Plaintiff notes, in his opinion, that *Younger*, has been entirely misconstrued in its development over time..." (*Id.*, p. 11:3-4.)

C. Rule 8.

To the extent Plaintiff's allegations go beyond what is barred by quasi-judicial immunity and the abstention doctrine, his grievances are not sufficiently pleaded and fail the standard of Rule 8. Plaintiff perpetuates concerns of unclear pleadings by stating his claims are tolled against unnamed defendants for unnamed actions simply because he asserts they are "tolled", and by the invention of terms such as "'kitchen sink' pre-trial motions" and "great faith."

III

CONCLUSION

This is Plaintiff's fifth attempt over two cases to bring suit against Defendants, with an improper goal of collaterally attacking his criminal matters. His complaint should be dismissed based on immunity, the abstention doctrine, or Rules 8(a) and

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1 12(b)(1) and (6). Further, Defendants request the Third Amended Complaint be
2 dismissed *without* leave to amend.

3 DATED: June 25, 2018

THOMAS E. MONTGOMERY, County Counsel

4
5 By: s/ RONALD LENERT, Senior Deputy
6 Attorneys for Defendants San Diego District
7 Attorney and Leonard Trinh
8 E-mail: ronald.lenert@sdcounty.ca.gov
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FILED

JUN 20 2018

CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
BY *[Signature]* DEPUTY

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UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF CALIFORNIA

GAVIN B. DAVIS,

Plaintiff,

vs.

SAN DIEGO COUNTY DISTRICT ATTORNEY
(SDDA),

LEONARD N. TRINH

Defendants.

Case No.: 17-cv-000654-JLS-BGS

NOTICE

**PLAINTIFF'S RESPONSE TO DEFENDANT'S
MOTION TO DISMISS (DOC. 76) THE AMENDED
COMPLAINT (DOC. 72)**

Date: July 12, 2018
Time: 1:30 p.m.
Courtroom: 4D, Hon. Janis L. Sammartino

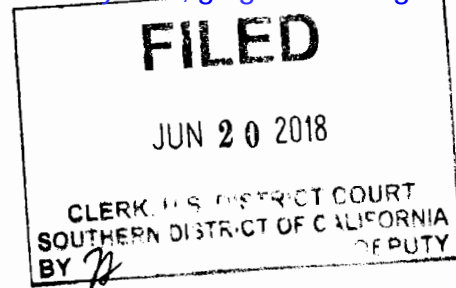
PLEASE TAKE NOTICE on July 12, 2018, at 1:30 p.m., before the Hon. Janis L. Sammartino at the U.S. District Court, Southern District of California, Plaintiff, herein, has provided a Response to Defendant's Motion to Dismiss (Doc. 76) to Plaintiff's Amended Complaint (Doc. 72), and notes that Defendant's Motion to Dismiss (MTD, Doc. 76) the Amended Complaint (Doc. 72), is a facial attack, and summary dismissal action under FRCP 12(b)(6); and, as such facial attack (as compared to a factual attack), Defendants are fully estopped from arguing any facts, or factual allegations, as presented in Plaintiff's Amended Complaint (Doc. 72) by case law authority, as presented herein.

This request and Motion will be based on this Notice of Motion, the Memorandum of Points and Authorities, statements, facts, argument, and all accompanying pertinent information admitted with this filing, in its pursuit, or as otherwise relevant, now, or in the future.

DATED: June 14, 2018

[Signature]

Gavin B. Davis, Pro Per



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UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA

GAVIN B. DAVIS,

Plaintiff,

vs.

SAN DIEGO COUNTY DISTRICT ATTORNEY
(SDDA),

LEONARD N. TRINH

Defendants.

Case No.: 17-cv-000654-JLS-BGS

MEMORANDUM OF SUPPORT TO

**PLAINTIFF'S RESPONSE TO DEFENDANT'S
MOTION TO DISMISS (DOC. 76) THE AMENDED
COMPLAINT (DOC. 72)**

Date: July 12, 2018

Time: 1:30 p.m.

Courtroom: 4D, Hon. Janis L. Sammartino

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POINTS AND AUTHORITES

Cases

| | |
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| <i>(Gilbertson v. Albright, 381 F.3d 965, 973 (9th Cir. 2004)</i> | <i>12</i> |
| <i>Adam v. Hawaii, 235 F.3d 1160, 1163 (9th Cir.2000).....</i> | <i>12</i> |
| <i>Burlington N. R.R. v. Huddleston, 94 F.3d 1413, 1415 (10th Cir. 1996).....</i> | <i>7</i> |
| <i>Celotex Corp. v. Catrett, 477 U.S. 324, 328 (1986)</i> | <i>7</i> |
| <i>Gideon v. Wainwright 372 U.S. 335 (1963)</i> | <i>3</i> |
| <i>Gilbertson v. Albright, 381 F.3d 965, 973 (9th Cir. 2004)</i> | <i>12</i> |
| <i>Harlow v. Fitzgerald, 457 U.S. 800 (1982)</i> | <i>8</i> |
| <i>Imbler v. Pachtman, 424 U.S. 409, 430-431 (1976).....</i> | <i>9</i> |
| <i>Kitchens v. Bowen, 825 F.2d 1337, 1341 (9th Cir.1987).....</i> | <i>10</i> |
| <i>Lockwood v. Wolf Corp., 629 F.2d 603, 611 (9th Cir. 1980).....</i> | <i>7</i> |
| <i>McElmurray, 501 F.3d at 1251</i> | <i>8</i> |
| <i>Modrowski v. Pigatto, 712 F.3d, 1166, 1170 (7th Cir. 2013)</i> | <i>7</i> |
| <i>New Orleans Pub. Serv., Inc. v. Council of City of New Orleans (NOPSI), 491 U.S. 350, 359, 109 S.Ct. 2506, 105</i> | |
| <i>L.Ed.2d 298 (1989).....</i> | <i>10</i> |
| <i>Ohio Civil Rights Comm’n v. Dayton Christian Sch., Inc., 477 U.S. 619, 629, 106 S.Ct. 2718, 91 L.Ed.2d 512 (1986)</i> | |
| <i>.....</i> | <i>11</i> |
| <i>Pearson v. Callahan, 555 U.S. 223 (2009).....</i> | <i>9</i> |

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| 1 | <i>Saucier v. Katz</i> , 533 U.S. 194 (2001) | 9 |
| 2 | <i>Scheurer v. Rhodes</i> , 416 U.S. 232, 236 (1974)..... | 8 |
| 3 | <i>Scott v. Illinois</i> , 440 U.S. 367 (1979)..... | 3 |
| 4 | <i>U.S. v. Ritchie</i> , 15 F.3d 592, 598 (6th Cir. 1994) | 8 |
| 5 | <i>Wallace v. Kato</i> , 549 U.S. at 389-393 (2007)..... | 5 |
| 6 | <i>Younger</i> | passim |
| 7 | Statutes | |
| 8 | 18 U.S.C. § 1621 | 8 |
| 9 | 18 U.S.C. § 242 | 11 |
| 10 | 28 U.S.C. § 455 | 7 |
| 11 | 42 U.S.C. § 1983 | 3, 5, 14 |
| 12 | Other Authorities | |
| 13 | ABA Rule 4.4(a)..... | 4, 6 |
| 14 | ABA Rule 3.4(e)..... | 4 |
| 15 | <i>Bail Reform and Risk Assessment: The Cautionary Tale of Federal Sentencing</i> ,” <i>Harvard Law Review</i> , 131 <i>Harv. L.</i> | |
| 16 | Rev. 1125, (Feb 9, 2018) | 9 |
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| 18 | Rules | |
| 19 | FRCP 12(b)(1) | 6, 7, 8 |
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| 24 | FRCP 8 | passim |
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A. INTRODUCTION

1. Plaintiff has brought forth six (6) FRCP 8 compliant claims in the Amended Complaint (Doc. 72, pg. 8-10, ¶¶ 11(a-d)) for deprivation of civil rights under 42 U.S.C. § 1983; and, demonstrated each of federal and constitutional standing (e.g. see Jurisdiction, Doc. 72, pg. 6-7, ¶¶ 5-6). Defendant San Diego County District Attorney's Office ("SDDA"); and, Deputy District Attorney ("DDA"), Mr. Leonard Nyugen Trinh ("Defendant Leonard," "Trinh," or, "DDA Trinh," collectively referred to herein, as either the "Defendant", or "Defendant SDDA-Trinh" for simplicity) have filed a "kitchen sink" Motion to Dismiss (Doc. 76, "MTD") the Amended Complaint (Doc. 72) comprised entirely of conclusions and no engagement on the facts and factual allegations of the Amended Complaint (Doc. 72, pg. 10-22, ¶¶ 13-43) under FRCP 8, 12(b); and, further, this Court's abstention, under *Younger*, which the Plaintiff holds as, a priori, not relevant hereto; though, secondarily, also failing to satisfy the conditions of *Younger*.

2. Plaintiff has already suffered irreparable loss; and, injury, of a great variety, prima facie. Further, it is plain to be seen, that Plaintiff's claims in the Amended Complaint do not interfere or enjoin the state criminal proceedings, as Defendant SDDA-Trinh allege in their MTD. The claims, and relief sought, including but not limited to damages, are of the variety that the California state court system, clearly, could not, did not, has not, and cannot afford adequate protection to the Plaintiff. Plaintiff has demonstrated jurisdiction and federal standing in the Amended Complaint.

3. Also, Plaintiff has noted that he was almost killed (Doc. 72, pg. 9, ¶ 11(b)) at the direct actions of Defendant SDDA-Trinh; whose constitutional violations against the Plaintiff where of such a dimension, in such capacity, as clear violations of *Gideon v. Wainwright* 372 U.S. 335 (1963), as affirmed in *Scott v. Illinois*, 440 U.S. 367 (1979), states are unable (i.e. they cannot) imprison an unrepresented (i.e. a self-litigant), as Defendant SDDA-Trinh, did to the Plaintiff on October 5, 2016 (see Doc. 72, pg. 11-12, ¶¶ 16-18).

4. Plaintiff moves for this Court to deny Defendant's Motion to Dismiss (Doc. 76), good cause showing, herein.

B. ISSUES WITH DEFENDANT'S FACTS OR MISREPRESENTATIONS IN ITS MTD (Doc. 76)

5. Defendant SDDA-Trinh begins its Motion to Dismiss (MTD, Doc. 76-1, pg. 1, ln 21-23) with an ad hominen character attack (fallacy of logic, attacking the arguer instead of the argument; poisoning the well,

attempting to frame the balance of an argument there from) on the Plaintiff, by, falsely stating that, "Plaintiff is upset with [California state] criminal proceedings....and pursues his discontent in federal court in a continuing abuse of the legal system in its resources." Defendant SDDA-Trinh has previously tried this tactic (e.g. in this case, Doc. 11, its Motion to Dismiss the Complaint (Doc. 1); which, this Court did not engage upon at such time, or anytime after. Further, Plaintiff has noted (e.g. Doc. 16, pg. 8, fn. 9) that Defendant SDDA-Trinh's character attacks are a violation of ABA Rule 4.4(a), "in representing a client, a lawyer shall not use means that have no substantial purpose other than to embarrass, delay, or burden a third person, or use methods of obtaining evidence that violate the legal rights of such a person," and ABA Rule 3.4(e), "allude to any matter that the lawyer does not reasonably believe is relevant or that will not be supported by admissible evidence, assert personal knowledge of facts in issue except when testifying as a witness, or state a personal opinion as to the justness of a cause, the credibility of a witness, the culpability of a civil litigant or the guilt or innocence of an accused." Plaintiff notes that Defendant SDDA-Trinh's ad hominine character attack of the Plaintiff is sanctionable (expressly reserved).

6. Plaintiff is not, in any uncertain capacity, abusing the legal system. Plaintiff has narrowed the claims in the Amended Complaint (TAC, Doc. 72; May 15, 2018; now six (6) claims; pg. 8-10, ¶¶ 11(a-d)); now, *not* having his 5th and 14th Amendment rights of due process (*see* Doc. 72, 'secondary' claims #4, #5, pg. 9-10, ¶¶ 11(c)) unlawfully violated at the direct, and deliberate, action(s) and/or consequence(s) of Defendant SDDA-Trinh, since being released from unlawful pre-trial detention on April 23, 2018, after being in held in custody on Excessive and Punitive Bail (\$1,000,000) for approximately six (6) months; in which he was, also, during this time of unlawfully pre-trial detention, unconstitutionally and unlawfully Denied Access to the Courts during this period of pre-trial custody. Plaintiff had previously attempted via FRCP 20 Joinder (Doc. 59, 63) in this case, to add the San Diego County Sheriff's Department as a defendant, herein, for such violations of law; however, given each of: (a) the Court's Order (Doc. 66) granting dismissal of the prior complaint (Doc. 37), which rendered the FRCP 20 Joinder (Doc. 59, 63) as 'moot'; and, separately, (b) Plaintiff's desire to *simplify* (it will have a certain degree of complexity to it, no matter what) this litigation before the Court (conscience of it being non-duplicative, at present, in any and all capacities); he chose to move in a separate case against the San Diego County Sheriff's Department (USDC SD Cal, 18-866, Complaint (Doc. 1), filed on May 4, 2018, *pending*, where. Defendant SDDA-Trinh's counsel, also represents that defendant in that separate case); seeking class counsel under FRCP 23, for one or more claims (e.g. being unconstitutionally Denied Access to the Courts), therein.

7. Defendant SDDA-Trinh falsely states that claims against it are all for activities associated with the judicial phase of the criminal process; and as criminal prosecutors, Defendants are entitled to absolute immunity. (Doc. 76-1, pg. 1, ln 23-26). Defendant SDDA-Trinh has made the same false claim in its Opposition (Doc. 79-main, pg. 1, ln 21-23) to the Plaintiff's FRCP 56 Motion for Partial Summary Judgment (Doc. 77) on three (3) of the six (6) claims from the Amended Complaint (Doc. 72, and the "Priority Claims"). Plaintiff noted in reply to Defendant SDDA-Trinh's opposition, that, "Plaintiff notes that certain of his claims, for example those sought for FRCP 56 Partial Summary Judgment (Doc. 77) itself, are *immediately* actionable in cross-action in federal court with federal standing as federal claims. Plaintiff specifically notes in the TAC (Doc. 72, "Jurisdiction", pg. 5, ¶¶ 5(a)(i)), "cases concerning 4th Amendment claims brought under 42 U.S.C. § 1983 have recognized that there is no favorable-termination for a 4th Amendment false imprisonment claim." (See *Wallace v. Kato*, 549 U.S. at 389-393 (2007), "an arrestee can file such claim while his prosecution is pending")." The Plaintiff does not seek to have the Court either: (a) intervene; or (b) enjoin the state criminal proceedings. A legal question for the Court arises, however, as follows: as the Plaintiff has demonstrated, with supporting authority, each of: (i) jurisdiction (see Doc. 72, Jurisdiction, pg. 5-7, ¶¶ 5(a)(i), and the "Priority Claims,"; 5(b), 5(c), and 6; and, such Priority Claims stated under FRCP 8 at pg. 8-9, ¶¶ 11(a-b)); and, (ii) the ability to move on collateral attack and cross-action (e.g. this litigation, 17-654, Doc. 72 and other motion) against Defendant SDDA-Trinh, *immediately* under the Priority Claims (#1 to #3 of six (6) total); can, the Court, having properly taken jurisdiction, and having constitutional and federal standing; thereafter, also, take under purvey, the Secondary Claims (see Doc. 72, pg. 6, ¶¶ 5(a)(ii)) for review. Plaintiff alleges that once this Court attaches under the Priority Claims; it can, if requested (as requested by the Plaintiff), attach to the Secondary Claim(s). (However, had the Plaintiff brought solely the Secondary Claims, then the Court, could not, by legal precedent, take jurisdiction; though, by federal legal precedent (as shown further herein) should properly stay the federal case; in lieu, of a dismissal and abstention; given, damages (Doc. 72, pg. 25-26, ¶¶ 56 (a, d); and, also, pg. 27, ¶ 66 (a-f), as sought). Prosecutors have certain immunities, but, in no uncertain capacity, absolute immunity—as such, this is disingenuous on the part of Defendant SDDA-Trinh, and, further, evidence of bad faith. Defendant's clearly know that they do not enjoy absolute immunity (that would be a dangerous precedent).

8. Defendant falsely states that, "since Plaintiff's grievances center on criminal matters which are ongoing, the abstention doctrine under *Younger* applies." (Doc. 76-1, pg. 1, ln 26-28) Even if the Plaintiff's

claims did concern ongoing criminal matters, Plaintiff, in prior paragraphs, has shown (also citing to the Amended Complaint (Doc. 72), that this Court has jurisdiction, and, federal standing (e.g. on the Priority Claims), and, notes that such attaches immediately for violations of the 4th and 8th Amendments—without interference or enjoinder; or, abstention under *Younger*. “It should never be forgotten that this slogan, “Our Federalism,” born in the early struggling days of our Union of States, occupies a highly important place in our Nation’s history and its future.” (*Younger*, 401 U.S. at 44-45, 91 S.Ct. 746) *Younger* concerned a 1st Amendment ‘free speech’ claim; entirely, different, and irrelevant (in the Plaintiff’s opinion) to either Plaintiff’s Primary Claims (e.g. including facing the actual literal prospect of death (see Doc. 72, pg. 9, ¶ 11(b)), at the hands of Defendant SDDA-Trinh abusing their powers and clearly, prima facie, violating the Plaintiff’s federal civil rights, as brought forth in this litigation) and Secondary claims (themselves more important, in this context, when viewed under *Younger*, than 1st Amendment violations, where *Younger* sought to avoid criminal prosecution—that is not what the Plaintiff, prima facie, is doing with this litigation). For posterity, without prejudice, to the position that *Younger* does not apply, Plaintiff more fully discusses *Younger* further herein.

9. Defendant moves for a non-specific, conclusory (without support) “kitchen sink” summary dismissal of the Amended Complaint (Doc. 72) in requesting dismissal under each of FRCP 8, and FRCP 12(b)(1) – a facial (non-factual) attack (Doc. 76-1, pg. 1-2, ln 28-2). Plaintiff clearly notes the FRCP 8 compliant Priority Claims (Doc. 72, pg. 8-9, ¶¶ 11(a-b)); and the FRCP 8 compliant Secondary Claims (Doc. 72, pg. 9-10, ¶¶ 11(c-d); all of which, are intelligible. Further, if the Court takes one (single) claim, liberty in amending any additional claims, if unintelligible, is the norm.

10. Defendant in its “Facts” section of its MTD (Doc. 76-1, pg. 2, 5-18), again, attacks the arguer instead of the argument (i.e. an ad hominine character attack and fallacy of logic; violating ABA Rules 4.4(a) and 3.4(e) as noted); as well, as these additional fallacies of logic: (a) moving the goal post; (b) straw man; (c) fallacy of division (assuming via inference that something true of a thing must be true of all things); (d) false equivalence; (e) incomplete comparison (summary conclusion without actual express knowledge); (f) moralistic fallacy; and, (g) otherwise. Defendant is wasting the Court’s time and resources. Defendant’s entire first paragraph of its “Facts” section in its MTD (Doc. 76-1, pg. 2, 5-18) is irrelevant as a result. For example (but *one* example, in judicious consideration of the Court’s time and resources), Defendant states that, “Plaintiff argued to recuse the Superior Court Judge presiding in the criminal matters against him,” (Doc. 76-1, pg. 2, ln 15-16). Plaintiff has successfully,

1 in USDC SD Cal, 18-810 moved (Doc. 6, Order granted, May 9, 2018) to recuse (Doc. 5, 18-866) the presiding
2 judge in that federal litigation under 28 U.S.C. § 455 (*extraordinarily* rare, and evidentiary, in some respect as to
3 the self-litigant's ability to reasonably understand the rules of the Court; improve upon and refine his legal
4 positions, when provided due process; and not, denied access to the courts)—Defendant's statements are irrelevant,
5 fallacious, and amount to mud-slinging (the Court is not a "baby-sitter").

6 11. In the balance of the Defendant's "Facts" section of its MTD (Doc. 76-1, pg. 2, ln 19-22), it fails,
7 entirely, to engage, or dispute, any of the Plaintiff's Facts, or Factual Allegations, of the Amended Complaint (Doc.
8 72, pg. 10-22, ¶¶ 13-43). As such, Defendant is fully estopped from doing such, with authority, as follows:

9 (a) Under *Celotex Corp. v. Catrett*, 477 U.S. 324, 328 (1986) in its support of the facts and factual
10 allegations as presented as admissible: "Plaintiff alleges that all facts have been presented in admissible form,
11 however, even if they were not, for any reason, such is immaterial their admission in support of the Motion." (*see*
12 also, Doc. 77, pg. 38, ¶ 83)

13 (b) Plaintiff also, in great faith, noted in the FRCP 56 Motion (Doc. 77, pg. 32-33, ¶¶ 62-65; hereby,
14 incorporated, as if cited herein), his proper Notice and attempts to engage in good faith with the Defendants prior to
15 so moving in Court. Per above, Defendants had ample time to each of: (a) engage out of Court; and, (b) dispute
16 any of the facts, or factual allegations as presented by the Plaintiff. As the Defendants did not do this, they are now
17 fully estopped from doing such, per the case law authority that follows:

18 (i) Importantly, in Defendant's MTD (Doc. 76) the Plaintiff's Amended Complaint (Doc. 72),
19 Defendant does not deny, a single fact, or factual allegation, as presented in the Plaintiff's TAC (Doc. 72).
20 Defendant makes a facial (rather than factual, see FRCP 12(b)(1)) jurisdictional attack in seeking an FRCP 12(b)(6)
21 dismissal of the TAC (Doc. 72).

22 (ii) As Defendants' attack in its MTD (Doc. 76) is facial, they did not deny the factual allegations in
23 the Plaintiff's TAC (Doc. 72), therefore, all such allegations are treated as if the Defendants have admitted them.
24 (*see* FRCP 8(b)(6), *see Modrowski v. Pigatto*, 712 F.3d, 1166, 1170 (7th Cir. 2013); *Burlington N. R.R. v.*
25 *Huddleston*, 94 F.3d 1413, 1415 (10th Cir. 1996); *Lockwood v. Wolf Corp.*, 629 F.2d 603, 611 (9th Cir. 1980)).
26 Plaintiff has an extraordinary estoppel, for reliance purposes, in review of his FRCP 56 Motion for Partial
27 Summary Judgment
28

(iii) As Defendants attack in their MTD is facial (Doc. 76), the Court has to accept all material allegations in the complaint (i.e. TAC, Doc. 72) as true and construe them as such. (see *Scheurer v. Rhodes*, 416 U.S. 232, 236 (1974), overruled on other grounds; *Harlow v. Fitzgerald*, 457 U.S. 800 (1982); *McElmurray*, 501 F.3d at 1251; *U.S. v. Ritchie*, 15 F.3d 592, 598 (6th Cir. 1994)). Importantly, this becomes a matter of law, in the Court's review of the Plaintiff's FRCP 56 Motion for Partial Summary Judgment (Doc. 77)—the Defendant with its filing of the MTD (Doc. 76) to the TAC (Doc. 72), without contesting any of the facts or factual allegations of the Plaintiff's complaint (Doc. 72), is now, fully estopped---the Court is able to move on the Plaintiff's FRCP 56 Motion (Doc. 77) without consideration of the Defendants position in defense thereof; Defendants have been estopped from doing such per case law authority shown above. Plaintiff has properly pled the "prima facie" case—he has provided Notice, informally, and formally to the opposition to reasonably engage regarding the facts and factual allegations; it has acted in bad faith (and also in a criminal capacity, see next paragraph); and, in doing, so has also estopped itself as demonstrated above. Plaintiff has plainly (e.g. FRCP 8 compliant) refined (e.g. three (3) of six (6) total claims with clear federal standing) certain matters sought for partial summary judgment before the Court in the FRCP 56 Motion (Doc. 77); while, also continuing to refine the claims from the original Complaint (Doc. 1; through the development of this litigation)

(iv) Further, Plaintiff has also brought a criminal complaint of Perjury (18 U.S.C. § 1621) against Defendants' counsel, Mr. Ronald C. Lenert (SBN #277434) in USDC SD Cal, 18-866, *Davis v. San Diego Sheriff's Department* (Doc. 5, pending), for perjuring himself on non-circumstantial (i.e. requiring no inference by the Court) direct facts from this litigation (i.e. 17-654). The Court must take material misrepresentations in great seriousness, at any stage of a proceeding.

12. Defendant in its Standard for Motion to Dismiss (Doc. 76-1, Section II, pg. 2-4, ln 26-2), moves for dismissal under FRCP 12(b)(1) and (6). Plaintiff in its Amended Complaint (Doc. 72), and, separately, in its FRCP 56 Motion for Partial Summary Judgment (Doc. 77) on three (3) of the six (6) claims from the Amended Complaint (Doc. 72), has clearly shown a non-hypothetical set of actionable facts, and, factual allegations; in so moving before this Court.

13. In its Argument, Defendant cites to its belief, that, it has absolute immunity from civil suit under *Imbler v. Pachtman*, 424 U.S. 409, 430-431 (1976) (Doc. 76-1, pg. 4, ln 14-20). Plaintiff, notes, in opposition, that Defendant SDDA-Trinh, do not enjoy either absolute or qualified immunity; either such immunity does not

1 “protect officials who violate “clearly established statutory or constitutional rights of which reasonable person
2 would have known.” This is an objective standard, meaning that the standard does not depend on the subjective
3 state of mind of the official but rather on whether a reasonable person would determine that the relevant conduct
4 violated clearly-established law. The overriding distinctions to be made are: (a) Plaintiff is not seeking in this
5 litigation for the federal court to intervene or enjoin; or overrule the state court (nowhere does the Plaintiff request
6 that this Court do such; except, perhaps, Claim #6; which he could, and expressly reserves the right, to move under
7 FRCP 57, solely; without damages specific to that one claim (i.e. Claim #6))—the Plaintiff notes that Defendant
8 SDDA-Trinh have great latitude in what they choose to prosecute—however, are not allowed, to act Vindictively,
9 or Discriminatorily, in such capacity; and, whereby, if they do, those, separate claims, are likely afforded due
10 process in the state court; including through the appellate process. Defendant SDDA-Trinh, are seeking to remand
11 all proceedings, including the Plaintiff’s valid, immediate collateral attack and federal cross-action (i.e. this
12 litigation) to the California State courts; despite, clear, timely, Constitutional violations as brought forth.

13 14. In further discussion on prosecutorial immunity, and Defendant SDDA-Trinh’s lack thereof, for
14 posterity, Plaintiff notes that Defendant SDDA-Trinh fail the *Saucier* test (*Saucier v. Katz*, 533 U.S. 194 (2001)),
15 as: (a) Plaintiff has alleged facts and factual allegations (at Doc. 72, pg. 10-22, ¶¶ 13-43), which are non-disputed
16 (as aforementioned), easily evidencing such parties Constitutional violations of the Plaintiff; and, thereafter, (b)
17 where these are clearly established Constitutional rights (e.g. non-Excessive Bail; pre-trial Liberty, etc.). Further,
18 under *Pearson v. Callahan*, 555 U.S. 223 (2009), the U.S. Supreme Court, softened the requirements under *Saucier*,
19 no longer making this two-factor test for piercing prosecutorial immunity as mandatory. To wit, Plaintiff contends
20 (conjecture) that this litigation, evidences the single most abusive, gross, and egregious 4th Amendment violations
21 (e.g. Doc. 72, Claim #1, pg. 8-9, ¶ 11(a)) regarding abuse of bail and pre-trial custody, in the history of the United
22 States (or one of them)—itself a national priority, given active legislation at both the federal (e.g. HR 4261, the
23 SAFE Justice Act) and state level (e.g. SB10: The California Money Bail Reform Act of 2017) seeking to reform
24 bail procedures and standards (see also, “*Bail Reform and Risk Assessment: The Cautionary Tale of Federal*
25 *Sentencing*,” *Harvard Law Review*, 131 Harv. L. Rev. 1125, (Feb 9, 2018))—this situation, is precisely why.

C. ABSTENTION UNDER YOUNGER DOES NOT HOLD ON MULTIPLE GROUNDS

15. There are limited circumstances in which, abstention by federal courts is appropriate, those circumstances are ‘carefully defined’ and ‘remain the exception, not the rule.’ ” 255 F.3d at 1089 (quoting *New Orleans Pub. Serv., Inc. v. Council of City of New Orleans* (NOPSI), 491 U.S. 350, 359, 109 S.Ct. 2506, 105 L.Ed.2d 298 (1989) (internal quotation marks in NOPSI omitted)).

16. Defendant SDDA-Trinh erroneously seeks the Court’s abstention under *Younger v. Harris*, 401 U.S. 37 (1971) (Doc. 76-1, pg. 5-6, ln 7-9), citing to the four (4) factors under *Younger*; which, Plaintiff addresses, as follows below. Further, Plaintiff notes that there are no extraordinary circumstances for the Court to abstain from exercising its jurisdiction. *Younger* was always intended to be invoked in ‘exceptional’ and ‘extraordinary’ circumstances; yet, over time, given increased federal case load; a statistically proven propensity for less oral argumentation; and such, more and more defendants have sought abstention doctrines in order to avoid engaging in substantive federal matters; even, where important state-federal questions are posed for serious consideration. Again, Plaintiff notes that *Younger* involved a party pursuing a much weaker 1st Amendment (free speech) claim, in an effort to avoid state criminal prosecution. Application of *Younger*, hereto this case, in the Plaintiff’s opinion, is improper; and, perhaps, why this Court, despite Defendant SDDA-Trinh repeatedly bringing it up; as not, addressed *Younger*.

17. Defendant SDDA-Trinh also sought *Younger* abstention in its “kitchen sink” pre-trial Motions to Dismiss as follows: (i) Doc. 11, seeking summary dismissal of the Complaint (Doc. 1)—and which, this Court, does not address *Younger* (Doc. 31) in granting dismissal with leave to amend; and (ii) Doc. 44, seeking summary dismissal of an Amended Complaint (Doc. 37)—and which, this Court, does not address *Younger* (Doc. 66) in granting dismissal with leave to amend. Importantly, “the critical date for purposes of deciding whether abstention principles apply is the date the federal action is filed.” See, e.g., *Kitchens v. Bowen*, 825 F.2d 1337, 1341 (9th Cir.1987) (noting that the question is not whether the state proceedings are still ongoing, but whether they were underway before initiation of the federal proceedings). Here, that was September 14, 2001. Gilbertson appealed to the Oregon Court of Appeals on January 7, 2000; that court’s decision was rendered July 24, 2002 and the state supreme court denied review on October 22, 2002. The appeal is not moot because Gilbertson’s federal action was filed while state proceedings were pending. Except to note that proceedings are deemed on-going for purposes of *Younger* abstention until state appellate review is completed, see *Ohio Civil Rights Comm’n v. Dayton*

1 *Christian Sch., Inc.*, 477 U.S. 619, 629, 106 S.Ct. 2718, 91 L.Ed.2d 512 (1986), we express no opinion on whether
 2 a stay, even if otherwise indicated, remains necessary.” (*Gilbertson v. Albright*, 381 F.3d 965, 973, fn. 4 (9th Cir.
 3 2004)) Plaintiff notes, in his opinion, that *Younger*, has been entirely misconstrued in its development over time;
 4 as, this point has been entirely missed in the development of the *Younger* abstention over time—*Younger*, a much
 5 weaker 1st Amendment claim; seeking to avoid state criminal prosecution, dealt with a party, perhaps likely
 6 knowing it was guilty, moving in federal court, before the respective state moved against it.

7 18. Irrespective, of the relevance of *Younger*, for posterity, Plaintiff, generally has addressed, the four
 8 (4) factors under *Younger*, as follows:

9 (a) a state-initiated proceeding is ongoing. Plaintiff alleges that Defendant SDDA-Trinh believes that
 10 the state-initiated proceeding was completed on June 7, 2018 (Plaintiff’s (defendant therein), Sentencing); and,
 11 therefore, Defendant SDDA-Trinh is, on its own, estopped, rendering, immediately, any and all discussion of
 12 *Younger* by the Defendant, as moot); without prejudice, to the Plaintiff’s opposing position regarding the
 13 underlying proceedings. Further, and in priority, Plaintiff, has shown how 4th Amendment violations (as opposed
 14 to due process 5th and 14th Amendment violations; or the much weaker *Younger* 1st Amendment claim) can be
 15 moved in collateral attack (e.g. this litigation) *immediately* (i.e. this component of *Younger*, is therefore irrelevant).

16 (b) the proceeding implicates important state interests. Non-disputed by the Plaintiff. Plaintiff
 17 contends, however, that Defendant SDDA-Trinh’s actions rise to a criminal level under 18 U.S.C. § 242; not,
 18 addressed for opinion of this Court, herein; but, expressly reserved.

19 (c) the federal plaintiff is not barred from litigating federal constitutional issues in the state
 20 proceeding. Plaintiff exhausted his California State remedies via writ; and is not, in any capacity (distinctly, and
 21 separately, as demonstrated, as well), barred from moving in federal court; under the standing and jurisdiction as
 22 demonstrated. Therefore, this requirement under *Younger*, is also not satisfied. Also, Defendant SDDA-Trinh
 23 contends that “nothing in Plaintiff’s filing indicate he would be barred from litigating constitutional claims in state
 24 court,” yet this is in direct contrast to Defendant SDDA-Trinh noting that the Plaintiff was ruled a vexatious litigant
 25 (in a non-true adversary proceeding (San Diego County, marriage dissolution D555614), in which the cross-parties,
 26 commit several crimes including Fraud, Perjury (see Ca. Fam. Code §§ 2107(d)(1) and (2), and Ca PC § 270)),
 27 which bars him or severely, and unconstitutionally, limits his remedies, and prejudices him (unconstitutionally) in
 28

1 the State of California. Also, again, Plaintiff is not in the Amended Complaint (Doc. 72) requesting that this Court
2 review state court matters (i.e. rulings within the state criminal proceeding).

3 (d) the federal court action would enjoin the proceeding or have the practical effect of doing. Plaintiff
4 is *not* seeking “re-ruling” of the federal court on matters intrinsic to the state criminal court proceedings. Plaintiff
5 with the Priority, and, separately, Secondary Claims, has demonstrated federal and Constitutional standing; in a
6 parallel federal proceeding. The federal case as presented by the Plaintiff does not enjoin. Nor, in Defendant
7 SDDA-Trinh’s filings, has it shown, how such actions by the Plaintiff (absent the prior injunction (Doc. 9, 11, 12,
8 16, 19, 22, 23, 24, 54)) sought (itself “Interposition” and not Enjoinment or Interference, distinct from the matters
9 presently before this Court) specifically seek the federal court to re-rule state court matters—in lieu thereof,
10 Defendant SDDA-Trinh in its MTD (Doc. 76) the Amended Complaint (Doc. 72) merely conclusory seeks
11 abstention under *Younger*, skips any and all facts supporting enjoinment; and moves, straight to supporting case
12 law authority of cases abstaining.

13 19. Plaintiff, in the prior paragraph, without prejudice to the notion that *Younger* is not appropriate,
14 has demonstrated, that *Younger*, does not hold, prima facie (i.e. it fails the test). However, even if this Court
15 someone found that abstention under *Younger* was appropriate (which it is not), *Younger* abstention applies as
16 follows, “federal courts should not dismiss actions where damages are at issue; rather, damages actions should be
17 stayed until the state proceedings are completed...” (*Gilbertson v. Albright*, 381 F.3d 965, 973 (9th Cir. 2004))
18 Also, in *Gilbertson v. Albright*, “a district court may stay but not dismiss an action for damages based on *Younger*
19 abstention, [citing to] *Adam v. Hawaii*, 235 F.3d 1160, 1163 (9th Cir.2000), overruled on other grounds by *Green*,
20 255 F.3d at 1093.”

21 20. Plaintiff has shown that Defendant SDDA-Trinh’s prosecution has been brought in bad faith (e.g.
22 see Claim #6, Doc. 72, pg. 10, ¶ 11(d); as supported, in the facts and argument); and, therefore, *Younger*, also, does
23 not apply; and, any and all equitable relief, is fully available, at the federal level, to the Plaintiff, as sought.

24 21. Plaintiff has demonstrated, that even if *Younger* were either relevant (which it is not), or held
25 (which it does not), this litigation does not directly interfere with the state criminal court matters. In *Gilbertson v.*
26 *Albright*, 381 F.3d 965, 973 (9th Cir. 2004), the 9th Cir., held “that “direct interference” is an additional element or
27 threshold requirement for *Younger* abstention that troubles us now. We indicated in *Green* that the three-factor
28 Middlesex test was triggered only because the plaintiffs there were seeking to interfere directly with the pending

disciplinary proceedings by asking the federal court to enjoin them, and that the Middlesex test is a suitable guide only when the relief sought in federal court would “directly interfere” with ongoing state judicial proceedings. We found confirmation of this view in the emphasis that NOPSI placed on the fact that the mere pendency of state proceedings does not exclude the federal courts. 255 F.3d at 1097 (quoting NOPSI, 491 U.S. at 373, 109 S.Ct. 2506). And we defined an action that would directly interfere as one seeking “to enjoin, declare invalid, or otherwise involve the federal courts in terminating or truncating the state court proceedings.” *Id.* at 1098. We also spoke in terms of relief that “stops that proceeding cold,” *id.* at 1095, and remarked that the “direct interference” element is not met simply by the prospect that the federal court decision may influence the state court outcome through claim or issue preclusion. *Id.* at 1094. In these respects, we believe, our course must be corrected.” By way of parallel, Plaintiff’s claims in the Amended Complaint (Doc. 72) do not, in any uncertain capacity, qualify as direct interference, or, separately enjoinder—they clearly, do not, stop the state proceedings ‘cold’ either.

22. Citing also to *Gilbertson v. Albright* (9th Cir. 2004), “the reasons of policy for deferring to state adjudication are outweighed¹ by the injury flowing from the very bringing of the state proceedings, by the perversion of the very process that is supposed to provide vindication, and by the need for speedy and effective action to protect federal rights. Cf. *Georgia v. Rachel*, 384 U.S. 780.” Plaintiff, notes, that this litigation, is precisely such—where, even if remedy existed at the state level, which it does not, the matters presented and brought forth, far and away, outweigh any potential for state adjudication.

23. Citing also to opinion from *Gilbertson v. Albright* (9th Cir. 2004), “[t]he special circumstances when federal intervention in a state criminal proceeding is permissible are not restricted to bad faith on the part of state officials or the threat of multiple prosecutions. They also exist where, for any reason, the state statute being enforced is unconstitutional on its face. As Mr. Justice Butler, writing for the Court, said in *Terrace v. Thompson*, 263 U.S. 197, 214: One of the jurisdiction-enlarging statutes passed during Reconstruction was the Act of April 20, 1871. 17 [p62] Stat. 13. Beyond its jurisdictional provision that statute, now codified as 42 U.S.C. § 1983 provides: Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory,

¹ Emphasis added.

1 subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to
2 the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the
3 party injured in an action at law, suit in equity, or other proper proceeding for redress. A state law enforcement
4 officer is someone acting under "color of law" even though he may be misusing his authority. *Monroe v. Pape*, 365
5 U.S. 167. And prosecution under a patently unconstitutional statute is a "deprivation of . . . rights, privileges, or
6 immunities secured by the Constitution." "Suit[s] in equity" obviously includes injunctions. [n5] I hold to the view
7 that § 1983 is included in the "expressly authorized" exception to § 2283, [n6] a point not raised or considered in
8 the much-discussed *Douglas v. City of Jeannette*, 319 U.S. 157. There is no more good reason for allowing a
9 general statute dealing with federalism passed at the end of the 18th century to control another statute also dealing
10 with federalism, passed almost 80 years later, than to conclude that the early concepts of federalism were not
11 changed by the Civil War. [p63] That was the view of Judge Will in the *Boyle* case, *Landry v. Daley*, 288 F.Supp.
12 200, 223. In speaking of the Civil War Amendments as "a constitutional revolution in the nature of American
13 federalism," he said: "this revolution, in turn, represents a historical judgment. It emphasizes the overwhelming
14 concern of the Reconstruction Congresses for the protection of the newly won rights of freedmen. By interposing
15 the federal government between the states and their inhabitants, these Congresses sought to avoid the risk of
16 nullification of these rights by the states. With the subsequent passage of the Act of 1871, Congress sought to
17 implement this plan by expanding the federal judicial power. Section 1983 is, therefore, not only an expression of
18 the importance of protecting federal rights from infringement by the states, but also, where necessary, the desire to
19 place the national government between the state and its citizens." Plaintiff's federal civil rights, have egregiously,
20 been violated and infringed by the state in its prosecution of the Plaintiff.

21
22 **D. CONCLUSION**

23 24. Plaintiff has brought forth six (6) FRCP 8 claims; each of, which is movable; and, whereby, if this
24 Court takes one claim; the litigation is advanced forth.

25 25. Defendant SDDA-Trinh in its MTD (Doc. 76), have sought to confuse and inundate the Court;
26 while, separately, not engaging with the Plaintiff out of Court; or on the Plaintiff's facts and factual allegations in
27 the Amended Complaint (Doc. 72), evidencing bad faith.
28

1 26. Plaintiff's facial attack (FRCP 12(b)) has stopped it from a factual attack, in moving matters
2 henceforth to pre-trial in this case.

3 27. Plaintiff has demonstrated, precisely, how *Younger* abstention, does not hold.
4

5 **E. REQUEST FOR RELIEF**

6 28. This Court should deny Defendants' request to dismiss (Doc. 76) the Plaintiff's Amended
7 Complaint (Doc. 72), and, relief, therein.

8 29. In the alternative, if one or more claims are taken by the Court, then liberty in amending any other
9 claims should be freely given (note: Plaintiff was never actually provided an Opinion on its first Amended
10 Complaint (Doc. 32), moving to its Second Amended Complaint (by namesake only) (Doc. 37); without leave of
11 the Court.

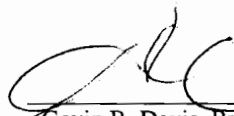
12 30. In the alternative, if none of the Plaintiff's six (6) FRCP 8 compliant claims are taken, then liberty
13 in amending the Complaint should be freely given.

14 31. Plaintiff requests that this Court grant any other relief that it deems appropriate.
15

16 **F. CERTIFICATION AND CLOSING**

17 32. Under FRCP 11, by signing below, I certify to the best of my knowledge, information, and belief
18 that this Filing and accompaniments: (a) is not being presented for an improper purpose, such as to harass, cause
19 unnecessary delay, or needlessly increase the cost of litigation; (b) is supported by existing law; (c) the factual
20 contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a
21 reasonable opportunity for further investigation or discovery; and (d) the complaint otherwise complies with the
22 requirements of Rule 11.
23

24 **DATED:** June 20, 2018

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26 
27 Gavin B. Davis, Pro Per
28

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 County of San Diego
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Attorneys for Defendants San Diego District Attorney and Leonard Trinh

**IN THE UNITED STATES DISTRICT COURT
 FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

GAVIN B. DAVIS,

Plaintiff,

v.

SAN DIEGO DISTRICT ATTORNEY,
 MR. LEONARD TRINH,

Defendants.

No. 17cv0654-JLS(BGS)

**NOTICE OF MOTION AND MOTION
 TO DISMISS THIRD AMENDED
 COMPLAINT (ECF NO. 72)**

Date: July 12, 2018
 Time: 1:00 p.m.
 Dept.: 4D - Courtroom of the
 Honorable Janis L. Sammartino
 Trial Date: None

PLEASE TAKE NOTICE that on July 12, 2018, in courtroom 4D of the Honorable Janis L. Sammartino, United States District Judge, located at 221 W. Broadway, San Diego, California, Defendants San Diego District Attorney and Leonard Trinh, will move to dismiss Plaintiff's Third Amended Complaint pursuant to Federal Rules of Civil Procedure Rules 8(a), 12(b)(1), and 12(b)(6), on grounds that the complaint fails to state claims upon which relief can be granted and fails to sufficiently short and plain statement of the claim.

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///

1 The motion will be based upon this notice, the accompanying memorandum of
2 points and authorities, and upon all papers and pleadings on file in this action.

3 DATED: May 25, 2018

THOMAS E. MONTGOMERY, County Counsel

4 By: s/ RONALD LENERT, Senior Deputy
5 Attorneys for Defendant San Diego District
6 Attorney and Leonard Trinh
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Attorneys for Defendants San Diego District Attorney and Leonard Trinh

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

Defendants.

Date: July 12. 2018
Time: 1:00 p.m.
Dept.: 4D - Courtroom of the
Honorable Janis L. Sammartino
Trial Date: None

I

INTRODUCTION

Plaintiff is upset with the criminal proceedings against him in Superior Court, and in his Third Amended Complaint (“TAC”) pursues his discontent in federal court in a continuing abuse of the legal system and its resources. The intelligible claims against the District Attorney’s Office and Assistant District Attorney Mr. Trinh are all for activities associated with the judicial phase of the criminal process, and as criminal prosecutors Defendants are entitled to absolute immunity. Further, since Plaintiff’s grievances center on criminal matters which are ongoing, the abstention doctrine articulated in *Younger* applies. Those claims which are not intelligible are barred by Rule 8 and Rule 12(b)(1)

and (6), as ruled in the previous complaints, and likely also lack federal jurisdiction. Defendants ask that the TAC be dismissed with prejudice.

II FACTS

In March of 2016, Plaintiff Gavin Davis was declared to be a vexatious litigant by the State of California due to his state court litigation strategies. *See Davis v. Unruh*, 2016 U.S. Dist. LEXIS 102851, at *7 (S.D. Cal. Aug. 3, 2016)). He then began filing actions in federal court, many of which targeted the criminal prosecution against him. In *Davis v. Unruh*, 16cv00897, Plaintiff sued the San Diego County District Attorney's Office upon similar grounds as currently alleged, as well as two Superior Court judges involved in his criminal and family law matters, the Superior Court itself, the San Diego County Public Defender, and a Deputy Public Defender. He also requested an injunction of the criminal matters. Plaintiff's first and amended complaints were dismissed on Rule 8 grounds and the *Younger* abstention doctrine. 2016 U.S. Dist. LEXIS 102851 (S.D. Cal. Aug. 4, 2016). In *Davis v. Fraser*, 17cv00708, Plaintiff argued to recuse the Superior Court Judge presiding in the criminal matters against him, as well as to enjoin the criminal matters. Plaintiff's first and amended complaints were dismissed on Rule 8 grounds and the *Younger* abstention doctrine.

Plaintiff initiated this lawsuit on March 31, 2017. (ECF No. 1.) Two motions to dismiss have been filed and granted. (ECF Nos. 31, 66.) This Court dismissed the Complaint for the second time, with leave to amend, on February 26, 2018. (ECF No. 66.) On May 15, 2018, Plaintiff filed the subject Third Amended Complaint. (ECF No. 72.)

III STANDARD FOR MOTION TO DISMISS

A motion to dismiss under Federal Rule of Civil Procedure 12(b)(6) tests the sufficiency of a complaint. *Navarro v. Block*, 250 F.3d 729, 732 (9th Cir. 2001). Dismissal is warranted under Rule 12(b)(6) where the complaint lacks a cognizable legal

theory. *Robertson v. Dean Witter Reynolds, Inc.*, 749 F.2d 530, 534 (9th Cir. 1984); *see* *Neitzke v. Williams*, 490 U.S. 319, 326, 109 S. Ct. 1827, 104 L. Ed. 2d 338 (1989) (“Rule 12(b)(6) authorizes a court to dismiss a claim on the basis of a dispositive issue of law.”). The complaint must state a cognizable legal theory and sufficient facts in light of Federal Rule of Civil Procedure 8(a)(2), which requires a “short and plain statement of the claim showing that the pleader is entitled to relief.” Although Rule 8 “does not require ‘detailed factual allegations,’ . . . it [does] demand . . . more than an unadorned, the defendant-unlawfully-harmed-me accusation.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (*quoting* *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007)). A plaintiff must plead factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged. Rule 8 “does not unlock the doors of discovery for a plaintiff armed with nothing more than conclusions.” *Ashcroft v. Iqbal*, 556 U.S. 662 (2009).

On a motion to dismiss pursuant to Rule 12(b)(1), the standard to be applied varies according to the nature of the jurisdictional challenge. A motion to dismiss for lack of subject matter jurisdiction may either attack the allegations of jurisdiction contained in the complaint as insufficient on their face to demonstrate the existence of jurisdiction (“facial attack”), or may attack the existence of subject matter jurisdiction in fact (“factual attack”). *Thornhill Publishing Co. v. General Tel. & Elec. Corp.*, 594 F.2d 730, 733 (9th Cir.1979); *Mortensen v. First Fed. Sav. & Loan Ass'n*, 549 F.2d 884, 891 (3d Cir.1977). If the motion constitutes a facial attack, the court must consider the factual allegations of the complaint to be true. *Williamson v. Tucker*, 645 F.2d 404, 412 (5th Cir.1981); *Mortensen*, 549 F.2d at 891. If the motion constitutes a factual attack, however, “no presumptive truthfulness attaches to plaintiff’s allegations, and the existence of disputed material facts will not preclude the trial court from evaluating for itself the merits of jurisdictional claims.” *Thornhill*, 594 F.2d at 733 (*quoting* *Mortensen*, 549 F.2d at 889).

If the court grants a motion to dismiss a complaint, it must then decide whether to grant leave to amend. Leave to amend may be denied if it is clear that the deficiencies of

the complaint cannot be cured by amendment. *Broughton v. Cutter Labs.*, 622 F.2d 458, 460 (9th Cir.1980).

IV

ARGUMENT

A. Absolute immunity bars all of Plaintiff's claims.

All of Plaintiff's claims arise from the prosecution of his criminal charges, and both the federal and state systems grant prosecutors immunity from civil suits arising from their criminal prosecutions. "Claim #1" is brought under 42 U.S.C. § 1983 and alleges a pattern of attempting to remand Plaintiff into custody in a state criminal prosecution. (ECF No. 72, p.9:1-2.) "Claims #2 and #3" are brought under § 1983 for excessive bail requests and a 'beating' while in jail. (ECF No. 72, p.9:4-9.) "Claims #4 and #5" are brought under § 1983 for impaired litigating ability due to criminal charges. (ECF No. 72, p.9:18-22.) "Claim #6" is for malicious prosecution. (ECF No. 72, p.10:5-7.) All of the claims arise from conduct intimately associated with the judicial phase of criminal proceedings. Therefore, Defendant Trinh¹, a state prosecutor, is entitled to absolute quasi-judicial immunity from suit under § 1983. *Imbler v. Pachtman*, 424 U.S. 409, 430-431 (1976)("[The prosecutor's] activities were intimately associated with the judicial phase of the criminal process, and thus were functions to which the reasons for absolute immunity apply with full force. ...in initiating a prosecution and in presenting the State's case, the prosecutor is immune from a civil suit for damages under § 1983.")

Analogously, a California supplemental claim would be barred by state law immunity set forth in Cal. Gov. Code § 821.6; "A public employee is not liable for injury caused by his instituting or prosecuting any judicial or administrative proceeding within the scope of his employment, even if he acts maliciously and without probable cause." Prosecutors are given this immunity as a matter of public policy to avoid the risk that

¹ While it would appear that Plaintiff is no longer naming prior District Attorney Ms. Dumanis or District Attorney Investigator Mr. Grapilon, he goes to lengths to inform the Court that if he can articulate a complaint which is not dismissed, he intends to name them in the future. (ECF No. 72, p.5:1-12, p.35; ECF No. 75, p.26)

1 they would avoid their public duty for fear of the burden of trial and risk of its outcome.
2 In other words, to protect them from exactly the kind of campaign that Plaintiff is
3 engaged in. A criminal defendant who feels aggrieved by a prosecutor's conduct in a
4 criminal prosecution must seek recourse in the criminal proceedings, not in a collateral
5 civil lawsuit against the prosecutor.

6 **B. Abstention is required under *Younger*.**

7 Because all of Plaintiff's complaints revolve around Defendants' actions towards
8 him in an ongoing state court proceeding, this Court is required to abstain from any ruling
9 on such matters. *Younger v. Harris*, 401 U.S. 37 (1971). Abstention, through which a
10 federal court seeks to avoid interference with *ongoing* state court proceedings, "is a
11 jurisprudential doctrine rooted in overlapping principles of equity, comity, and
12 federalism." *San Jose Silicon Valley Chamber of Commerce Political Action Comm. v.*
13 *City of San Jose*, 546 F.3d 1087, 1091-92 (9th Cir. 2008) (footnote omitted). A federal
14 court "must abstain under *Younger* if four requirements are met: (1) a state-initiated
15 proceeding is ongoing; (2) the proceeding implicates important state interests; (3) the
16 federal plaintiff is not barred from litigating federal constitutional issues in the state
17 proceeding; and (4) the federal court action would enjoin the proceeding or have the
18 practical effect of doing so, *i.e.*, would interfere with the state proceeding in a way that
19 *Younger* disapproves." *Id.* at 1092 (citing *Gilbertson v. Albright*, 381 F.3d 965, 978 (9th
20 Cir. 2004) (en banc)).

21 Here, all four abstention requirements are met: (1) two state-initiated criminal
22 proceedings are ongoing against Plaintiff; (2) marital dissolution and custody proceedings
23 in the Superior Court implicate important state interests such as domestic and family
24 relations (*H.C. ex rel. Gordon v. Koppel*, 203 F.3d 610, 613 (9th Cir. 2000)), the state has
25 an implicit interest in prosecuting felony criminal allegations, and a state court's ability to
26 enforce a bench warrant is an important state interest; (3) nothing in Plaintiff's filing
27 indicates he would be barred from litigating his claims in state court; and (4) Plaintiff's
28 desire to enjoin the criminal proceedings is clear; in the TAC he states that because he is

pursuing the current lawsuit, Defendant Trinh will now be conflicted from prosecuting him². He has also specifically filed a motion for a preliminary injunction earlier in this litigation, asking that Defendant District Attorney's Office be restrained from seeking his custody. (ECF No. 9, denied by this Court in ECF No. 19.) Plaintiff appealed this denial to the Ninth Circuit, where it was again denied based the federal court's lack of jurisdiction to issue a writ of mandamus to a state court. (ECF No. 54.) Plaintiff is also engaged in pursuing an effective injunction through several Habeas Writs (ECF Nos. 61, 75.) All of the requirements upon which *Younger* abstention is conditioned are met in this case, and abstention should be granted.

C. Allegations beyond prosecutorial conduct are insufficiently clear.

To the extent Plaintiff seeks to allege liabilities that are not intimately associated with the judicial phase of the criminal process, his grievances are not sufficiently pleaded and fail the standard of Rule 8. "Rule 8(a) requires parties to make their pleadings straightforward, so that judges and adverse parties need not try to fish a gold coin from a bucket of mud. Federal judges have better things to do..." *United States ex rel. Garst v. Lockheed-Martin Corp.*, 328 F.3d 374, 378 (7th Cir. 2003). A complaint may be properly dismissed when it fails to provide a defendant fair notice of the wrongs allegedly committed. *McHenry v. Renne*, 84 F.3d 1172, 1178-80 (9th Cir. 1996) (upholding Rule 8(a) dismissal of complaint that was "argumentative, prolix, replete with redundancy, and largely irrelevant"); *Cafasso, United States ex rel. v. General Dynamics C4 Systems, Inc.*, 637 F.3d 1047, 1059 (9th Cir. 2011) (citing cases upholding Rule 8 dismissals where pleadings were "verbose," "confusing," "distracting, ambiguous, and unintelligible," and "highly repetitious").

Plaintiff has demonstrated multiple times that he cannot properly articulate legal claims against Defendants. In *Davis v. Unruh* he filed two complaints against

² In the TAC, Plaintiff asserts "In addition to being vindictive,... Defendant Leonard is barred from prosecuting the Plaintiff, as 'a prosecutor, but not their employer, shall not try a defendant with whom he is in civil litigation with.'" (ECF No. 72, p.10:1-2 (citation omitted))

Defendants on similar grounds, both of which were dismissed on Rule 8 grounds and *Rooker-Feldman* or *Younger* abstention deficiencies. 16cv00897. The second dismissal was upheld by the Ninth Circuit. *Davis v. Unruh*, 2017 U.S. App LEXIS 3218. In this case Plaintiff has previously filed two complaints, both of which were dismissed on Rule 8 grounds. One dismissal was also upheld by the Ninth Circuit. (ECF No. 65.) It has become clear that Plaintiff cannot cure the deficiencies to his suit and it should be dismissed without leave to amend. *Cato v. United States*, 70 F.3d 1103, 1106 (9th Cir. 1995).

D. Plaintiff is abusing the legal process.

Plaintiff has consistently abused the legal process in attempts to waylay his criminal charges or personally conflict any judicial agent involved in the criminal charges against him. The TAC should be dismissed with prejudice or in accordance with Rule 11 for causing harassment, undue delay, and needlessly increasing the cost of litigation.

In *Davis v. Fraser*, Plaintiff sued to recuse the Superior Court Judge presiding in the criminal matters against him, and requested to enjoin the proceedings. 17cv00708. The defendants argued in their motion to dismiss; “Plainly, the proper means for Plaintiff to challenge Judge Fraser’s rulings would be for him to appeal to, or seek writ relief from, the California Court of Appeal. Instead, Plaintiff improperly filed this action, seeking damages and an order from this Court staying his pending state criminal cases.” The complaint was dismissed with prejudice on grounds of judicial immunity. Plaintiff appealed several District Court rulings that he was dissatisfied with the Ninth Circuit, which included an appeal of the dismissal and a motion arguing his bail was set illegally high. The Ninth Circuit denied all Plaintiff’s motions.

In *Davis v. Unruh*, Plaintiff sued to recuse two Superior Court judges involved in his criminal and family law matters, as well as the Superior Court itself, three attorneys, a local law firm, the San Diego Police Department, the San Diego District Attorney, the San Diego County Public Defender, and a Deputy Public Defender. 16cv00897. He also attempted to enjoin the criminal matters against him and requested a restraining order

1 against one of the judges. The complaint was dismissed with prejudice. Plaintiff
2 appealed several District Court rulings to the Ninth Circuit, which included a motion to
3 prevent attempts to take him into custody, a notice that the District Attorney was
4 committing perjury, an injunction against the criminal proceedings, appeal of the
5 dismissal, and a motion arguing his bail was set illegally high. The Ninth Circuit denied
6 all of Plaintiff's motions.

7
8 **V**

9 **CONCLUSION**

10 This is Plaintiff's fifth attempt in the course of two cases to bring suit against the
11 San Diego District Attorney's Office and Assistant District Attorney Trinh in a collateral
12 attack on Plaintiff's criminal prosecution. His complaint should be dismissed based on
13 immunity, the abstention doctrine, or Rules 8(a) and 12(b)(1) and (6). Further,
14 Defendants request the TAC be dismissed *without* leave to amend.

15 DATED: May 25, 2018

THOMAS E. MONTGOMERY, County Counsel

16 By: s/ RONALD LENERT, Senior Deputy
17 Attorneys for Defendants San Diego District
18 Attorney and Leonard Trinh
19 E-mail: ronald.lenert@sdcounty.ca.gov
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FILED

May 15 2018

CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
BY s/ markl DEPUTY

NUNC PRO TUNC

5/15/2018

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA

GAVIN B. DAVIS,

Plaintiff,

vs.

SAN DIEGO COUNTY DISTRICT ATTORNEY
(SDDA),

LEONARD N. TRINH

Defendants.

Case No.: **17-cv-00654-JLS-BGS****AMENDED COMPLAINT (TAC)****JURY DEMAND**

Date:

Time:

Courtroom: 4D, Hon. Janis L. Sammartino

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A. PARTIES

1 1. The main parties to this proceeding, have remained, the Plaintiff, as cited below, and the
2 San Diego County District Attorney's Office and employees thereof, as cited below. The Plaintiff,
3 for posterity, notes with prejudice, that prior parties (e.g. the San Diego Police Department
4 ("SDPD") and employees thereof) previously cited as Defendants (e.g. Complaint (Doc. 1); Second
5 Amended Complaint (SAC, Doc. 37), have merely been "tolled" by the Plaintiff, with prejudice
6 towards the preservation of such claims. At the Court's direction (Doc. 66, pg. 6, ln 3-6), the
7 Plaintiff continues seeking to simplify the parties and claims before the Court, without prejudice to
8 foregone claims in this filing: the Third Amended Complaint ("TAC"). In good faith, other parties
9 that may be added via Joinder, whether Permissive, Compulsory, or otherwise, (FRCP 19 – 22), such
10 as the SDPD, are Noticed as cited in the Certificates of Service, with prejudice thereto.

11 2. **Plaintiff, Mr. Gavin B. Davis** (the "Plaintiff" or "Mr. Davis"), is an individual that is a
12 citizen of the United States of America. He holds a Bachelor of Science degree from Cornell
13 University; has completed approximately Four Billion Dollars (US\$4,000,000,000) of complex
14 corporate finance and real estate transactions; is a published author; and is an industry speaker,
15 including before such law firms as DLA Piper. Service of process may be completed to the address
16 on the cover of the filing for the Plaintiff.

17 3. **Defendant, San Diego County District Attorney** ("SDDA" or "SDCDA") is a San
18 Diego municipal entity existing within the District that may be served in care of interim District
19 Attorney, Ms. Summer S. Stephan (SBN# 129323), whom may be served via lead attorney of record,
20 Mr. Ronald C. Lenert (SBN# 277434), County of San Diego Office of County Counsel, at 1600
21 Pacific Highway, Room 355, San Diego, CA 92101-2469.

22 4. **Defendant, Mr. Leonard Nygugen Trinh** ("Defendant Leonard") is a citizen of the
23 State of California, is a Deputy District Attorney ("DDA") with Defendant San Diego District
24 Attorney ("SDDA"), previously filed as a as a Jane Doe defendant (Doc. 1). Defendant Leonard
25
26
27
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(SBN# 236873), may be served via lead attorney of record, Mr. Ronald C. Lenert (SBN# 277434), County of San Diego Office of County Counsel, at 1600 Pacific Highway, Room 355, San Diego, CA 92101-2469.

B. JURISDICTION

5. The Court has proper jurisdiction over the lawsuit as:

(a) Under 42 U.S.C. § 1983, a priori, Civil action(s) for deprivation of rights, as alleged herein;

(i) whereby, 4th Amendment, and separately, 8th Amendment, violations are able to be moved under such statute, and thereby, providing each of federal statutory standing, and Constitutional standing, immediately on collateral attack to U.S. state criminal proceedings (e.g. [*State of California*] v. Gavin B. Davis, San Diego County, SCD266332), without such state proceedings each of being: (a) determined; and (b) favorably determined in such defendant's favor before moving on civil cross-action, as is required of certain other civil rights violations. ("cases concerning 4th Amendment claims brought under 42 U.S.C. § 1983 ... have recognized that there is no favorable-termination for a 4th Amendment false imprisonment claim." (See *Wallace v. Kato*, 549 U.S. at 389-393 (2007), "an arrestee can file such claim while his prosecution is pending"))

(ii) whereby, the Due Process clauses of the 5th and 14th Amendment violations are able to be moved under such statute, and thereby, provide each of federal statutory standing, and supplemental jurisdiction; which may be argued in writ or orally, if and as required, as well as additional Constitutional standing thereunder; and further, as cited further herein; *Younger* abstention doctrine, or favorable-termination of criminal proceedings are each not relevant in this litigation;

(b) under 28 U.S.C. § 1331, the district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States;

(c) under 28 U.S.C. § 1443, in which civil actions or criminal prosecutions, commenced in a State court may be removed by the defendant to the district court of the United States for the district and division embracing the place wherein it is pending:

(i) against any person who is denied or cannot enforce in the courts of such State a right under any law providing for the equal civil rights of citizens of the United States, or of all persons within the jurisdiction thereof; or,

(ii) for any act under color of authority derived from any law providing for equal rights, or for refusing to do any act on the ground that it would be inconsistent with such law.

6. A party bringing a Civil Rights action under 42 U.S.C. § 1983 is not required to exhaust state remedies before filing suit in federal court, because such a requirement would be inconsistent with congressional intent in passing civil rights legislation. (*Patsy v. Board of Regents*, 457 U.S. 496, 102 S. Ct. 2557, 73 L. Ed. 2d 172 (1982))

C. VENUE

7. Venue is proper in the United States District Court for the Southern District of California under 28 U.S.C. §§ 1391(b)(2), in which, a substantial part of the events or omissions giving rise to the claim occurred, or a substantial part of property that is the subject of the action is situated.

D. CONDITIONS PRECEDENT

8. All conditions precedent have been formed or have occurred, as is sufficient and generally alleged under FRCP 9(c). This filing is also FRCP 11 compliant.

9. While multiplication of cases within the federal system or across the federal and state systems is a common characteristic of complex litigation, and could arise in the future, such does not now, as no matters herein have been litigated, or ruled upon, of this complaint, on its own accord and face. This litigation, is, somewhat complex, though this TAC seeks to simplify the case from the

SAC (Doc. 37) as requested and inferred by the Court's Order (Doc. 66); though, in no uncertain manner is this litigation prolix, or, separately, meritless, in the least.

E. INTRODUCTION, FRCP 8 STATEMENT

10. DDA Mr. Leonard Nguyen Trinh ("Defendant Leonard") of Defendant San Diego District Attorney ("SDDA"), is Vindictively and Maliciously Prosecuting the Plaintiff (e.g. *[State of California] v. Gavin B. Davis*, San Diego County, SCD266332), and in doing so, in part, has remanded, or attempted to remand the Plaintiff to the custody of the San Diego County Sheriff's Department ("SDCSD"), on (a) unreasonable; (b) off-schedule (i.e. Superior Court of California, County of San Diego, Bail Schedule); (c) Excessive; (d) highly restrictive; (e) non-flexible; and (f) Punitive; terms and conditions of bail, in which Defendant Leonard is the lead prosecutor for Defendant SDDA. In doing so, in order to gain a tactical upper-hand in the prosecution of the Plaintiff (defendant therein), Defendant Leonard has, a priori, violated the Plaintiff's 4th Amendment rights, prima facie, and right to pre-trial liberty; his 8th Amendment rights, secondarily, as the Plaintiff was beaten (Ca PC § 243(A), October 20, 2016) during one period of unlawful pre-trial detention (SCD266332), and could have died from such assault. Further, during these periods in which the Plaintiff has been incarcerated, pre-trial, unlawfully; his rights of due process under each of the 5th and 14th Amendments have been violated as a direct result of Defendant Leonard purposefully attempting to thwart cross-action (e.g. this case), drain the Plaintiff's financial resources necessary to retain competent counsel in criminal defense and for other necessary purposes; and subjugating the Plaintiff's time, resources, and procedural due process rights, prima facie.

11. As a result, the Plaintiff has moved with these claims herein, where each claim below, is itself, FRCP 8 compliant:

(a) **Claim #1:** under 42 U.S.C. § 1983, Deprivation of Civil Rights, by the Plaintiff against Defendant Leonard, and, separately, his employer, Defendant SDDA, for 4th Amendment violations

related to Defendant Leonard's clear pattern of attempting to remand the Plaintiff (defendant therein) to custody, pre-trial, in his prosecution (SCD2666332) of the Plaintiff, on behalf of Defendant SDDA, violating the Plaintiff's liberty, and right to pre-trial liberty.

(b) **Claims #2 and #3:** under 42 U.S.C. § 1983, Deprivation of Civil Rights, by the Plaintiff against Defendant Leonard, and, separately, his employer, Defendant SDDA, for 8th Amendment violations related to: (i) Defendant Leonard's multiple requests at bail either: (a) entirely without liberty (i.e. no bail); or (b) with Excessive bail; and (ii) while the Plaintiff was detained on October 20, 2016, the Plaintiff suffered a beating, which the [SDCSD] formally reported (San Diego Sheriff Case No.: 16153663) as Ca PC § 243(A), Battery on a Person (misdemeanor); though whereby, the Plaintiff holds, the beating to have been so bad, as to the fact that he could have reasonably died—necessitating the timely subpoena of the CTT Video Evidence of the beating on the Plaintiff cited on the Report (16153663.1) as preserved on CD-ROM in the San Diego Central Jail Evidence Locker, being unlawfully withheld. Plaintiff holds Defendant Leonard and Defendant SDDA, given such unlawful detention, as directly liable for the Battery, and has moved under the 8th Amendment for this as it constitutes cruel and unusual punishment.

(c) **Claims #4 and #5:** under 42 U.S.C. § 1983, Deprivation of Civil Rights, by the Plaintiff against Defendant Leonard, and, separately, his employer, Defendant SDDA, for 5th and 14th Amendment violations related to his pre-trial detentions based on the charges they have brought. Plaintiff has a constitutional right to timely access the courts, and to impair, in any capacity, especially in light of valid collateral attack while the Parties are in cross-cation, is a violation of due process and equal protection guarantees of the 5th and 14th Amendments to the United States Constitution, as well as Art. I, §15 of the California Constitution. (pre-trial detention shall not impair ongoing claims and cross-actions, *Cody v. Weber*, 256 F.3d 764 (8th Cir. 2001).; defendants (or pre-trial detainees) have a right to timely access the courts (*Trujillo v. Williams*, 465 F.3d 1210 (10th Cir., 2006); *Marange v. Fontenot*, 879 F.Supp. 679 (E.D. Tex. 1995)) In addition to being

Vindictive, and engaging in a Malicious Prosecution of the Plaintiff (defendant SCD266332), Defendant Leonard is barred from prosecuting the Plaintiff, as “a prosecutor, but not their employer, shall not try a defendant with whom he is in civil litigation with.” (*Ganger v. Peyton*, 379 F.2d 709, (4th Cir. 1967); *Sinclair v. State*, 278 Md. 243 (363 A.2d 468], (1976))

(d) **Claim #6:** under 42 U.S.C. § 1983, Deprivation of Civil Rights, by the Plaintiff against Defendant Leonard, and, separately, his employer, Defendant SDDA for separately, Vindictive and Malicious Prosecution. Amongst many actions evidencing Vindictiveness, and, separately, Malice, Defendant SDDA, has already dropped, pre-trial, its most serious charge, Ca PC § 422, threat of immediate serious bodily (felony). (*Becker v. Kroll*, 494 F.3d 904 (10th Cir. 2007) "We have repeatedly recognized in this circuit that, at least prior to trial, the relevant constitutional underpinning for a claim of malicious prosecution under [Section 1983] must be 'the Fourth Amendment.) Plaintiff notes that, irrespective of whether a claim of Malicious Prosecution falls under the 4th Amendment or the due process clause of the 5th and 14th Amendments, it is a valid 42 U.S.C. § 1983 action, such as pursued herein.

12. Even if the Plaintiff's claims seem unlikely or improbable, the facts must be accepted as true for reliance purposes or purposes of ruling on an action. (*Del E. Webb Corp. v. Structural Materials*, 123 Cal.App.3d 593, 604, (1981)) Furthermore, the Plaintiff's ability to prove the allegations is also irrelevant. (*Committee on Children's Television, Inc. v. General Foods Corp.*, 35 Cal.3d 197, 213-4, (1983))

F. STATEMENT OF FACTS

CLAIM #1: Defendant Leonard, of Defendant SDDA, repeatedly attempts to remand the Plaintiff to custody, in the process violating his pre-trial right of liberty, in violation of the 4th Amendment, moved under 42 U.S.C. § 1983

13. **Arrest #1 (March 2016).** In March 2016, the Plaintiff was arrested by the SDPD, outside his Recorded Homestead with San Diego County, and the SDDP entered his Homestead without legal right (e.g a bona fide Writ of Possession, as legally required), in violation of the 4th Amendment. Plaintiff posted bail of Five Thousand Dollars (\$5,000). Defendant SDDA brought case no: SCD266332, *[State of California] v. Gavin B. Davis*, against the Plaintiff. Plaintiff has plead, and continues to plead, “Not Guilty” to all such false charges.

14. **Arrest #2 (June 2016).** In June 2016, the Plaintiff was arrested by plain clothes detectives immediately preceding a financial hearing in the marriage dissolution (San Diego, D555614, a non-true adversary proceeding under Ca Fam. Code §§ 2107(d)(1) and (2), for Perjury and Fraud (willing suppression of assets), by the same false accusers). Plaintiff was released on Fifty Thousand Dollars (\$50,000) of bail for a Ca PC § 422 (felony) for case no. SCD267655 (later consolidated into SCD266332). This charge, the most serious charge, and a false charge, was entirely dropped (grounds for: a reduction in bail; and proof of Vindictiveness and Malicious Prosecution) by Defendant SDDA and Defendant Leonard in August 2017.

15. **Custody without Bail #1 (October 2016).** On October 5, 2016, Defendant Leonard requested that the Plaintiff (defendant therein) be remanded to custody without¹ bail in MH112708, a special civil hearing inside of a criminal hearing (SDC266332), before Judge Steven Stone. Judge Stone exonerated the \$5,000 bond that the Plaintiff had been appearing on at every (bar none) court date and remanded the Plaintiff (defendant therein) to custody without bail pending a 1368 Competency Hearing, an ultra-low threshold, which was never of legitimate question.

16. Further, on October 5, 2016, there was no change in circumstances (e.g. no new charges by Defendant SDDA against the Plaintiff), that would have been the basis for potentially suggesting

¹ Emphasis added.

for consideration changes in the terms and conditions of bail (the Plaintiff was at liberty, on a Five Thousand Dollar (\$5,000) bond on such day.

17. Also, on October 5, 2016, for dramatic purposes intending to remand the Plaintiff to custody, Defendant Leonard, produced the false accuser in SCD266332, Ms. Lindsay A. Unruh (ex-wife of the Plaintiff, whom he has known since high school and whose grandfathers also knew each other as members of organized crime in the Midwest, living in a town of less than two thousand people). Yet, at the same time, Defendant Leonard, on such day before the court, specifically indicates that his concern is that he has emailed Ms. Unruh in violation of a protective order (deemed fraudulent, as an abuse of court process), but also acknowledging before the court on record that there was “nothing threatening” (*see* Transcript of October 5, 2016, in MH112708) about the emails. Indeed, the subject emails are not love overtures, or threats; the emails are pragmatic, generally regarding discovery requests for suppressed assets (Ms. Unruh is a multi-millionaire), constituting actual crimes of Actual Fraud, Fraudulent Deceit and Actual Deceit, and actionable under Ca. Fam. Code §§ 2107(d)(1) and (2) in the marriage dissolution (D555614) of these two parties. To iterate, Defendant Leonard, on record: (a) produces a witness for dramatic purposes; (b) adds no new charges (i.e. change in the circumstances) against the Plaintiff by the State of California; and (c) readily admits that the emails are “non-threatening”. These are not actions that constitute someone on bail for Five Thousand Dollars (\$5,000) being remanded without bail—such, as happened, is a 4th Amendment violation against the Plaintiff.

18. **Battery on the Plaintiff as a Result of a No-Bail Custody for a Sham Proceeding.**

During this period of unlawful pre-trial detention from October 5, 2016 to November 2, 2016, the Plaintiff’s 4th Amendment rights were violated, *prima facie*. The Plaintiff had, leading up to the *ex parte* hearing on October 5, 2016 (in MH112708, a special civil hearing inside of a criminal proceeding (SCD266332)), evidenced competency to stand trial (i.e. the sole legal purpose of a 1368 Hearing and examination; itself an ultra-low threshold nearing mental retardation) in literally

thousands of discrete ways (e.g. feeding himself; bathing himself; shaving; putting on a coat and tie; utilizing everyday services in and around San Diego county; etc.); rendering, in the process, MH112708, a Sham Proceeding.

19. On October 18, 2016, while detained, pre-trial, in the custody of the San Diego Sheriff's Department, the Plaintiff was transferred from George Bailey Donovan Facility ("GBDF" in Otay Mesa) to San Diego Central Jail ("SDCJ") while detained. The Plaintiff presumed that he his request for access to a law library had been granted by the SDCSD, and such was the purpose of being transferred from GBDF to SDCJ.

20. On the morning of October 19, 2016, the Plaintiff was abruptly awoken, and told that he had a professional visitor (note: which most commonly includes attorneys, attorney services and other non-social visits), at which point, the Plaintiff knew that his 1368 Examiner was at SDCJ. At no time did SDCSD, or the Plaintiff's attorney of record in SCD266332, at that time (Ms. Victoria Ramirez, Public Defender, SBN# 226540), despite having moved via *Faretta* Motion, a priori, for her removal in favor of self-representation for her requesting (alleged to be in a quid pro quo capacity with Defendant Leonard) the 1368 Examination in the first place; and whereby the *Faretta* Motion, was tabled given the suspension of all criminal proceedings while a 1368 examination has been ordered, let the Plaintiff know the date, time and place of the examination.

21. **Material Comments from the 1368 Report in favor of the Plaintiff.** Nevertheless, the Plaintiff passed the 1368 Examination with flying colors,' as could have been reasonably inferred to literally almost anyone who had borne witness to the Plaintiff in the days preceding custody on October 5, 2016; and during custody from October 5, 2016 to November 2, 2016. In the Psychologist's Report², for evidentiary purposes, supporting the notion that the evaluation, itself, was never needed, and such was a Sham Proceeding, it notes:

² Plaintiff's, "PSYCHOLOGICAL EVALUATION" from October 19, 2016, is PRIVILEGED, CONFIDENTIAL INFORMATION; and any citations, herein, are done without

(a) “It became quite clear from his initiation of the conversation that he was extremely well versed in many different legal issues citing both the law and the principle of his legal concerns.” (pg 2, ¶ 3);

(b) “Throughout the evaluation process, [Plaintiff] was engaging. He presents as a very bright, certainly well above the average range and possibly into superior range. He is knowledgeable and speaks knowingly regarding many legal issues and does so without notes or any apparent difficulty in memory.” (pg 3, ¶ 2)

(c) “[Plaintiff’s] mental status throughout the examination was well oriented to person, place, and time. His speech was linear, direct, well-organized and surprisingly his memory was excellent for significant details of his past.” (pg 3, ¶ 3)

(d) “In process of interaction with [Plaintiff], there was no evidence whatsoever of hallucinations or any type of mental distress.” (pg 3, ¶ 4)

(e) “[Plaintiff] presented in an appropriate fashion and spoke in a gentleman like manner and thanked the examiner for his time and effort indicating that he was attempting to obtain a new attorney and have his current attorney, Ms. Ramirez replaced.” (pg 3, ¶ 6) Of note, immediately subsequent to the Plaintiff letting Ms. Ramirez know of such intention to replace her in [June 2016], she first, without discussion, requested the 1368 Evaluation by the court (i.e. Ms. Ramirez was the reactionary; not the Plaintiff)

(f) “Does the defendant [(Plaintiff herein)] suffer from a mental illness? At the present time, [Plaintiff] offers no evidence that he suffers from a mental illness such as a psychotic disorder. There are clearly no indicators of hallucinations and to the best of the undersigned's ability, there is no current evidence of delusion that can be identified.” (pg 3, ¶ 8)

waiver of any patient-physician confidentiality; at the Plaintiff’s sole, unilateral, instance-specific discretion. No waiver of HIPAA.

(g) “Is the defendant [(Plaintiff herein)] able to understand the nature of the criminal procedure? It is clearly beyond a doubt that [Plaintiff] is well aware of the criminal proceeding. He understands various aspects of the law very well and he is able to quote the various statutes and orders with little difficulty.” (pg. 3, ¶ 9)

(h) “Is the defendant [(Plaintiff herein)] able to assist counsel in a rational manner? The undersigned has little doubt that [Plaintiff] is able to assist counsel should he choose. At the present time, [Plaintiff] disputes whether Ms. Ramirez is his attorney and indicates that he has requested that she be replaced. The undersigned feels that [Plaintiff] is certainly capable of assisting counsel.” (pg. 4, ¶ 1)

(i) Psychologist’s Impression: “Adjustment disorder of adult with mixed features, anxiety and depression due to current incarceration and legal circumstances.” (pg. 4, ¶ 6) Here, the psychologist’s impression directly supports actual injury (e.g. mental pain and anguish) to the Plaintiff stemming from his pre-trial detention, as alleged.

(j) “[Plaintiff] does not present as a danger due to being aggressive, assaultive or predatory at the present time.” (pg. 5, ¶ 4)

As indicated, the Plaintiff, in SCD266332 (or otherwise), has never, not a single time, not been competent (an ultra-low threshold) to stand trial, prima facie.

22. **Excessive Bail Request of Defendants (November 2016).** On November 2, 2016, in MH112708, Defendant Leonard requested bail of Two Hundred Thousand Dollars (\$200,0000), or forty times (40x) the amount of prior bail in SCD266332, which the Plaintiff holds as, each of: (a) unreasonable; (b) off bail schedule; (c) Excessive; (d) Punitive; (e) Malicious; and (f) Vindictive. Bail was set at five percent (5%) of Defendant Leonard’s request, or Ten Thousand Dollars (\$10,000), providing evidentiary support by the California State Judge (Shore) on such day clearly in favor of the Plaintiff’s claim. The statistical discrepancy, itself, is noteworthy (i.e. the level at which Defendant Leonard requests bail be fixed, and the actual fixing of bail).

23. On November 3, 2016, the Plaintiff (defendant therein); successfully moved in SCD266332, with his self-drafted *Faretta* Motion (i.e. not form State of California document; which was superseded as cited in the *Faretta* Motion). The Plaintiff also entered SCD267655 (where a CA PC § 422, based on partial, false, and/or misleading statements by the Plaintiff's ex-father-in-law, Mr. John Gregory Unruh (Henderson, Nevada), was charged—and in August 2017, entirely dropped by Defendant SDDA, pre-trial, itself, evidentiary) Pro Per; which later become consolidated into SCD266332.

24. In mid-November, the Plaintiff retained criminal defense attorney, Mr. Patrick J. Hennessy, Jr. (SBN# 47993), for SCD266332 and SCD267655. Mr. Hennessy appeared on November 12, 2016 and November 14, 2016, where a bind-over for approximately ten (10) weeks until January 27, 2017 was ordered.

25. On January 27, 2017, before the Hon. Michael Groch (Dept. 31, San Diego Central), Mr. Hennessy withdrew in SCD266332 and SCD267655, citing a conflict of interest, without disclosing such to the Plaintiff or the court, and against the oral objections on record (see, separately, Minutes and Transcript) of the Plaintiff (defendant therein). In such unilateral withdraw, against the Plaintiff (defendant therein), Mr. Hennessy was in violation of, separately, C.C.P. § 284, and Ca. Rules of Court 3.1362 (a), (c), (e), and otherwise.

26. **Defendants Request Remand Plaintiff to Custody with No Bail (January 2017).** Thereafter, on January 27, 2017, whereby under C.C.P. § 284, and Ca. Rules of Court 3.1362, the Plaintiff was entitled to Notice, Service of Process and time, yet, SCD266332 and SCD267655, continued on such day, with the Plaintiff, moving pro per in his self-defense. As a result of such, despite no changes in the underlying charges or other potential cause, Defendant Leonard, again requested that the Plaintiff (therein), himself not having the benefit of counsel on such day, be remanded to custody without bail. The court took an unplanned recess and held an afternoon session thereafter on the specific matter. At the conclusion of the afternoon session, Judge Groch concluded

that the Plaintiff (defendant therein) would not be remanded to custody on such day; and separately, that there would be no changes in the terms and conditions of bail. Again, consider the extremities therein, in light of the Plaintiff's allegation of Defendant Leonard acting Vindictively: on one hand, Defendant Leonard requests that the Plaintiff (defendant therein) be remanded to custody without bail, similar to the request for a forty times (40x) increase in bail that Defendant Leonard made on November 2, 2016; relative to the court's decision, on that day, January 27, 2017, in making no changes to the terms and conditions of bail for the Plaintiff (defendant in SCD266332)—these are not small discrepancies, these are discrepancies, so large and so egregious to, beyond doubt, raise the prospect of the “mere appearance” (i.e. the legal standard for grounds for disqualification in such proceeding) of Vindictiveness on Defendant Leonard's part in seeking excessive, off-schedule, unreasonable, punitive and otherwise, for the terms and conditions of bail.

27. Plaintiff (defendant therein) represented himself from January 27, 2017, until such time as appearing in SCD266632 in April 2017, and requesting a continuance to obtain counsel (a fundamental and basic civil right under the 6th Amendment), which was unlawfully denied (Hon. Jeffrey F. Fraser). The Plaintiff, in good faith, thereafter: (a) filed a Motion to Waive Conflicts relating to his prior retention of criminal defense attorney, Mr. Patrick J. Hennessy, Jr., in so seeking counsel; (b) filed a Motion to Appoint Counsel on April 14, 2017 (Dept. 11), as conditionally granted on January 27, 2017 (Dept. 31, Hon. M. Groch) from the Office of Appointed Counsel (“OAC”); and (c) filed a Notice of Availability with respect to, “[Plaintiff (defendant therein)] is not available for court hearings [SCD266332 / SCD267655] until he has the assistance of counsel [i.e. Good Cause, and legal right] and for other reasons necessitating for him not to be in San Diego County during the balance of April 2017” ([*State of California v. Gavin B. Davis*], SCD266332 / SCD267655, “Notice of Availability”, pg 3, ¶ 3, (April 14, 2017))

28. **Excessive Bail after requesting the right to an Attorney.** Plaintiff missed his first Noticed court appearance on April 17, 2017, and Judge Jeffrey F. Fraser issued two bench warrants

1 on such day, Punitive increasing bail in SCD266332 from Ten Thousand Dollars (\$10,000) to Fifty
2 Thousand Dollars (\$50,000) at the request of Defendant Leonard; and increasing bail in SCD267655
3 from Fifty Thousand Dollars (\$50,000) to One Hundred Thousand Dollars (\$100,000) at the request
4 of Defendant Leonard. A priori, Plaintiff has a right to the assistance of counsel (i.e. 6th
5 Amendment), and was clearly attempting to retain counsel.

6 29. A defendant who is not advised of the consequences and penalties of violating the
7 conditions of release and penalties of violating the conditions of release and who fails to appear in
8 court cannot be found to have “willfully” failed to do so. (*People v. Jenkins*, 146 CA3d 22, 27, 193
9 CR 854 (1983)) As the Plaintiff (defendant therein), was represented pro per in April 2017, while
10 actively, prima facie, seeking criminal defense counsel (SCD266332 / SCD267655), a civil right
11 under the 6th Amendment of the U.S. Constitution; and was engaged with the process of the law,
12 providing all parties information on how to reach him and his availability as to court (SCD266332 /
13 SCD267655), until such time as an attorney was attached, no one advised him of the consequences
14 and penalties of missing court—therefore, it cannot be claimed that he “willfully” failed to do so—
15 was he evading the court process or highly engaged with it, speaking rhetorically.

16 30. **Arrest #3 (May 2017).** Plaintiff traveled to Burlington, Vermont, for business
17 purposes (note: Plaintiff closed nearly \$20 Million of commercial real estate transactions in Vermont
18 in 2017), in April 2017, and was apprehended there by the U.S. Marshals in May 2017 on the bench
19 warrants. Defendant Leonard and Defendant SDDA aggressively sought extradition; however, it was
20 vitally important to the Plaintiff to continue evidencing each of good (perhaps great) faith, and that
21 he was engaged in the process of the law and not evading it; so the Plaintiff, posted One Hundred
22 Thousand Dollars (\$100,000) of bail in Chittenden County, Vermont; Notified the US Marshals of
23 his travel plans (since he was traveling from Vermont through several states to return to California
24 over the course of aa few days, and could, in theory, easily be apprehended again in any other state,
25 once out of Vermont). Plaintiff, thereafter, made an appearance, at liberty, in Chittenden County,
26
27
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1 before flying back to California to resume criminal proceedings. Plaintiff was able to retain
2 professional law firm, Ronis & Ronis (San Diego) in his criminal defense against the State of
3 California and the Defendants.

4 31. Prior to appearing in California, Plaintiff was required to post an additional Fifty
5 Thousand Dollars (\$50,000) of bail for SCD2666332 (defendant therein), which he did prior to
6 arrival in California.

7 32. **Excessive Bail by Defendants (July 2017)**. At court (SCD266332 / SCD267655) on the
8 afternoon of Friday, July 7, 2017, where the Plaintiff was now represented by Mr. Jason A. Ronis
9 (SBN# 229628) of Ronis & Ronis; Defendant Leonard, despite Plaintiff, having now posted One
10 Hundred Fifty Thousand Dollars (\$150,000) of combined bail within approximately one week, and
11 having flown himself at liberty back to California, once again requested, yet more bail before the
12 court, seeking One Hundred Thousand Dollars (\$100,000) of additional bail. On such day, the court
13 provided the Plaintiff (defendant therein) with approximately two (2) hours to post bail, or indicated
14 that he would be booked into county jail. The judge left chambers for the weekend assuming that the
15 Plaintiff would not be able to post bail in such short of a time period. Nevertheless, the Plaintiff,
16 foreseeing and planning for certain continued Vindictive and Malicious actions of Defendant
17 Leonard, was able to move somewhat quickly, and have the bail bonds company, walk (literally) a
18 One Hundred Thousand Dollar (\$100,000) bond over to the courtroom and post bail for the Plaintiff
19 (defendant therein), bringing the total bail for SCD266332 and SCD267655 (including Vermont) to
20 Two Hundred and Fifty Thousand Dollars (\$250,000) within approximately ten (10) days time,
21 addressing the situation—and now totaling Three Hundred Sixty Five Thousand Dollars (\$365,000),
22 for the same charges, from their original combined fixing of Fifty Five Thousand Dollars (\$55,000),
23 clearly off-schedule and Excessive.

24 33. Plaintiff (defendant therein) appeared at liberty again in July 2017 in SCD266332 /
25 SCD267655, with Ronis & Ronis, before traveling out of state to Texas.
26
27
28

34. In August 2017, Defendant SDDA Notified criminal defense attorney to the Plaintiff, Mr. Jan E. Ronis (SBN# 51450, Ronis & Ronis (San Diego)) in [*State of California v. Gavin B. Davis*], San Diego County, SCD266332 and associated cases, that the Plaintiff (defendant therein) was to be arraigned for a new charge, Failure to Appear (“FTA”, Ca PC § 1320.5), from the April 2017 missed court date (SCD266332), where the Plaintiff missed court for Good Cause, and indicated that arraignment would be approximately twenty-four (24) hours later.. Plaintiff, who was in Texas, at the time, immediately, made flight arrangements for travel within a few hours and flew from Texas to San Diego, to appear in San Diego County – State of California Superior Court the next day for this new charge brought by Defendant SDDA. On such day, Defendant SDDA, with a reasonable attorney of its employ at the arraignment, agreed to grant the Plaintiff (defendant therein), release on his Own Recognizance (“OR”), which was so granted by the court. Clearly, to a reasonable person, as agreed to by Defendant SDDA on such day, without objection, Plaintiff was deemed “not a flight risk,” and “not a safety risk” in being granted OR release.

35. Plaintiff again appeared OR for court (SCD266332 / SCD267655) in late September 2017.

36. Plaintiff has never Willfully missed court related to matters brought by Defendant SDDA.

37. **Excessive Bail by Defendants (October 2017).** On October 10, 2017, Plaintiff appeared for a morning court session (SCD266332 / SCD267655), but was unable to attend the afternoon session, for Good Cause, being referred by a physician at UCSD Urgent Care to the UCSD Emergency Room. Upon discharge from the UCSD Emergency Room that evening, Plaintiff learned that at Defendant Leonard’s request, bail had been increased, yet again; to an unthinkable, unreasonable, off-schedule, Excessive, Punitive (increased bail with the intent to punish someone is unlawful (*People v. Gilman*, 41 CA3d 181, 191, 116 CR317 (1974); and violation of the 8th Amendment (CLAIM #2), guaranteeing non-excessive bail, actionable under 42 U.S.C. § 1983), and

otherwise, One Million Dollars (\$1,000,000), representing a ten-fold (10x) increase over the existing One Hundred Thousand Dollars (\$100,000) of bail.

38. **Plaintiff is Clearly Engaged with the Process of the Law.** Plaintiff has been (and continues to be) clearly (highly) engaged with the process of the law, except when Denied Access to the Courts (see Doc. 1, USDC SD Cal, 17-810, *Davis v San Diego County Sheriff's Department*, filed May 10, 2018), and is not, prima facie, evading the process of the law.

39. Plaintiff evidences his engagagment with the process of the law in multiple capacities including but not limited to: (a) maintaining regular good faith communication with each of Defendant SDDA, and employees, thereof; and attorney (17-654), to Defendant SDDA, and employees therof; and (b) on collateral attack, and cross-action (e.g. *Davis v. SDDA et. al.*, USDC SD Cal, 17-654). With respect to good faith attempts to maintain communication with the counter parties, consider the following:

(a) **Offer to Surrender #1.** On October 13, 2017, Plaintiff, via Email and Facsimile, Notified Defendant Leonard of Defendant SDDA; and, their attorney, Mr. Ronald Lenert, that, “given the totality of the circumstances, Mr. Davis is prepared to surrender himself to his attorney, Mr. Jan Ronis (Ronis & Ronis), solely, after careful consideration and incorporation of the situation including but not limited to medical needs, pending Writ of Habeas Corpus Relief, and other cross-actions, should such remedies not be fully exhausted....Any actions by the SDDA, or SDPD, prior to such time, will be seen as more Aggression, Vindictiveness and Retaliation, and lead to additional cross-action.” (“Statement of Surrender”) Plaintiff also provided additional pertinent information to such parties in good faith.

(b) **Offer to Surrender #2.** On October 19, 2017, Plaintiff, via Email and Facsimile, Notified Defendant Leonard of Defendant SDDA; and, their attorney, Mr. Ronald Lenert, of an Update on the circumstances, and again iterate (verbatim) therein, his Statement of Surrender of October 13.

1 (c) During this time period, Plaintiff was told that Supervising Investigator, Mr. Jeffrey L.
2 Miller of Defendant SDDA had been in contact with the Plaintiff's family. In great faith, with an
3 open line of communication, Plaintiff immediately reached out to Mr. Jeffrey Miller on October 23,
4 2017, via Email and Facsimile, constituting Notice to each of Defendant Leonard of Defendant
5 SDDA; Mr. Jeffrey Miller of Defendant SDDA; and, Mr. Ronald Lenert, attorney to Defendant
6 SDDA and personnel thereof, of an Update on the circumstances, and again iterated (verbatim), his
7 Statement of Surrender of October 13, and October 19. Plaintiff has never been evasive, and is
8 clearly engaged with the process of the law.
9

10 (d) **Offer to Surrender #3.** On October 27, 2017, Plaintiff, via Email and Facsimile,
11 Notified Defendant Leonard of Defendant SDDA; Mr. Jeffrey Miller of Defendant SDDA; and,
12 attorney to Defendant SDDA and personnel thereof, Mr. Ronald Lenert, of an Update on the
13 circumstances, and again iterate (verbatim), his Statement of Surrender of October 13, October 19,
14 and October 23.
15

16 (e) **Offer to Surrender #4.** On October 30, 2017, Mr. Jeffrey Miller of Defendant SDDA,
17 emailed (10:33 AM) Plaintiff, and commented, "I no longer work in the unit handling your case, I
18 have been re-assigned. I can no longer help you with any of these matters. Any issues on your case
19 contact DDA Trinh [i.e. Defendant Leonard]," which the Plaintiff had been doing.
20

21 (f) **Offer to Surrender #5.** On October 31, 2017, Plaintiff, via Email and Facsimile,
22 Notified Defendant Leonard of Defendant SDDA; and, their attorney, Mr. Ronald Lenert, of an
23 Update on the circumstances, and again iterated (verbatim), his Statement of Surrender of October
24 13, October 19, October 23 and October 27.
25

26 (g) Once again, Plaintiff has never been evasive, remaining in communication regularly
27 with Defendant SDDA and employees thereof; and offered a reasonable procedure to surrender
28 himself subject to a contested court order and unreasonable, Excessive, and Punitive bail fixed at
One Million Dollars (\$1,000,000), a ten-fold (10x) increase over the prior bond fixed at One

Hundred Thousand Dollars (\$100,000), itself excessive; when the Plaintiff missed court on one of two court appearances on October 10, 2017, for Good Cause.

(h) **Plaintiff's Life Endgangered Due to Excessive Bail.** Despite such good faith overtures and engagement on the part of the Plaintiff, he was arrested on November 1, 2017, by approximately ten (10) U.S. Marshals with Assault Rifles armed with Scopes. Plaintiff alleges that at the time of apprehension, he was (literally) one- to two-steps from being shot at point blank range dead; as in the fixing of his bail, Excessively, and Punitively, at One Million Dollars (\$1,000,000), a higher threshold of cofidication in the FBI's National Crime Information Center (NCIC) Database shared by various law enforcement agencies, is a threshold, that each of, separately, allows for lethal force in the apprehension of a criminal suspect; and (b) carries a mandatory prison sentence (note: thereby evidencing such as Punitive). It is clear to see, why, setting bail off-schedule, especially in a Punitive capacity, can have grave consequences, well beyond the intention and legality of bail. Plaintiff holds that his bail was so Excessive and so Punitive, while Defendants acted in bad faith, Vindicatively and Maliciously, that his life was placed in clear danger.

40. **Due Process Violations and Injury to Plaintiff while in Custody on Excessive Bail.**

Plaintiff remained in custody from November 1, 2017 to April 23, 2018, or approximately six (6) months. During this period, he was Denied Access to the Courts by not being allowed access to a law library (so moved in USDC SD Cal, against Defendant San Diego County Sheriff Department, seeking class action status and assigned class action attorney therein, on May 10, 2018, case no.: 18-810); and, having his Attorney Services firm, Callahan Attorney Services, after over twenty (20) professional visits for legal purposes including collateral attack, denied access to the Plaintiff while in custody—violations of the Due Process Clauses of the 5th and 14th Amendments; as well as such right under the California Constitution. Plaintiff's business, H-Fin Capital Advisors, Inc., directly, and Plaintiff, as an employee thereof, despite closing a Nineteen Million Six Hundred Thousand Dollar (\$19,600,000) transaction in Vermont in November 2017; had approximately One Hundred

1 Fifty Million Dollars (\$150,000,000) of legitimate business transactions cancelled; causing
2 irreparable damage to each of H-Fin Capital Advisors, Inc., and the Plaintiff.

3 41. Plaintiff entered into a Plea Bargain on April 23, 2018 (SCD266332) for the sole
4 purpose of having his liberty returned, and continuing collateral attack (i.e. USDC SD Cal, 17-654).

5 42. Defendant SDDA and Defendant Leonard (on record orally), Agreed to the Plaintiff's
6 (defendant therein, SCD266632) Own Recognizance ("OR") release (despite \$1,000,000 bail from
7 October 10, 2017), which is held as Evidentiary in cross-action, here; as further evidence of
8 Vindictiveness (constructively), and further grounds for each of federal cross-action, and CA PC §
9 1424, Disqualification, prima facie, of, separately, Defendant Leonard, and Defendant SDDA, in
10 SCD266332 and associated prosecution of the Plaintiff.

11 43. On April 27, 2018 Plaintiff filed a Motion (Doc. 69) requesting an Extension of Time to
12 file a Third Amended Complaint (TAC) in this case, which the Court Granted on May 9, 2018 (Doc.
13 70), as entered on May 10, 2018 on the Court's docket. In such Motion, the Plaintiff is very specific
14 regarding (Doc. 69, pg 6-7, ¶¶ 4-7) the nature of the plea (SCD266332) entered on April 23, 2018,
15 and it not being an equal bargaining position.
16

17 44. Plaintiff, has Noticed Defendants via FAX on May, 6, 2018, in good faith, in a
18 thoughtful five-page Notice, of his unequivocal withdraw of his prior plea, per below (shown in
19 part):
20

21 "Now, herein, directly to the SDDA, regarding SDC266332, and associated cases ([State of
22 California] v. Gavin B. Davis, he, unequivocally, and now not being in an unequal bargaining
23 position, fully withdraws the Agreements made on April 23, 2018. Mr. Davis has stated, precisely
24 why, he entered into such Agreements (i.e. to regain his pre-trial right to liberty); and has made
25 directly, here, and indirectly (e.g. clearly via email, verbally, and, also, on record in USDC SD Cal,
26 17-654), timely withdraw of such Agreements, in favor of all prior (i.e. when Arraigned) "Not Guilty"
27 pleas to the alleged charges (e.g. SCD266332)."
28

45. Plaintiff suffered actual injury, prima facie, as a result of the Defendants actions.

46. During the period in which Plaintiff was held in custody by the San Diego County Sheriff from November 2017 until April 23, 2018, related to the Defendants prosecution, he was denied access to the law library facilities where he was detained; which compounded actual injuries to the Plaintiff, and were detrimentally impeding on cross-action/collateral attack and in other capacities. Plaintiff has a constitutional right to access to the courts and to deny that access based upon his or her incarceration constitutes a violation of the due process and equal protection guarantees of the 5th and 14th Amendments to the United States Constitution, as well as Art. I, §15 of the California Constitution. Plaintiff had previously attempted to move via Joinder (Docs. 59, 63) of such claim, which were Mooted, by the Court (Doc. 66). In lieu thereof, Plaintiff opened separate, non-duplicative litigation on May 4, 2018, in the USDC SD Cal (Case No.: 18-866), for benign Denied Access to the Court, at the direct actions of the San Diego County Sheriff's Department (defendant therein).

G. ARGUMENT

CRIMINAL DEFENDANTS HAVE A PRE-TRIAL RIGHT TO THEIR LIBERTY –

CLAIM #1

47. Pre-trial detention may be challenged under the 4th Amendment; and as such, under a 42 U.S.C. § 1983 civil rights action. (*Manuel v. Joliet*, 580 U.S. (2017), citing to *Gerstein v. Pugh*, 420 U.S. 103, 111, 125 n.7; see *Albright v. Oliver*, 510 U.S. 266 (1994))

48. "The Framers" of the U.S. Constitution "considered the matter of pretrial deprivations of liberty and drafted the 4th Amendment to address it. (*Manuel v. Joilet*, 580 U.S., Opinion of the Court, pg. 11, (2017)) The right to be free from seizure during the pretrial period is supported by "broad consensus" among the various federal circuit courts."

49. "A person is seized" whenever officials "restrain his freedom of movement" such that he is "not free to leave." (*Brendlin v. California*, 551 U.S. 249, 254 (2007)) The Plaintiff due to the

1 actions, unlawful under the color of state law, of Defendant Leonard, has clearly had his freedom
2 restrained, numerous times, for ulterior purposes (e.g. the conviction rate of criminal defendants in
3 custody versus out-of-custody is extraordinary by order of magnitude, etc.)

4 50. "A '4th Amendment wrong' 'is fully accomplished,' when an impermissible seizure
5 occurs. The Amendment is violated and the injury is inflicted no matter what happens in any later
6 proceedings." (*Manuel v. Joliet*, 580 U.S. ____ (2017))

7 51. "The 4th Amendment, after all, prohibits *all* unreasonable seizures-regardless of
8 whether a prosecution is every brought or how a prosecution ends." (*Id.*)

9 52. Plaintiff has been detained, pre-trial: (a) on numerous occasions, itself evidentiary as to
10 the intent of Defendant Leonard; and, also (b) on terms and conditions of bail that are, each of: (i)
11 Excessive (e.g. off-schedule bail); (ii) non-flexible and highly restrictive terms versus the legally
12 mandated "least restrictive" conditions (e.g. custody with no bail) to reasonably assure appearance at
13 court; and (iii) Punitive (e.g. One Million Dollars (\$1,000,000), a ten-fold (10x) increase over the
14 bond outstanding (i.e. \$100,000), and the Plaintiff's (defendant therein) court granted order releasing
15 him on his Own Recognizance (agreed to by an employee of Defendant SDDA other than Defendant
16 Leonard, not present on such day, therefore also evidentiary relative to Defendant Leonard's actions
17 towards the Plaintiff) at his prior court appearance in August 2017 (SCD266332).

18 53. "Pretrial detention can violate the 4th Amendment not only when it precedes, but also
19 when it follows the start of the legal process. The 4th Amendment prohibits government officials
20 from detaining a person absent probable cause. And where legal process has gone forward, but has
21 not done nothing to satisfy the probable-cause requirement, it cannot extinguish a detainee's 4th
22 Amendment claim." (*Id.*) In May 2016, the Plaintiff's ex-father-in-law, member of organized crime,
23 convicted felon, (Mr. John Gregory Unruh, of the greater Las Vegas area), made false, partial and/or
24 misleading statements to the SDPD intending to induce the arrest of the Plaintiff. Unruh told the
25 SDPD, with specificity, where and when to have the Plaintiff arrested: immediately preceding a
26
27
28

1 financial hearing, in which Unruh's alleged interests were at stake, in a marriage dissolution (San
 2 Diego, case no.: D555614, a non-true adversary proceeding under Ca Fam. Code §§ 2107(d)(1) and
 3 (2), for Perjury and Fraud of Unruh and the Plaintiff's ex-wife, unlawfully suppressing assets
 4 required to be disclosed).

5 54. Plaintiff was arrested in June 2016, and charged with an extraordinarily serious felony
 6 charge, CA PC § 422, criminal threats (formerly known as terrorist threats): for example, when a
 7 party threatens to kill or physically cause great bodily harm someone. Of highly relevant note, such
 8 a threat has to be, "so unequivocal, unconditional, immediate, and specific as to convey to the person
 9 threatened, a gravity of purpose and an immediate prospect of execution of the threat, and thereby
 10 causes that person reasonably to be in sustained fear for his or her own safety or for his or her
 11 immediate family's safety," – obviously, if an accuser (or false accuser in this case), directly
 12 indicates to the SDPD a time and place to arrest an alleged criminal making serious criminal threats,
 13 then there is nothing that is immediate about such prospect. Therefore, it is held as evidentiary in
 14 other capacities.³ In [September 2017], Defendant SDDA, pre-trial, without any preliminary hearing,
 15 entirely dropped the CA PC § 422 against the Plaintiff (defendant in SCD267655); evidencing
 16 Vindictiveness, and separately Malicious Prosecution, by Defendant Leonard in its pursuit.
 17 Plaintiff's time in custody, represents a 4th Amendment violation, as well as False Arrest / False
 18 Imprisonment. Therefore, evidencing that there was no probable cause to begin with in bringing
 19 such charge against the Plaintiff (defendant therein); and constructively supporting Vindictiveness
 20
 21
 22
 23

24 ³ Plaintiff has previously made claims against SCD267655, False Accuser, ex-father-in-
 25 law, Mr. John Gregory Unruh (Henderson, Nevada), who has evaded legal process service on twelve
 26 (12) occasions; while also refusing U.S. Mail, rendering him a de facto Fugitive from Summons.
 27 Plaintiff, for the purposes of simplifying the TAC, has simplified the claims and complaint; however,
 28 Plaintiff preserves his claim of Unruh's improper purpose (element) and Abuse of Process in bringing
 the Ca PC 422 charge based on his partial, false, and/or misleading statements, intending a collateral
 advantage in D555614. This is supported, prima facie, by Defendant SDDA's outright, dropping of
 the charge, pre-trial in August 2017. Further, Abuse of Process claims need not required the
 establishment of probable cause. Plaintiff intends to add such claim in the proper court of law in time.

and Malicious Prosecution on the part of Defendant Leonard, and his employer, Defendant SDDA, towards the Plaintiff, as alleged.

PLAINTIFF HAS A RIGHT UNDER THE 8TH AMENDMENT TO BE FREE FROM CRUEL AND UNUSUAL PUNISHMENT AND TO BE HELD ON NON-EXCESSIVE BAIL – CLAIMS #2 AND #3

55. Facts, and authority, are held under Paragraph 11(b), herein. The San Diego County Sheriff's Department filed a formal report of Battery with the Plaintiff as a victim therein, in which he could have reasonably died from such beating, while detained without bail.

PLAINTIFF'S DUE PROCESS RIGHTS HAVE BEEN VIOLATED UNDER THE 5TH AND 14TH AMENDMENTS – CLAIMS #4 AND #5

56. An imposition of a bail condition may not violate a criminal defendant's procedural due process rights. (*Gray v. Superior Court*, 125 CA 4th 629, 636-643, 23 CR3d 50 (2005))

57. The Due Process clauses of the 5th and 14th Amendments, ensure that unfair competitive advantage is not maintained by adversarial counter-parties, such as the Defendants in their prosecution of the Plaintiff (defendant therein, SCD266632, SCD26655 and associated cases), rendering a fair tribunal impossible. Denying someone's liberty, their ability to work, access to the courts, etc., are each, separately violations of due process under the 5th and 14th Amendments; and actionable under 42 U.S.C. § 1983.

VINDICTIVE PROSECUTION (E.G. FALSE CHARGES) CLAIMS ARE ACTIONABLE UNDER THE 4TH AMENDMENT – CLAIM #6

58. Unreasonable seizure continues beyond legal process so as to allow a malicious (a higher legal standard than Vindictiveness) prosecution claim based upon the 4th Amendment. This question was raised, but left unanswered by this Court in *Albright v. Oliver* (1994). Since then, the

First, Second, Third, Fourth, Fifth, Sixth, Ninth, Tenth, Eleventh and D.C. Circuits have all held that a 4th Amendment malicious prosecution claim is cognizable through 42 U.S.C. § 1983. Once the Plaintiff has supported his 4th Amendment violation(s) against the Defendant(s), he is also, able to move for support of Vindictivness, and/or Malice.

DUE PROCESS REQUIRES THAT A DEFENDANT NOT BE SUBJECTED TO VINDICTIVE PROSECUTION

59. A Vindictive Prosecution, also called retaliatory prosecution, occurs when a prosecutor files more serious charges, or takes other retaliatory actions against a defendant who has exercised a constitutional right in defense of the original charge, or in any other capacity (*People v. Valli*, 187 Cal. App. 4th 786, 114 Cal. Rptr. 3d 335 (3d Dist. 2010)). Plaintiff has had bail increased upon him numerous times by Defendant Leoanrd of Defendant SDDA, in an unreasonable, Excessive, Punitive, off-schedule, manner, for clearly the non-legal intended purpose of remanding the Plaintiff to custody, pre-trial, and/or draining his resources (e.g. time, ability to work, financial, etc.).

60. Further, Defendant Leonard of Defendant SDDA filed a Ca PC § 422 felony charge against the Plaintiff (defendant in SCD267655) in June 2, 2016, which charge was entirely dropped, pre-trial, in September 2017 (Such charge was filed in retaliation for the Plaintiff asserting his constitutional rights in federal court in April 2016 against multiple parties including the Defendants.)

61. Vindictive Prosecution has been recognized by the United States Supreme Court as grounded on a violation of the due process clause of the federal Constitution. It is “patently unconstitutional” to “chill the assertion of constitutional rights by penalizing those who choose to exercise them” (*U.S. v. Jackson*, 390 U.S. 570, 581, 88 S. Ct. 1209, 1216, 20 L. Ed. 2d 138, 147 (1968)).

62. Due process requires that a defendant not be deterred from exercising a procedural or constitutional right by the possibility of prosecutorial retaliation. “To punish a person because he has

done what the law plainly allows him to do is a due process violation of the most basic sort” (*U. S. v. Goodwin*, 457 U.S. 368, 372, 102 S. Ct. 2485, 73 L. Ed. 2d 74 (1982); *Blackledge v. Perry*, 417 U.S. 21, 94 S. Ct. 2098, 40 L. Ed. 2d 628 (1974)).

63. Therefore, based on such case law authority noted above (prior three (3) ¶¶), constructively with: (a) Plaintiff’s 4th Amendment violation claims against the Defendants (facts, argument in support of, as aforementioned heren within, from Claim #1); (b) Plaintiff’s 8th Amendment violation claims against the Defendant (facts, argument in support of, as aforementioned heren within, from Claims #2, #3); and (c) Plaintiff’s Due Process violaions of the 5th and 14th Amendments by the Defendant (facts, argument in support of, as aforementioned heren within, from Claims #4, #5), constructively support, separately, Vindictivenss and Malice (Claim #6) towards the Plaintiff.

64. In California, once an initial showing (e.g. the taking of a Complaint into pre-trial discovery would be one way to qualify as such) of Vindictiveness is made via its “appearance” (i.e. prior to full burden of proof is enough to create the “appearance” of vindictiveness) (*U.S. v. Burt*, 619 F.2d 831, 836 (9th Cir. 1980); subsequent thereafter to this prima facie showing being made, it places a “heavy burden” on the prosecution (Defendants herein) to dispel the appearance of Vindictiveness as well as actual Vindictiveness (*U.S. v. Ruesga-Martinez*, 534 F.2d 1367, 1369 (9th Cir. 1976); *Twiggs v. Superior Court*, 34 Cal. 3d 360, 371, 194 Cal. Rptr. 152, 667 P.2d 1165 (1983)).

65. The mere appearance of prosecutorial vindictiveness places the burden on the government [(Defendants herein)] because the doctrine of vindictive prosecution “seek[s] to reduce or eliminate apprehension on the part of an accused ([Plaintiff herein])” that she may be punished for exercising her rights (*U.S. v. Ruesga-Martinez*, 534 F.2d 1367 (9th Cir. 1976)).

66. To establish a presumption of Vindictiveness, the defendant (Planitiff herein) need not show “that the prosecutor ([Defendants herein]) acted in bad faith” or that he “maliciously sought”

the prosecution of the defendant ([Plaintiff herein]) (*U.S. v. Groves*, 571 F.2d 450 (9th Cir. 1978); see also *U.S. v. Ruesga-Martinez*, 534 F.2d 1367 (9th Cir. 1976)). A priori, “[t]he presumption is not based on the subjective state of mind of the individual prosecutor ([Defendants herein]) and does not imply that he or she individually harbors an improper motive” (*In re Bower*, 38 Cal. 3d 865, 879, 215 Cal. Rptr. 267, 700 P.2d 1269 (1985)). Separately, however, Plaintiff has and does allege that Defendant Leonard does harbor improper motive.

67. In *Blackledge v. Perry*, 417 U.S. 21, 28, 94 S. Ct. 2098, 40 L. Ed. 2d 628 (1974), the court dealt with whether the defendant (Plaintiff herein) must demonstrate bad faith on the part of the prosecutor (Defendants herein). The court specifically noted that their ruling “was not grounded upon the proposition that actual retaliatory motivation must inevitably exist. Rather, we emphasized that ‘since the fear of such [V]indictiveness may unconstitutionally deter a defendant’s ([Plaintiff herein]) exercise of the right to appeal or collaterally attack his first conviction, due process also requires that a defendant be freed of such a retaliatory motivation on the part of the sentencing judge.’ ” Plaintiff notes that the mere filing of permissible cross-action such as this litigation, is a collateral attack; and the Plaintiff has evidenced in several capacities each of, separately (a) the appearance of retaliation (e.g. through the repeated attempts at custody and/or Excessive bail; or (b) actual demonstration via evidentiary support of retaliatory, or unconstitutional actions of the Defendants towards the Plaintiff.

68. It is therefore the “potential of [V]indictiveness” that is prohibited by due process; and whereby, this has been demonstrated, prima facie; along with, its appearance, as well as its actual demonstration.

69. From the Standard of Review regarding Vindictiveness, the heavy burden of proof on the prosecution (Defendants herein) cannot be dispelled by a mere declaration from the prosecution (Defendants herein) that denies vindictiveness or bad faith. (As the court held in *In re Bower*, 38 Cal. 3d 865, 879, 215 Cal. Rptr. 267, 700 P.2d 1269 (1985))

H. REQUEST FOR RELIEF

70. For these reasons, Plaintiff requests for judgment against the defendants, Damages as follows:

- (a) Actual damages as determined by a jury;
 - (b) Reasonable attorney fees to be submitted for the court for review, including but not limited to the opportunity to move for appointment of counsel (preferred);
 - (c) Cost of suit;
 - (d) Punitive damages, if any, so found;
 - (e) Prejudgment and post judgment interest calculated as is customary;
- and, where such division of damages between responsible parties is determined by the Court.
- (i) Plaintiff requests that the Court grant all other relief that it deems appropriate.

I. JURY DEMAND

71. Plaintiff asserts his rights under the 7th Amendment to the U.S. Constitution and demands, in accordance with FRCP 38, a trial by jury on the following issue: each of the 42 U.S.C. § 1983 claims against each of the defendants.

72. This Jury Demand and Notice, is timely, as it is made at any time after the commencement of the suit, but not later than service of the last live pleading. Further, all parties have been properly served and no party shall attempt, in bad faith, technical default on the issue of jury demand, herein.

73. Jury Demand is herein FRCP 38(b)(2) compliant.

74. Plaintiff has preserved his right of trial by jury as provided in the 7th Amendment to the U.S. Constitution or by federal statute. (see *City of Monterey v. Del Monte Dunes, Ltd.*, 526 U.S. 687, 708-09 (1999); *Curtis v. Loether*, 415 U.S. 189, 193-94 (1974))

75. There is a federal right to a jury trial in this case under FRCP 39(a)(2), and supporting case law. (*Chauffeurs, Teamsters & Helpers Local No. 391 v. Terry*, 494 U.S. 558, 564-65 (1990); also, *United States v. Balistrieri*, 981 F.2d 916, 927-28 (7th Cir. 1992))

76. No parties, hereto, have waived the right to jury trial, in whole, or in part. (*Paracor Fin., Inc. v. Gen. Elec. Capital Corp.*, 96 F.3d 1151, 1166 (9th Cir. 1996))

77. This case involves issues that are best tried by a jury. (*Daniel Int'l Corp. v. Fischbach & Moore, Inc.*, 916 F.2d 1061, 1064 (5th Cir. 1990); *Parrott v. Wilson*, 707 F.2d 1262, 1267 (11th Cir. 1983))

78. A jury trial will not disrupt the schedule of the court, or any party to the proceeding, where such right (7th Amendment) outweighs any potential disruption. (*TG Plastics Trading Co. v. Toray Plastics (Am.), Inc.*, 775 F.3d 31, 36 (1st Cir. 2014); *Daniel Int'l Corp. v. Fishbach & Moore, Inc.*, 916 F.2d 1061, 1064 (5th Cir. 1990); see *Parrott v. Wilson*, 707 F.2d 1262, 1267 (11th Cir. 1983))

J. DAMAGES

79. As a result, directly or indirectly, though with explicit liability, of the conduct of defendants, including any potential future defendants, the Plaintiff, has suffered the following injuries:

- (a) Medical expenses in the past or future;
- (b) Physical pain and mental anguish in the past and future;
- (c) Lost earnings;
- (d) Lost profits;
- (e) Loss of earning capacity; and
- (f) Plaintiff, explicitly, reserves the right, to pursue Exemplary damages for the crimes committed against him in civil litigation, here, antecedent, or in the future, as the case may be.

K. ATTORNEY FEES & COSTS

80. Plaintiff reserves the right to request appointment of individual counsel under 28 U.S.C. §§ 1915(e)(1) and separately 42 U.S.C. §§ 2000(e), 5(f)(1), at any future time.

81. Irrespective of self-litigant status, or future attorney(s) representing the Plaintiff, under *Buckhannon*⁴, the Plaintiff is entitled to reasonable attorney fees and costs, and expressly reserved.

L. CERTIFICATION AND CLOSING

82. Under FRCP 11, by signing below, I certify to the best of my knowledge, information, and belief that this Amended Complaint and accompaniments: (a) is not being presented for an improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation; (b) is supported by existing law; (c) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and (d) the complaint otherwise complies with the requirements of Rule 11.

DATED: May 14, 2018

/s/ Gavin B. Davis
Gavin B. Davis, Pro Per

⁴ *Buckhannon Board & Care Home, Inc. v. West Virginia Dept. of Health and Human Resources*, 532 U.S. 604 (2001)

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA

GAVIN B. DAVIS,

Plaintiff,

vs.

SAN DIEGO COUNTY DISTRICT ATTORNEY
(SDDA),

LEONARD N. TRINH,

Defendants.

Case No.: **17-cv-00654-JLS-BGS**

CERTIFICATE OF SERVICE

AMENDED COMPLAINT (TAC)

I certify, under Penalty of Perjury, that a copy of:

**AMENDED COMPLAINT (TAC)
& SUMMONS**

Deposited via U.S. Mail on or before May 14, 2018, and any Attachments, was served, by mail, on the person, listed below:

Defendant, San Diego County District Attorney (SDDA), a municipal entity

Defendant, Mr. Leonard N. Trinh, DDA of SDDA

"Tolled" Defendant, Ms. Bonnie Dumanis (former DA of SDDA)

"Tolled" Defendant, Mr. David Grapilon (of the SDDA)

c/o Mr. Ronald Lenert

County of San Diego Office of County Counsel

1600 Pacific Highway

Room 355

San Diego, CA 92101-2469

619-531-4860

Fax: 619-531-6005

Email: ronald.lenert@sdcounty.ca.gov

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA

GAVIN B. DAVIS,

Plaintiff,

vs.

SAN DIEGO COUNTY DISTRICT ATTORNEY
(SDDA),

LEONARD N. TRINH,

Defendants.

Case No.: **17-cv-00654-JLS-BGS**

CERTIFICATE OF SERVICE

AMENDED COMPLAINT (TAC)

I certify, under Penalty of Perjury, that a copy of:

**AMENDED COMPLAINT (TAC)
& SUMMONS**

Deposited via U.S. Mail on or before May 14, 2018, and any Attachments, was served, by mail, on the person, listed below:

Office of the Attorney General of California
Mr. Xavier Becerra, Attorney General of California
300 S Spring St #1700,
Los Angeles, CA 9001
(213) 897-2000
Fax:
Email:

U.S. District Court
Southern District of California (San Diego)
CIVIL DOCKET FOR CASE #: 3:17-cv-00654-JLS-BGS

Davis v. San Diego District Attorney et al
Assigned to: Judge Janis L. Sammartino
Referred to: Magistrate Judge Bernard G. Skomal
Case in other court: USCA, 17-55829
Cause: 28:1331cv Fed. Question: Other Civil Rights

Date Filed: 03/31/2017
Date Terminated: 09/04/2018
Jury Demand: Plaintiff
Nature of Suit: 440 Civil Rights: Other
Jurisdiction: Federal Question

| Date Filed | # | Docket Text |
|------------|-------------------|---|
| 03/31/2017 | 1 | COMPLAINT with Jury Demand against All Defendants (Filing fee \$400 receipt number CAS089904.), filed by Gavin B. Davis. (Attachments: # 1 Civil Cover Sheet) The new case number is 3:17-cv-00654-JLS-BGS. Judge Janis L. Sammartino and Magistrate Judge Bernard G. Skomal are assigned to the case.(mxn) (jao). (Entered: 03/31/2017) |
| 03/31/2017 | 2 | Summons Issued. Counsel receiving this notice electronically should print this summons and serve it in accordance with Rule 4, Fed.R.Civ.P and LR 4.1. Summons has been provided to plaintiffs not receiving notice electronically. (mxn) (jao). (Entered: 03/31/2017) |
| 04/13/2017 | 3 | Notice of Document Discrepancies and Order Thereon by the Chambers of Judge Janis L. Sammartino Accepting Document: Emergency Motion/Lodgment of Exhibits, from Plaintiff Gavin B. Davis. Non-compliance with local rule(s), Civ. L. Rule 7.1: Lacking memorandum of points and authorities in support as a separate document. Nunc Pro Tunc 4/12/2017. (All non-registered users served via U.S. Mail Service)(dxj) (Entered: 04/13/2017) |
| 04/13/2017 | 4 | Emergency Motion to Grant Subpoena and Lodgment of Exhibits by Gavin B. Davis. Nunc pro tunc 4/12/2017. (dxj) (Entered: 04/13/2017) |
| 04/13/2017 | 5 | MOTION to Dismiss for Failure to State a Claim <i>And Failure To Allege A Short, Plain Statement</i> by San Diego District Attorney, Leonard Trinh. (Attachments: # 1 Memo of Points and Authorities, # 2 Proof of Service) (Lenert, Ronald)Attorney Ronald Lenert added to party San Diego District Attorney(pty:dft), Attorney Ronald Lenert added to party Leonard Trinh(pty:dft) (dxj). (Entered: 04/13/2017) |
| 04/18/2017 | 6 | MOTION to Dismiss by San Diego Police Department. (Attachments: # 1 Memo of Points and Authorities, # 2 Proof of Service)(Girer-Rosenkrantz, Hannah)Attorney Hannah Melissa Girer-Rosenkrantz added to party San Diego Police Department(pty:dft) (dxj). (Entered: 04/18/2017) |
| 04/21/2017 | 7 | RESPONSE re 6 MOTION to Dismiss filed by Gavin B. Davis. (acc) (Entered: 04/21/2017) |

| | | |
|------------|--------------------|---|
| | | 04/24/2017) |
| 04/26/2017 | 8 | Notice of Document Discrepancies and Order Thereon by the Chambers of Judge Janis L. Sammartino Accepting Document: Emergency Motion for Preliminary Injunction, from Plaintiff Gavin B. Davis. Non-compliance with local rule(s), Civ. L. Rule 7.1: Lacking memorandum of points and authorities in support as a separate document. Nunc Pro Tunc 4/25/2017.(All non-registered users served via U.S. Mail Service)(dxj) (Entered: 04/26/2017) |
| 04/26/2017 | 9 | Emergency Motion for Preliminary Injunction by Gavin B. Davis. Nunc Pro Tunc 4/25/2017. (dxj) (Entered: 04/26/2017) |
| 04/27/2017 | 10 | ORDER Setting Briefing Schedule re 9 MOTION for Preliminary Injunction. It is ordered that defendant shall file a response in opposition to plaintiff's PI Motion on or before 5/5/2017. Plaintiff shall file a reply in support of his PI Motion, if any, on or before 5/12/2017. On that date the Court will take the matter under submission without oral argument pursuant to Civil Local Rule 7.1(d)(1). Signed by Judge Janis L. Sammartino on 4/27/2017.(All non-registered users served via U.S. Mail Service)(dxj) (Entered: 04/27/2017) |
| 05/01/2017 | 11 | RESPONSE in Opposition re 9 MOTION for Preliminary Injunction filed by San Diego District Attorney, Leonard Trinh. (Attachments: # 1 Proof of Service)(Lenert, Ronald) (dxj). (Entered: 05/01/2017) |
| 05/02/2017 | 12 | RESPONSE in Opposition re 9 MOTION for Preliminary Injunction filed by San Diego Police Department. (Attachments: # 1 Proof of Service)(Girer-Rosenkrantz, Hannah) (dxj). (Entered: 05/02/2017) |
| 05/12/2017 | 13 | Notice of Document Discrepancies and Order Thereon by the Chambers of Judge Janis L. Sammartino Accepting Document: Motion to File Electronically, from Plaintiff Gavin B. Davis. Non-compliance with local rule(s), Civ. L. Rule 5.1: Missing time and date on motion and/or supporting documentation, Civ. L. Rule 7.1: Lacking memorandum of points and authorities in support as a separate document. Nunc Pro Tunc 5/11/2017. (All non-registered users served via U.S. Mail Service)(dxj) (Entered: 05/12/2017) |
| 05/12/2017 | 14 | MOTION to File Electronically by Gavin B. Davis. Nunc Pro Tunc 5/11/2017. (dxj) (Entered: 05/12/2017) |
| 05/12/2017 | 15 | Notice of Document Discrepancies and Order Thereon by the Chambers of Judge Janis L. Sammartino Accepting Document: (Reply) Response to Defendant SDDA/TRINH Opposition to Motion for Emergency Preliminary Injunction, from Plaintiff Gavin B. Davis. Non-compliance with local rule(s), Civ. L. Rule 7.1: Briefs or memoranda exceed length restrictions. Nunc Pro Tunc 5/11/2017. (All non-registered users served via U.S. Mail Service)(dxj) (Entered: 05/12/2017) |
| 05/12/2017 | 16 | (REPLY) Response to Defendant SDDA Opposition to Motion re 9 MOTION for Preliminary Injunction filed by Gavin B. Davis. Nunc Pro Tunc 5/11/2017. (dxj) (Entered: 05/12/2017) |
| 05/12/2017 | 17 | Notice of Document Discrepancies and Order Thereon by the Chambers of Judge Janis L. Sammartino Accepting Document: (Reply) Response to Defendant SDPD Opposition to Motion for Emergency Preliminary |

| | | |
|------------|--------------------|--|
| | | Injunction, from Plaintiff Gavin B. Davis. Non-compliance with local rule(s), Civ. L. Rule 7.1: Briefs or memoranda exceed length restrictions. Nunc Pro Tunc 5/11/2017.(All non-registered users served via U.S. Mail Service)(dxj) (Entered: 05/12/2017) |
| 05/12/2017 | 18 | (REPLY) Response to Defendant SDPD Opposition to 9 MOTION for Preliminary Injunction filed by Gavin B. Davis. Nunc Pro Tunc 5/11/2017. (dxj) (Entered: 05/12/2017) |
| 05/30/2017 | 19 | ORDER Denying 9 Motion for Preliminary Injunction. Signed by Judge Janis L. Sammartino on 5/30/2017. (All non-registered users served via U.S. Mail Service)(dxj) (Entered: 05/30/2017) |
| 06/01/2017 | 20 | REPLY to Response to Motion re 6 MOTION to Dismiss filed by San Diego Police Department. (Attachments: # 1 Proof of Service)(Girer-Rosenkrantz, Hannah) QC Mailer re: S/ (dxj). (Entered: 06/01/2017) |
| 06/05/2017 | 21 | ORDER Vacating Hearing re 5 MOTION to Dismiss for Failure to State a Claim <i>And Failure To Allege A Short, Plain Statement</i> , 6 MOTION to Dismiss . It is ordered that the Court vacates the hearing on the motions, presently set for 6/8/2017 and takes them under submission without oral argument pursuant to Civil Local Rule 7.1(d)(1). Signed by Judge Janis L. Sammartino on 6/5/2017.(All non-registered users served via U.S. Mail Service)(dxj) (Entered: 06/05/2017) |
| 06/09/2017 | 22 | NOTICE OF APPEAL to the 9th Circuit as to 19 Order denying Motion for Preliminary Injunction, by Gavin B. Davis. (Filing fee \$ 505, receipt no. CAS091759.) (Notice of Appeal electronically transmitted to the US Court of Appeals.) (akr) (Entered: 06/09/2017) |
| 06/12/2017 | 23 | USCA Case Number 17-55829 for 22 Notice of Appeal to 9th Circuit filed by Gavin B. Davis. (akr) (Entered: 06/12/2017) |
| 06/13/2017 | 25 | Mail Returned as Undeliverable re 21 Order Vacating Hearing. Mail sent to Gavin B. Davis. (lrf) (Entered: 06/14/2017) |
| 06/14/2017 | 24 | ORDER of USCA as to 22 Notice of Appeal to 9th Circuit filed by Gavin B. Davis. The appeal filed June 9, 2017 is a preliminary injunction appeal. Accordingly, Ninth Circuit Rule 3-3 shall apply. Briefing schedule issued. The appeal and any motions pending at the time briefing is completed shall be referred to the next available motions panel for disposition. The parties are reminded that streamlined requests for extensions of time are not available in preliminary injunction appeals. Any request for an extension of time must be requested under Ninth Circuit Rule 31- 2.2(b). Failure to file timely the opening brief shall result in the automatic dismissal of this appeal by the Clerk for failure to prosecute. (akr) (Entered: 06/14/2017) |
| 06/20/2017 | 26 | ORDER Denying Without Prejudice 14 Motion to File Electronically. In the present motion, Plaintiff has not provided any information about his computer or its software. Without such information, the Court is unable to assess whether his equipment and software meet the technical specifications required. Accordingly, the Court denies without prejudice plaintiff's motion. Signed by Judge Janis L. Sammartino on 6/20/2017. (All non-registered users served via U.S. Mail Service)(dxj) (Entered: 06/20/2017) |
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| 06/27/2017 | <u>27</u> | Mail Returned as Undeliverable re <u>21</u> Order. Mail sent to Gavin B. Davis. (Returned mail was sent to Swanton, VT, address. Address was updated on the docket on 6/23/2017 to South Burlington, VT, address. A copy of <u>26</u> Order was mailed to South Burlington, VT, address on 6/26/2017.) (akr) (Entered: 06/27/2017) |
| 06/27/2017 | <u>28</u> | Mail Returned as Undeliverable re <u>13</u> Notice and Order of Document Discrepancies, <u>14</u> MOTION for Leave to Electronically File Documents. Mail sent to Gavin Davis. (dxj) (Entered: 06/27/2017) |
| 07/03/2017 | <u>29</u> | Mail Returned as Undeliverable re <u>21</u> Order and Docket Sheet. Mail sent to Gavin B. Davis. (fth) (Entered: 07/03/2017) |
| 07/10/2017 | <u>30</u> | Mail Returned as Undeliverable re <u>26</u> Order on Motion for Leave to Electronically File Documents. Mail sent to Gavin Davis. (dxj) (Entered: 07/11/2017) |
| 07/12/2017 | <u>31</u> | ORDER granting <u>5</u> <u>6</u> Motions to Dismiss. Plaintiff shall file an amended complaint, if any, on or before thirty (30) days of the date on which this order is electronically docketed. Signed by Judge Janis L. Sammartino on 7/12/2017. (All non-registered users served via U.S. Mail Service)(fth) (Entered: 07/12/2017) |
| 07/12/2017 | <u>32</u> | FIRST AMENDED COMPLAINT with Jury Demand against San Diego District Attorney, Leonard Trinh, filed by Gavin B. Davis. (dxj) (Entered: 07/13/2017) |
| 07/13/2017 | <u>33</u> | Notice of Document Discrepancies and Order Thereon by the Chambers of Judge Janis L. Sammartino Accepting Document: Notice of Motion for Protective Order Against Publicity, from Plaintiff Gavin B. Davis. Non-compliance with local rule(s), Civ. L. Rule 5.1: Missing time and date on motion and/or supporting documentation, Civ. L. Rule 7.1: Lacking memorandum of points and authorities in support as a separate document. Nunc Pro Tunc 6/30/2017. Signed by Judge Janis L. Sammartino on 7/13/2017. (All non-registered users served via U.S. Mail Service)(dxj) (Entered: 07/13/2017) |
| 07/13/2017 | <u>34</u> | MOTION for Protective Order Against Publicity by Gavin B. Davis. Nunc Pro Tunc 6/30/2017. (dxj) (Entered: 07/13/2017) |
| 07/14/2017 | <u>35</u> | ORDER Denying <u>4</u> Request for Rule 45 Subpoena. Signed by Magistrate Judge Bernard G. Skomal on 7/14/2017. (All non-registered users served via U.S. Mail Service)(dxj) (Entered: 07/14/2017) |
| 07/25/2017 | <u>36</u> | Notice of Document Discrepancies and Order Thereon by the Chambers of Judge Janis L. Sammartino Accepting Document: First Amended Complaint, from Plaintiff Gavin B. Davis. Non-compliance with local rule(s), OTHER: CivLR 15.1(a) First Amended Complaint filed 07/12/2017. Party does not have leave of court to file Second Amended Complaint. Nunc Pro Tunc 7/24/2017.(All non-registered users served via U.S. Mail Service)(dxj) (Entered: 07/25/2017) |
| 07/25/2017 | <u>37</u> | SECOND AMENDED COMPLAINT (filed as First Amended Complaint) with Jury Demand against San Diego District Attorney, Leonard Trinh, David T. Grapilon, Bonnie Dumanis, John Gregory Unruh, filed by Gavin B. Davis. |

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| | | Nunc Pro Tunc 7/24/2017. (Attachments: # 1 Proof of Service)New Summons Requested. (dxj) (Entered: 07/25/2017) |
| 07/25/2017 | 38 | Summons Issued re: SECOND AMENDED COMPLAINT (filed as First Amended Complaint). Counsel receiving this notice electronically should print this summons and serve it in accordance with Rule 4, Fed.R.Civ.P and LR 4.1. Summons will be mailed to plaintiffs not receiving notice electronically. (dxj) (Entered: 07/25/2017) |
| 07/25/2017 | 39 | Notice of Document Discrepancies and Order Thereon by the Chambers of Judge Janis L. Sammartino Accepting Document: Request for U.S. Marshall for Process of Service on Defendant Greg, from Plaintiff Gavin B. Davis. Non-compliance with local rule(s), Civ. L. Rule 7.1: Lacking memorandum of points and authorities in support as a separate document. Nunc Pro Tunc 7/24/2017.(All non-registered users served via U.S. Mail Service)(dxj) (Entered: 07/25/2017) |
| 07/25/2017 | 40 | Request for U.S. Marshall for Process of Service on Defendant Greg by Gavin B. Davis. Nunc Pro Tunc 7/24/2017. (Attachments: # 1 Proof of Service)(dxj) (Entered: 07/25/2017) |
| 07/31/2017 | 41 | Notice of Document Discrepancies and Order Thereon by the Chambers of Judge Janis L. Sammartino Accepting Document: Motion Fed. R. Civ. P. 45 - Subpoena, from Plaintiff Gavin B. Davis. Non-compliance with local rule(s), Civ. L. Rule 5.1: Missing time and date on motion and/or supporting documentation, Civ. L. Rule 7.1: Lacking memorandum of points and authorities in support as a separate document. Nunc Pro Tunc 7/28/2017.(All non-registered users served via U.S. Mail Service)(dxj) (Entered: 07/31/2017) |
| 07/31/2017 | 42 | MOTION for Subpoenas by Gavin B. Davis. Nunc Pro Tunc 7/28/2017. (dxj) (Entered: 07/31/2017) |
| 08/04/2017 | 43 | ORDER Denying 40 Request for U.S. Marshal Service. Signed by Judge Janis L. Sammartino on 8/4/2017. (All non-registered users served via U.S. Mail Service)(dxj) (Entered: 08/04/2017) |
| 08/08/2017 | 44 | MOTION to Dismiss for Failure to State a Claim by Bonnie Dumanis, David T. Grapilon, San Diego District Attorney, Leonard Trinh. (Attachments: # 1 Memo of Points and Authorities, # 2 Proof of Service)(Lenert, Ronald)Attorney Ronald Lenert added to party Bonnie Dumanis(pty:dft), Attorney Ronald Lenert added to party David T. Grapilon(pty:dft)(mpl). (Entered: 08/08/2017) |
| 08/14/2017 | 45 | ORDER Setting Briefing Schedule re 44 MOTION to Dismiss for Failure to State a Claim : Responses due by 8/31/2017. Replies due by 9/7/2017. A hearing on this matter is currently set for September 14, 2017 at 1:30 p.m. Signed by Judge Janis L. Sammartino on 8/14/2017. (All non-registered users served via U.S. Mail Service)(mpl) (jao). (Entered: 08/14/2017) |
| 08/29/2017 | 48 | Notice of RESPONSE to Defendant SDDA's Motion to Dismiss 44 Plaintiff's SAC 37 filed by Gavin B. Davis. (mpl) (Modified on 9/7/2017 - Main Document 48 replaced. Additional attachment(s) added: # 1 Memo in Support of Response, # 2 Criminal Complaint - Unruh, # 3 Criminal Complaint - Trinh, # 4 Re: Ad Hominem Character Attack, # 5 Certificates of Service. Regenerated |

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| | | NEF. Plaintiff served copies of all updated filed documents via U.S. Mail Service) (ajs). (Entered: 08/31/2017) |
| 08/30/2017 | 46 | Notice of Document Discrepancies and Order Thereon Signed by the Chambers of Judge Janis L. Sammartino Accepting Document: Response to Defendant SDDA's Motion to Dismiss (Doc.44) Plaintiff's SAC (Doc.37), from Plaintiff Gavin B. Davis. Non-compliance with local rule(s) Civ. L. Rule 5.2 Missing Proof of Service. Nunc Pro Tunc 8/29/2017. (All non-registered users served via U.S. Mail Service)(mpl) (Entered: 08/30/2017) |
| 08/30/2017 | 47 | MOTION for Oral Argument re: Response to Defendant SDDA's Motion to Dismiss Doc. 44 Plaintiff's SAC Doc. 37 by Gavin B. Davis. Nunc Pro Tunc 8/30/2017. (mpl) (Entered: 08/30/2017) |
| 08/31/2017 | 49 | RESPONSE in Opposition re 47 MOTION Request for Oral Argument Hearing re 37 Amended Complaint, 44 MOTION to Dismiss for Failure to State a Claim filed by Bonnie Dumanis, David T. Grapilon, San Diego District Attorney, Leonard Trinh. (Attachments: # 1 Proof of Service)(Lenert, Ronald) (mpl). (Entered: 08/31/2017) |
| 09/06/2017 | 50 | REPLY to Response to Motion re 44 MOTION to Dismiss for Failure to State a Claim filed by Bonnie Dumanis, David T. Grapilon, San Diego District Attorney, Leonard Trinh. (Attachments: # 1 Proof of Service)(Lenert, Ronald) (mpl). (Entered: 09/06/2017) |
| 09/07/2017 | 51 | ORDER Vacating Hearing. After considering Plaintiff's motion, the Court finds that it can adequately assess Defendants' 44 MTD based on the parties' briefing, and thus does not require oral argument. Thus, the Court denies Plaintiff's Motion for Oral Argument (ECF No. 47). Accordingly, on its own motion the Court vacates the hearing on Defendants' Motion to Dismiss, presently set for 9/14/2017, and takes the matter under submission without oral argument pursuant to Civil Local Rule 7.1(d)(1). Signed by Judge Janis L. Sammartino on 9/7/2017.(All non-registered users served via U.S. Mail Service)(mpl) (jao). (Entered: 09/07/2017) |
| 09/22/2017 | 52 | Mail Returned as Undeliverable re 51 Order Vacating Hearing. Mail sent to Gavin B. Davis. (All non-registered users served via U.S. Mail Service)(mpl) (Entered: 09/22/2017) |
| 10/05/2017 | 53 | Mail Returned as Undeliverable re 48 Notice of RESPONSE. Mail sent to Gavin B. Davis. (ajs) (Entered: 10/06/2017) |
| 10/11/2017 | 54 | ORDER of USCA as to 22 Notice of Appeal to 9th Circuit filed by Gavin B. Davis. Appellant's urgent motion for a stay of state court criminal proceedings is denied. Appellant's "motion for extension of time and acceptance of reply brief" is granted. The Clerk shall file the reply brief submitted on September 10, 2017. Briefing is completed. (akr) (Entered: 10/11/2017) |
| 10/17/2017 | 55 | Notice of Document Discrepancies and Order Thereon signed by the chambers of Judge Janis L. Sammartino Accepting Document: FRCP 20 Joinder, from Plaintiff Gavin B. Davis. Non-compliance with local rule(s), Civ. L. Rule 5.1: Missing time and date on motion and/or supporting documentation. Nunc Pro Tunc 10/16/2017. (All non-registered users served via U.S. Mail Service)(mpl) (Entered: 10/17/2017) |

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| 10/17/2017 | 56 | NOTICE of FRCP 20 Joinder by Gavin B. Davis. Nunc Pro Tunc 10/16/2017. (Attachments: # 1 Memo of Points and Authorities, # 2 Proof of Service)(All non-registered users served via U.S. Mail Service)(mpl) (Entered: 10/17/2017) |
| 10/30/2017 | 57 | Mail Returned as Undeliverable re 55 Notice and Order of Document Discrepancies, 56 Notice of Joinder. Mail sent to Gavin B. Davis. (mpl) (Entered: 10/31/2017) |
| 11/15/2017 | 58 | ORDER of USCA as to 22 Notice of Appeal to 9th Circuit filed by Gavin B. Davis. Appellant's "Urgent Motion Under Circuit Rule 27-3(b) Subpoena Video Evidence of Lethal Violence on Plaintiff" is denied. Briefing is completed. (akr) (Entered: 11/15/2017) |
| 11/20/2017 | 59 | Ex Parte MOTION FRCP 20 Joinder by Gavin B. Davis. (Attachments: # 1 Memo of Points and Authorities, # 2 Attachments to Memo of Points and Authorities, # 3 Proof of Service)(mpl) (Entered: 11/21/2017) |
| 12/06/2017 | 60 | Notice of Document Discrepancies and Order Thereon signed by the chambers of Judge Janis L. Sammartino Accepting Document: Judicial Notice, from Plaintiff Gavin B. Davis. Non-compliance with local rule(s), OTHER: Civ. L. Rule 5.2 Missing Proof of Service. Nunc Pro Tunc 12/5/2017. (All non-registered users served via U.S. Mail Service)(mpl) (Entered: 12/07/2017) |
| 12/06/2017 | 61 | REQUEST FOR JUDICIAL NOTICE by Gavin B. Davis. Nunc Pro Tunc 12/5/2017. (All non-registered users served via U.S. Mail Service)(mpl) (Entered: 12/07/2017) |
| 01/12/2018 | 62 | Notice of Document Discrepancies and Order Thereon by the chambers of Judge Janis L. Sammartino Accepting Document: Ex Parte Memorandum in Support of Motion for Access to the Courts, from Plaintiff Gavin B. Davis. Non-compliance with local rule(s), OTHER: Civ. L. Rule 5.2 Missing Proof of Service. Nunc Pro Tunc 1/11/2018. (All non-registered users served via U.S. Mail Service)(mpl) (Entered: 01/12/2018) |
| 01/12/2018 | 63 | Ex Parte Memorandum in Support of Motion for Access to the Courts by Gavin B. Davis. Nunc Pro Tunc 1/11/2018. (mpl) (Entered: 01/12/2018) |
| 01/24/2018 | 64 | ORDER of USCA as to 22 Notice of Appeal to 9th Circuit filed by Gavin B. Davis. A review of the record and the parties' briefs indicates that the questions raised in this appeal are so insubstantial as not to require further argument. Accordingly, we summarily affirm the USDC's order denying preliminary injunctive relief. Affirmed. (akr) (Entered: 01/24/2018) |
| 02/15/2018 | 65 | MANDATE of USCA affirming the decision of the USDC as to 22 Notice of Appeal to the 9th Circuit filed by Gavin B. Davis. (akr) (Entered: 02/15/2018) |
| 02/26/2018 | 66 | ORDER: (1) Granting 44 Motion to Dismiss; (2) Denying as Moot 34 Motion for Protective Order; (3) Denying as Moot 59 Motion for Joinder; and (4) Denying as Moot 63 Motion to for Access to Courts. The Court grants Defendants' Motion to Dismiss, (ECF No. 44). Accordingly, the Court Dismisses Without Prejudice Plaintiff's Second Amended Complaint, (ECF No. 37). Additionally, the Court denies as moot Plaintiff's pending motions, (ECF Nos. 34 , 59 , 63). Signed by Judge Janis L. Sammartino on 2/26/2018. |

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| | | (All non-registered users served via U.S. Mail Service)(mpl) (Entered: 02/26/2018) |
| 03/05/2018 | 67 | ORDER Denying 42 Request for Rule 45 Subpoena/Request for Relief Via Declaratory Decree. Signed by Magistrate Judge Bernard G. Skomal on 3/5/2018. (All non-registered users served via U.S. Mail Service)(mpl) (Entered: 03/05/2018) |
| 04/26/2018 | 68 | Notice of Document Discrepancies and Order Thereon by the chambers of Judge Janis L. Sammartino Accepting Document: Motion for Extension of Time to File Third Amended Complaint, from Plaintiff Gavin B. Davis. Non-compliance with local rule(s), Civ. L. Rule 5.1: Missing time and date on motion and/or supporting documentation, Civ. L. Rule 7.1: Lacking memorandum of points and authorities in support as a separate document. Nunc Pro Tunc 4/26/2018. (All non-registered users served via U.S. Mail Service)(mpl) (Entered: 04/26/2018) |
| 04/26/2018 | 69 | MOTION for Extension of Time to File Third Amended Complaint by Gavin B. Davis. Nunc Pro Tunc 4/26/2018. (mpl) (Entered: 04/27/2018) |
| 05/09/2018 | 70 | ORDER granting 69 Motion for Extension of Time to File Amended Complaint. Plaintiff Shall File his amended complaint on or before May 25, 2018. Signed by Judge Janis L. Sammartino on 5/9/2018. (All non-registered users served via U.S. Mail Service)(anh) (Entered: 05/10/2018) |
| 05/15/2018 | 71 | Notice of Document Discrepancies and Order Thereon by the chambers of Judge Janis L. Sammartino Accepting Document: Third Amended Complaint, from Plaintiff Gavin B. Davis. Non-compliance with local rule(s), Civ. L. Rule 5.1: Improper format, OTHER: Filer does not have leave of court to file electronically. Document set via Email to chambers. Nunc Pro Tunc 5/15/2018. (All non-registered users served via U.S. Mail Service)(mpl) (Entered: 05/16/2018) |
| 05/15/2018 | 72 | THIRD AMENDED COMPLAINT with Jury Demand against San Diego District Attorney, Leonard Trinh, filed by Gavin B. Davis. Nunc Pro Tunc 5/15/2018. New Summons Requested. (mpl) (Entered: 05/16/2018) |
| 05/16/2018 | 73 | Amended Summons Issued as to 72 THIRD AMENDED COMPLAINT. Counsel receiving this notice electronically should print this summons and serve it in accordance with Rule 4, Fed.R.Civ.P and LR 4.1. Summons will be mailed to plaintiffs not receiving notice electronically. (mpl) (Entered: 05/16/2018) |
| 05/22/2018 | 74 | Notice of Document Discrepancies and Order Thereon by Judge Janis L. Sammartino Accepting Document: Memorandum in Support of Motion for Habeas Corpus and Other Relief, Under 28 U.S.C. § 2254, from Plaintiff Gavin B. Davis. Non-compliance with local rule(s), OTHER: LR Cv 5.1 Improper Format; CM/ECF Rule 2(b) Unless otherwise authorized by the court, all documents submitted for filing to the Clerk's Office by parties appearing without an attorney must be in legible, paper form. Document set via Email to chambers. Nunc Pro Tunc 5/21/2018. (All non-registered users served via U.S. Mail Service)(mpl) (Entered: 05/22/2018) |
| 05/22/2018 | 75 | ***DOCUMENT WITHDRAWN PER ECF No 89 *** Ex Parte Memorandum in Support of Motion for Habeas Corpus and Other Relief, Under 28 U.S.C. § |

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| | | 2254 by Gavin B. Davis. (mpl) (Entered: 05/22/2018) |
| 05/25/2018 | <u>76</u> | MOTION to Dismiss for Failure to State a Claim <i>Notice of Motion and Motion to Dismiss Third Amended Complaint (ECF No. 72)</i> by San Diego District Attorney, Leonard Trinh. (Attachments: # <u>1</u> Memo of Points and Authorities In Support of Motion to Dismiss Third Amended Complaint (ECF No. 72), # <u>2</u> Proof of Service)(Lenert, Ronald) (mpl). (Entered: 05/25/2018) |
| 05/29/2018 | <u>77</u> | MOTION for Summary Judgment by Gavin B. Davis. (mpl) (Entered: 05/30/2018) |
| 06/04/2018 | <u>78</u> | Ex Parte MOTION for Extension of Time to File Response to Defendant's <u>76</u> MOTION to Dismiss by Gavin B. Davis. (mpl) (Entered: 06/04/2018) |
| 06/05/2018 | <u>79</u> | RESPONSE in Opposition re <u>77</u> MOTION for Summary Judgment filed by San Diego District Attorney, Leonard Trinh. (Attachments: # <u>1</u> Proof of Service) (Lenert, Ronald) (mpl). (Entered: 06/05/2018) |
| 06/06/2018 | <u>80</u> | ORDER Denying <u>78</u> Motion for Extension of Time to File Response to Defendant's <u>76</u> Motion to Dismiss. The Court reiterates the briefing schedule on the pending motions before the Court. Plaintiff shall file his Opposition to Defendants' Motion to Dismiss on or before 6/28/2018. Defendants may file their Reply in Support of the Motion on or before 7/5/2018. Defendants shall file their Opposition to Plaintiff's Motion for Summary Judgment on or before 6/28/2018. Plaintiff may file his Reply in Support of his Motion on or before 7/5/2018. Signed by Judge Janis L. Sammartino on 6/6/2018. (mpl) (Entered: 06/06/2018) |
| 06/11/2018 | <u>81</u> | Ex Parte MOTION for FRCP 201 Judicial Notice and FRCP 57 Declaratory Decree. by Gavin B. Davis. (Attachments: # <u>1</u> Memo of Points and Authorities, # <u>2</u> Proof of Service)(mpl) (Entered: 06/11/2018) |
| 06/18/2018 | <u>82</u> | Notice of Document Discrepancies and Order Thereon by the chambers of Judge Janis L. Sammartino Accepting Document: Response to Defendants' Opposition, from Plaintiff Gavin B. Davis. Non-compliance with local rule(s), OTHER: Civ.L. Rule 5.1 Improper format; Document not submitted in 14 pt. font. Nunc Pro Tunc 6/15/2018 (All non-registered users served via U.S. Mail Service)(mpl) (Entered: 06/18/2018) |
| 06/18/2018 | <u>83</u> | REPLY to Response to Motion re <u>77</u> MOTION for Summary Judgment filed by Gavin B. Davis. Nunc Pro Tunc 6/15/2018. (Attachments: # <u>1</u> Memo of Points and Authorities, # <u>2</u> Proof of Service)(mpl) (Entered: 06/18/2018) |
| 06/20/2018 | <u>84</u> | Plaintiffs Response to Defendant's Motion to Dismiss <u>76</u> The Amended Complaint <u>72</u> filed by Gavin B. Davis. (Attachments: # <u>1</u> Memo of Points and Authorities, # <u>2</u> Proof of Service)(mpl) (Entered: 06/21/2018) |
| 06/25/2018 | <u>85</u> | REPLY to Response to Motion re <u>76</u> MOTION to Dismiss Third Amended Complaint filed by San Diego County District Attorney, Leonard Trinh. (Attachments: # <u>1</u> Proof of Service)(Lenert, Ronald). Modified on 6/26/2018 - Edited text to match pleading (jah). (Entered: 06/25/2018) |
| 06/27/2018 | <u>86</u> | Notice of Document Discrepancies and Order Thereon by Judge Janis L. Sammartino Accepting Document: Plaintiff's Sur-Reply, from Plaintiff Gavin B. Davis. Non-compliance with local rule(s), OTHER: Sur-Reply No |

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| | | provisions for acceptance. Nunc Pro Tunc 6/25/2018. (All non-registered users served via U.S. Mail Service)(mpl) (Entered: 06/28/2018) |
| 06/27/2018 | 87 | Plaintiff's SUR-REPLY to Defendant's Reply 85 to Plaintiff's Response 83 to Defendants' Motion to Dismiss 76 Plaintiff's Amended Complaint 72 filed by Gavin B. Davis. Nunc Pro Tunc 6/25/2018. (Attachments: # 1 Memo of Points and Authorities, # 2 Proof of Service)(mpl) (Main Document 87 replaced on 6/28/2018) (mpl). (Entered: 06/28/2018) |
| 07/05/2018 | 88 | ORDER Vacating Hearing re 77 MOTION for Summary Judgment, 76 MOTION to Dismiss for Failure to State a Claim. Signed by Judge Janis L. Sammartino on 7/5/2018.(All non-registered users served via U.S. Mail Service)(mpl) (Entered: 07/05/2018) |
| 07/06/2018 | 89 | NOTICE OF WITHDRAWAL OF DOCUMENT (Withdraw of Plaintiff's 75 Motion for Habeas Relief) filed by Gavin B. Davis. (Attachments: # 1 Proof of Service)(mpl) (Main Document 89 replaced on 7/6/2018) (mpl). (Entered: 07/06/2018) |
| 07/13/2018 | 90 | ORDER Requesting Additional Briefing re 76 MOTION to Dismiss. Signed by Judge Janis L. Sammartino on 7/13/2018.(All non-registered users served via U.S. Mail Service)(mpl) (Entered: 07/13/2018) |
| 07/16/2018 | 91 | Notice of Document Discrepancies and Order Thereon by the chambers of Judge Janis L. Sammartino Accepting Document: Preliminary Good Faith Response to Court's Order, from Plaintiff Gavin B. Davis. Non-compliance with local rule(s), Supplemental documents require court order, OTHER: Document not signed. Nunc Pro Tunc 7/16/2018. (All non-registered users served via U.S. Mail Service)(mpl) (Entered: 07/16/2018) |
| 07/16/2018 | 92 | NOTICE (Preliminary Good Faith Response to Court's Order) by Gavin B. Davis. Nunc Pro Tunc 7/16/2018. (Attachments: # 1 Proof of Service)(All non-registered users served via U.S. Mail Service)(mpl) (Entered: 07/16/2018) |
| 07/17/2018 | 93 | SUPPLEMENTAL BRIEFING by Defendants San Diego District Attorney, Leonard Trinh re 90 Order, 76 MOTION to Dismiss for Failure to State a Claim <i>Notice of Motion and Motion to Dismiss Third Amended Complaint (ECF No. 72) Defendants' Additional Briefing</i> . (Attachments: # 1 Proof of Service)(Lenert, Ronald) (mpl). (Entered: 07/17/2018) |
| 07/26/2018 | 94 | Ex Parte MOTION re FRCP 19 Compulsory Joinder, FRCP 56 Decree by Gavin B. Davis. (Attachments: # 1 Memo of Points and Authorities, # 2 Proof of Service)(mpl) (Entered: 07/26/2018) |
| 09/04/2018 | 95 | ORDER Granting 76 Motion to Dismiss; Dismissing Complaint; Denying 77 Motion for Summary Judgment; Denying 81 Motion for Declaratory Judgment; Denying 94 Motion Ex parte Motion for Joinder. The Clerk SHALL close the file. Signed by Judge Janis L. Sammartino on 9/4/2018. (All non-registered users served via U.S. Mail Service)(acc) (Entered: 09/04/2018) |
| 09/04/2018 | 96 | CLERK'S JUDGMENT. IT IS SO ORDERED AND ADJUDGED that the Court GRANTS Defendants' Motion to Dismiss, (ECF No. 76). Accordingly, the CourtDISMISSES WITH PREJUDICE Plaintiff's Third Amended Complaint, (ECF No. 72). Because Defendants have absolute immunity, further amendment of Plaintiff's claims would be futile. See Cahill v. Liberty Mut. |

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| | | Ins. Co., 80 F.3d 336, 339 (9th Cir. 1996) (noting denial of leave to amend is not an abuse of discretion where further amendment would be futile). Additionally, the Court DENIES Plaintiff's pending motions, (ECF Nos. 77, 81, 94). The Clerk SHALL close the file. (All non-registered users served via U.S. Mail Service)(acc) (Entered: 09/04/2018) |
| 09/05/2018 | 97 | NOTICE OF APPEAL to the 9th Circuit as to 96 Clerk's Judgment, by Gavin B. Davis. (Filing fee \$ 505, receipt no. CAS103914.) (Notice of Appeal electronically transmitted to the US Court of Appeals.) (akr) (Entered: 09/05/2018) |

| PACER Service Center | | | |
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| 09/05/2018 15:12:33 | | | |
| PACER Login: | Gavinbdavis:4872224:0 | Client Code: | |
| Description: | Docket Report | Search Criteria: | 3:17-cv-00654-JLS-BGS |
| Billable Pages: | 9 | Cost: | 0.90 |

No. 18-56202

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

GAVIN B. DAVIS,

Appellant and Plaintiff,

vs.

SAN DIEGO DISTRICT ATTORNEY (SDDA) ET. AL.,,

Appellees and Defendants.

CERTIFICATE OF SERVICE

I, Plaintiff-Appellant, certify, under Penalty of Perjury, that on or before September 6, 2018, the Filing denoted below, and any Attachments (e.g. Memo of P&A), was served, by mail, on, the party addressed herein.

EXCERPTS OF RECORD

Defendant—Appellee, San Diego County District Attorney’s Office and Personnel

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