Case Number: 18-8474

In The
Supreme Court of the United States

JOHN HENNEBERRY,
Petitioner,

vs.

COUNTY OF ALAMEDA, CALIFORNIA, ET AL,
Respondents.

On Petition for Writ of Certiorari
To The United States Court of Appeals
For The Ninth Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS FOR REVIEW:

1. When deciding the matter of a no-bail bench warrant for failure to appear, can the court allow faulty and fabricated, misdirected service-by-mail of a criminal summons that if not faulty, would otherwise conform to the California Code of Civil Procedure instead of requiring personal, service-by-sworn-peace officer that conforms to the Penal Code?

2. The record demonstrates Respondents' pattern and practice of faulty and fabricated service that does not conform to the Penal Code. Is the district attorney, her county employer and others liable for damages resulting from faulty and fabricated service of a criminal summons?

3. Petitioner was arrested at his home as a result of a no-bail warrant and held in police custody for seven days and required to post cash bail to secure his release. According to statute, the only crime for which petitioner was arraigned would have required the Respondents to cite-and-release petitioner following booking had the police made the misdemeanor arrest. Petitioner was not convicted of any crime as a result of the prosecution. Was Petitioner denied his Fifth Amendment right to due process and his Fourth Amendment right to be free from seizure?

4. The district attorney cited the Code of Civil Procedure on the criminal summons, creating the appearance of authority for proper service. The district attorney then convinced a judge to issue a no-bail bench warrant for failure to appear. If a pattern and practice of mail fraud can be established, can the district attorney, the police and other public officials be held liable in a private action for mail fraud and kidnapping in accordance with the federal RICO statutes?

5. Did the Respondents' reckless acts alleged in Petitioner's complaint exceed the reasonable person standard that would otherwise afford the Respondents qualified immunity?

6. Were the acts alleged in Petitioner's complaint sufficient to meet the standard for conspiracy to deny Petitioner his legal and Constitutional rights?

7. Was Petitioner's complaint sufficient to survive defense motions to dismiss the complaint?

LIST OF PARTIES

JOHN HENNEBERRY,

Petitioner/Appellant/Plaintiff

vs.

COUNTY OF ALAMEDA, CALIFORNIA (hereinafter 'ALCO'); CITY OF FREMONT, CALIFORNIA; CITY OF NEWARK, CALIFORNIA; ASSISTANT ALAMEDA COUNTY DISTRICT ATTORNEY JOHN WELLINGTON JAY (retired), SBN 88427; ALAMEDA COUNTY DISTRICT ATTORNEY NANCY E. O'MALLEY, SBN 111923; ALAMEDA COUNTY DEPUTY DISTRICT ATTORNEY ALEXANDER HERNANDEZ (resigned and rehired), SBN 280989; ALAMEDA COUNTY DEPUTY DISTRICT ATTORNEY CHRISTINE S. SAUNDERS, SBN 287882; JUDGE OF THE SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA RICHARD OVERTON KELLER (retired), SBN 40890; COUNTY OF ALAMEDA, CALIFORNIA ADMINISTRATOR SUSAN S. MURANISHI (CEO); ALAMEDA COUNTY SHERIFF GREGORY J. AHERN; NEWARK, CALIFORNIA CITY MANAGER JOHN BECKER (CEO, retired); FREMONT, CALIFORNIA CITY MANAGER FRED DIAZ (CEO, retired); CITY OF FREMONT, CALIFORNIA CHIEF OF POLICE RICHARD LUCERO (retired), SBN 207011; CITY OF FREMONT, CALIFORNIA POLICE OFFICER MICHAEL RAMSEY, BADGE NUMBER 14175; CITY OF NEWARK, CALIFORNIA CHIEF OF POLICE JAMES LEAL (retired); CITY OF NEWARK, CALIFORNIA STREET ENFORCEMENT TEAM DETECTIVE ANTHONY HECKMAN, BADGE NUMBER 12; CITY OF NEWARK, CALIFORNIA POLICE OFFICER YAMA HOMAYOUN, BADGE NUMBER 89; ALAMEDA COUNTY SHERIFF'S DEPUTY JAMES LINN, BADGE NUMBER 2152; DOES 1 – 100,

Respondents/Appellees/Defendants

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OPINIONS AND ORDERS ENTERED IN THE CASE, RELATED CASES

Petitioner appealed to The Ninth Circuit Court of Appeals in accordance with 18 U.S.C. §1291. The Appellate Court entered judgment against Petitioner, affirming the United States District Court of Northern California ruling that dismissed all of Petitioner's claims against all of the Respondents. The Ninth Circuit Court four-page Memorandum dated December 18, 2018 and one-page Mandate dated January 9, 2019 are in APPENDIX 'A'. Ninth Cir. Case no. 16-17049 The United States District Court of Northern California entered judgment against Petitioner, dismissing all claims against all Respondents following four defense motions to dismiss Petitioner's complaint pursuant to Federal Rules 12(b)(6) and 8(a)(2).
The District Court's 41-page ruling and order, dated October 12, 2016 is in APPENDIX 'B'. United States District Court of Northern California case number: 16cv-02766-EDL.
Except for the rulings and orders, the lower court's opinions have not been published. Petitioner is not a party to any cases that are directly related to this case.

BASIS FOR JURISDICTION OF THIS COURT TO REVIEW THIS CASE

The Ninth Circuit Court of Appeals entered judgment and orders against Petitioner on December 18, 2018 and issued a one-page Mandate on January 9, 2019. The United States District Court of Northern California entered judgment and orders against Petitioner on October 12, 2016. Petitioner asks this court to grant a Writ of Certiorari to review and reverse those judgments and orders in accordance with 28 U.S.C. §1254 (1).

JURISDICTION OF THE FEDERAL COURT AND STATEMENT OF THE CASE

The jurisdiction of the United States District Court was invoked pursuant to 42 U.S.C. § 1983 et seq.; 28 U.S.C. §§ 1331 and 1343(a). Supplemental jurisdiction over state law

claims exists pursuant to 28 U.S.C. § 1367. Venue was proper in the Northern District of California as the events described in Petitioner's complaint occurred in that district.

Petitioner is not a corporation. Petitioner filed a civil rights complaint in the district court arising from the Unconstitutional and unlawful arrest and imprisonment of Petitioner/Plaintiff John Henneberry. On the night of July 2, 2014 Petitioner was arrested at his home as a result of no-bail bench warrant for failure to appear in the California Superior Court of Alameda County for a misdemeanor arraignment. The bench warrant was issued after the Respondents utilized the United States Mail to serve Petitioner with a summons to appear in court. Petitioner did not appear in court and then the Respondents convinced the court that the criminal summons had been properly served. Service of the summons was faulty and fabricated because a sworn peace officer or an officer of the court was required to personally serve the criminal summons in accordance with the California Penal Code. To compound the faulty service, the summons was mailed to the wrong address despite the fact that all parties involved in the criminal matter had Petitioner's correct home address. Petitioner did not receive the summons and was unaware that he had been ordered to appear in court. As a result of the July 2, 2014 arrest, Petitioner was held in the Alameda County jail for seven days without bail. While being held in county custody as a misdemeanor suspect, Petitioner was denied prescription medication and was never taken to court. Petitioner was released from county custody only after a relative appeared in court on his behalf, requested that bail be set and then posted cash bail. The misdemeanor for which Petitioner was eventually arraigned would have required the police to cite-and-release him in the event a probable cause police arrest was made in accordance with clearly defined California statute; posting cash bail for release had not been required by law since the statute was amended in the year 1986. Petitioner was denied his rights to due process and freedom from seizure in accordance with the United States Constitution. Petitioner was also defrauded and kidnapped by state actors as a result of a pattern and practice of mail fraud in combination with violations of the Federal Racketeering Statutes.

Petitioner was never convicted of any crime as a result of the no-bail arrest and imprisonment.

ARGUMENT FOR ALLOWING WRIT OF CERTIORARI

The Ninth Circuit Court of Appeals has affirmed and sanctioned the ruling of the District Court of Northern California. The district court's ruling significantly departed from the accepted and usual course of judicial proceedings. State actors that acted under the color of authority denied Petitioner his clearly defined statutory and Constitutional rights. Those actions violated Petitioner's Civil Rights. In addition to other claims, Petitioner was denied his Fifth Amendment right to due process and his Fourth Amendment right to be free from seizure. The Respondents clearly admitted on record that they mail criminal summonses to suspects as a matter of pattern, practice and policy (APPENDIX 'C'). This practice violates clearly defined state statutes and Constitutional due process protections. Petitioner calls on the supervisory power of the United States Supreme Court.

I. FACTS

Petitioner stated facts in ¶¶ 1 – 54 of his complaint that support his claims. On the night of July 2, 2014 Petitioner was arrested at his home as a result of a no-bail bench warrant for failure to appear in the California Superior Court of Alameda County for a misdemeanor arraignment. The bench warrant was issued after Respondent Assistant Alameda County District Attorney John Jay prepared a summons and then utilized the United States Mail to serve Petitioner with the improperly addressed summons and Petitioner did not appear. Service of the summons was faulty because a sworn peace officer or an officer of the court was required to personally serve the summons in accordance with the California Penal Code. CPC §816(a).

Service was also fabricated and fraudulent because the criminal summons contained references to the California Code of Civil Procedure as a representation of proper authority for service. CCCP §§1013A(3), 2015.5

The California Superior Court forfeited its right to issue a probable cause misdemeanor arrest warrant because a summons had been requested. CPC §813(a).

Petitioner was never charged with a felony, only a misdemeanor. There is no doubt that misdemeanor suspects have at least the same statutory rights as felony suspects to be free from imprisonment, and therefore, Petitioner had the statutory and Constitutional right to be free from a probable cause misdemeanor arrest in accordance with CPC §813(a) because the summons had been requested by the district attorney.

Petitioner was arrested for failure to appear, he was not arrested for suspicion of committing a misdemeanor. The court never issued a misdemeanor arrest warrant pursuant to CPC §1427(a), and did not have the authority to issue a misdemeanor arrest warrant in accordance with felony suspect protections codified by CPC §813(a) because a summons had been requested. If a probable cause misdemeanor arrest had been made by the police instead of requesting a summons, the police would have been required to cite and release Petitioner in accordance with California statute. CPC § 853.6

The chain of events that lead to the July 2, 2014 arrest follow:

On April 23, 2014 Petitioner was the victim of an automobile theft in Fremont, CA. A few minutes later he exchanged words with the suspected thief who admitted taking Petitioner's car. A few days later the suspected thief reported Petitioner to the Fremont, CA Police, claiming that Petitioner had victimized the suspected thief.

On April 29, 2014, Petitioner was inside his home in Newark, CA. Petitioner answered a knock on his front door and spoke with Respondent Fremont Police Officer trainee Michael Ramsey. Ramsey told Petitioner that he was not going to arrest him, but wanted to talk to him about what happened at 'PK Market,' the location where Petitioner's car had been stolen days earlier. Petitioner spoke with Ramsey for about 20 minutes about the car theft. Another Fremont Police Officer was present. This other Fremont Police Officer has been identified as Field Training Officer (FTO) Rafael Samayoa, badge number 13011. Samayoa was training Ramsey. Samayoa remained silent until Ramsey was finished speaking with Respondent. It was then that Samayoa told the Respondent, (paraphrased), "Stay away from PK Market." Petitioner did not agree or object to this command, but in retrospect Petitioner should have advised Samayoa that he was acting outside of his authority by commanding Petitioner to do something that only a

judge could order. Samayoa was violating plaintiff's First Amendment right to freedom of movement by giving plaintiff an unlawful and Unconstitutional command under color of authority. Samayoa is a Field Training Officer and therefore is expected to fully understand the extent of his authority. This demonstrates that FTO Samayoa helped cause Petitioner's civil rights to be violated, which in turn demonstrates further abuse by the police officers that were part of the chain conspiracy that violated Petitioner's statutory and Constitutional rights. Petitioner seeks to add Samayoa as a defendant in this action because Samayoa was actively involved in the chain conspiracy to violate Petitioner's statutory and Constitutional rights.

Fremont Police Officer Michael Ramsey and the Fremont Police Department chose not to investigate the reported theft. Instead, Ramsey and the Fremont Police reported to the Alameda County District Attorney that Petitioner was suspected of committing felony assault with a deadly weapon. CPC §245 (a)(1) Despite this report of suspected felony violence that the police made to the district attorney, at no time did Ramsey or any member of the Fremont Police attempt to arrest Petitioner for suspicion of committing a violent felony. As a matter of public safety, the police will always arrest individuals that they have named and located if they suspect them of committing any violent felony. Despite the absence of a felony arrest, Respondent police trainee Ramsey made a written report to the district attorney, advising a felony assault prosecution. This felony report to the district attorney was the beginning of the conspiracy to maliciously indict Petitioner for a crime; Ramsey did not arrest Petitioner for suspicion of committing a violent felony, but he did make a written report to the district attorney recommending that Petitioner be prosecuted for a violent felony. The combination of Ramsey's actions were not logical in terms of improving public safety, but they were logical for the purpose of conspiring to maliciously indict Petitioner for a crime.

Before going to Petitioner's home on April 29, 2014 to question him, the Fremont Police viewed and collected a single surveillance video that was later proven to be edited in an obvious way by the alleged assault victim/suspected car thief before it was submitted to the police.

Immediately following this unannounced police contact at his home, Petitioner chose not to shake hands with defendant Ramsey, instead Petitioner told Ramsey, "I don't shake hands with

cops. There are too many of you and you're overpaid." Ramsey collected no further evidence after leaving Petitioner's home. Fremont Police Officer trainee Ramsey, after having attempted to shake Petitioner's hand following his unannounced visit to Petitioner's home, then wrote a police report accusing Petitioner of felony assault. In his report to the Alameda County District Attorney, Ramsey made no mention of Petitioner's detailed verbal account about how his car had been stolen. Also in that report, Ramsey wrote, "I told Henneberry I was completing an investigation of the incident at PK Liquors and I would forward my report to the DDA." Petitioner has no recollection of Ramsey telling Petitioner that a police report would be produced and that report would be forwarded to the district attorney. The Fremont Police produced an audio recording of their unannounced April 29, 2014 visit to Petitioner's home. While Ramsey was leaving Petitioner's home, Petitioner told Ramsey (paraphrased), "I'm preparing a written report and I'll deliver it to the Fremont Police in the coming weeks." Petitioner concluded his investigation and submitted his six-page theft report to the Fremont Police on June 24, 2014. Ramsey was being poorly trained and supervised. Substandard training for police officers by their employers satisfies the pattern and practice requirement derived from the common law evolution of, *Monell (1978).*

To compound the unlawful, faulty and fabricated service of the criminal summons, the summons was mailed to the wrong address despite the fact that all parties involved in the criminal matter had Petitioner's correct home address; Petitioner's correct home address was listed on the police report that Ramsey submitted to the Alameda County District Attorney. This demonstrates malice. Respondent ALCO Assistant District Attorney Jay fraudulently represented proper service of the summons by citing sections of the California Code of Civil Procedure on the proof of service portion of the criminal summons as the legal authority for proper service. This information was submitted to the court by the district attorney for the purpose of obtaining issuance of a no-bail bench warrant for failure to appear. Petitioner did not receive the summons and was not aware that he had been ordered to appear in court for a criminal arraignment. Petitioner first obtained a copy of the criminal summons on or around July 10, 2014, which was about two days after he was released from jail. Petitioner obtained a copy of the summons after

going to the Fremont Hall of Justice and speaking with a clerk at the district attorney's office. As a result of the July 2, 2014 arrest, Petitioner was held in the Alameda County jail for seven days without bail. While being held by county captors, Petitioner was denied prescription medication and was never taken to court. Petitioner was released from county captivity only after a relative appeared in court on his behalf and agreed to post cash bail for his release. Petitioner was processed into Santa Rita Jail where his name was taken incorrectly, not simply misspelled, but his name was incorrect on the paperwork he was given. This error was alarming considering that Petitioner provided the processing clerk with his valid, California driver license before the clerk began completing paperwork. During processing, Petitioner immediately advised the clerk of this name error.

Petitioner spent the first 24 hours at the county jail in dirty concrete holding cells, was strip searched and also encountered prisoners with psychiatric problems as well as violent prisoners. Petitioner was screened by jail medical staff who told him he would receive the prescription eye drops that he brought with him or a replacement when he was moved to the jail's housing unit. Despite repeated requests over the next six days, Petitioner was not given this prescription medication that he needed to use daily for treating his glaucoma. Petitioner was finally given this prescription medication about 12 hours before he was released from the county jail. Petitioner completed a grievance form describing how his prescription medication was being withheld or neglected by the Sheriff's Department. Petitioner attempted to submit this grievance form to Respondent, Alameda County Sheriff's Deputy James Linn, but Linn attempted to dissuade him from submitting the grievance form. Linn told Petitioner that the Sheriff's medical contractor was to blame, not the sheriff's department. Petitioner told Linn, "I was just told to turn-in this form." Linn responded by telling Petitioner, "You're not very bright are you?" Linn was part of the chain conspiracy which caused the sheriff's department to withhold prescription medication from Petitioner, and that in turn compelled the sheriff's department to not transport Petitioner to court. Petitioner was ready, willing and able to be transported to court, so the sheriff's department's medical hold was not legally or Constitutionally justified.

On his fifth day of imprisonment, Petitioner was told that he had been given the wrong prisoner identification number. It wasn't until after Petitioner was released from jail that he learned that because his medication was withheld due to the sheriff's neglect, he had been placed on a medical hold and thereby not transported to court.

After being released from county imprisonment, Petitioner learned that a relative had gone to court on his behalf on July 7, 2014 and requested that Respondent Judge Richard O. Keller set bail. Petitioner also learned that Respondent Alameda County Deputy District Attorney Christine Saunders appeared at the Fremont Hall of Justice on behalf of the county on July 7, 2014 to prevent or significantly hinder Petitioner's release from jail because Petitioner did not appear in court days earlier. Judge Keller signed and issued the no-bail bench warrant for Petitioner's failure to appear in his courtroom on June 27, 2014, despite the fact that Keller had easy access to information that the summons was improperly served.

Petitioner's imprisonment was not lawful, Constitutional or custodial. Petitioner was denied his rights to due process according to California statutes and the United States Constitution. Petitioner was also defrauded and kidnapped by state actors. The misdemeanor charge for which Petitioner was eventually arraigned would have required the police to cite-and-release the Petitioner in accordance with CPC §853.6 had they made a probable cause misdemeanor arrest. None of the statutory exceptions for cite-and-release applied according to CPC §853.6, and therefore, the Respondents had no lawful or Constitutional right to imprison Petitioner.

Petitioner was charged with misdemeanor assault and was never charged with battery. Petitioner was forced to defend himself during a 2.5 week jury trial that took place at the Fremont Hall of Justice in February, 2015. Respondent Keller presided over the trial. This trial resulted in a mistrial. The district attorney then refiled the misdemeanor assault charge and added a second charge, misdemeanor trespassing. Petitioner was forced to return to court for several pre-trial hearings after the second criminal complaint was filed against him, but the district attorney never brought this second case to trial and discontinued its prosecution of the Petitioner on April 22, 2016. Petitioner was never convicted of any crime as a result of the July 2, 2014 arrest.

Respondent Alameda County Deputy District Attorney Alexander Hernandez openly volunteered and admitted in court proceedings that he had contacted Petitioner's properly subpoenaed defense witnesses during Petitioner's criminal jury trial and instructed those witnesses to not appear in court. Complaint ¶11, APPENDIX 'F'

Respondents O'Malley, Muranishi, Becker, Diaz, Ahern, Lucero and Leal all act in capacities that manage, supervise, direct and create and maintain policies for the entities that employ them and the employees that they supervise.

Entities County of Alameda which includes the ALCO Sheriff and the ALCO District Attorney; the City of Fremont; and, the City of Newark all choose to partner with each of the other entities. The events described herein constitute either a hub-and-spoke conspiracy or a chain conspiracy. Petitioner will refer to the conspiracy as a chain conspiracy because that form of conspiracy is the most likely given the facts.

II. PETITIONER'S CLAIMS AGAINST THE RESPONDENTS

Petitioner's complaint asserted 20 claims against the Respondents: (1) Violation of Fifth Amendment to the United States Constitution; (2) Violation of Fourth Amendment to The United States Constitution; (3) Violation of Sixth Amendment to The United States Constitution; (4) Violation of Fourteenth Amendment to The United States Constitution; (5) Conspiracy Against Civil Rights; (6) Deprivation of Rights Under Color of Law; (7) Mail Fraud; (8) Wire Fraud; (9) Attempt and/or Conspiracy to Commit Mail Fraud and/or Wire Fraud; (10) Kidnapping, Conspiracy to Kidnap and Using the Mail in Furtherance of The Commission of The Offense of Kidnapping; (11) Hostage Taking; (12) Receiving and Possessing Ransom Money; (13) Criminal Street Gang Injunction; (14) Battery; (15) False Arrest and False Imprisonment; (16) Kidnapping; (17) Conspiracy to Falsely and Maliciously Indict Plaintiff for a Crime; (18) Conspiracy to Commit Fraud; (19) Committing Acts Against Plaintiff that was Injurious to The Due Administration of The Laws; (20) Violation of California Civil Code §52.1: Plaintiff's Right to Peaceful Exercise and Enjoyment of Rights Secured by the Constitution and Laws of The United States and The State of California.

The Respondents divided themselves into four groups and each of these groups filed a separate motion to dismiss Petitioner's complaint. The district court held a hearing on the four motions to dismiss (MTD) on September 9, 2016. On October 12, 2016 district court Magistrate Judge Elizabeth D. Laporte signed a judgment and order that granted the four motions to dismiss all twenty of Petitioner's claims against all Respondents with prejudice. APPENDIX 'B'

III. LEGAL ISSUES

1. Respondent Ramsey violated Peace Officers Standards Training (POST) when he submitted a report to the district attorney which omitted exculpatory information, specifically, detailed information about the theft of Petitioner's car during the time of the alleged assault.

2. Respondent Ramsey was part of the chain conspiracy to maliciously indict Petitioner for a crime. Ramsey recommended to the district attorney that Petitioner be charged with felony assault with a deadly weapon. Despite this, neither police trainee Ramsey nor any member of the Fremont Police Department made any attempt to arrest Petitioner for felony assault with a deadly weapon. In the interests of promoting public safety, the police always arrest violent felony suspects if they have the means to do so. The absence of the felony arrest combined with the report to the district attorney recommending felony prosecution provides ample evidence that a conspiracy existed to maliciously indict Petitioner for a crime.

3. Respondent ALCO Assistant District Attorney John Jay never properly served Petitioner with the criminal summons. Respondents have argued that the incorrectly addressed letter to Petitioner was a, 'summons letter' or a 'courtesy notice' and not a summons. Petitioner disagrees that this letter (APPENDIX 'E') was not a summons. In any case, the Respondents have never produced proof that the criminal summons was properly served. CPC §816(a).

4. Respondents Jay and ALCO committed fraud by citing sections of the California Code of Civil Procedure as proper means of service for the criminal summons. This citation appears on the summons. APPENDIX 'E' This legal citation which was written on the district attorney's letterhead created the appearance of legal authority, and was therefore a fraudulent

misrepresentation to the court for proper service of a criminal summons. Respondent Jay was part of a chain conspiracy to deprive Petitioner of his statutory and Constitutional rights.

5. Respondents Deputy District Attorney Saunders, Assistant District Attorney Jay and ALCO committed fraud by representing to Respondent Judge Keller that Petitioner was properly served with the criminal summons, and under those circumstances, represented to Keller that he had the legal and Constitutional authority to issue a no-bail bench warrant for failure to appear. The resulting arrest violated Petitioner's Fifth Amendment right to due process, his Fourth Amendment right to be free from seizure as well as violating Petitioner's other statutory and Constitutional rights. Saunders and Jay were part of the chain conspiracy to deprive Petitioner of his Constitutional and statutory rights.

6. Respondent Deputy District Attorney Hernandez was part of a chain conspiracy to falsely and maliciously indict Petitioner for a crime and to violate several of Petitioner's Constitutional and statutory rights. Hernandez violated Petitioner's Sixth Amendment right to defense witnesses during a criminal prosecution by telephoning properly subpoenaed defense witnesses and instructing them to not appear in court. Complaint ¶11, APPENDIX 'F'

7. Respondent Keller violated Petitioner's Constitutional and statutory rights when he acted outside the scope of his jurisdiction by issuing a no bail bench warrant, despite having easy access to information that the warrant was not legally or Constitutionally justified. Judge Keller was also part of the chain conspiracy to deprive Petitioner of his Constitutional and statutory rights. The injuries Keller caused could not be corrected by judicial review.

8. Respondents City of Newark, Heckman and Homayoun violated Respondent's statutory and Constitutional rights by arresting Petitioner at his home on July 2, 2014. The no-bail arrest was also malicious because it was timed to take place on a Wednesday before the three-day Independence Day holiday weekend. CPC §825.2. The Newark Respondents were part of a chain conspiracy to violate Petitioner's statutory and Constitutional rights. The Newark Respondents also have liability due to strict liability; the Newark Respondents made the arrest and transported Petitioner to the ALCO jail in Dublin, CA.

9. Respondents ALCO, Linn, and Ahern deprived Petitioner of his statutory and

Constitutional rights by denying Petitioner prescription medication while he was imprisoned and then using the problem that they created as an excuse to not transport Petitioner to court during the seven days Petitioner was imprisoned at the county jail. During this time in jail, Petitioner had not been properly served with a summons and therefore was not being lawfully or Constitutionally imprisoned for failure to appear. At this time Petitioner was no more than a misdemeanor suspect because he had not yet been arraigned. No arrest including a cite-and-release probable cause arrest was lawful because a summons had been issued well before the time of arrest and imprisonment. CPC §813(a). Because the summons had already been issued, the district attorney had no legal options to force Petitioner to appear in court except to properly serve petitioner with the criminal summons. CPC § 813(a). The ALCO Respondents were part of a chain conspiracy to deprive Petitioner of Constitutional and statutory rights.

10. The Respondents were part of a chain conspiracy to falsely and maliciously indict Petitioner for a crime. This prosecution lasted for two years; it did not end until April 22, 2016. Petitioner was never convicted of any crime as a result of the July 2, 2014 arrest.

11. The ALCO Respondents committed mail fraud by utilizing the United States Mail to mail Petitioner a criminal summons. The summons was not properly served because it was not personally served by a peace officer or an officer of the court. CPC §816(a).
In addition, this summons was mailed to the incorrect address, despite the fact that Respondent Ramsey provided the ALCO Respondents with the Petitioner's correct address in his police report. During the September 9, 2016 district court hearing for the four defense motions to dismiss, attorney Gregory Rockwell that represented the ALCO Respondents stated that the ALCO Respondents mail summonses to criminal suspects as a matter of practice. APPENDIX 'C', MTD hearing transcript: Page 14, line 25; page 15, lines 1-25; page 16, lines 1 – 4; page 29, lines 6 – 25; page 30, lines 1 – 25. As stated above, Respondent Jay enhanced the mail fraud by citing sections of the California Code of Civil Procedure on the summons as authorities for proper service of a criminal summons. APPENDIX 'E' This practice of mailing criminal summonses, and, the practice of citing irrelevant legal authorities representing proper service of criminal summonses in an effort to persuade judges to issue no-

bail bench warrants for failure to appear constitutes a pattern of mail fraud. A pattern of mail fraud is a qualifying predicate act that gives Petitioner a private right to action for violations of specific sections of the Federal Criminal Code, Title 18. This private right to action for specific Title 18 violations based on a qualifying predicate act is supported by both the federal RICO statutes and common law. Kidnapping is one of the specified crimes according to RICO.

12. As a Judge of the Superior Court of California, Respondent Keller is claiming absolute immunity for his unlawful and Unconstitutional actions described herein. Absolute immunity only applies if the judge's actions are within the scope of his authority. Respondent Keller did not have the authority to issue a no-bail bench warrant for any reason that he saw fit. By ordering the police to arrest and imprison Petitioner without bail, Keller acted outside the scope of his jurisdiction and therefore does not have absolute immunity from civil liability.

13. Several Respondents are claiming qualified immunity from civil liability. Given the facts, none of those Respondents are entitled to qualified immunity because their conduct violated clearly established statutory and Constitutional rights of which a reasonable person would have known.

14. All of the Respondents were part of a chain conspiracy to commit acts against Petitioner that was injurious to the due administration of the laws.

15. Because Petitioner's seizure and imprisonment was not lawful and not Constitutional, and, because his Constitutional and statutory rights to appear in court were blatantly violated, his imprisonment was not custodial. Instead, Petitioner was held as a captive. Also, because the warrant for failure to appear was issued as a result of fraud, demanding bail money to secure his release was not lawful or Constitutional. Petitioner was only charged with a cite-and-release misdemeanor. Because a summons had been issued, a cite-and-release probable cause arrest would have been unlawful. CPC §813(a) Due to this combination of facts, Petitioner was kidnapped and held for ransom by the Respondents.

16. Several of the Respondents were not directly involved in the actions that injured Petitioner. However, these individual-Respondents are executives and top officers for the entity-Respondents that employ them. As executives and top officers they manage, direct and

supervise the employees that injured Petitioner and also create policy for the entities that employ them. The executives and top officers named as Respondents are liable for Petitioner's injuries.

17. At the time the six-month claims deadline passed following the July 2, 2014 date of the primary injury, Petitioner was being maliciously prosecuted by the Respondents. In an effort to mitigate damages, Petitioner did not file state administrative claims for his injuries. Had he filed these state claims during the malicious criminal prosecution, the Respondents would have been further incentivized to continue their malicious prosecution in an effort to secure a conviction for the purpose of nullifying any civil claims brought by the Petitioner. The accrual date for all of Petitioner's claims was not until April 22, 2016. This was the date the county defendants ended their malicious criminal prosecution. Therefore, the deadline for filing all state claims did not expire until October 21, 2016. Petitioner filed all state claims with the appropriate parties on September 28, 2016. All of these administrative claims were rejected by the Respondents.

Petitioner had no duty to file administrative claims for his federal claims.

IV. ARGUMENT

For easy reference, the outline designators in this section will follow the same outline as the district court's October 12, 2016 41-page ruling and order granting the four defense motions to dismiss Petitioner's complaint with prejudice. APPENDIX 'B' For example, discussion and argument regarding immunity for Respondents Hernandez, Saunders and Jay will appear in section **IV. E. 1.** in both the district court order and this petition. The Ninth Circuit Court of Appeals issued a four-page memorandum ruling that affirmed the district court's ruling.

A. Petitioner adequately alleged the basis of his claims against each Respondent to satisfy Federal Rule of Civil Procedure 8(a)(2). Petitioner adequately alleged a plausible conspiracy.

When deciding motions to dismiss, the court rules in favor of plaintiffs unless the complaint contains serious defects. For purposes of ruling on a Rule 12(b)(6) motion, the court "Accepts factual allegations in the complaint as true and construes the pleading in the light most

favorable to the non-moving party." *Manzarek vs. St. Paul Fire and Marine Insurance Co. 519 F.3d 1025, 1031 (9th Cir. 2008).*

Pro Se litigants are held to lower standards of brief-writing than attorneys. *McCottrel vs. E.E.O.C. 726 F 2d 350, 351 (7th Cir. 1984).* The court recognizes that it has a duty to ensure that Pro Se litigants do not lose their right to a hearing on the merits of their claim due to ignorance of technical procedural requirements. *Borzeka vs. Heckler 739 F. 2d 444, 447 (9th Cir. 1984).* Pro Se pleadings are liberally construed, particularly where civil rights claims are involved. *Christensen vs. C.I.R. 786 F. 2d 1382, 1384-85 (9th Cir. 1986). Bretz vs. Kelman 773 F. 2d 1026, 1027 (9th Cir. 1985).*

Petitioner sufficiently alleged facts in his complaint and did not need to prove his case at the pleading stage. Each of Petitioner's claims contained a paragraph that read, "Plaintiff re-alleges and incorporates by reference paragraphs 1 – 54 of this complaint." The discovery process and trial will provide further proof of Petitioner's claims.

Petitioner made claims against municipal governments: ALCO, City of Fremont and City of Newark. Petitioner made no claims against the State of California.

Section 1983 imposes two essential proof requirements upon a claimant: 1) That a person acting under color of law committed the conduct at issue, and 2) that the conduct deprived the claimant of some right privilege or immunity protected by the Constitution or laws of the United States. *Parratt vs. Taylor, 451 U.S. 527 (1981).* Petitioner sufficiently plead these two elements in his complaint.

With regards to conspiracy, the connection between the Respondents is obvious; the Respondents worked together to unlawfully and Unconstitutionally seize and imprison the Petitioner. The Respondents were not required to have a, 'meeting of the minds' to take part in either a hub-and-spoke conspiracy or a chain conspiracy.

The United States Supreme Court has affirmed the existence and validity of both 'chain conspiracies', and, 'hub-and-spoke conspiracies'. A chain conspiracy does not require that every member of the conspiracy know all of the other conspirators. This type of conspiracy also does not require that every member of the conspiracy be involved in all of the activities of the

conspiracy. The court held that a prosecutor's charge of a single chain conspiracy was proper, finding that each salesman "by reason of his knowledge of the plan's general scope, if not its exact limits, sought a common end to aid in disposing of the whiskey." *Blumenthal vs. United States, 332 U.S. 539, 68 S.C. (1947).* In the case of a hub-and-spoke conspiracy, several parties ('spokes') enter into an unlawful agreement with a leading party ('hub'). *Interstate Circuit vs. United States 306 U.S. 208 (1939).*

During the September 9, 2016 district court hearing for the four defense motions to dismiss, the attorney for the ALCO Respondents stated that the ALCO Respondents mail summonses to criminal suspects as a matter of practice. APPENDIX 'C', MTD hearing transcript: Page 14, line 25; page 15, lines 1-25; page 16, lines 1 – 4; page 29, lines 6 – 25; page 30, lines 1 – 25

Considering the information that was contained in the summons, it should be considered fraud. Utilizing the U.S. Mail to deliver the summons enhanced the fraud and elevated the fraud to mail fraud. According to the 'RICO' statutes, this pattern of mail fraud is a qualifying predicate act for a private right to action for violations of specific sections of the Federal Criminal Code, Title 18. This private right to action based on qualifying predicate acts includes a plaintiff's right to sue for kidnapping and mail fraud. 18 U.S.C. §§ 1961(4), (5), 1962(c), 1964(c), 1965(a).

The Respondent-conspirators are all responsible for all of the actions of their co-conspirators. In the case of the Newark Respondents, they have liability due to conspiracy and liability as a matter of strict liability. The Newark Respondents arrested and transported Petitioner. Due to the long holiday weekend, the timing of the no-bail arrest at Petitioner's home on a Wednesday was malicious in addition to being unlawful and Unconstitutional. CPC §825.2

The district court ruled that the Petitioner's complaint was, "exceedingly confusing." APPENIDIX 'B': Page 7, lines 23 – 26 Respondent disputes that his complaint was confusing. Also, the district court ruled that Respondent did not allege the basis of his claims against each defendant. Each of Petitioner's claims included the phrase, "Plaintiff re-alleges and incorporates by reference paragraphs 1 through 54 of this complaint."

Respondents argued that Petitioner failed to sufficiently state facts for each of the claims asserted, relying on "naked assertions" devoid of "further factual enhancement." Respondents

cited *Ashcroft vs. Iqbal 556 U.S. 662 (2009),* where the court ruled that the plaintiff was required to plead facts that were plausible and not simply possible. Petitioner's complaint included allegations that far exceeded the possibility standard, the allegations are more than simply plausible, and Petitioner will prove during trial that there is far more than a preponderance of evidence that everything alleged in his complaint is true. In *Leatherman (1993),* The U.S. Supreme Court ruled, "The Federal Rules of Civil Procedure do not require a claimant to set out in detail the facts upon which he bases his claim. To the contrary, all the Rules require is 'a short and plain statement of the claim' that will give the defendants fair notice of what the plaintiff's claim is and the grounds upon which it rests." *Leatherman vs. Tarrant County Narcotics Intelligence and Coordination Unit, 507 U.S. 163 (1993).* If the court finds any defects or deficiencies in the way the claims were stated, Petitioner asks the court to grant leave to amend his complaint.

B. Claims Against Named Respondents Based on Managerial Roles are Valid

1. Fremont City Manager Diaz and Fremont Police Chief Lucero have Liability

Respondents Fremont City Manager Diaz and Fremont Police Chief Lucero have liability because they acted in supervisory and policy-making capacities for the Respondent-entities that employed them. Because the aforementioned Respondents were decision-makers that created and maintained policies that deprived Petitioner of his statutory and Constitutional rights, these Respondents have liability. Petitioner has standing for claims against Respondents City of Fremont, Diaz and Lucero. The court has ruled that government officials cannot be held liable for the Unconstitutional conduct of their subordinates in actions brought under 42 USC §1983 under the theory of, 'respondeat superior.' Petitioner's complaint did not allege respondeat superior. Instead, the City of Fremont is liable for the actions of Respondents Diaz, Lucero and Ramsey because their actions were a matter of pattern, practice or policy. Complaint ¶ 98, APPENDIX 'F'. *Monell vs. Dept. of Social Services, 436, U.S.. 658 (1978).*

2. Alameda County Sheriff Ahern, County Administrator Muranishi and District Attorney O'Malley Have Liability

Respondents County Sheriff Ahern, County Administrator Muranishi and District Attorney O'Malley are all policy-makers, decision-makers and work in supervisory capacities and therefore, they all have liability due to the argument presented in section **IV. B. 1.** above.

3. Newark City Manager Becker and Police Chief Leal Have Liability

Respondents Newark City Manager Becker and Police Chief Leal were both policy-makers, decision-makers and were employed in supervisory capacities and therefore, they both have liability due to the argument presented in section **IV. B. 1.** above.

C. Petitioner's Monell Claims Against the Municipalities are Valid

Petitioner's Monell claims against the municipalities are valid because the Municipalities had and have patterns, policies and practices that were and are the moving force behind the Constitutional and statutory violations that injured Petitioner. *Monell vs. Dept. of Social Services, 436, U.S.. 658 (1978).* Petitioner's complaint clearly described the unlawful and Unconstitutional municipal practices that caused his injuries. The county Respondents admitted to these policies and practices during the hearing to dismiss. APPENDIX 'C', MTD hearing transcript: Page 14, line 25; page 15, lines 1-25; page 16, lines 1 – 4; page 29, lines 6 – 25; page 30, lines 1 – 25; Complaint ¶ 98, APPENDIX 'F'

On page two of their memorandum ruling the Ninth Circuit stated, "The district court properly dismissed Henneberry's claims against Alameda County, the City of Fremont and the City of Newark because Henneberry failed to allege facts sufficient to show a policy practice or custom of any of these entities resulting in constitutional violation." Petitioner's complaint did allege these facts in clear and unambiguous language. Complaint ¶ 98, APPENDIX 'F'

Further, co-conspirator Respondent Fremont Police Officer trainee Michael Ramsey was improperly trained and this creates liability for the other Respondents: "A local government entity's failure to train its employees can also create §1983 liability where the failure to train "amounts to deliberate indifference to the rights of persons" with whom those employees are likely to come into contact." *City of Canton, Ohio vs. Harris, et al 489 U.S. 378 (1989);* and, *Oviatt vs. Multnomah County, et al 954 f 2d (1992).*

"In this circuit, a claim of municipal liability under §1983 is sufficient to withstand a motion to dismiss, "even if the claim is based on nothing more than bare allegation that the individual officer's conduct conformed to official policy, custom or practice." *Karim-Panahi vs. Los Angeles Police Dept. 839 F. 2d 621, 624 (9th cir. 1988).*

To prevail on a claim under 42 USC §1983, a plaintiff must show (1) that a right secured by the Constitution or laws of the United States was violated, and (2) that the violation was committed by a person acting under the color of state law. Petitioner has sufficiently stated facts to support both of these elements for all of his §1983 claims.

D. The Federal Claims Against the Fremont Respondents are not Time-Barred

The two-year statute of limitations for the Fremont Respondents had not expired at the time Petitioner filed his complaint. The actions of the Fremont Respondents created a chain of events that continuously injured Petitioner until the malicious criminal prosecution ended on April 22, 2016. Therefore, April 22, 2016 should be the accrual date for all of Petitioner's claims. Petitioner filed his complaint on May 23, 2016.

Fremont Respondent Ramsey omitted exculpatory information from the police report that he submitted to the ALCO district attorney. Specifically, Ramsey made no mention that Petitioner was the victim of a property crime. Because Ramsey omitted this exculpatory information, his report did not comply with CA Peace Officer Standards Training (POST). Ramsey and his trainer, Fremont Police Training Officer (FTO) Samayoa, were well aware of this exculpatory information before the Fremont Police submitted their report to the district attorney. Ramsey's unlawful actions initiated a chain of events that caused Petitioner to be continuously injured for approximately two years as a result of the malicious prosecution. There is further evidence that Ramsey and the other Fremont Respondents had the common objective to maliciously prosecute Petitioner. Ramsey's written report advised the district attorney to prosecute the Petitioner for felony assault with a deadly weapon. In addition to the facts not supporting this felony charge, at no time did Ramsey, his trainer Field Training Officer Samayoa or any other member of the Fremont Police Department arrest Petitioner for suspicion of committing a violent felony. This is alarming because in the interests of promoting public safety, the police arrest violent felony

suspects provided that they have the means to do so. Ramsey and other Fremont Respondents acted with malice and caused a chain of events that injured Petitioner continuously until the malicious prosecution ended on April 22, 2016.

Petitioner's claims against the City of Fremont and Fremont individual Respondents are not time-barred. Ramsey contacted Petitioner on April 29, 2014 but Petitioner was not unlawfully and Unconstitutionally arrested until July 2, 2014. The date Petitioner's injuries began was July 2, 2014. Petitioner did not discover until at least late July, 2014 that Ramsey had submitted a police report to the district attorney. The statute of limitations on fraud cases is two years from the date of the discovery of fraud. Respondent ALCO and ALCO individual Respondents did not end their malicious prosecution of Petitioner until April 22, 2016, which was the day of Petitioner's final appearance at the Fremont Hall of Justice where he was required to appear when ALCO formally ended its criminal prosecution. The 'accrual' date for all of Petitioner's claims was April 22, 2016, the day the Respondents formally ended their malicious prosecution of Petitioner. Officer Ramsey's reckless and unlawful actions, specifically, filing a false, and fraudulent police report initiated a chain of events that violated Petitioner's statutory and Constitutional rights.

E. All Federal Claims Against the ALCO Respondents Should Not be Dismissed

For the reasons stated above, the claims against Respondents ALCO, District Attorney O'Malley, County Administrator Muranishi and Sheriff Ahern should not be dismissed. Petitioner's complaint properly stated facts to support claims against all the Respondents. The claims against DA's Hernandez, Saunders and Jay and Deputy Linn should not be dismissed.

1. Prosecutorial Immunity Does Not Apply to Deputy District Attorneys Hernandez, Saunders and Assistant District Attorney Jay

Respondents Hernandez, Saunders and Jay are not entitled to immunity from civil liability in accordance with any or all of the following protections: 1) Eleventh Amendment, 2) absolute prosecutorial immunity or 3) qualified immunity. These Respondents do not have Eleventh Amendment immunity because they are employed by the county, not the state of

California. Petitioner has and will make frequent references to the 'state.' However, this reference to the state is spelled with a lower case, 's' meaning a generic political division or a reference to government actions or actors. The State of California and individuals employed by the State of California are not Respondents in this action.

a. Absolute Prosecutorial Immunity Does Not Apply

Absolute prosecutorial immunity does not apply to Respondents Hernandez, Saunders and Jay because they were acting outside the scope of their duties when they violated Petitioner's Constitutional and statutory rights. It was not within the scope of duties for these three Respondents to maliciously indict and prosecute Petitioner for a crime. Also, it was not within the scope of duties for Jay and Saunders to utilize state infrastructure including the Superior Court, the district attorney's letterhead, the United States Mail, the county jail and local police officers to: 1) Improperly serve a criminal summons in violation of the statute, and, 2) Cite the California Code of Civil Procedure in an effort to represent legal authority for proper service of the summons, and then 3) Mail the summons to an incorrect address despite having the correct address, and then 4) Represent to the court that the summons had been properly served, and then, 5) Request that the court issue a no-bail arrest warrant for a misdemeanor criminal suspect's failure to appear for an arraignment, and then 6) Present argument in court requesting that the misdemeanor criminal suspect remain jailed for failure to appear for misdemeanor arraignment. APPENDIX 'E'

It was not within the scope of Hernandez's duties to telephone Petitioner's properly subpoenaed defense witnesses midway through a criminal trial and instruct those witnesses to not appear in court. Complaint, ¶11 APPENDIX 'F'

The over-arching issue is whether Jay's, Saunders' and Hernandez's duties entitle them to absolute immunity or only qualified immunity if the proper criterion are met for these forms of immunity. In the event the court decides that these Respondents' duties only entitle them to qualified immunity depending on their actions, they will not enjoy qualified immunity in this case because a reasonable person would have known the actions described herein violated Petitioner's Constitutional and statutory rights. The doctrine of qualified immunity protects

government officials "From liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." *Harlow vs. Fitzgerald, 457 U.S. 800, 818, 102 S. Ct. 2727, 73 L.Ed.2d 396 (1982).* When deciding *Fitzgerald (1982)*, the Supreme Court ruled on qualified immunity for public officials: " 'Qualified' or 'good faith' immunity is an affirmative defense that must be pleaded by a defendant official. *Gomez vs. Toledo, 446 U. S. 635 (1980).* Decisions of this Court have established that the 'good faith' defense has both an 'objective' and a 'subjective' aspect. The objective element involves a presumptive knowledge of and respect for 'basic, unquestioned constitutional rights.' *Wood vs. Strickland, 420 U. S. 308, 322 (1975).* The subjective component refers to 'permissible intentions.' *Ibid.* Characteristically the Court has defined these elements by identifying the circumstances in which qualified immunity would not be available. Referring both to the objective and subjective elements, we have held that qualified immunity would be defeated if an official 'knew or reasonably should have known that the action he took within his sphere of official responsibility would violate the constitutional rights of the [plaintiff], or if he took the action with the malicious intention to cause a deprivation of constitutional rights or other injury. . . .' " *Ibid.*

"Rule 56 of the Federal Rules of Civil Procedure provides that disputed questions of fact ordinarily may not be decided on motions for summary judgment. And an official's subjective good faith has been considered to be a question of fact that some courts have regarded as inherently requiring resolution by a jury." *Harlow vs. Fitzgerald at 816 (1982).* In support of their motion to dismiss Petitioner's complaint, the Respondents cited, *Saucier vs. Katz, 533 U.S. 194, 201 (2001).* The *Saucier* decision does not support the Respondents' defense motion because the subject matter of that case focused on qualified immunity in the context of an excessive force complaint against a police officer during an arrest. The Supreme Court's introduction: "In this case a citizen alleged excessive force was used to arrest him. The arresting officer asserted the defense of qualified immunity." *Id at 197.* The Supreme Court has offered more opinions about absolute immunity: "The greater the power of [high] officials, affords a greater potential for a regime of lawless conduct." *Butz vs. Economou 438 U.S. 478 at 506*

(1978). "Damages actions against high officials were therefore 'an important means of vindicating constitutional guarantees." *Ibid.* "Moreover we concluded that it would be untenable to draw a distinction for purposes of immunity law between suits brought against state officials under 42 U.S.C. §1983 and suits brought directly under the Constitution against federal officials." *Id at 504.*

The Respondents' motion to dismiss Petitioner's complaint cited, *Burns vs. Reed 500 U.S. 478, 111 S. Ct. 1934, 114 L. Ed. 2d 547 (1991).* The *Burns* ruling does not support the Respondents' argument for qualified immunity because the *Burns* decision was limited to whether a state prosecuting attorney is absolutely immune from liability for damages under 42 U. S. C. § 1983 for giving legal advice to the police and for participating in a probable-cause hearing. Due to the minimum standard of plain incompetence, none of the Respondents involved in the warrant's issuance have qualified immunity. In the case of *Malley vs. Briggs 475 U.S. 335 (1986),* The Supreme Court provided an opinion regarding warrants. The Supreme Court's introduction explains the subject matter: "This case presents the question of the degree of immunity accorded a defendant police officer in a damages action under 42 U. S. C. § 1983 when it is alleged that the officer caused the plaintiffs to be unconstitutionally arrested by presenting a judge with a complaint and a supporting affidavit which failed to establish probable cause." *Id at 337.* "Nor are we moved by Petitioner's argument that policy considerations require absolute immunity for the officer applying for a warrant. As the qualified immunity defense has evolved, it provides ample protection to all but the plainly incompetent or those who knowingly violate the law." *Id at 341.* "No reasonably competent officer would have concluded that a warrant should issue." *Id at 341.*

Respondent Keller issued a no-bail bench warrant for failure to appear. What's more, the court did not have the legal authority to issue a probable cause misdemeanor arrest warrant because the district attorney had already requested the summons. CPC §813(a). According to California statute, the court forfeits its right to issue an arrest warrant when it requests a summons. CPC §813(a). There is no doubt that misdemeanor suspects enjoy at least the same, if not greater rights than felony suspects to be free from arrest and imprisonment. CPC §813(a) only describes

felony suspects. A probable cause misdemeanor arrest warrant was never issued pursuant to CPC §1427(a). The county Respondents never requested that a misdemeanor arrest warrant be issued. A no-bail arrest warrant for failure to appear is based on a clear transgression on the part of the accused; failing to appear in court as ordered. When issuing a warrant for failure to appear, the judge has personal knowledge of the suspect's failure to appear. Therefore, the court will be more likely to issue the failure to appear warrant than a misdemeanor warrant that's based on the prosecutor's suspicion. If the county Respondents had not requested the summons and had instead lawfully requested that the court issue a misdemeanor arrest warrant pursuant to CPC §1427(a), obtaining such a misdemeanor arrest warrant would have been more difficult than obtaining the no-bail warrant for failure to appear. This is because the judge does not have personal knowledge of the facts that would support a probable cause misdemeanor arrest warrant, and therefore, a probable cause hearing must take place whereby the prosecutor is required to persuade the judge that there is probable cause that a misdemeanor has been committed. If a misdemeanor probable cause arrest is initiated by the police instead of by warrant, the police are required to cite-and-release the suspect. CPC §853.6

Also worth mentioning is that the issuance of arrest warrants in California courts for failure to appear is a routine daily occurrence. This contrasts with the issuance of misdemeanor warrants; they are seldom issued because cite-and-release misdemeanor police arrests and properly served summonses are utilized to deliver the vast majority of misdemeanor suspects to arraignments in California. This is important because if a prosecutor requests that the court issue a misdemeanor warrant as opposed to issuing and properly serving a misdemeanor summons, the judge must ask the district attorney why the misdemeanor warrant is being requested in addition to requiring the prosecutor to persuade the court that there is probable cause to issue the warrant.

The police have a statutory requirement to cite-and-release misdemeanor suspects according to CPC §853.6, but misdemeanor warrants issued pursuant to CPC §1427(a) allows the constabulary to jail suspects until such time that they can be brought to court. The district attorney had a desire to jail the Petitioner and knew that a misdemeanor warrant would be more difficult to obtain than the no-bail failure to appear warrant due to the probable cause standard,

and therefore, committed fraud and mail fraud to have the no-bail bench warrant issued for failure to appear.

i. Alameda County Assistant District Attorney John Jay

The district court magistrate ruled, "Importantly, however, Section 816 does not specify whether the service must be in person or may be by mail." APPENDIX 'B' district court's October 12, 2016 ruling, page 19, lines 4 – 5

CPC §816(a): 'A summons issued pursuant to Section 813 shall be served by any peace officer, or any public officer or employee authorized to serve process when the summons is for a violation of a statute or ordinance which that person has the duty to enforce, within the state. Upon service of the summons, the officer or employee shall deliver one copy of the summons to the defendant and shall file a duplicate copy with the magistrate before whom the defendant is to appear.'

The statute makes no mention of the U.S. Postal Service, postal workers or letter carriers. The district court magistrate reasoned that because the statute does not prohibit a prosecutor from utilizing the United States Mail to properly serve a summons, then mailing a criminal summons is proper according to the statute. The problem with the district court's interpretation of the statute is the language itself: '.....the officer or employee shall deliver one copy of the summons to the defendant and shall file a duplicate copy.....' The clear, unambiguous phrase is, '.... the officer or employee shall deliver....' The district court's ruling with the Ninth Circuit affirming, demonstrated that the court departed from the accepted and usual course of judicial proceedings.

The statutes for serving a summons in a civil matter include clear language that describes how the U.S. Mail is to be utilized. The summons that Respondent Assistant District Attorney John Jay improperly served was a criminal summons. Postal workers are not authorized to serve process of a criminal summons according to statute. CPC §816(a)

The issue of whether the May 19, 2014 letter (APPENDIX 'E') is a criminal summons subject to the service requirements of CPC §816(a), or simply a 'summons letter' or 'courtesy notice' is irrelevant. That letter states, "A criminal complaint and summons has been filed against you in

the above-entitled court." The Respondents clearly stated that a summons had been issued, and therefore, they were required to provide proof of proper service of that criminal summons. Proof of proper service of that summons has not been produced by the Respondents.

Respondent Judge Keller issued the no-bail bench warrant on June 27, 2014 for Petitioner's failure to appear in court that day. This means that none of the Respondents intended to seek or issue a misdemeanor arrest warrant pursuant to CPC §1427(a) because once the summons was requested, according to statute, the district attorney forfeited the right to request a misdemeanor arrest warrant based on probable cause. CPC §813(a).

ii. Deputy District Attorney Hernandez

In addition to conspiring to falsely and maliciously indict Petitioner for a crime, Respondent Hernandez telephoned Petitioner's properly subpoenaed defense witnesses midway through Petitioner's criminal trial and instructed them to not appear in court. During the trial, there was confusion because the defense witnesses that were scheduled to testify were not in court. It was then that Hernandez volunteered and admitted to contacting these witnesses (his words on record, paraphrased), "After speaking with my supervisor I called the witnesses and told them not to come to court." This supervisor is likely to be identified as Respondent ADA John Jay. Hernandez's actions violated Petitioner's Sixth Amendment right to defense witnesses and also demonstrates incompetence, recklessness and malice on the part of the Respondents. Contacting these defense witnesses did not reach the reasonable person standard that would have otherwise afforded Hernandez qualified immunity and was not within the scope of duties for the deputy district attorney. Complaint, ¶ 11, APPENDIX 'F'

iii. Deputy District Attorney Saunders

Deputy District Attorney Saunders requested that the court issue a no-bail bench warrant for Petitioner's failure to appear in court on June 27, 2014. Misdemeanor summonses and their proper service is a core duty for a deputy district attorney, and therefore, she should have known that the service of that summons was improper. Despite having easy access to this information, she requested that the no-bail bench warrant be issued on June 27, 2014. On July 7, 2014 Saunders argued that the court should order Petitioner to remain imprisoned for failure to appear.

A reasonable person would have known that this violated Petitioner's Constitutional and statutory rights. For this reason Saunders does not have qualified immunity from civil liability. Complaint ¶¶ 50 – 51, APPENDIX 'F'

2. Alameda County Sheriff's Deputy Linn

Deputy Linn was instrumental in denying Petitioner his Constitutional and statutory right to make a court appearance. Rather than resolving problems arising from Petitioner's misidentification in jail and the county's failure to provide prescription medication, Linn actively attempted to dissuade Petitioner from filing a jailhouse grievance whereby Petitioner complained about prescription medication that was being withheld by county captors. The ALCO Sheriff's Department eventually used this problem that it created to place Petitioner on a medical hold and not transport him to court on July 7, 2014. Petitioner was ready, willing and able to be transported to court at all times while being imprisoned by county captors and therefore, a medical hold was not justified. These actions further violated Petitioner's Fifth Amendment right to due process. Deputy Linn was a member of the chain conspiracy to violate Petitioner's Civil Rights.

F. The Federal Claims Against Respondent Judge Keller Should Not be Dismissed

1. The Court Does Not Lack Jurisdiction Over the Claims Against the Judge

Judge Keller was acting outside the scope of his judicial duties when he issued the no-bail bench warrant for failure to appear. Complaint: ¶¶ 50 - 52, APPENDIX 'F' Judges issue arrest warrants but they are not allowed to use state infrastructure to issue a warrant for any reason that they see fit. Keller had easy access to information that the summons was not properly served and therefore, he knew or should have known that issuing a warrant for failure to appear would violate a variety of Petitioner's Constitutional and statutory rights, including the rights to due process and freedom from seizure. Petitioner did not ask the district court to review Keller's decision to issue the warrant. For these reasons the *Rooker-Feldman* doctrine does not apply. Also, the injury Keller inflicted on the Petitioner cannot be corrected by judicial review. *District Court of Columbia Court of Appeals vs. Feldman, 460 U.S. (1983).*

Keller twice violated Petitioner's Constitutional and statutory rights within a period of days: First on June 27, 2014 when he issued the no-bail warrant for failure to appear. The second violation took place on July 7, 2014 when he demanded money for Petitioner's release from county captivity. If defendant Keller believes that he was defrauded or otherwise deceived by the district attorney or other individuals, or, if he believes that he was an innocent agent of the conspiracy which caused him to use a state institution and state infrastructure to order Petitioner's injuries, then Respondent Keller has the liberty of filing a cross-complaint against any named or unnamed co-Respondents and co-conspirators. All members of a conspiracy are liable for the actions of all of the conspirators. Petitioner has no duty to absorb or otherwise manage the judge's civil liabilities.

Petitioner's claims against Keller are not barred by the Eleventh Amendment. California Superior Court is essentially a franchise operation; the local courts have the privilege of enforcing California law but they are operated autonomously by the counties. The expense and revenue for The California Superior Court of Alameda County is derived from within Alameda County. Therefore, Respondent Judge Keller is essentially an employee of Alameda County. Also, Petitioner is not suing the State of California, he is suing an individual.

2. Judge Keller Does Not Have Absolute Judicial Immunity

"Most judicial mistakes or wrongs are open to correction through ordinary mechanisms of review, which are largely free of the harmful side effects inevitably associated with exposing judges to personal liability." *Forrester vs. White 484 U.S. 219 at 227 (1988).* The Supreme Court ruled in favor of the plaintiff in *Forrester,* "We conclude that the judge's decisions were not judicial acts for which he should be held absolutely immune." *Id at 221.* In the case of *Mireles vs. Waco, 502 U.S. 9 (1991),* Plaintiff Howard Waco was a public defender and Raymond Mireles was a Judge of the Superior Court of California. According to the plaintiff, the Judge, "angered by the absence of attorneys from his courtroom," ordered the police officer co-defendants, "to forcibly and with excessive force seize and bring plaintiff into his courtroom." *App. to Pet. for Cert. B-3, ¶ 7(a). Id at 10.* Plaintiff Waco alleged the Judge ordered an act of battery, not Fifth Amendment Due Process violations as is the case in

Petitioner's complaint and claims against defendant Judge Keller. The Supreme Court dismissed plaintiff Waco's complaint. The court ruled that defendant Judge Mireles was acting within the scope of his jurisdiction when he ordered the police to bring plaintiff Waco into his courtroom. The Supreme Court's opinion: "A judge's direction to court officers to bring a person who is in the courthouse before him is a function normally performed by a judge. See generally Cal. Civ. Proc. Code Ann. §§ 128, 177, 187 (West 1982 and Supp. 1991) (setting forth broad powers of state judges in the conduct of proceedings). Waco, who was called into the courtroom for purposes of a pending case, was dealing with Judge Mireles in the judge's judicial capacity." *Id at 12.*

In *Mireles,* the relevant sentence in the opinion of the Supreme Court's ruling was, "A judge's direction to court officers to bring a person who is in the courthouse before him is a function normally performed by a judge." *Id at 12.* The relevant phrase in the sentence was, "who is in the courthouse." *Id at 12.*

Plaintiff Waco had a legal duty to be in Judge Mireles' courtroom because he was in the courthouse and he had the duty to represent defendants that were appearing before Judge Mireles. This means that Judge Mireles was acting within his jurisdiction when he ordered the police to bring Mr. Waco into his courtroom. Petitioner had no legal or Constitutional duty to be in Judge Keller's courtroom when Judge Keller ordered the state to use force to seize and imprison Petitioner and then bring Petitioner to his courtroom.

The Supreme Court ruled that a Judge can be held liable for his actions: "Whether the act done by [a judge] was judicial or not is to be determined by its character, and not by the character of the agent." *Ex Parte Virginia 100 U.S. 339, 348 (1880).* County Judge James D. Coles was criminally indicted along with two other County Judges by a U.S. District Court for violating the Federal Civil Rights Act of 1875 because the County Judges excluded black men from juries. The U.S. Supreme Court ruling, *Ex Parte Virginia (1880),* denied criminal defendant Judge James D. Coles his petition for Habeas Corpus. As a result of the Supreme Court's ruling in *Ex Parte Virginia* and the federal indictments, two of the County Judges were tried as criminals in federal court for violating the Civil Rights Act of 1875.

Respondent Judge Keller violated Petitioner's Fifth Amendment right to Due Process. The Fifth Amendment has a higher enforcement priority than the Civil Rights Act of 1875 because the Fifth Amendment is part of the Bill of Rights. The Bill of Rights is arguably the most fundamental part of the U.S. Constitution.

On April 30, 2004, Judge William Richard Danser (SBN 84789) of the California Superior Court, County of Santa Clara was convicted of a felony: Conspiracy to Pervert and Obstruct Justice and the Due Administration of Laws. CPC §182, subdivision (a)(5). On that day Judge Danser was also convicted of three misdemeanors. Judge Danser had been conspiring to give preferential treatment to friends and celebrities by dismissing their traffic tickets and it was also proven that he steered a drunk driving case into his courtroom for the purpose of dismissing the case. For these reasons he was convicted of crimes for acts he performed as a Superior Court Judge. Danser had the judicial authority to dismiss traffic tickets and possibly to steer cases in and out of his courtroom, but he did not have the authority to provide preferential treatment; this was determined to be outside the scope of his jurisdiction.

(Calbar citation: http://members.calbar.ca.gov/courtDocs/03-C-03820.pdf)

The standard for a criminal prosecution is higher than the standard for a private action in a civil case. Due to the nature of his actions, it was determined that Judge Danser did not enjoy absolute judicial immunity from criminal prosecution for actions that are normally performed by a judge. It follows that Judge Keller should not have absolute immunity from civil liability. Judge Keller acted outside the scope of his jurisdiction when he violated Petitioner's Fifth Amendment Right to Due Process, his Fourth Amendment Right to be Free from Seizure as well as other rights.

Those civil rights violations caused injuries that cannot be corrected by judicial review.

3. Petitioner Did Not Fail to State a Claim Against Judge Keller

Petitioner's complaint adequately stated facts, and those facts sufficiently supported claims against Respondent-defendant Keller. Each of Petitioner's claims in his complaint included a paragraph that stated: "Plaintiff re-alleges and incorporates by reference paragraphs 1 – 54 of this complaint."

G. Claims Against All Respondents Should Not Be Dismissed

1. The Fifth Amendment Claim Should Not Be Dismissed

The district court significantly departed from the usual course of judicial proceedings when it ruled that Petitioner's Fifth Amendment claims were invalid because none of the Respondents are federal employees. In support of their motion to dismiss, the Respondents cited, *Lee vs. City of Los Angeles, 250 F.3d 668,687 (9th Cir. 2001).* The Respondents argued that according to *Lee (2001),* Petitioner had no right to due process under the Fifth Amendment to the United States Constitution because none of the entities named as defendants in his complaint are part of our federal government. Respondents did not properly analyze *Lee (2001).* Respondents' argument that local governments need not provide the accused with due process protections in accordance with the Fifth Amendment is specious, absurd and abusive. The very idea creates horrifying possibilities. Taken to its logical extreme, Respondents' argument would mean that no criminal suspect would be entitled to due process protections unless they were being investigated and prosecuted by our federal government. People could be held indefinitely in city and county jails without charges. When making its ruling on *Lee (2001),* The 9th circuit relied on *Schweiker (1981).* When ruling on *Schweiker (1981),* the Supreme Court cited *Lindsley (1911)* and *Dandridge (1970).* Questions involving the administration of public welfare was the subject of the *Schweiker and Dandridge* cases. A shocking, unconstitutional two-years-long, incarceration of a mentally disabled person based on grossly negligent mistaken identity was the subject of the *Lee (2001)* case. Plaintiffs in these cases argued that administering public welfare involves due process. In *Schweiker (1981),* plaintiffs argued that local governments had a duty to provide a stipend to mentally disabled people that were institutionalized and collecting Social Security Benefits (SSI). Plaintiffs in *Schweiker (1981)* argued that withholding this stipend violated Fifth Amendment due process rights. The court ruled that, "The equal protection obligation imposed by the Due Process Clause of the Fifth Amendment is not an obligation to provide the best governance possible." *Schweiker vs. Wilson, 450 U.S. 221 (1981).* Also included in the *Schweiker (1981)* decision: "In the area of economics and social welfare, a state does not violate the Equal Protection Clause [and correspondingly the Federal Government does not violate the

equal protection component of the Fifth Amendment] merely because the classifications made by its laws are imperfect. If the classification has some 'reasonable basis', it does not offend the Constitution simply because the classification is not made with mathematical nicety or because in practice it results in some inequality." The court cited *Lindsley vs. Natural Carbonic Gas Co. 220 U.S. 61, 78. (1911),* and *Dandridge vs. Williams, 397 U.S. at 485 (1970).*

2. The Fourth Amendment Claim Should Not Be Dismissed

Petitioner's complaint described how: 1) The conduct complained of was committed by person(s) acting under color of state law; and 2) The conduct deprived Petitioner of a constitutional right. Petitioner's complaint clearly stated how the Respondents acted under color of state law to unlawfully and Unconstitutionally deprive Petitioner of his right to be free from search, seizure, force, arrest and imprisonment.

a. Newark Respondents

Newark Respondents City Manager Becker and Police Chief Leal managed, directed and supervised all activities for the Newark Police Department. Becker and Leal were policy makers and are liable for Petitioner's injuries. Respondent City of Newark has engaged in a pattern and practice of executing faulty and fraudulent arrest warrants for Newark's business partners: The City of Fremont and The County of Alameda. The Newark Respondents also have liability due to strict liability; Newark Respondents Heckman and Homayoun arrested Petitioner at his home and then delivered him to county captors at Santa Rita County Jail. Petitioner has no duty to absorb or manage liability for the City of Newark. If the City of Newark believes that its business partners have not performed to their satisfaction, the City of Newark has the liberty of filing a cross complaint against these business partners.

b. Fremont Respondents

Police Officer trainee Ramsey was part of a chain conspiracy to Falsely and Maliciously Indict Petitioner for a Crime. Officer Ramsey submitted a report to the district attorney, but did not include the exculpatory information that Petitioner was the victim of a property crime. Further, the only surveillance video evidence that Ramsey chose to collect had been edited in an obvious way by the alleged assault victim. Ramsey also advised the district attorney to prosecute

Petitioner for felony assault. At no time did Ramsey or any member of the Fremont Police department, including Ramsey's direct supervisor Field Training Officer Samayoa, attempt to arrest Petitioner for this violent felony. In the interest of promoting public safety, the police arrest violent felony suspects if they have the means to do so. Ramsey was improperly trained and this creates liability for the other defendants: "A local government entity's failure to train its employees can also create §1983 liability where the failure to train "amounts to deliberate indifference to the rights of persons" with whom those employees are likely to come into contact." *City of Canton, Ohio vs. Harris, et al 489 U.S. 378 (1989);* and, *Oviatt vs. Multnomah County, et al 954 f 2d (1992).*

c. County Respondents and Judge Keller

All of the claims against the county Respondents and Judge Keller should not be dismissed for the reasons described in previous sections of this petition.

3. The Sixth Amendment Claim Should Not be Dismissed

As described in Petitioner's complaint, Deputy District Attorney Alexander Hernandez volunteered at trial that he telephoned properly subpoenaed defense witnesses midway through Petitioner's criminal trial and instructed those witnesses to not appear in court.

4. The Fourteenth Amendment Equal Protection Claim Should Not be Dismissed

Despite not being properly served with a summons, Petitioner was imprisoned without bail for failure to appear in court. As a result, Petitioner was treated differently compared to others that were similarly situated and this constitutes a violation of Petitioner's Fourteenth Amendment rights. "Our cases have recognized successful equal protection claims brought by a "class of one," where the plaintiff alleges that she has been intentionally treated differently from others similarly situated and that there is no rational basis for the difference in treatment." *Village of Willowbrook, et al vs. Olech 528 U.S. 562 (2000).* When deciding *Willowbrook (2000),* The U.S. Supreme Court cited other cases where the 'class-of-one' concept applied to Fourteenth Amendment claims in private actions: *Sioux City Bridge Co. vs. Dakota County, 260 U.S. 441 (1923); Allegheny Pittsburgh Coal Co. vs. Commission of Webster County 488 U.S. 336 (1989).* "Liberty is protected from unlawful state deprivation by the due process clause of

the 14th Amendment." *Haygood vs. Younger 769 F. 2d 1350, 1354 (9th Cir. 1985).* "The Supreme Court has recognized that an individual has a liberty interest in being free from incarceration absent a criminal conviction." *Oviatt vs. Multnomah County, et al 954 F 2d at 1474 (1992),* citing *Baker vs. McCollan, 443 U.S. 137, 144 99 S. Ct. 2689, 61 L. Ed. 2d 433 (1979).* Pretrial detainees rights arise under the Due Process Clause of the 14th Amendment. *Revere vs. Massachusetts General Hospital, 463 U.S. 239, 24, 103, S. Ct. 2979, 77 L. Ed. 2d 605 (1983).*

5. §1983 Conspiracy Claim Should Not be Dismissed

There are triable issues to support this claim. Each participant in the conspiracy had the objective to violate Petitioner's civil rights. A chain conspiracy does not require a meeting of the minds, it does not require all the conspirators know each other and it does not require that all of the conspirators are equally culpable. *Blumenthal vs. United States, 332 U.S. 539, 68 S.C. (1947). Interstate Circuit vs. United States 306 U.S. 208 (1939).*

6. Claim For Deprivation of Rights Under Color of Law Should Not be Dismissed

Petitioner's claims for Deprivation of Rights Under Color of Law Should not be dismissed. "Liability may be imposed on the individual defendants if plaintiff can show that they proximately caused the deprivation of a federally protected right. Under §1983, a person deprives another of a constitutional right if he or she does an affirmative act, participates in another's affirmative act, or omits to perform an act which he is legally required to do that causes the deprivation of which plaintiff complains. The inquiry into causation must be individualized and focus on the duties and responsibilities of each individual defendant whose acts or omissions are alleged to have caused a constitutional deprivation. Here it is undisputed that all the defendants were acting under color of state law, therefore plaintiff's claims are valid under §1983." *Harris vs. City of Roseburg 664 F. 2d 1121, 1125 (9th Cir. 1981).*

7. Mail and Wire Fraud and Attempt and/or Conspiracy to Commit Mail Fraud And/or Wire Fraud (Claims 7, 8, 9)

The Respondents used the U.S. Mail to commit fraud by mailing Petitioner a summons in violation of statute, mailing it to the wrong address despite having the correct

address, and making irrelevant legal citations to the California Code of Civil Procedure in that mailing to create the appearance of authority for proper service for that summons.

(18 USC §§1341, 1346). The gravamen of the offense is the scheme to defraud, and any "mailing that is incident to an essential part of the scheme satisfies the mailing element," *Schmuck (1989).* Wayne T. Schmuck sold used cars and rolled back odometers. Mr. Schmuck was prosecuted for mail fraud. *Schmuck vs. United States 489 U.S. 705, 712, 109 S. Ct. 1443, 103 L. Ed 2d 734 (1989),* The Supreme Court continued, "Even if the mailing itself contains no false information." *Id at 715.*

"Using the mail to execute or attempt to execute a scheme to defraud is indictable as mail fraud, and hence a predicate of racketeering under RICO, even if no one relied on any misrepresentation. And one can conduct the affairs of a qualifying enterprise through a pattern of such acts without anyone relying on a fraudulent misrepresentation. The broad language of 18 USC §1964 (c) allows recovery by 'any person' injured by a violation, and a person can be injured 'by reason of' a pattern of mail fraud even if he has not relied on any misrepresentations." *Bridge vs. Phoenix Bond and Indemnity Co. 128 S. Ct. 2131 (2008).* The U.S. Supreme Court held that a RICO plaintiff's injury occurred "by reason of" the defendants' violation only if the violation was the injury's proximate cause. *Holmes vs. Securities Investor Protection Corp. 503 U.S. 258, 112 S. Ct. 1311, 117 L.Ed. 2d 532 (1992),* and, *Anza vs. Ideal Steel Supply Corp. 547 U.S. 451, 126 S. Ct. 1991 164 L.Ed. 2d 720 (2006).* Qualifying crimes that give rise to a private right to action under RICO include but are not limited to: Mail fraud, wire fraud, kidnapping and obstruction of justice. 18 USC §1961 (1). Persons injured through racketeering, "May sue therefore in any appropriate U.S. District Court." 18 USC §1964 (c).

The Respondents also utilized telephones and police radios to share information which furthered the conspiracy. During the district court hearing for the motions to dismiss, the county Respondents admitted that mailing criminal summonses is a routine county practice. This creates a pattern of mail fraud, which is a qualifying predicate act under the federal RICO statutes for a private right to action for violations of specific sections of the federal criminal

code, Title 18. The RICO statutes are the authorities for Petitioner's private right to action for violations of specific sections of Title 18, such as kidnapping. It is well-established that RICO does not require proof that the defendants or the enterprises are connected with organized crime. *United States vs. Aleman, 609 F. 2d 298, 303 – 304 (7th Cir. 1979).* Even if the enterprise's legitimate activities do not affect interstate commerce, the 7th Circuit has ruled that the requirement is satisfied if the racketeering activities alone affect interstate commerce. *Bunker Ramo Corp. vs. United Business Forms, Inc. 713 2d 1272 (7th Cir. 1983).* The Respondents' use of the U.S. Mail in their scheme to defraud Petitioner satisfies the interstate commerce element. The Supreme Court has ruled that in a private action under RICO, an enterprise without a profit motive is equally capable of doing harm as a for-profit enterprise. "We hold that RICO contains no economic motive requirement." *National Organization for Women, Inc. vs. Scheidler 510 U.S. 249, 114 S. Ct. 798, 127 L. Ed. 2d 99 (1994).*

When a legitimate organization is corrupted by criminal activity and racketeering practices, the criminal forfeiture and civil reform sections of RICO apply to purge the organization of the criminal elements so that it can continue to function as a rehabilitated and wholly legal economic entity. *United States vs. Casamayor 837 F. 2d 1509 (11th Cir. 1988).*

8. Kidnapping, Conspiracy to Kidnap and Using the Mail in Furtherance of the The Commission of Kidnapping; Hostage Taking; Receiving and Possessing Ransom Money (Claims 10, 11, 12)

Respondents used the United States Mail to further Petitioner's kidnapping by mailing him a summons and mailing it to an incorrect address. Petitioner was held hostage for seven days, during which time the Respondents eventually demanded $5,000 in exchange for releasing Petitioner from captivity. The ransom money was paid and Petitioner was released. The Respondents pattern and practice of mail fraud used in the furtherance of kidnapping schemes is a qualifying predicate act that gives the Petitioner a private right to action to recover damages for kidnapping as well as other specified federal crimes committed by Respondents. 18 USC §§ 1201(a)(1), 1202, 1203, 1961(1), 1964(c), 1965(a)

9. The Criminal Street Gang Injunction Claim Should Not be Dismissed

The Respondents were part of a chain conspiracy to deprive Petitioner of his Constitutional and statutory rights. In the interests of promoting public safety, Petitioner's complaint asked the district court to enjoin all Respondents from associating with each other in accordance with federal statute. 18 USC §521

10. State Law Claims Should Not be Dismissed

a. Administrative Claims Were Filed in a Timely Way

Petitioner did not file administrative claims within six months of the date of some of his injuries because he had a duty to mitigate damages. Cal. Govt. Code §910. The Respondents were engaged in a malicious criminal prosecution of Petitioner six months after the July 2, 2014 arrest. Filing these state administrative claims anytime within six months after the July 2, 2014 arrest would have incentivized the Respondents to continue and enhance their malicious prosecution for the purpose of managing civil liability. Also, Petitioner maintains that the accrual date for all injuries was not until the malicious criminal prosecution ended on April 22, 2016. Petitioner filed administrative claims with the appropriate parties on September 28, 2016, which was less than six months after April 22, 2016. "The [six-month filing deadline] statute commences 'upon the occurrence of the last element essential to the cause of action.' " *Bernson vs. Browning-Ferris Industries 7 Cal. 4th 926, 931 30 Cal. Rptr. 2d 440, 873 P. 2d 613 (1994).*

1. Doctrine of Equitable Estoppel Applies

The doctrine of equitable estoppel applies and will allow the court to waive or excuse non-compliance with California State Claims procedures. See: *State of California vs. Superior Court of Kings County (Bodde), 32 Cal 4th 1234, 1243 (2004):* "Finally, requiring plaintiffs to allege facts sufficient to demonstrate or excuse compliance does not deprive them of their due process rights or unfairly bar just claims." Continuing, "Sections 911.4, 911.6, 911.8 and 946.6 contain a detailed scheme permitting litigants to petition the public entity and the court for leave to present a late claim." Continuing, "Finally, a plaintiff may arguably be able to satisfy the claim presentation requirement by alleging an appropriate excuse,

such as equitable estoppel." *Ard vs. County of Contra Costa 93 Cal App 4th 339, 346-347 [112 Cal Rptr. 2d 886] (2001).*

"Thus we concluded that non-compliance does not divest the trial court of subject matter jurisdiction over causes of action against public entities." *County of Santa Clara vs. Superior Court 4 Cal. 3d at 551 (1971).* "We therefore reject defendants' contention that failure to allege compliance establishes jurisdictional defect."

"It is well settled that a public entity may be estopped from asserting the limitations of the claims statute where its agents or employees have prevented or deterred the filing of a timely claim by some affirmative act." *John R. vs. Oakland Unified School District 48 Cal. 3d 438, 445, 256; Cal Rptr. 766, 769 (1989).* "The purpose of the requirement that claims be filed is to provide the public entity with full information concerning the rights asserted against it, so that it may settle those of merit without litigation. Therefore, the public entity cannot frustrate a claimant's ability to comply with the statutes enacted for its benefit and then assert noncompliance as a defense." *Christopher P. vs. Mohave Unified School District 19 Cal App. 4th 165, 172, 23 Cal Rptr. 2d 353 (1993).*

2. The Claim Filing Deadlines Did Not Expire

Respondents ended their malicious criminal prosecution on April 22, 2016. This was the accrual date for all of Petitioner's injuries. The six months filing deadline was not until October 21, 2016. Petitioner filed all state administrative claims on September 28, 2016.

b. Petitioner Did Not Fail to State a Claim

Petitioner's complaint sufficiently stated facts to support claims against all named Respondents.

H. Prayer For Injunctive Relief

Petitioner seeks preliminary and permanent injunctive relief, restraining Respondents from engaging in the unlawful and Unconstitutional actions described in his complaint.

I. Prayer For Declaratory Relief

Petitioner seeks a declaratory judgment that the Respondents' conduct described in the Complaint was a violation of Petitioner's rights under the Constitution and laws of the United States and the State of California.

J. Prayer For Compensatory, Punitive and Exemplary Damages

Petitioner seeks compensatory, punitive and exemplary damages against all Respondents.

V. CONCLUSION

The United States District Court of Northern California significantly departed from the accepted and usual course of judicial proceedings when it granted the four defense motions to dismiss Petitioner's complaint and issued the ruling and order to dismiss Petitioner's complaint with prejudice. Petitioner's complaint exceeded the minimum pleading standards and was more than sufficient to survive the four defense motions to dismiss. The Ninth Circuit Court of Appeals also significantly departed from the accepted and usual course of judicial proceedings when it issued a four-page memorandum ruling that affirmed the district court's ruling. For the foregoing reasons, Petitioner asks this court to:

1) Grant Petitioner's Petition For Writ of Certiorari and then reverse the judgment and order of The District Court of Northern California that dismissed Petitioner's complaint, and, reverse the judgment and order of the Ninth Circuit Court of Appeals that affirmed the district court's judgment and order. If The United States Supreme Court partially reverses these judgments and orders, Petitioner requests leave to amend his complaint. Petitioner asks the court to consider all the pleadings and filings in this this action, including but not limited to the complaint, the four opposition briefs to the Respondents' four motions to dismiss Petitioner's complaint, Petitioner's opening brief and reply brief to the Ninth Circuit Court of Appeals and any oral argument that may be presented by Petitioner at the time of hearing.

2) Remand this case to the District Court of Northern California for trial.

3) Order the district court to allow Petitioner to amend his complaint to add Fremont, California Police Field Training Officer Rafael Samayoa, badge number 13011 as a defendant in Petitioner's complaint. As a member of the chain conspiracy described herein, Samayoa would share liability with the other defendant-Respondents for all of Petitioner's injuries.

Respectfully submitted,

March 5, 2019

John Henneberry

Pro Se Petitioner