

NOT FOR PUBLICATION
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

JAMES SOLER, Plaintiff-Appellant, v. COUNTY OF SAN DIEGO; et al., Defendants-Appellees.	No. 17-56270 D.C. No. 3:14-cv-02470-MMA-RBB MEMORANDUM* (Filed Feb. 26, 2019)
--	---

Appeal from the United States District Court
for the Southern District of California
Michael M. Anello, District Judge, Presiding

Argued and Submitted February 7, 2019
Pasadena, California

Before: GOULD, NGUYEN, and OWENS, Circuit Judges.

James Soler appeals from the district court's judgment in his 42 U.S.C. § 1983 action arising from his arrest and detention for a thirty-year-old crime he did not commit. Soler's neighbor falsely reported to Arkansas authorities that Soler, a resident of California, was an Arkansas prison escapee, Steven Dishman. The state of Arkansas issued an extradition request to the state of California, and California officials arrested and detained Soler for over eight days before concluding

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

that he was not Dishman and releasing him. The district court dismissed Soler’s claims against employees of the Arkansas Department of Corrections (“ADC”) for lack of personal jurisdiction, and granted summary judgment in favor of several individual San Diego officers and the County of San Diego.

We review de novo the district court’s dismissal for lack of personal jurisdiction and grant of summary judgment. *See Axiom Foods, Inc. v. Acerchem Int’l, Inc.*, 874 F.3d 1064, 1067 (9th Cir. 2017); *Bravo v. City of Santa Maria*, 665 F.3d 1076, 1083 (9th Cir. 2011). We have jurisdiction under 28 U.S.C. § 1291, and we affirm in part, reverse in part, vacate in part, and remand.

I. Personal Jurisdiction

Soler argues that the district court erred in determining that it lacked personal jurisdiction over Lisa Wilkins, an attorney at ADC, and Ray Hobbs, Director of ADC. On a Federal Rule of Civil Procedure 12(b)(2) motion to dismiss for lack of personal jurisdiction, the plaintiff “need only make a *prima facie* showing” of jurisdiction. *See Schwarzenegger v. Fred Martin Motor Co.*, 374 F.3d 797, 800 (9th Cir. 2004). “[U]ncontroverted allegations in the complaint must be taken as true,” and “[c]onflicts between parties over statements contained in affidavits must be resolved in the plaintiff’s favor.” *Dole Food Co. v. Watts*, 303 F.3d 1104, 1108 (9th Cir. 2002). California courts may exercise specific jurisdiction if “(1) defendants purposefully availed themselves of the privilege of conducting activities in

App. 3

California . . . ; (2) [plaintiff's] claims arise out of defendants' California-related activities; and (3) the exercise of jurisdiction would be reasonable." *Ziegler v. Indian River County*, 64 F.3d 470, 473 (9th Cir. 1995).

Here, Soler has made a *prima facie* showing that all three requirements for specific jurisdiction are satisfied for Wilkins and Hobbs. The first requirement, "purposeful availment," is satisfied because Wilkins and Hobbs engaged in intentional acts "expressly aimed" at California, causing harm in California. *Dole Food Co*, 303 F.3d at 1111. Specifically, Wilkins coordinated the efforts to have the Arkansas Governor issue a warrant of requisition to California for Soler's arrest and detention in California. Wilkins then communicated with California officials on several occasions over the phone and email, including persuading the arresting officer to hold Soler even when the officer doubted that Soler was Dishman. Similarly, Hobbs was Wilkins' supervisor, and he signed all critical documents requesting that the Arkansas Governor issue the warrant of requisition to California. Notably, Hobbs' affidavit provided the only factual basis for an Arkansas judge's probable cause finding that Dishman was living under Soler's name at Soler's California address.

Thus, although Wilkins and Hobbs did not physically travel to California, they were "directly and significantly involved" in the extradition efforts. *Lee v. City of Los Angeles*, 250 F.3d 668, 694 (9th Cir. 2001) (holding that defendants who did not travel to California, but "were otherwise directly and significantly involved" in the extradition, may satisfy the purposeful

App. 4

availment requirement); *see also Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 476 (1985) (“Jurisdiction . . . may not be avoided merely because the defendant did not *physically* enter the forum State.” (emphasis in original)).

Moreover, the exercise of personal jurisdiction here is consistent with *Walden v. Fiore*, in which the Supreme Court explained that jurisdiction “must arise out of contacts that the ‘defendant *himself*’ creates with the forum State.” 571 U.S. 277, 284 (2014) (emphasis in original) (quoting *Burger King Corp.*, 471 U.S. at 475). Wilkins and Hobbs specifically requested that California officials arrest and detain Soler. Thus, it is Wilkins’ and Hobbs’ own conduct that connects them to California, and they are not being haled into a California court “solely as a result of random, fortuitous, or attenuated contacts.” *Burger King Corp.*, 471 U.S. at 475 (internal quotation marks omitted).

The remaining requirements for specific jurisdiction are easily satisfied. The parties do not dispute that Soler’s “claims arise out of defendants’ California-related activities,” *Ziegler*, 64 F.3d at 473, and Wilkins and Hobbs have failed to present a “*compelling case*” to overcome the presumption of reasonableness, *id.* at 476 (emphasis in original).

Accordingly, we reverse the district court’s dismissal of Soler’s claims against Wilkins and Hobbs for lack of personal jurisdiction, and remand.

II. Summary Judgment

Soler also appeals from the district court’s decision to grant summary judgment to several San Diego officers and the County of San Diego on his § 1983 wrongful detention claim.¹

Soler argues that his detention based on mistaken identity violated both the Fourth and Fourteenth Amendments. However, “post-arrest incarceration is analyzed under the Fourteenth Amendment alone.” *Rivera v. County of Los Angeles*, 745 F.3d 384, 389-90 (9th Cir. 2014). Our precedent makes clear that detention based on mistaken identity violates due process if “the circumstances indicated to the defendants that further investigation was warranted.” *Id.* at 391; *see also id.* at 392 (explaining that, in contrast, “[u]nsupported claims of mistaken identity, by themselves, do not trigger a duty to investigate further”). These “further investigation” cases generally “involve[] significant differences between the arrestee and the true suspect.” *Id.* at 391; *see also, e.g., Garcia v. County of Riverside*, 817 F.3d 635, 641 (9th Cir. 2016) (explaining that further investigation was warranted because the arrestee was “nine inches taller and forty pounds heavier than the warrant subject”). Moreover, once further investigation is warranted, the investigation should involve “readily available and resource-efficient identity

¹ Soler does not challenge the district court’s grant of summary judgment to the defendants on his § 1983 wrongful arrest claim. Soler also does not challenge the district court’s grant of summary judgment on his wrongful detention claim to two San Diego officers, Javier Medina and Mark Milton.

App. 6

checks, such as a fingerprint comparison, to ensure that they are not detaining the wrong person.” *Garcia*, 817 F.3d at 642.

However, an individual officer may only be liable if there is a “causal connection” between the officer’s acts and the constitutional violation. *See Preschooler II v. Clark Cty. Sch. Bd. of Trs.*, 479 F.3d 1175, 1183 (9th Cir. 2007). Thus, we analyze each San Diego officer in turn.

Starting with Detective Ernesto Banuelos, a reasonable juror could conclude that he had the necessary causal connection to a violation of Soler’s due process rights. Banuelos was assigned to look into Soler’s claim of mistaken identity, and—viewing the evidence in the light most favorable to Soler—Banuelos had the duty to initiate further investigation. This is because there were significant differences between Soler’s and Dishman’s physical appearances. Soler has brown eyes, while Dishman has blue eyes. Soler does not have any visible scars, while Dishman has a scar on his forehead between his eyes, and a scar on his wrist. Thus, Soler’s repeated protests of mistaken identity were supported, and Banuelos should have investigated further.

A reasonable juror could also conclude that Banuelos failed to initiate such an investigation. For example, Soler asserts that—when Banuelos visited Soler in jail—Banuelos would not listen to him and repeatedly called him a liar. Banuelos stated in his deposition that he observed that Soler had brown eyes and no visible scars, and that he was aware that Dishman

App. 7

had blue eyes and scars, but Banuelos did not tell anyone of this discrepancy. In fact, a San Diego officer wrote in a report the same day that Banuelos visited Soler that a detective from Banuelos's unit confirmed that Soler was positively identified as Dishman—a reasonable juror could conclude that this detective was Banuelos. Banuelos even admitted to handwriting over a piece of Soler's paperwork that Soler had blue eyes. Moreover, Banuelos never conducted a fingerprint comparison, despite filling out paperwork stating that a print match was confirmed.

Although Banuelos wrote in his final report that he recommended further investigation into Soler's mistaken identity claim, he completed this report six days after Soler's release, and the report is inconsistent with the evidence discussed above. Also, the fact that Soler received a hearing the day after Banuelos's visit does not, by itself, break the causal connection between Banuelos's conduct and Soler's wrongful detention. *See Lee*, 250 F.3d at 685. In sum, given the conflicting evidence about whether Banuelos initiated any further investigation, a reasonable juror could conclude that he violated Soler's rights.²

In addition, Banuelos is not entitled to qualified immunity because the right at issue was "clearly established." *Pearson v. Callahan*, 555 U.S. 223, 236 (2009).

² Adding to Soler's injury, after San Diego officials finally conducted a fingerprint comparison, and the results revealed that Soler's and Dishman's prints did not match, there was a five-day delay before officials conducted a second, verification fingerprint comparison and released Soler.

In *Garcia v. County of Riverside*, we concluded that an officer was not entitled to qualified immunity because, for these “further investigation” cases, “the standards for determining whether alleged police conduct violates the Fourteenth Amendment were clearly established.” *Id.* at 643 (referencing *Lee*, 250 F.3d 668; *Fairley v. Luman*, 281 F.3d 913 (9th Cir. 2002); *Rivera*, 745 F.3d 384; *Gant v. County of Los Angeles*, 772 F.3d 608 (2014)). Specifically, we explained that our decision in *Rivera v. County of Los Angeles* “summarize[d] existing law” when it declared that “officers violate the Fourteenth Amendment if they wrongly detain a person where ‘the circumstances indicated to [them] that further investigation was warranted.’” *Id.* at 643 (quoting *Rivera*, 745 F.3d at 391). *Rivera* and our other cases have simply applied this statement “to different allegations by different plaintiffs” and “do not make new law.” *Id.* at 644. Thus, similar to the officer in *Garcia*, Banuelos is not entitled to qualified immunity.

As for the other individual officers, Detective Ken Smith, the San Diego Sheriff’s Fugitive Task Force member assigned to Soler’s case, does not have the “requisite causal connection” to Soler’s wrongful detention. *Preschooler II*, 479 F.3d at 1183. Soler’s injury is also not attributable to Deputy Robert Germain, the arresting officer, or Sergeant Rick Turvey, Germain’s supervisor. Although officers in the field may be liable for failing to investigate potential identity issues under some circumstances, such circumstances are not present here.

App. 9

Accordingly, we reverse the district court's grant of summary judgment to Detective Banuelos, and affirm the judgment as to the other San Diego officers.

Finally, after the district court erroneously determined that there was no underlying constitutional violation, it denied Soler's request for leave to amend to allege different policies as the bases for municipal liability, and granted summary judgment to the County. Because we determine above that a reasonable juror could conclude that there was a constitutional violation, we vacate the district court's grant of summary judgement to the County. On remand, the district court should reconsider Soler's request for leave to amend his complaint.³

Each party shall bear its own costs on appeal.

**AFFIRMED IN PART, REVERSED IN PART,
VACATED IN PART, AND REMANDED.**

³ Because the district court dismissed Soler's federal claims, it declined to exercise supplemental jurisdiction over Soler's state law claims. On remand, the district court should reconsider whether to exercise supplemental jurisdiction over the state law claims.

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

JAMES SOLER,
Plaintiff-Appellant,
v.
COUNTY OF SAN DIEGO;
et al.,
Defendants-Appellees.

No. 17-56270
D.C. No.
3:14-cv-02470-MMA-RBB
Southern District
of California,
San Diego
ORDER
(Filed Jul. 29, 2019)

Before: GOULD, NGUYEN, and OWENS, Circuit
Judges.

Appellee County of San Diego's motion to recall
and/or stay mandate in light of respondent's petition
for certiorari (Dkt. No. 63) and Appellees Ray Hobbs
and Lisa Wilkins' motion to recall and/or stay mandate
in light of respondents' petition for certiorari (Dkt. No.
64) are GRANTED.

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

JAMES SOLER, Plaintiff, v. COUNTY OF SAN DIEGO, et al., Defendants.	Case No.: 14cv2470-MMA (RBB) ORDER GRANTING SPECIALY APPEAR- ING DEFENDANTS LISA WILKINS AND RAY HOBBS' MOTION TO DISMISS [Doc. No. 91] (Filed Aug. 23, 2016)
--	--

Plaintiff James Soler brings this civil rights action pursuant to Title 42, United States Code, section 1983, and California state law, against the County of San Diego, and various individually named defendants. Lisa Wilkins and Ray Hobbs, specially appearing, move to dismiss Plaintiff's claims against them. *See* Doc. No. 103. Plaintiff filed an opposition to the motion, to which Wilkins and Hobbs replied. *See* Doc. Nos. 102, 113. The Court took the matter under submission on the briefs and without oral argument pursuant to Civil Local Rule 7.1.d.1. *See* Doc. No. 116. For the reasons set forth below, the Court **GRANTS** the motion.

BACKGROUND

This action arises out of events involving a case of mistaken identity and Plaintiff’s arrest for a thirty-year old crime he did not commit.¹ At the time in question, Lisa Wilkins was employed by the Arkansas Department of Corrections, and Ray Hobbs was the Director of the Arkansas Department of Corrections. *See Third Amended Complaint*, Doc. No. 60 ¶ 16. Wilkins prepared an affidavit for Hobbs’ signature to support a judicial finding of probable cause to conclude that Plaintiff was a wanted escapee from Arkansas prison, Steven Dishman. *Id.* The affidavit stated, “I have new and reasonably believe it to be accurate information as to [Mr. Dishman’s] current residence at [Mr. Soler’s street address], Alpine, California, and is living under the alias of James DeWolfe Soler.” *Id.* Hobbs presented the affidavit to an Arkansas judge, who in turn issued an Affidavit of Probable Cause to support the extradition of “Steven Dishman, a/k/a James DeWolfe Soler” from California to Arkansas. *Id.* Thereafter, Wilkins forwarded the Affidavit to the Office of Arkansas Governor Mike Beebe, who issued a “requisition” for extradition to California Governor Brown, based on the judge’s probable cause finding. *Id.* ¶ 17.

On or about November 27, 2013, the Office of the Governor of California, through Peter A. Krause, Interstate Rendition Officer, and Debra Bowen, Secretary of

¹ Plaintiff’s additional factual allegations are set forth in detail in the Court’s March 19, 2015 Order Granting in Part and Denying in Part Defendants’ Motion to Dismiss. *See* Doc. No. 17.

App. 13

State, issued a Governor's warrant of rendition. *Id.* ¶ 18. Based on these allegations, Plaintiff contends:

Any reasonable law enforcement officer would have known that the information that Defendants Hobbs and Wilkins relied on did not support a finding of probable cause to believe that Mr. Soler and Mr. Dishman were the same man. Furthermore, in submitting Mr. Hobbs's affidavit to Judge Denis and Governor Beebe, Defendants Hobbs and Wilkins intentionally or recklessly misrepresented, or failed to mention, that: (1) Steven Dishman had never been known to use the name James Soler, and vice versa; (2) Mr. Dishman's and Mr. Soler's fingerprints do not match; (3) Mr. Dishman's and Mr. Soler's birth dates are different, and Mr. Dishman was nearly ten years older than Mr. Soler; (4) photographs of Mr. Dishman and Mr. Soler from the mid-1980s show that they did not even remotely look alike, most obviously with respect to their different eye colors, the parts of the hair on their heads, and Mr. Soler's lack of a beard; (5) records showed that in the mid-1980s, Mr. Dishman weighed 159 pounds, whereas Mr. Soler weighed approximately 125 pounds; (6) Mr. Dishman was known to have scars on his forehead between his eyes and on his left wrist, and Mr. Soler does not have such scars; and (7) in 1985, when Mr. Dishman was imprisoned in Arkansas, Mr. Soler lived in Jamul, California, where he had lived for several years.

Id. ¶ 19.

App. 14

Plaintiff brings claims against Wilkins and Hobbs under Section 1983 and California law for wrongful arrest and detention, false imprisonment, and negligence. Wilkins and Hobbs move to dismiss Plaintiff's claims pursuant to Federal Rule of Civil Procedure 12(b)(2), arguing that this Court lacks either general or specific personal jurisdiction over them.¹ See Doc. No. 91.

DISCUSSION

1. Legal Standard

Under Federal Rule of Civil Procedure 12(b)(2), a defendant may move for dismissal based on lack of personal jurisdiction. On a motion to dismiss for lack of personal jurisdiction, “the plaintiff bears the burden of establishing that jurisdiction exists.” *Rio Props., Inc. v. Rio Int'l Interlink*, 284 F.3d 1007, 1019 (9th Cir. 2002). Uncontroverted allegations in a complaint must be taken as true when a *prima facie* showing of personal jurisdiction is required. *Am. Tel. & Tel. Co. v. Compagnie Bruxelles Lambert*, 94 F.3d 586, 588 (9th Cir. 1996). However, the court “may not assume the truth of allegations in a pleading which are contradicted by affidavit.” *Data Disc, Inc. v. Systems Tech. Assocs. Inc.*, 557 F.2d 1280, 1284 (9th Cir. 1977). Conflicts between facts contained in the parties’ affidavits must be

¹ Wilkins and Hobbs further contend that Plaintiff's claims substantively fail, and are subject to dismissal under Rule 12(b)(6). Because the Court finds that it lacks personal jurisdiction over Wilkins and Hobbs, it does not address the plausibility of Plaintiff's claims against them.

resolved in favor of the party asserting jurisdiction when deciding whether there has been a *prima facie* showing of personal jurisdiction. *Am. Tel. & Tel.*, 94 F.3d at 588.

The court applies the personal jurisdiction law of the forum state where, as here, “there is no applicable federal statute governing personal jurisdiction[.]” *Dole Food Co., Inc. v. Watts*, 303 F.3d 1104, 1110 (9th Cir. 2002). “California’s long-arm jurisdictional statute is coextensive with federal due process requirements,” and so under California law a court can exert personal jurisdiction over a defendant if doing so would be consistent with constitutional due process. *Id.* A court may exercise personal jurisdiction “over a non-resident defendant” without offending constitutional principles if that defendant has “at least ‘minimum contacts’ with the relevant forum such that the exercise of jurisdiction ‘does not offend traditional notions of fair play and substantial justice.’” *Dole Food Co., Inc.*, 303 F.3d at 1111 (quoting *Int’l Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945)).

2. Analysis

Wilkins and Hobbs move to dismiss Plaintiff’s claims against them based on lack of personal jurisdiction. First, Wilkins and Hobbs argue that this Court lacks general jurisdiction, as neither individual is domiciled in California; neither individual was served with the complaint and summons in California; neither individual has systematic and continuous contacts with

California; and neither individual has consented to jurisdiction in this forum. Second, Wilkins and Hobbs argue that the Court lacks specific personal jurisdiction, arguing that the extent of their contact with California in this case involved the completion of extradition paperwork, in Arkansas, regarding an individual believed to be a former Arkansas prisoner.

Plaintiff argues that this Court may exercise specific personal jurisdiction over both Wilkins and Hobbs based on their direct and significant involvement in Plaintiff's arrest and attempted extradition.² *Opp.* at 12 (citing *Lee v. City of Los Angeles*, 250 F.3d 668, 694 (9th Cir. 2001)).

"[I]f a defendant has not had continuous and systematic contacts with the state sufficient to confer 'general jurisdiction,'" *Dole Food Co.*, 303 F.3d at 1111, specific personal jurisdiction may be established by showing the following: "(1) the defendant has performed some act or consummated some transaction within the forum state or otherwise purposefully availed himself of the privileges of conducting activities in the forum, (2) the claim arises out of or results from the defendant's forum-related activities, and (3) the exercise of jurisdiction is reasonable." *See Bancroft & Masters, Inc. v. Augusta Nat., Inc.*, 223 F.3d 1082,

² Plaintiff does not contend that the Court has general personal jurisdiction over Wilkins and Hobbs. Accordingly, the Court need not determine the issue. *See Sher v. Johnson*, 911 F.2d 1357, 1361 (9th Cir. 1990) (declining to determine whether general jurisdiction existed because plaintiff argued only specific jurisdiction existed).

App. 17

1086 (9th Cir. 2000). Plaintiff bears the burden of satisfying the first two prongs of the test for specific jurisdiction. *Dole Food Co.*, 303 F.3d at 1111 (citing *Sher v. Johnson*, 911 F.2d 1357, 1361 (9th Cir. 1990)). “In tort cases, jurisdiction may attach if the defendant’s conduct is aimed at or has an effect in the forum state.” *Panavision Int’l, L.P. v. Toeppen*, 141 F.3d 1316, 1321 (9th Cir. 1998). “To meet the effects test, the defendant must have (1) committed an intentional act, which was (2) expressly aimed at the forum state, and (3) caused harm, the brunt of which is suffered and which the defendant knows is likely to be suffered in the forum state.” *Bancroft & Masters, Inc.*, 223 F.3d at 1087.

Plaintiff contends that Wilkins and Hobbs purposefully availed themselves of this forum by preparing extradition papers which were forwarded to the California governor’s office, and communicating with the San Diego County Sheriff’s Department during the process of Plaintiff’s apprehension and arrest. Plaintiff cites to *Lee v. City of Los Angeles*, in which the Ninth Circuit ruled that New York law enforcement officers who participated actively in the plaintiff’s extradition from California to New York had “purposefully availed themselves of the privilege of conducting activities in California.” 250 F.3d at 694.

In *Lee*, the circuit court found that the defendant New York officers

... extensively interacted with officials in California. They communicated with and relied upon California law enforcement officers

to detain and identify Kerry Sanders as the fugitive Robert Sanders; sent an information package about Robert Sanders to California specifically to aid in identifying him; requested that California authorities extradite Kerry Sanders; and deliberately traveled to California where they took custody of Kerry Sanders before transporting him back to New York State.

Id. at 694. On those facts, the Ninth Circuit held that the defendant New York officers “who traveled to Los Angeles to retrieve Kerry Sanders, or were otherwise directly and significantly involved in Kerry Sanders’s extradition, purposefully availed themselves of the privilege of conducting activities in California.” *Id.*

Here, Plaintiff alleges that his neighbor, a private citizen, initiated contact with the Arkansas Department of Corrections on August 7, 2013. A lieutenant with the Arkansas Department of Corrections followed up by contacting the San Diego Sheriff’s Department. Based on the information provided by two unrelated sources in California, Wilkins, in her role as an attorney for the Department of Corrections, prepared the paperwork necessary to begin the process of extraditing Plaintiff to Arkansas. *Wilkins Decl.* ¶ 9. This paperwork included a supporting affidavit, which Hobbs signed and submitted to an Arkansas judge and the Arkansas governor’s office on or about September 25, 2013. Several weeks later, the Arkansas governor’s office approved the extradition and forwarded the documentation to the California governor’s office. A

App. 19

representative from the Arkansas governor's office notified Wilkins of this action on or about October 17, 2013. Wilkins in turn notified Hobbs the next day.

Several months later, on January 13, 2014, a San Diego County Sheriff's deputy charged with apprehending Plaintiff pursuant to the extradition warrant initiated communication with Wilkins, in an attempt to obtain additional identifying information regarding the Arkansas fugitive. On January 14, 2014, Wilkins emailed the Sheriff's Department supporting documentation pursuant to their request for information. A Sheriff's deputy emailed Wilkins Plaintiff's booking photograph after his arrest. A Sheriff's deputy called Wilkins regarding a purported positive fingerprint match. On January 15, 2014, a Sheriff's deputy called Wilkins to advise her that Plaintiff was challenging extradition. Wilkins kept Hobbs apprised of the developments. These email and telephone communications appear to have taken place over the course of less than 48 hours.

On or about January 21, 2014, an assistant district attorney with the San Diego County District Attorney's office called Wilkins to advise regarding the negative fingerprint comparison between Plaintiff and the Arkansas fugitive, and the concomitant decision to dismiss the case against Plaintiff. The next day, the assistant district attorney spoke with Wilkins regarding Plaintiff's release from custody. Wilkins requested the original fingerprint card for purposes of forwarding it to the Arkansas State Police for comparison.

App. 20

Plaintiff has not established a *prima facie* case that Wilkins and Hobbs' allegedly tortious acts were "expressly aimed" at California. Wilkins and Hobbs prepared the extradition paperwork in Arkansas, for the purpose of obtaining a probable cause finding from an Arkansas judge in order to present an extradition package for an Arkansas fugitive to the governor of Arkansas. While Wilkins and Hobbs' intentional acts eventually caused harm to Plaintiff in California, whom they knew lived in California, "this does not confer jurisdiction, for [their] express aim was local." *Schwarzenegger v. Fred Martin Motor Co.*, 374 F.3d 797, 807 (9th Cir. 2004). As the Ninth Circuit explained fourteen years after *Lee*, in order to establish the existence of personal jurisdiction over a defendant, a plaintiff who resides in the forum state cannot be the only link between the defendant and the forum. *Picot v. Weston*, 780 F.3d 1206, 1214 (9th Cir. 2015) (quoting *Walden v. Fiore*, 134 S. Ct. 1115, 1122 (2014)). "[M]ere injury to a forum resident is not a sufficient connection to the forum"; courts must engage in a "forum-focused" inquiry. *Walden*, 134 S. Ct. at 1125.

The facts of the *Walden* case are instructive. Officer Anthony Walden was working as a deputized DEA agent at Hartsfield-Jackson Atlanta International Airport in Atlanta, Georgia, when he seized \$97,000 in cash from travelers Gina Fiore and Keith Gipson. *Id.* at 1120. Fiore and Gipson eventually recovered their money, but ultimately filed suit against Walden in federal court in Nevada, where they maintained residency. *Id.* They alleged Walden had unlawfully seized

their money and had deliberately submitted a false affidavit to support planned forfeiture proceedings. *Id.* The court dismissed the case against Walden based on lack of personal jurisdiction, but the Ninth Circuit reversed. *Fiore v. Walden*, 688 F.3d 558, 581 (9th Cir. 2011). The Ninth Circuit reasoned that Walden’s alleged submittal of a false affidavit created minimum contacts with Nevada because it was conduct “expressly aimed” at Nevada, as Walden allegedly knew his tortious act would cause harm within Nevada. *Id.* The Supreme Court reversed the Ninth Circuit, explaining that the “relevant conduct occurred entirely in Georgia,” and “the mere fact that . . . conduct affected plaintiffs with connections to” Nevada did not establish a sufficient connection between the defendant and Nevada. *Walden*, 134 S. Ct. at 1126.

Nor do the actions of Wilkins and Hobbs constitute the type of “extensive” interaction with officials in California contemplated by the Ninth Circuit in *Lee*. Neither Wilkins nor Hobbs appear to have been responsible for forwarding the extradition paperwork to California, or communicating with the California governor’s office. Several months elapsed between the time Wilkins and Hobbs prepared the extradition paperwork and the San Diego County Sheriff’s Department apprehended Plaintiff; neither Wilkins nor Hobbs is alleged to have been in contact with California law enforcement officers during that elapsed period of time. The San Diego Sheriff’s deputies initiated contact with Wilkins. Her communications were responsive, not assertive. While emails and calls directed at a

forum state can be meaningful enough to create personal jurisdiction, *see Walden*, 134 S. Ct. at 1122, Wilkins' contacts in this case are not. And it does not appear that Hobbs interacted directly with California officials at any time. The Supreme Court has made clear that "it is the defendant, not the plaintiff or third parties, who must create contacts with the forum State." *Id.* at 1126. Furthermore, neither Wilkins nor Hobbs traveled to California to take custody of Plaintiff, nor would it have been the responsibility of either individual to do so. Wilkins was not employed by the Arkansas Department of Corrections as a correctional officer, but as an attorney. Hobbs, as director, occupied a supervisory administrative position.

In sum, the Court finds that Plaintiff has not established that Wilkins and Hobbs expressly aimed their actions at California or extensively interacted with anyone in California. Under Plaintiff's theory of jurisdiction, any state employee involved in processing the extradition of an individual from another state could be sued in that state, no matter how limited their contact with the forum state. That is not the holding of *Lee* nor is it compatible with the Supreme Court's analysis in *Walden*. As such, the Court concludes that it lacks personal jurisdiction over Wilkins and Hobbs.

CONCLUSION

Pursuant to Federal Rule of Civil Procedure 12(b)(2), the Court **GRANTS** Wilkins and Hobbs' motion and **DISMISSES** Plaintiff's claims against them

App. 23

without prejudice. *Grigsby v. CMI Corp.*, 765 F.2d 1369, 1372 n.5 (9th Cir. 1985) (dismissal for lack of personal jurisdiction must be without prejudice).

IT IS SO ORDERED.

DATE: August 23, 2016

/s/ Michael M. Anello
HON. MICHAEL M. ANELLO
United States District Judge

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

JAMES SOLER, Plaintiff, v. COUNTY OF SAN DIEGO, et al., Defendants.	Case No.: 14cv2470-MMA (RBB) ORDER DENYING PLAINTIFF'S MOTION FOR RECONSIDERATION [Doc. No. 126] (Filed Jan. 17, 2017)
--	---

Plaintiff James Soler brings this civil rights action pursuant to Title 42, United States Code, section 1983, and California state law, against the County of San Diego, and various individually named defendants, including Arkansas residents Lisa Wilkins and Ray Hobbs. The Court previously dismissed Plaintiff's claims against Wilkins and Hobbs, based on lack of personal jurisdiction. *See* Doc. No. 125. Plaintiff now moves the Court to reconsider the dismissal of his claims against Wilkins and Hobbs on the ground that newly discovered evidence establishes the Court's jurisdiction over these non-resident defendants. *See* Doc. No. 126. The Court took the matter under submission on the briefs and without oral argument pursuant to Civil Local Rule 7.1.d.1. *See* Doc. No. 133. For the reasons set forth below, the Court **DENIES** the motion.

DISCUSSION¹

1. Legal Standard

Pursuant to this District's Local Rules, a party may seek reconsideration of a court order. *See* S.D. Cal. Civ. L.R. 7.1.i. "A timely filed motion for reconsideration under a local rule is a motion to alter or amend a judgment under Fed. R. Civ. P. 59(e)." *Bestran Corp. v. Eagle Comtronics, Inc.*, 720 F.2d 1019, 1019 (9th Cir. 1983). "Although Rule 59(e) permits a district court to reconsider and amend a previous order, the rule offers an extraordinary remedy, to be used sparingly in the interests of finality and conservation of judicial resources." *Kona Enters., Inc. v. Estate of Bishop*, 229 F.3d 877, 890 (9th Cir. 2000) (internal quotation marks omitted). "Indeed, a motion for reconsideration should not be granted, absent highly unusual circumstances, unless the district court is presented with newly discovered evidence, committed clear error, or if there is an intervening change in the controlling law." *Id.* (quoting *389 Orange St. Partners v. Arnold*, 179 F.3d 656, 665 (9th Cir. 1999)) (internal quotation marks omitted).

The Ninth Circuit has emphasized that "a Rule 59(e) motion may *not* be used to raise arguments or present evidence for the first time when they could reasonably have been raised earlier in the litigation." *Id.*

¹ Plaintiff's factual allegations are set forth in detail in the Court's March 19, 2015 Order Granting in Part and Denying in Part Defendants' Motion to Dismiss and the Court's August 23, 2016 Order Granting Wilkins and Hobbs' Motion to Dismiss. *See* Doc. Nos. 17 and 125.

(emphasis in original). Further, “[i]t is well-settled that Rule 59 is not a vehicle for relitigating old issues, presenting the case under new theories, securing a rehearing on the merits, or otherwise taking a ‘second bite at the apple.’” *Sequa Corp. v. GBJ Corp.*, 156 F.3d 136, 144 (2d Cir. 1998). “[M]otions for reconsideration are not the proper vehicles for rehashing old arguments and are not intended to give an unhappy litigant one additional chance to sway the judge.” *Phillips v. C.R. Bard, Inc.*, 290 F.R.D. 615, 670 (D. Nev. 2013), *reconsideration denied* (Aug. 7, 2013).

2. Analysis

Plaintiff seeks reconsideration of the Court’s August 23, 2016 Order dismissing his claims against Wilkins and Hobbs on the ground that newly discovered evidence establishes the Court’s jurisdiction over both individuals. More specifically, Wilkins and Hobbs were deposed on July 7 and 8, 2016, subsequent to the completion of briefing on their motion to dismiss. According to Plaintiff, the deposition testimony supports the Court’s reconsideration of its dismissal order.^{1 [sic]}

^{1 [sic]} Plaintiff has also submitted transcripts from audiotaped pre-litigation interviews with Defendants San Diego County Sheriff’s Department Deputy Corporal Robert Germain, Deputy Javier Medina, and Sergeant Turvey. See Doc. No. 138. Wilkins and Hobbs object to the submission of this evidence, arguing, *inter alia*, that the submission is untimely and irrelevant. See Doc. Nos. 136, 139. The Court notes that a party must seek leave of Court prior to filing supplemental documentation in support of or in opposition to a pending motion, if the motion has been taken under submission pursuant to Civil Local Rule 7.1.d.1., or the filing

As an initial matter, the Court notes that a motion for reconsideration “may not be used to raise arguments or present evidence for the first time when they could reasonably have been raised earlier in the litigation.” *Kona Enters., Inc.*, 229 F.3d at 890. In this case, Wilkins and Hobbs were deposed approximately six and a half weeks prior to the issuance of the dismissal order on August 23, 2016.² [sic] Hence, Wilkins and Hobbs’ deposition testimony does not constitute “newly discovered evidence” because Plaintiff could have submitted the evidence prior to the Court’s ruling.³ [sic] *Marlyn Nutraceuticals, Inc. v. Mucos Pharma GmbH & Co.*, 571 F.3d 873, 881 (9th Cir. 2009). The Court may deny Plaintiff’s motion for reconsideration on this ground alone. *Frederick S. Wyle Professional Corp. v. Texaco, Inc.*, 764 F.2d 604, 609 (9th Cir. 1985) (“Counsel for the trustee admitted that the evidence he was offering was available before disposition of the motion for summary judgment. Therefore, as a matter of law . . . the trustee

would otherwise be in contravention to the applicable briefing schedule. As such, Wilkins and Hobbs’ timeliness objection is well-taken. In any event, the Court has reviewed Plaintiff’s submission, and considered the evidence as it pertains to the personal jurisdiction analysis.

² [sic] Plaintiff’s counsel received the deposition transcripts during the week prior to the issuance of the dismissal order. *See Pl. Memo.* at 1.

³ [sic] In fact, the Court deferred ruling on Wilkins and Hobbs’ motion to dismiss for some time after taking the motion under submission, in part because of the scheduled depositions, and the possibility that Plaintiff would seek leave to supplement his opposition to the motion to dismiss with relevant deposition testimony.

was not entitled to reconsideration based on that evidence.”).

Plaintiff’s motion also fails on its merits. Hobbs’ deposition testimony confirms that he lacks sufficient minimum contacts with California such that he could have foreseen being sued in this forum for his actions related to the extradition of Steven Dishman/James Soler. *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 291 (1980) (holding that a “court may exercise personal jurisdiction over a nonresident defendant only so long as there exist ‘minimum contacts’ between the defendant and the forum State.”). Hobbs testified that he signed and submitted paperwork to the Arkansas Governor’s office, containing information provided to him by his colleagues, arising out of an investigation he did not conduct. Hobbs did not establish a relationship or even communicate with San Diego Sheriff’s Department officials, or otherwise directly participate in or coordinate Plaintiff’s apprehension. *See Lee v. City of Los Angeles*, 250 F.3d 668, 693 (9th Cir. 2001) (holding that there was personal jurisdiction in California over New York law enforcement officials who took “deliberate actions” of working directly with Los Angeles police officials to arrange for the extradition of a fugitive, including “regular” communications).

With respect to Lisa Wilkins, her deposition testimony is consistent with the documentation previously provided by Plaintiff to the Court in opposition to Wilkins and Hobb’s motion to dismiss. Wilkins testified repeatedly that her role in the extradition process was limited – she did not investigate the underlying facts,

she was “the attorney doing the documents.” *Wilkins Depo.* at 53. She prepared those documents based on information provided to her by the individuals who investigated Plaintiff’s neighbor’s claims. She presented those documents for Hobbs’ signature and a judge’s approval, and forwarded the documents to the Arkansas Governor’s office. Wilkins testified that she did not monitor the situation after the Governor’s office approved the extradition. *Id.* at 102. Nor did she coordinate Plaintiff’s arrest with law enforcement officials in San Diego. Months later, Deputy Corporal Germain contacted Wilkins on her personal cell phone to advise her of Plaintiff’s arrest after the fact. *Id.* at 106. According to Wilkins, Deputy Corporal Germain asked if she could provide the Sheriff’s Department with Steven Dishman’s fingerprints so that Plaintiff could remain in custody, despite the fact that Arkansas officials included a copy of the fingerprints in the warrant materials sent to California. *Id.*

Deputy Medina, Germain’s partner, confirmed that Germain initiated contact with the Arkansas Department of Corrections and Wilkins, in order to obtain additional information regarding Steven Dishman. *See* Doc. No. 138-3. Sergeant Turvey stated that Germain had “very limited” information at the time of Plaintiff’s apprehension, because he only had three pages of the Governor’s Warrant. *See* Doc. No. 183-2 at 1. According to Sergeant Turvey, Germain spoke to Wilkins so that she could “get more information for him,” so that Germain could then use “his best judgment on either arresting or not arresting” Plaintiff. *Id.* at 2. Ultimately,

Deputy Corporal Germain “made the decision that the information he had was enough for him to believe that was the correct person, so he made the arrest.” *Id.* Wilkins’ assistance to law enforcement officials in San Diego under these circumstances is not the type of “intentional conduct by the defendant that creates the necessary contacts with the forum.” *Walden v. Fiore*, 134 S. Ct. 1115, 1123 (2014). The Court previously determined that hauling Lisa Wilkins into court in California in this case based on her limited contact with California officials would not comport with due process, and finds no basis upon which to now conclude otherwise.

CONCLUSION

Based on the foregoing, the Court **DENIES** Plaintiff’s motion for reconsideration.

IT IS SO ORDERED.

DATE: January 17, 2017

/s/ Michael M. Anello
HON. MICHAEL M. ANELLO
United States District Judge

[LOGO]

United States District Court
SOUTHERN DISTRICT OF CALIFORNIA

James Soler

Plaintiff,

v.

San Diego, County of; San
Diego County Sheriff's
Department; San Diego
County Office of the Public
Defender; Salvatore
Tarantino; see attachment

Defendant.

Civil Action No.
14-cv-2470-MMA-RBB

JUDGMENT IN
A CIVIL CASE

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

IT IS HEREBY ORDERED AND ADJUDGED:

Thee [sic] Court grants Defendants' motion for summary judgment and dismisses Plaintiff's federal civil rights claims with prejudice. The Court declines to exercise supplemental jurisdiction over Plaintiff's remaining

App. 32

state law claims and dismisses those claims without prejudice.

Date: 8/15/17 CLERK OF COURT
JOHN MORRILL, Clerk of Court
By: s/ A. Garcia
A. Garcia, Deputy

[Attachment Omitted]

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

JAMES SOLER, Plaintiff-Appellant, v. COUNTY OF SAN DIEGO; et al., Defendants-Appellees.	No. 17-56270 D.C. No. 3:14-cv-02470-MMA-RBB Southern District of California, San Diego ORDER (Filed Jun. 4, 2019)
--	---

Before: GOULD, NGUYEN, and OWENS, Circuit Judges.

The panel has voted to deny Appellees Ray Hobbs and Lisa Wilkins' petition for rehearing en banc (Dkt. No. 57). The full court has been advised of the petition for rehearing en banc, and no judge of the court has requested a vote on it.

Appellees Ray Hobbs and Lisa Wilkins' petition for rehearing en banc is DENIED.

In addition, the panel has voted to deny Appellees Ernesto Banuelos and County of San Diego's petition for panel rehearing and petition for rehearing en banc (Dkt. No. 58). The full court has been advised of the petition for rehearing en banc, and no judge of the court has requested a vote on it.

App. 34

Appellees Ernesto Banuelos and County of San Diego's petition for panel rehearing and petition for rehearing en banc are DENIED.

TODD W. BURNS
State Bar No. 194937
todd@burnsandcohan.com
GABRIEL COHAN
State Bar No. 259449
gabriel@burnsandcohan.com
Burns & Cohan, Attorneys at Law
1350 Columbia Street, Suite 600
San Diego, California 92101
Telephone: (619) 236-0244

Attorneys for Plaintiff James Soler

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

JAMES SOLER,) Case No. 14cv2470-
Plaintiff,) MMA (RBB)
vs.) Civil Rights Action
COUNTY OF SAN DIEGO;)
CPL. ROBERT GERMAINE;) **THIRD**
JAVIER MEDINA; DET.)
MARK MILTON; DET. KEN) **AMENDED**
SMITH; SGT. RICK TURVEY;) **COMPLAINT FOR**
ERNESTO BAUNELOS [sic];)
LISA WILKINS; RAY HOBBS;) **DAMAGES AND**
SAN DIEGO COUNTY SHER-)
IFF'S DEPARTMENT; SAN)
DIEGO COUNTY OFFICE OF)
THE PUBLIC DEFENDER;)
SALVATORE TARANTINO;)
AND DOES 1-5, 7-25, and 28-35,) **DEMAND FOR**
Defendants.) **JURY TRIAL**

) (Filed Feb. 26, 2016)

Plaintiff alleges:

JURISDICTION

1. Plaintiff's claims arise under 42 U.S.C. § 1983, *et seq.*, and the Fourth and Fourteenth Amendments to the United States Constitution, thus jurisdiction is conferred upon this Court by 28 U.S.C. §§1331 and 1343. There are also state law claims over which the Court has supplemental jurisdiction under 28 U.S.C. §1337. Plaintiff has complied with the claims filing requirements of the California Government Code and this amended complaint is timely filed under applicable state and federal law.
2. Plaintiff's claims arise out of acts of the Defendants that occurred in large part in San Diego County, thus venue is proper in the Southern District of California.

GENERAL ALLEGATIONS

3. Plaintiff is and was at all material times mentioned herein a resident of the County of San Diego, State of California.
4. At all times mentioned herein, Defendant Salvatore Tarantino and Defendant DOES 1-5 were employees of the County of San Diego and/or the San Diego Office of the Public Defender, and in doing the acts herein alleged they acted within the course and scope of their employment. Defendant Tarantino and Defendant DOES 1 through 5 are sued individually

and in their capacities as employees of the County of San Diego and/or the San Diego Office of the Public Defender.

5. At all times mentioned herein, Defendants Cpl. Robert Germaine, Javier Medina, Det. Mark Milton, Det. Ken Smith, Sgt. Rick Turvey, Ernesto Banuelos, and DOES 7 through 15 were employees of Defendants County of San Diego and/or the San Diego County Sheriff's Department, and in doing the acts herein alleged they acted within the course and scope of their employment. The alleged acts of Defendants Cpl. Robert Germaine, Javier Medina, Det. Mark Milton, Det. Ken Smith, Sgt. Rick Turvey, Ernesto Banuelos, and DOES 7 through 15 were also done under the color and pretense of the statutes, ordinances, regulations, customs, and usages of the State of California. Defendants Cpl. Robert Germaine, Javier Medina, Det. Mark Milton, Det. Ken Smith, Sgt. Rick Turvey, Ernesto Banuelos, and DOES 7 through 15 are sued individually and in their capacities as employees of the County of San Diego and/or the San Diego County Sheriff's Department.

6. At all times mentioned herein, Defendant [sic] DOES 16 through 25 were employees of the State of California or its agencies (including the Office of the Governor and the Office of the Secretary of State) or its [sic] political subdivisions (including counties, cities, or municipalities), and in doing the acts herein alleged they acted within the course and scope of their employment. The alleged acts of Defendant [sic] DOES 16 through 25 were also done under the color and pretense of the

statutes, ordinances, regulations, customs, and usages of the State of California. Defendant [sic] DOES 16 through 25 are sued individually and in their capacities as employees of the State of California or its agencies or political subdivisions by which they are employed.

7. At all times mentioned herein, Defendants Lisa Wilkins, Ray Hobbs, and DOES 28 through 35 were employees of the State of Arkansas or its agencies (including the Arkansas Office of the Governor and the Arkansas Department of Corrections), or political subdivisions of Arkansas (including counties, cities, or municipalities), and in doing the acts herein alleged Defendants Lisa Wilkins, Ray Hobbs, and DOES 28 through 35 acted within the course and scope of their employment. The alleged acts of Defendants Lisa Wilkins, Ray Hobbs, and DOES 28 through 35 were also done under the color and pretense of the statutes, ordinances, regulations, customs, and usages of the State of Arkansas. Defendants Lisa Wilkins, Ray Hobbs, and DOES 28 through 35 are sued individually and in their capacities as employees of the State of Arkansas or its agencies (including the Arkansas Office of the Governor and the Arkansas Department of Corrections) or political subdivisions of Arkansas (including counties, cities, or municipalities).

8. Defendants County of San Diego, the San Diego County Sheriff's Department, and the San Diego Office of the Public Defender are public entities existing under the laws of the State of California.

9. The true names or capacities, whether individual, corporate, associate or otherwise, of Defendants named herein as DOES 1-5, 7-25, and 28-35 are unknown to Plaintiff, who therefore sues said Defendants by fictitious names. Plaintiff will amend this complaint to show said Defendants' true names and capacities when the same have been ascertained. Plaintiff is informed and believes and thereon alleges that all Defendants sued herein as DOES are in some manner responsible for the acts and injuries alleged herein.

10. Plaintiff is informed and believes and therefore alleges that at all times mentioned herein each of the Defendants, including the DOE Defendants, was the agent, servant, and/or employee of each of the remaining Defendants and were, in doing the acts herein alleged, acting within the course and scope of this agency and/or employment and with the permission, consent and authority of their co-defendants and each of them, and each is responsible in some manner for the occurrences hereinafter alleged, and that Plaintiff's injuries were proximately caused by the actions of each.

FACTUAL ALLEGATIONS

11. The Plaintiff, James Soler, is a 50-year-old man, and at all times relevant to this case he lived in Alpine, California.

12. On or about May 28, 1985, a man named Steven Dishman escaped from prison in Arkansas, where he was serving a seven year term for burglary and

theft of property. James Soler and Steven Dishman are not the same person.

13. Some time after Mr. Dishman escaped from custody, but prior to August 2013, the Arkansas Department of Corrections posted an internet notice regarding Mr. Dishman's escape status that noted, among other things, that he has scars on his left wrist and on his forehead between his eyes, and when he escaped in 1985 he weighed 159 pounds. The internet notice also had a photograph of Mr. Dishman, taken prior to his escape, that showed that he had his hair parted in the center and had a full beard on his face.

14. In early 2012, Plaintiff and his wife began to have ongoing problems with their then-neighbors, Jose Lara and Connie Avila. That conflict involved, among other things, restraining order proceedings in San Diego Superior Court that were initiated in 2012, about which San Diego Sheriff's Department deputies were aware, having served papers on the parties with respect to those proceedings. In addition, prior to August 2013, San Diego Sheriff's Department deputies were aware that Mr. Lara and Ms. Avila had made false claims about Plaintiff being involved in criminal activity, and were aware that Mr. Lara and Ms. Avila had made repeated complaints to the Sheriff's Department about Mr. Soler. Furthermore, on or about August 2, 2013, Mr. Soler was arrested by San Diego Sheriff's deputies based on a complaint made by Mr. Lara and Ms. Avila, and as a result of that arrest the San Diego Sheriff's Department took Mr. Soler's fingerprints and

made a record of identifying characteristics on his body, or the lack thereof, such as scars and tattoos.

15. At approximately midnight Pacific Standard Time (PST) on or about August 7, 2013, Ms. Lara called the Arkansas Department of Corrections and falsely claimed to Lt. Smart that Mr. Soler was Steven Dishman, the escaped inmate from the Arkansas Department of Corrections mentioned above. At approximately 1:00 a.m. PST, Lt. Smart with the Arkansas Department of Corrections contacted the San Diego Sheriff's Department and asked them "to look into the incident." At approximately 3:00 a.m. PST, San Diego Sheriff's Deputy Jnowles [sic] spoke with Lt. Smart and advised that to arrest Mr. Soler the San Diego Sheriff's Department would need there to be an active arrest warrant, and there was no such warrant at that time. Lt. Smart asked Deputy Jnolwes [sic] "if he had reason to believe [Mr. Soler] was the same individual that was listed as an escaped inmate from [the Arkansas Department of Corrections]." Based on a photograph of Mr. Soler that he looked at, Deputy Jnowles [sic] said that "the two [men] were similar in facial features, but [he] could not verify."

16. Based on the information set out in the preceding paragraph, Lisa Wilkins, an employee of the Arkansas Department of Corrections, prepared a sworn affidavit for signature of the Director of the Arkansas Department of Corrections, Ray Hobbs. That affidavit was prepared to support a judicial finding of probable cause to conclude that James Soler was the wanted escapee Steven Dishman. To support the conclusion that

App. 42

the two men were one and the same, Mr. Hobbs's affidavit, which was drafted by Ms. Wilkins, stated, "I have new and reasonably believe it to be accurate information as to [Mr. Dishman's] current residence at [Mr. Soler's street address], Alpine, California, and is living under the alias of James DeWolfe Soler." That was the *entirety* of the information presented by Ms. Wilkins in Mr. Hobbs's sworn affidavit (or otherwise) to support a finding of probable cause to believe that Mr. Dishman and Mr. Soler were the same man. Mr. Hobbs signed that affidavit on September 25, 2013, and that same day presented it to Arkansas Circuit Judge Jodi Denis. Based on Mr. Hobbs's affidavit, and specifically based on the quoted language above, that same day Judge Denis issued an Affidavit of Probable Cause stating, "I find there is sufficient and probable cause to support the extradition of Steven Dishman, a/k/a James DeWolfe Soler from the State of California or wherever he may be located to Arkansas."

17. After Judge Denis [sic] signed the Affidavit of Probable Cause, Defendant Lisa Wilkins forwarded that Affidavit to the Office of Arkansas Governor Mike Beebe. In reliance on that Probable Cause Affidavit/finding, on or about October 10, 2013 Arkansas Governor Beebe issued a "requisition" for extradition to California Governor Brown, and included with that requisition Judge Denis's finding that there was probable cause to believe that Steven Dishman and James Soler were the same man.

18. Relying on that representation from the Arkansas Governor and the finding of Judge Denis, on or

about November 27, 2013 the Office of the Governor of California, through Peter A. Krause, Interstate Rendition Officer, and Debra Bowen, Secretary of State, issued a Governor's warrant of rendition. That document said, "It has been represented to me by the Governor of the State of Arkansas that Steven Lee Dishman aka James DeWolfe Soler stands convicted under the laws of that state of Burglary and Theft of Property, thereafter escaped from custody, fled from the justice of the State of Arkansas, and is now found to be in the State of California. . . ." The warrant of rendition goes on to state that the Governor of Arkansas had demanded that Mr. Dishman be arrested, that demand was accompanied by "supporting papers certified by the Governor of the State of Arkansas," and therefore the Governor of California, "acting through my duly authorized Interstate Rendition Officer, command you to arrest and secure Steven Lee Dishman aka James DeWolfe Soler . . . and to deliver him into the custody of the designated agent(s), to be returned to the State of Arkansas. . . ."

19. The only information submitted to support the judicial finding by Judge Denis, and the quasi-judicial finding by Arkansas Governor Beebe, that Mr. Soler and Mr. Dishman were the same person was what was quoted above from the Affidavit of Defendant Ray Hobbs, which was drafted by Defendant Lisa Wilkins. Any reasonable law enforcement officer would have known that the information that Defendants Hobbs and Wilkins relied on did not support a finding of probable cause to believe that Mr. Soler and

App. 44

Mr. Dishman were the same man. Furthermore, in submitting Mr. Hobbs's affidavit to Judge Denis and Governor Beebe, Defendants Hobbs and Wilkins intentionally or recklessly misrepresented, or failed to mention, that: (1) Steven Dishman had never been known to use the name James Soler, and vice versa; (2) Mr. Dishman's and Mr. Soler's fingerprints do not match; (3) Mr. Dishman's and Mr. Soler's birth dates are different, and Mr. Dishman was nearly ten years older than Mr. Soler; (4) photographs of Mr. Dishman and Mr. Soler from the mid-1980s show that they did not even remotely look alike, most obviously with respect to their different eye colors, the parts of the hair on their heads, and Mr. Soler's lack of a beard; (5) records showed that in the mid-1980s, Mr. Dishman weighed 159 pounds, whereas Mr. Soler weighed approximately 125 pounds; (6) Mr. Dishman was known to have scars on his forehead between his eyes and on his left wrist, and Mr. Soler does not have such scars; and (7) in 1985, when Mr. Dishman was imprisoned in Arkansas, Mr. Soler lived in Jamul, California, where he had lived for several years.

20. Defendants Cpl. Robert Germaine, Javier Medina, Det. Mark Milton, Det. Ken Smith, Sgt. Rick Turvey, and/or DOES 7-15 were aware of, or involved in, the deeply lacking pre-arrest investigation into whether Mr. Dishman and Mr. Soler were the same person, and they acted in concert with Defendants Hobbs and Wilkins in intentionally or recklessly representing to Judge Denis and Arkansas Governor Beebe that two men were the same person. Furthermore, prior to Mr.

Soler's arrest on January 13, 2014, those Defendants knew, or recklessly disregarded, that there was not probable cause to believe that Mr. Soler and Mr. Dishman were the same person, yet those Defendants undertook to arrest and detain Mr. Soler knowing or recklessly disregarding that fact. Specifically, those Defendants were aware of, or recklessly disregarded, the information set out in the preceding paragraph.

21. On January 13, 2014, Mr. Soler was approached by two San Diego County Sheriff's Deputies while he was in the driveway of his home in Alpine, California. On information and belief those two deputies were Defendants Cpl. Robert Germaine and Javier Medina. The Deputies told Mr. Soler that there was a warrant for his arrest under the name Steven Dishman, who had escaped from prison in Arkansas in 1985, and the Deputies handcuffed Mr. Soler and placed him under arrest.

22. Before the Deputies took Mr. Soler away from his home in their patrol car, Mr. Soler and his wife explained to the Deputies that (1) Mr. Soler was not Mr. Dishman, (2) had not escaped from prison in Arkansas, and (3) they suspected that their neighbors, with whom they had a long-running conflict, were behind the false allegation to the contrary. One of the Deputies responded that he was aware of the long-running conflict with the neighbors, which, as mentioned, had led to several calls to the San Diego Sheriff's Department. That Deputy said that Mr. Soler would be taken into the Sheriff's sub-station, his fingerprints would be checked, and if they did not match those of the wanted

escapee (*i.e.*, Mr. Dishman), the Deputy would drive Mr. Soler back home within a couple hours.

23. Mr. Soler was first taken to the San Diego Sheriff's Department sub-station in Alpine, California. There he was told that the fingerprinting machine was broken, thus, he was told, a comparison of his and Mr. Dishman's fingerprints could not be done at that time. Mr. Soler continued to explain that he was not a wanted fugitive, and that he suspected his neighbors were behind the false allegation. Some of the Deputies examined Mr. Soler's physical characteristics and noticed that he did not match the description of Steven Dishman. One thing in particular that the Deputies noticed and mentioned was that Mr. Soler does not have a scar between his eyes, a known characteristic of Mr. Dishman. One of the arresting Deputies said that they had arrested the wrong man, and that he was going to drive Mr. Soler home. On information and belief that deputy was Cpl. Robert Germaine. Another Deputy overruled that decision, and ordered that Mr. Soler be taken to the jail in downtown San Diego. On information and belief that deputy was Sgt. Rick Turvey.

24. At the downtown San Diego jail, Mr. Soler continued to protest to officials that he was not Steven Dishman, and was not a fugitive. Mr. Soler was met with abusive and profane retorts from law enforcement personnel, who said that Mr. Soler was a liar and needed to admit that he was Mr. Dishman. On information and belief one of those law enforcement personnel who questioned Mr. Soler was Defendant Ernesto Banuelos.

25. Mr. Soler was put into a holding cell overnight, then was put into solitary confinement for the duration of his period of detention.

26. On January 15, 2014, Mr. Soler was taken to San Diego Superior Court. Before his court appearance, Mr. Soler met briefly with Salvatore Tarantino, an attorney with the San Diego Office of the Public Defender. Mr. Soler explained to Mr. Tarantino that he was not Steven Dishman, he was not a wanted fugitive, and that two of his neighbors were likely behind the false allegation. Mr. Soler also tried to explain to Mr. Tarantino that he, Mr. Soler, could easily prove that he was not Mr. Dishman, but Mr. Tarantino cut off Mr. Soler after approximately ten seconds and responded that he did not believe Mr. Soler.

27. Had Mr. Tarantino taken the time to talk with, and listen to, Mr. Soler, Mr. Soler could have provided him with a wealth of information, and access to materials and documents, that Mr. Tarantino could have used to convincingly show that Mr. Soler was not/is not Mr. Dishman. Mr. Soler tried to provide that information to Mr. Tarantino, but Mr. Tarantino cut him off and ended the conversation. Perhaps the most compelling fact that Mr. Tarantino could have obtained evidence of in a short period of time was that in May 1985 Mr. Soler was living in Jamul, California, with his foster parents, who could have appeared in court on January 15, 2014 and attested that Mr. Soler was living in Jamul, and not imprisoned in Arkansas, in 1985. Furthermore, three of Mr. Soler's neighbors during the May 1985 time frame were children/young adults from

a family that lived next door; those three went on to work for several years for law enforcement agencies, including [sic] the San Diego Sheriff's Department; and all three were available on January 15, 2014 to confirm, and if necessary testify, that Mr. Soler was living in Jamul, and was not in prison in Arkansas, in 1985. Indeed, Mr. Soler had never even been to Arkansas prior to 1985. There was also a great deal of documentary evidence that Plaintiff's foster parents could have produced quickly to establish that Mr. Soler was not Steven Dishman (e.g., photographs), and there was a wealth of public and business records to the same effect (e.g., school records, DMV records, work records).

28. Under California law, a person who denies that he is the person wanted pursuant to a governor's warrant may contest his continued detention and extradition by filing a writ of *habeas corpus*. And Mr. Soler had unequivocally told Mr. Tarantino that he was not/is not the person named in the warrant (*i.e.*, Steven Dishman).

29. Nonetheless, at the subsequent hearing in Superior Court on January 15, 2014, Mr. Tarantino began by referring to Mr. Soler as Mr. Dishman, then told the Superior Court that he had "been given a signed warrant of extradition," and it was "not [his] intent to file a writ of *habeas corpus*," thus "Arkansas needs to be notified to come pick him up. . ." (A copy of the reporter's transcript from the January 15, 2014 appearance is attached as Exhibit A). From the transcript, it appears that the Superior Court then began to order Mr. Soler's extradition, at which point Mr. Tarantino

asked if he could “interrupt” and said that he had just been told by Ken Smith, an extradition officer in the San Diego County Sheriff’s Department, that the prints of Mr. Dishman and Mr. Soler did not match, or had not been matched (the transcript is not clear), and that “Mr. Dishman informs me – he says that’s not him.” Mr. Tarantino went on to say, “based on what Mr. Dishman told me, that it wasn’t him, and now being told by the officer that those prints were not compared, I can say to the court I will file a writ. But I think the quicker way is to continue the matter for a week. They can give me the print comparisons. And then if I am satisfied, then I will tell the court again that I am not going to file a writ.” In short, at the January 15, 2014 hearing, Mr. Tarantino: (1) first said that Mr. Soler should be ordered extradited, even though, as Mr. Tarantino subsequently admitted, Mr. Soler said that he was not the man wanted in Arkansas; and (2) then indicated that rather than him making appropriate inquiries of his client and pressing for Mr. Soler’s immediate, or quick, release, the case should be stayed for a week, and Mr. Soler should stay in custody, so that the Sheriff’s Department personnel would have more time to do something that they should have done days, weeks, or months earlier. The court granted Mr. Tarantino’s request and scheduled a hearing for January 22, 2014.

30. On January 16, 2014, a fingerprint examiner who worked in the San Diego District Attorney’s Office compared the prints of Mr. Dishman to Mr. Soler and determined that they did not match, yet Mr. Soler was

not released from the custody of the San Diego County Sheriff's Department until the night of January 21, 2014.

31. On January 22, 2014, Deputy District Attorney Richard Madruga appeared in San Diego Superior Court and said, "Your Honor, last night we did receive a fingerprint comparison on this case showing that James Soler, the defendant in custody, is not the wanted individual from Arkansas. I called the Sheriff's Department and they released Mr. Soler."

32. On February 28, 2014, counsel for Mr. Soler contacted Ken Smith, an extradition officer in the Sheriff's Department, to whom Mr. Tarantino referred during the January 15, 2014 Superior Court hearing. Counsel told Mr. Smith that he would like to take any steps necessary to ensure that any future false claims made by Mr. Soler's then-neighbors, Mr. Lara and Ms. Avila, would not again result in Mr. Soler's arrest. During this conversation, Mr. Smith confirmed that it was the claims of Mr. Lara and Ms. Avila alone that led to the issuance of the warrant of rendition and to Mr. Soler's arrest on January 13, 2014. When counsel asked Mr. Smith why it took so long for the Sheriff's Department to release Mr. Soler, Mr. Smith said that was because the practice of the Sheriff's Department was to undertake by "snail mail" (*i.e.*, United States mail) the exchange of information and documents with other agencies that the Sheriff's Department requires before releasing a person such as Mr. Soler, and that can take a long time. Mr. Smith also said, however, that the Sheriff's Department would have acted more

quickly to discover that Mr. Soler was not/is not Mr. Dishman, and Mr. Soler would have been released more quickly, if Mr. Soler were a more important person.

33. As a proximate result of the acts alleged above, Plaintiff was injured in mind and body, including physical pain, emotional distress, fear, anxiety, and humiliation.

34. As a further result of the acts alleged above, Plaintiff incurred substantial economic losses, including lost business, lost earnings, and lost earning capacity.

35. Plaintiff also incurred expenses, including attorneys fees, as a result of the events discussed above.

FIRST CAUSE OF ACTION

[42 U.S.C. §1983 – Wrongful Arrest]

36. Plaintiff re-alleges and incorporates by reference the allegations contained in all of the other paragraphs of this amended complaint as though fully set forth herein.

37. Plaintiff was seized and arrested pursuant to Judge Denis's Affidavit of Probable Cause, the request for extradition by Arkansas Governor Beebe, and the resulting California Governor's warrant of rendition discussed above. Those documents were issued, and the finding of probable cause made, based on the

assertions in the Affidavit of Defendant Ray Hobbs discussed above, which Affidavit was drafted by Lisa Wilkins. In making the assertion in Mr. Hobb's affidavit that there was probable cause to believe that Mr. Soler and Mr. Dishman were the same person, Defendants Hobbs and Wilkins: (1) acted deliberately, or with reckless disregard for the truth, when they made false statements, or failed to mention relevant facts; and (2) had those false statements not been made, and had those relevant facts not been omitted, the Governor's warrant would not have been issued.

38. Defendants Cpl. Robert Germaine, Javier Medina, Det. Mark Milton, Det. Ken Smith, Sgt. Rick Turvey, and/or DOES 7-25 and 28-35 acted in concert with Defendants Hobbs and Wilkins in presenting the facts supporting the probable cause finding discussed above, and prior to Mr. Soler's arrest those Defendants knew, or recklessly disregarded, that the facts supporting the claimed probable cause were so lacking and deficient that no reasonable official could have believed that the facts supported the conclusion that there was probable cause to believe that Steven Lee Dishman and James DeWolfe Soler were/are the same person.

39. As a result of the actions of Defendants Ray Hobbs, Lisa Wilkins, Cpl. Robert Germaine, Javier Medina, Det. Mark Milton, Det. Ken Smith, Sgt. Rick Turvey, and DOES 7-25 and 28-35, Plaintiff was unlawfully seized and arrested in violation of his constitutional rights, as guaranteed by the Fourth Amendment to the United States Constitution.

40. As a result, Plaintiff is entitled to general and compensatory damages under 42 U.S.C. § 1983, *et seq.*, in an amount to be proven at trial.

41. In committing the acts alleged above, Defendants Ray Hobbs, Lisa Wilkins, Cpl. Robert Germaine, Javier Medina, Det. Mark Milton, Det. Ken Smith, Sgt. Rick Turvey, and DOES 7-25 and 28-35 acted maliciously and/or were guilty of a wanton and reckless disregard for the rights, feelings, and safety of Plaintiff, and by reason thereof Plaintiff is entitled to exemplary and punitive damages in an amount to be proven at trial.

SECOND CAUSE OF ACTION

[42 U.S.C. §1983 – Wrongful Detention]

42. Plaintiff re-alleges and incorporates by reference the allegations contained in all of the other paragraphs of this amended complaint as though fully set forth herein.

43. Following his arrest, Plaintiff was unlawfully detained by Defendants Ray Hobbs, Lisa Wilkins, Cpl. Robert Germaine, Javier Medina, Det. Mark Milton, Det. Ken Smith, Sgt. Rick Turvey, Ernesto Banuelos, and DOES 7-25 and 28-35, without probable cause to believe that he was the fugitive Steven Dishman, and his detention was unreasonably prolonged, in violation of his constitutional rights as guaranteed by the Fourth and Fourteenth Amendments to the United States Constitution.

44. As a result, Plaintiff is entitled to general and compensatory damages under 42 U.S.C. § 1983, *et seq.*, in an amount to be proven at trial.

45. In committing the acts alleged above, Defendants Ray Hobbs, Lisa Wilkins, Cpl. Robert Germaine, Javier Medina, Det. Mark Milton, Det. Ken Smith, Sgt. Rick Turvey, Ernesto Banuelos, and DOES 7-25 and 28-35 acted maliciously and/or were guilty of a wanton and reckless disregard for the rights, feelings, and safety of Plaintiff, and by reason thereof Plaintiff is entitled to exemplary and punitive damages in an amount to be proven at trial.

THIRD CAUSE OF ACTION

[Cal. Civ. Code §52.1 – Wrongful Arrest, Detention, and Imprisonment]

46. Plaintiff re-alleges and incorporates by reference the allegations contained in all of the other paragraphs of this amended complaint as though fully set forth herein.

47. Defendants San Diego County, San Diego County Sheriff's Department, Ray Hobbs, Lisa Wilkins, Cpl. Robert Germaine, Javier Medina, Det. Mark Milton, Det. Ken Smith, Sgt. Rick Turvey, Ernesto Banuelos, and DOES 7-25 and 28-35, and each of them, is liable to Plaintiff for his wrongful arrest, detention, and false imprisonment based on allegations and issuance of a warrant that did not apply to him, and, through coercion and/or threats, those Defendants

violated Plaintiff's state and/or federal rights, thereby entitling him to recover general, compensatory, and statutory damages under California Civil Code §§52.1 and 52.

48. In committing the acts alleged above, Defendants Ray Hobbs, Lisa Wilkins, Cpl. Robert Germaine, Javier Medina, Det. Mark Milton, Det. Ken Smith, Sgt. Rick Turvey, Ernesto Banuelos, and DOES 7-25 and 28-35 acted maliciously and/or were guilty of a wanton and reckless disregard for the rights, feelings, and safety of Plaintiff, and by reason thereof Plaintiff is entitled to exemplary and punitive damages in an amount to be proven at trial.

FOURTH CAUSE OF ACTION

[False Imprisonment]

49. Plaintiff re-alleges and incorporates by reference the allegations contained in all of the other paragraphs of this amended complaint as though fully set forth herein.

50. Defendants San Diego County, San Diego County Sheriff's Department, Ray Hobbs, Lisa Wilkins, Cpl. Robert Germaine, Javier Medina, Det. Mark Milton, Det. Ken Smith, Sgt. Rick Turvey, Ernesto Banuelos, and DOES 7-25 and 28-35 are liable for the wrongful imprisonment of Plaintiff, thereby entitling Plaintiff to recover compensatory damages against those Defendants. *See Sullivan v. County of Los Angeles*, 12 Cal. 3d 710 (1974).

51. In committing the acts alleged herein, Defendants Ray Hobbs, Lisa Wilkins, Cpl. Robert Germaine, Javier Medina, Det. Mark Milton, Det. Ken Smith, Sgt. Rick Turvey, Ernesto Banuelos, and DOES 7-25 and 28-35 acted with malice, oppression and fraud. Accordingly, Plaintiff is entitled to obtain punitive damages against all such Defendants in an amount sufficient to punish and deter such conduct, according to proof at the time of trial.

52. At the time Defendants Ray Hobbs, Lisa Wilkins, Cpl. Robert Germaine, Javier Medina, Det. Mark Milton, Det. Ken Smith, Sgt. Rick Turvey, Ernesto Banuelos, and DOES 7-25 and 28-35 caused the unlawful seizure and detention of Plaintiff, they were acting within the course and scope of their employment as governmental officers and employees. Accordingly, the employers of the Defendants Ray Hobbs, Lisa Wilkins, Cpl. Robert Germaine, Javier Medina, Det. Mark Milton, Det. Ken Smith, Sgt. Rick Turvey, Ernesto Banuelos, and DOES 7-25 and 28-35 are liable for their conduct under California Government Code sections 815.2(a) and 820.

FIFTH CAUSE OF ACTION

[Negligence]

53. Plaintiff re-alleges and incorporates by reference the allegations contained in all of the other paragraphs of this amended complaint as though fully set forth herein.

54. Defendants Ray Hobbs, Lisa Wilkins, Cpl. Robert Germaine, Javier Medina, Det. Mark Milton, Det. Ken Smith, Sgt. Rick Turvey, Ernesto Banuelos, and DOES 7-25 and 28-35 breached their duties to Plaintiff to exercise reasonable care (pursuant to California common law and California Civil Code section 1714) in the performance of their official duties, including their duties to comply with governmental orders, policies, regulations, and training, and Defendants Ray Hobbs, Lisa Wilkins, Cpl. Robert Germaine, Javier Medina, Det. Mark Milton, Det. Ken Smith, Sgt. Rick Turvey, Ernesto Banuelos, and DOES 7-25 and 28-35 thereby proximately and foreseeably caused Plaintiff injury, damage, and loss.

55. In doing, or failing to do, the acts and omissions described herein, Defendants Ray Hobbs, Lisa Wilkins, Cpl. Robert Germaine, Javier Medina, Det. Mark Milton, Det. Ken Smith, Sgt. Rick Turvey, Ernesto Banuelos, and DOES 7-25 and 28-35 knew, or in the exercise of reasonable care and prudence should have known, that their actions likely would result in Plaintiff suffering harm.

56. Those of Defendants who were law enforcement officers owed a duty to Plaintiff to avoid unlawfully seizing and falsely imprisoning Plaintiff.

57. Those of Defendants who were employed in supervisory governmental positions had a duty to Plaintiff to properly train, supervise, and control subordinate officers and/or employees, including other Defendants, to prevent them from unlawfully seizing and

falsely imprisoning Plaintiff and/or violating Plaintiff's constitutional or statutory rights. In addition, those of Defendants who were employed in supervisory governmental positions had a duty to properly review the conduct of those Defendants over whom they had authority and to discipline and/or punish improper conduct by such Defendants, and to refrain from ratifying such conduct that was illegal or unconstitutional.

58. Finally, Defendants had a duty to obey all state, local, and federal laws, and to avoid exceeding the scope of their authority in their dealings with Plaintiff.

59. In performing the acts and omissions alleged herein, Defendants Ray Hobbs, Lisa Wilkins, Cpl. Robert Germaine, Javier Medina, Det. Mark Milton, Det. Ken Smith, Sgt. Rick Turvey, Ernesto Banuelos, and DOES 7-25 and 28-35 breached the duty of care they owed to Plaintiff, and those breaches, and each of them, were a direct and proximate cause of the injuries and damages suffered by Plaintiff.

60. The acts of confirming and ratifying the conduct of subordinate officers by those of Defendants who were employed in supervisory governmental positions were undertaken with the actual and/or constructive knowledge that Plaintiff's physical and emotional distress would be caused, and were done with a wanton and reckless disregard for the consequences to Plaintiff.

61. In performing the acts and omissions set forth herein, Defendants Ray Hobbs, Lisa Wilkins, Cpl.

Robert Germaine, Javier Medina, Det. Mark Milton, Det. Ken Smith, Sgt. Rick Turvey, Ernesto Banuelos, and DOES 7-25 and 28-35 were acting within the course and scope for their employment as governmental employees, thus their governmental employers are liable for those Defendants' acts and omissions pursuant to California Government Code sections 815.2(a) and 820.

SIXTH CAUSE OF ACTION

[42 U.S.C. §1983/*Monell* Claim]

62. Plaintiff re-alleges and incorporates by reference the allegations contained in all of the other paragraphs of this amended complaint as though fully set forth herein.

63. As explained above, when asked on February 28, 2014 why Mr. Soler was held in custody for such a lengthy period before being released, Ken Smith, an extradition officer in the San Diego County Sheriff's Department, said that it was the practice of the Sheriff's Department to undertake by "snail mail" the exchange of documents and information with other agencies that the Sheriff's Department requires before releasing a person such as Mr. Soler, and that can take a long time. Mr. Smith also said, however, that Mr. Soler would have been released much more quickly if he were a more important person.

64. Mr. Smith's statement reflects that the custom, policy, practice, and procedure of the County of

App. 60

San Diego and the San Diego County Sheriff's Department in the interstate extradition process are, in relevant part, as follows: (1) even where there is sufficient time to do so, the County of San Diego and the Sheriff's Department do not, prior to arresting a person believed to be wanted, exchange with relevant agencies the documents and information necessary to verify that the person to be arrested is the person wanted; and (2) once the person is arrested, the County of San Diego and the Sheriff's Department use "snail mail" to exchange identifying documents and information, and will not release a wrongfully arrested person until this "snail mail" exchange occurs. That custom, policy, practice, and procedure is deficient because it will, sooner or later, lead to wrongful arrests and detentions. That is for the simple reason that false accusations and mistakes occur. Such wrongful arrests can be easily prevented, or the length of detention limited, by enacting and implementing common sense, low cost policies and procedures, including, but not limited to, requiring San Diego County and San Diego Sheriff's Department personnel to: (1) review and compare, prior to arrest, available materials and information with respect to identifying characteristics of the person wanted in another state and the person that is the target of a potential arrest; (2) take steps to ensure that any identifying documents, materials, or information that are not readily available are available for review before, or promptly after, an arrest; and (3) use available means of electronic communication and databases to compare identifying information of the person wanted and the person to be arrested prior to, or shortly after, arrest.

Had the County of San Diego and the San Diego Sheriff's Department had such common sense policies and procedures in place, the readily available identifying information with respect to Mr. Soler would have been compared with the wealth of available identifying information with respect to Mr. Dishman before Mr. Soler was arrested, or immediately after Mr. Soler was arrested, and Mr. Soler either would not have been arrested, or his detention would have lasted no more than a few hours, rather than nine days. Accordingly, the policy and procedure discussed above was the actual and proximate cause of the damages and injury Mr. Soler suffered as a result of his wrongful arrest and prolonged detention, in violation of the Fourth and Fourteenth Amendments. Moreover, it was obvious that the deficient custom, policy, practice, and procedure discussed above was likely to cause a constitutional injury, because false accusations and mistakes in identification are made, and without common sense measures in place, those false accusations and mistakes will lead to wrongful arrests and detentions.

65. Furthermore, and for the reasons explained above, the County of San Diego and the San Diego County Sheriff's Department's failed to provide adequate training and supervision to ensure that its personnel (1) take reasonable steps to ensure that a person who is to be arrested in the interstate extradition process is the person actually wanted in another state, and (2) take reasonable steps to confirm that a person who is arrested is actually the person wanted in another state. Amongst those reasonable steps are

App. 62

those identified in the preceding paragraph. Furthermore, the County of San Diego and the San Diego County Sheriff's Department have failed to adequately train personnel that steps should be taken to respect and ensure the constitutional rights of all people, and that there is no sliding scale of concern for constitutional rights based on a person's perceived importance; and the County of San Diego and the San Diego Sheriff's Department have failed to provide adequate supervision to ensure that its personnel are aware of, and comply with, these principles. The training and supervision failures discussed were the actual and proximate cause of Mr. Soler's wrongful arrest and detention, in violation of the Fourth and Fourteenth Amendments to the United States Constitution, because had the named Defendants provided adequate training and supervision with respect to the reasonable steps and principles discussed above, Mr. Soler would not have been wrongfully arrested or his detention would have lasted a matter of a few hours rather than nine days. Moreover, it was obvious that the deficient training and supervision discussed above was likely to cause a constitutional injury, because false accusations and mistakes in identification are made, and without the named Defendants ensuring that its personnel are trained and supervised to take the common sense investigative steps discussed above, false accusations and mistakes will lead to wrongful arrests and detentions.

66. As a result of what is discussed in the preceding paragraphs, Plaintiff is entitled to general and

compensatory damages against Defendants County of San Diego and the San Diego County Sheriff's Department under 42 U.S.C. § 1983 *et seq.*, in an amount to be proven at trial.

SEVENTH CAUSE OF ACTION

[Professional/Legal Malpractice]

67. Plaintiff re-alleges and incorporates by reference the allegations contained in all of the other paragraphs of this amended complaint as though fully set forth herein.

68. As attorneys representing Plaintiff in January 2014, Defendant Salvatore Tarantino, Defendant [sic] DOES 1-5, and the San Diego Office of the Public Defender had a duty to use such skill, prudence, and diligence as members of the legal profession commonly possess and exercise.

69. As discussed above, when Plaintiff told Defendant Tarantino that he was not Steven Dishman, Mr. Tarantino responded that he did not believe Plaintiff and cut off the conversation, and neither Mr. Tarantino, nor anyone else in the Public Defender's Office, ever followed up with Mr. Soler. As a result, Plaintiff was unable to explain to Mr. Tarantino the wealth of evidence that could be used to convincingly show that he was not Mr. Dishman, evidence including, but not limited to, the testimony of his foster parents, with whom he lived in 1985, and the testimony of three of his neighbors from that time period, who were long-time employees of the San Diego Sheriff's Department.

There was also a great deal of documentary evidence that Plaintiff's foster parents could have produced quickly to establish that Mr. Soler was not Steven Dishman, and there was a wealth of public record material to the same effect. Mr. Tarantino also could have hired an expert to do a prompt fingerprint comparison, but that was not even necessary, given the wealth of other evidence that showed Mr. Soler was not/is not Mr. Dishman.

70. Mr. Tarantino, DOES 1-5, and the San Diego Office of the Public Defender had a duty to consult with Plaintiff, and to learn about such evidence. That evidence was so overwhelming and voluminous that had Mr. Tarantino, or the other named Defendants, made any effort to present such evidence to the prosecutor who appeared in court on January 15, 2014, or to a supervisor in the District Attorney's Office, Mr. Soler would have been released that day. Furthermore, had Mr. Tarantino explained the relevant circumstances to the Superior Court judge (including what is set out above), and promptly filed a petition for a writ of *habeas corpus*, the Superior Court would have scheduled a prompt hearing and Mr. Tarantino could have presented ample evidence to secure Mr. Soler's release by Superior Court order on either January 16 or 17, 2014.

71. By failing to take the obvious and advisable steps to show that Mr. Soler was not Mr. Dishman, Defendant Tarantino, Defendant [sic] DOES 1-5, and the San Diego Office of the Public Defender breached their professional duties to Plaintiff. And because those obvious and advisable steps would have secured

Plaintiff's release well before January 22, 2014 (when he was eventually released), Defendant Salvatore Tarantino, Defendant [sic] DOES 1-5, and the San Diego Office of the Public Defender directly and proximately caused the damages and injury (including loss of liberty, pain, psychological suffering, and economic and business harm) that Mr. Soler suffered as a result of the ongoing detention during that time period (*i.e.*, from January 15, or at the latest January 17, until January 21, 2014).

72. As a result, Plaintiff is entitled to general and compensatory damages against Defendants Salvatore Tarantino, Defendant DOES 1-5, and the San Diego Office of the Public Defender, in an amount to be proven at trial.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment against Defendants and each of them as follows:

1. For general and compensatory damages against Defendants and each of them in an amount to be proven at trial;
2. For exemplary and punitive damages against Defendants Ray Hobbs, Lisa Wilkins, Cpl. Robert Germaine, Javier Medina, Det. Mark Milton, Det. Ken Smith, Sgt. Rick Turvey, Ernesto Banuelos, and/or DOES 7-25 and 28-35, in an amount to be proven at trial;

3. For costs of suit herein, including reasonable attorneys fees; and
4. For such other relief and damages to which Plaintiff is entitled pursuant to state or federal law.

Dated: February XX, 2016 s/ Todd W. Burns
Attorney for Plaintiff
James Soler

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a jury trial in this action.

Dated: February XX, 2016 s/ Todd W. Burns
Attorney for Plaintiff
James Soler

[Certificate Of Service Omitted]

EDGAR R. NIELD, State Bar #135018
GABRIELLE DE SANTIS NIELD, State Bar #110930
NIELD LAW GROUP, APC
679 Encinitas Blvd., Suite 201
Encinitas, CA 92024
Telephone: (760) 942-9880
Facsimile: (760) 942-9882
Email: enield@nieldlaw.com
Attorneys for Specially Appearing Defendants
LISA WILKINS and RAY HOBBS

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

<p>JAMES SOLER, Plaintiff, v. COUNTY OF SAN DIEGO; CPL ROBERT GERMAINE; JAVIER MEDINA; DET. MARK MILTON; DET. KEN SMITH; SGT. RICK TURVEY; ERNESTO BAUNELOS [sic]; LISA WILKINS; RAY HOBBS; SAN DIEGO COUNTY SHER- IFF'S DEPARTMENT; SAN DIEGO COUNTY OFFICE OF THE PUBLIC DEFENDER; SALVATORE TARANTINO; and DOES 1-5, 7-25, AND 28-35, Defendants.</p>	<p>CASE NO. 3:14-cv- 02470-MMA-RBB DECLARATION OF RAY HOBBS IN SUPPORT OF SPECIALLY APPEARING DEFENDANTS MOTION TO DISMISS Filed.: 10/16/2014 Judge: Hon. Michael M. Anello Magistrate: Hon. Ruben B. Brooks</p>
---	---

I, RAY HOBBS, declare:

1. I am an adult person over the age of 18 and have personal knowledge of all matters stated herein.
2. I was the Director of the Arkansas Department of Correction from 2010 to 2014. I am currently retired.
3. I am a resident of the State of Arkansas and I have never been a resident in the State of California.
4. I have never owned or had any interest in any property in California.
5. I have never worked in the State of California.
6. I have never had a bank account in California.
7. Aside from this lawsuit, have never been a defendant in any lawsuit in California.
9. The affidavit of Ray Hobbs, the Director of the Arkansas Department of Correction at that time was prepared by Attorney Lisa Wilkins of the Arkansas Department of Correction and was in order to obtain extradition of Steven Dishman, a fugitive for the State of Arkansas. Two sources, unrelated to each other from California, provided information to the Arkansas Department of Correction and advised that Plaintiff James Soler could be the same fugitive, Steven Dishman. This Affidavit was provided to State of Arkansas, County of Jefferson Circuit Judge Jodi Raines Dennis who issued probable cause for the extradition and the Governor of Arkansas, Mike Bebe [sic] issued the Governor's Warrant of Rendition.

App. 69

10. I never traveled to California for any reason related to the instant litigation.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. I signed this declaration on April 27, 2016 in Pine Bluff, Arkansas.

/s/ Ray Hobbs
Ray Hobbs

EDGAR R. NIELD, State Bar #135018
GABRIELLE DE SANTIS NIELD, State Bar #110930
NIELD LAW GROUP, APC
679 Encinitas Blvd., Suite 201
Encinitas, CA 92024
Telephone: (760) 942-9880
Facsimile: (760) 942-9882
Email: enield@nieldlaw.com
Attorneys for Specially Appearing Defendants
LISA WILKINS and RAY HOBBS

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

<p>JAMES SOLER, Plaintiff, v. COUNTY OF SAN DIEGO; CPL ROBERT GERMAINE; JAVIER MEDINA; DET. MARK MILTON; DET. KEN SMITH; SGT. RICK TURVEY; ERNESTO BAUNELOS [sic]; LISA WILKINS; RAY HOBBS; SAN DIEGO COUNTY SHER- IFF'S DEPARTMENT; SAN DIEGO COUNTY OFFICE OF THE PUBLIC DEFENDER; SALVATORE TARANTINO; and DOES 1-5, 7-25, AND 28-35, Defendants.</p>	<p>CASE NO. 3:14-cv- 02470-MMA-RBB DECLARATION OF LISA WILKINS IN SUPPORT OF SPECIALLY APPEARING DEFENDANTS MOTION TO DISMISS Filed.: 10/16/2014 Judge: Hon. Michael M. Anello Magistrate: Hon. Ruben B. Brooks</p>
---	--

I, Lisa Wilkins, declare:

1. I am an adult person over the age of 18 and have personal knowledge of all matters stated herein.
2. I have been an Attorney Supervisor employed by the Arkansas Department of Corrections since October 18, 2010.
3. I am a resident of the State of Arkansas and I have never been a resident in the State of California. I have only been a resident of the States of Florida, Arkansas, and Texas.
4. I am licensed to practice law in the States of Texas and Arkansas. I do not have a license to practice law in California nor have I ever practiced law in the State of California.
5. I have never owned or had any interest in any property in California.
6. I have never worked in the State of California.
7. I have never had a bank account in California.
8. Aside from this lawsuit, I have never been a defendant in any lawsuit in California.
9. The affidavit of Ray Hobbs, the Director of the Arkansas Department of Correction at that time was prepared by me and was in order to obtain extradition of Steven Dishman, a fugitive for the State of Arkansas. Two sources, unrelated to each other from California, provided information to the Arkansas Department of Correction and advised that Plaintiff James Soler

App. 72

could be the same fugitive, Steven Dishman. The Affidavit of Ray Hobbs was provided to State of Arkansas, County of Jefferson Circuit Judge Jodi Raines Dennis who issued probable cause for the extradition and the Governor of Arkansas, Mike Beebe issued the Governor's Warrant of Rendition.

10. I never traveled to California for any reason related to the instant litigation.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. I signed this declaration on April 26, 2016 in Pine Bluff, Arkansas.

/s/ Lisa Wilkins

Lisa Wilkins
Declarant
