

No. 19-8602

IN THE  
Supreme Court of the United States

EUGENE WASHINGTON,

*Petitioner*

v.

COUNTY OF ALAMEDA SANTA RITA COUNTY JAIL,

*Respondent*

On Petition for Writ of Certiorari  
To the Ninth Circuit Court of Appeal

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**SUPPLEMENTAL APPENDIX  
IN SUPPORT OF  
OPPOSITION TO PETITION FOR WRIT OF CERTIORARI**

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JILL P. SAZAMA, Deputy County Counsel  
*Counsel of Record for County of Alameda*  
(sued erroneously as “County of Alameda Santa  
Rita County Jail”)

OFFICE OF THE COUNTY COUNSEL,  
COUNTY OF ALAMEDA  
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## TABLE OF CONTENTS

<u>Pages</u>	<u>Document</u>
1-20	Amended Complaint, filed on October 22, 2018, D.C. Dkt. <sup>1</sup> No. 16
21-28	County of Alameda's Notice of Motion and Motion to Dismiss Amended Complaint; Memorandum of Points and Authorities in Support Thereof, filed on December 18, 2018, D.C. Dkt. No. 21
29-35	County of Alameda's Request for Judicial Notice in Support of Motion to Dismiss Amended Complaint, and Exhibit A thereto, filed on December 18, 2018, D.C. Dkt. No. 21-1
36	Clerk's Notice Vacating Hearing on Motion to Dismiss, filed on January 30, 2019, D.C. Dkt. No. 23
37	Judgment, filed on August 7, 2019, D.C. Dkt. No. 25
38-40	Notice of Appeal, filed on September 3, 2019, D.C. Dkt. No. 26
41-42	Referral Notice, filed on September 4, 2019, 9th Cir. Dkt. <sup>2</sup> No. 2
43-48	Order Revoking Plaintiff's In Forma Pauperis Status in Response to Ninth Circuit Referral, filed on September 10, 2019, D.C. Dkt. No. 29
49-63	Order, and attachments, filed October 9, 2019, 9th Cir. Dkt. No. 3

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<sup>1</sup> "D.C. Dkt" refers to the docket from the case of *Washington v. County of Alameda Santa Rita Jail, et al.*, No. 18-CV-03420-LHK, U.S. District Court for the Northern District of California.

<sup>2</sup> "9th Cir. Dkt." refers to the docket from the case of *Washington v. County of Alameda Santa Rita Jail, et al.*, No. 19-16723, U.S. Court of Appeals for the Ninth Circuit.

64-85 Motion and Affidavit for Permission to Proceed in Forma Pauperis,  
filed on October 11, 2019, 9th Cir. Dkt. No. 4

86-145 Appellee County of Alameda's Opposition to Appellant's Motion for  
Permission to Proceed in Forma Pauperis, with Exhibits, filed on  
October 21, 2019, 9th Cir. Dkt. No. 5

DATED: July 6, 2020

By */s/Jill P. Sazama*  
JILL P. SAZAMA  
Deputy County Counsel

*Counsel of Record for Respondent  
County of Alameda*

2420 107<sup>th</sup> Ave.  
OAKLAND, CA. 94603  
PRO. SE.

UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

EUGENE WASHINGTON,  
PLAINTIFF,

Vs.

DEFENDANT,  
SANTA RITA COUNTY JAIL.

CASE No. 18-cv-03420-LHK

FILED

OCT 22 2018

SUSAN Y. SOONG  
CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE

AMENDED COMPLAINT  
PURSUANT TO, THE COURT'S ORDER  
ON AUGUST 27, 2018

19 BACKGROUND

20  
21 1) ON JUNE 8<sup>th</sup>, 2018, THE PLAINTIFF,  
22 EUGENE WASHINGTON, FILED A CIVIL  
23 ACTION IN THE UNITED STATES DISTRICT  
24 COURT FOR THE NORTHERN DISTRICT OF  
25 CALIFORNIA. UPON FILING, THE OAKLAND  
26 DIVISION "TRANSFERRED" THE COMPLAINT  
27 TO THE SAN FRANCISCO DIVISION WHO  
28 THEN "TRANSFERRED" THE COMPLAINT TO

1 THE SAN JOSE DIVISION PURSUANT TO  
 2 THE PLAINTIFF RESIDING IN MONTEREY  
 3 COUNTY. THIS FINAL TRANSFER TOOK  
 4 PLACE ON JULY 2, 2018.

5  
 6 2) THE HONORABLE LUCY H. KOH DID A  
 7 PRELIMINARY REVIEW OF THE COMPLAINT  
 8 AND DETERMINED THAT IN ORDER FOR  
 9 THE COMPLAINT TO PROCEED FORWARD,  
 10 THE PLAINTIFF NEEDED TO "AMEND" THE  
 11 COMPLAINT. THE HONORABLE KOH ISSUED  
 12 THE COURT ORDER ON AUGUST 27<sup>th</sup>, HOWEVER,  
 13 THE PLAINTIFF WAS IN THE PROCESS  
 14 OF "MOVING" AND SOMEHOW THE ORDER  
 15 WAS NEVER RECEIVED. PLAINTIFF NOTIFIED  
 16 THE COURT OF THE CHANGE OF ADDRESS,  
 17 HOWEVER, IT WASN'T UNTIL "PERSONS"  
 18 ASSISTING THE PLAINTIFF VIEWED A  
 19 COMPUTER FILE AND OBSERVED THAT  
 20 THE COURT HAD ISSUED AN ORDER TO  
 21 AMEND. THE REVIEW TOOK PLACE ABOUT  
 22 3 DAYS PRIOR TO THE "EXPIRATION"  
 23 DATE ON THE ORDER, SEPTEMBER 26<sup>th</sup>.  
 24

25 3) A STATUS MOTION HAD ALREADY  
 26 BEEN SENT OUT. AND THEREFORE, A MOTION  
 27 FOR EXTENSION OF TIME TO FILE THE  
 28 AMENDED COMPLAINT WAS THEN SENT

1 OUT ON 9-23-18. FOR THE PLAINTIFF  
 2 [OFFICIALLY] RECEIVED NOTICE TO AMEND  
 3 "3-DAYS" PRIOR TO THE EXPIRATION  
 4 DATE OF 9-26-18. THEREFORE, THE  
 5 PLAINTIFF WAS NOT AWARE SOON ENOUGH  
 6 IN ORDER TO AMEND THE COMPLAINT.  
 7 THUS AN EXTENSION OF TIME WAS  
 8 REQUESTED IN THE INTEREST OF  
 9 JUSTICE.

10 4) PLAINTIFF IS NOW PRESENTING  
 11 HIS "AMENDED COMPLAINT" HEREIN SO  
 12 THAT THE COURT CAN PROCEED WITH  
 13 THE ADJUDICATION OF THE CLAIM.

14

15 FACTS SUPPORTING THE  
 16 AMENDED COMPLAINT

17

18 1) ON SEPTEMBER 16, 2015, THE PLAINTIFF,  
 19 WASHINGTON, WAS RELEASED FROM  
 20 TERMINAL ISLAND FEDERAL PRISON IN  
 21 SAN PEDRO, CALIFORNIA. THE RELEASE WAS  
 22 IN PURSUANT TO EXHIBIT A, COURT  
 23 ORDER. EXHIBIT A STATES THAT THE  
 24 PLAINTIFF'S SENTENCE WAS "MODIFIED"  
 25 ON APRIL 21, 2015. THE MODIFICATION  
 26 STATES THAT THE SENTENCE OF 360  
 27 MONTHS WAS REDUCED TO 292 MONTHS

1) HOWEVER, EXHIBIT B, PROGRAM REVIEW  
 2) FROM STAFF CASE MANAGER, STATES A  
 3) PROJECTED RELEASE DATE OF JULY  
 4) 29, 2020, AND EXHIBIT A [REDUCES]  
 5) THE PROJECTED RELEASE DATE TO  
 6) NOVEMBER 1<sup>ST</sup>, 2015.

7) 3) THE PLAINTIFF THEN FLEW FROM  
 8) LOS ANGELES TO OAKLAND, CALIFORNIA.  
 9) THE PLAINTIFF WAS ASSIGNED TO THE  
 10) GEO HALFWAY-HOUSE IN SAN FRANCISCO  
 11) TO COMPLETE THE REMAINDER OF HIS  
 12) SENTENCE.

14) 4) WHILE @ GEO HALFWAY-HOUSE, THE  
 15) PLAINTIFF WAS ASSIGNED TO A ROOM  
 16) WITH AN INMATE WHO HARRASSED HIM  
 17) DAILY TO MOVE TO ANOTHER ROOM.  
 18) STAFF WAS AWARE OF THE INMATE'S  
 19) ACTIONS TOWARD THE PLAINTIFF BUT  
 20) DID NOTHING TO DETER THEM.

22) 5) ON THE MORNING OF SEPTEMBER  
 23) 20<sup>th</sup>, 2015, THE PLAINTIFF FEARED FOR  
 24) HIS [LIFE] AND LEFT THE HALFWAY-  
 25) HOUSE ON FOOT SEEKING TO PROTECT  
 26) HIMSELF. AFTER WANDERING THROUGH  
 27) THE STREETS OF SAN FRANCISCO FOR

1 OVER 2 HOURS, THE PLAINTIFF'S  
2 SISTER, LUCILLE CUNNINGHAM, PICKED  
3 HIM UP AND TOOK HIM BACK TO THE  
4 HALFWAY-HOUSE.

5  
6 b) STAFF THEN DIRECTED MRS. CUNNINGHAM  
7 TO TAKE THE PLAINTIFF TO A HOSPITAL.  
8 SEE EXHIBIT A, SUMMARY, WHERE  
9 THE PLAINTIFF'S IMPRISONMENT LED  
10 TO A "CIVIL COMMITMENT" DUE TO  
11 A SEVERE BRAIN ACCIDENT. MRS.  
12 CUNNINGHAM TOOK THE PLAINTIFF TO  
13 HIGHLAND HOSPITAL IN OAKLAND  
14 WHERE HE STAYED APPROXIMATELY  
15 3-DAYS.

16  
17 7) THE PLAINTIFF WAS THEN TRANSFERRED  
18 TO JOHN GEORGE PSYCHIATRIC HOSPITAL  
19 IN SAN LEANDRO, CA. THE PLAINTIFF  
20 REMAINED AT JOHN GEORGE PSYCHIATRIC  
21 HOSPITAL UNTIL OCTOBER 3<sup>RD</sup> 2015, @  
22 WHICH TIME THE U.S. MARSHALLS  
23 TRANSPORTED THE PLAINTIFF TO  
24 SANTA CLARA COUNTY JAIL IN DUBLIN,  
25 CA. SEE EXHIBIT C, INMATE CUSTODY  
26 INFORMATION.

1       8) WHILE @ THE SANTA RITA  
 2       COUNTY JAIL, THE PLAINTIFF CALLED  
 3       HIS SISTER, LUCILLE CUNNINGHAM, TO  
 4       FIND OUT IF GEO-HALFWAY-HOUSE HAD  
 5       WRITTEN HIM AN "INCIDENT REPORT" ABOUT  
 6       THE ALTERCATION ON SEPTEMBER 20<sup>th</sup>.  
 7       MRS. CUNNINGHAM SAID SHE CONTACTED  
 8       MRS. WASHINGTON, THE DIRECTOR OF  
 9       GEO, AND SHE STATED "NO."

10      9) AROUND OCTOBER 20<sup>th</sup>, THE  
 11      PLAINTIFF CALLED MRS. CUNNINGHAM  
 12      REGARDING HIS RELEASE. MRS.  
 13      CUNNINGHAM STATED SHE CONTACTED  
 14      THE SANTA RITA COUNTY JAIL, PERSON  
 15      UNKNOWN, AND THE JAIL SAID THAT  
 16      [NO] RELEASE DATE HAD BEEN SET  
 17      YET. AND THAT IF SHE WANTED TO  
 18      KNOW A SET RELEASE DATE, SHE  
 19      NEEDED TO GO TO THE WEB-SITE  
 20      CALLED "FIND AN INMATE" AND THE  
 21      POSTING SHOULD BE THERE. MRS.  
 22      CUNNINGHAM STATED SHE CHECKED  
 23      THE WEB-SITE FROM OCTOBER 23 TO  
 24      OCTOBER 30<sup>th</sup> AND NO RELEASE DATE  
 25      WAS SHOWING FOR THOSE 8 DAYS.  
 26  
 27  
 28

1) SINCE [NO] RELEASE DATE WAS  
 2 SHOWING ON THE WEB-SITE, MRS. CUNNINGHAM  
 3 THEN CONTACTED TERMINAL ISLAND  
 4 PRISON. A PERSON IN R&D, A  
 5 WOMAN, TOLD MRS. CUNNINGHAM  
 6 THAT SANTA RITA SHOULD HAVE POSTED  
 7 IT. IF [NO] DATE WAS SHOWING, TO  
 8 CONTACT THE BOP OFFICE IN  
 9 SACRAMENTO. MRS. CUNNINGHAM  
 10 STATED AROUND NOVEMBER 3<sup>RD</sup>, SHE  
 11 CONTACTED SACRAMENTO. SHE SAID  
 12 SHE SPOKE TO A MR. DAN PAINTER.  
 13 AND THAT MR. PAINTER STATED  
 14 THAT THE SANTA RITA COUNTY JAIL  
 15 HAD THAT INFORMATION. MRS. CUNNINGHAM  
 16 ASKED MR. PAINTER ABOUT WHY  
 17 THE BOP COULDN'T GIVE HER THE  
 18 EXACT DAY. MR. PAINTER STATED  
 19 THAT THE SANTA RITA COUNTY JAIL  
 20 WILL EVENTUALLY POST IT ON THE  
 21 WEB-SITE.

22  
 23 II) MRS. CUNNINGHAM SAID THAT SHE  
 24 CHECKED THE WEB-SITE ON VARIOUS  
 25 DAYS LEADING UP TO NOVEMBER 11<sup>TH</sup>.  
 26 THAT ON THIS DAY, NOVEMBER 11<sup>TH</sup>, THE  
 27 WEB-SITE SHOWED AN OUTDATE OF  
 28 NOVEMBER 12<sup>TH</sup>. MRS. CUNNINGHAM

1 SAID THAT WHEN THE OUT DATE OF  
2 NOVEMBER 12<sup>th</sup> POPPED UP, SHE  
3 COPIED THE PAGE OFF THE WEB -  
4 SITE FOR HER RECORDS. SEE EXHIBIT  
5 D, FIND AN INMATE, WHERE THE DATE  
6 SHOWING ON THE FORM IS 11-11-2015.  
7 MRS. CUNNINGHAM SAID THAT SHE  
8 THEN CONTACTED HER NEPHEW, GREG  
9 COMICK, AND ASKED HIM TO PICK  
10 THE PLAINTIFF UP THE NEXT  
11 DAY. THE VERY NEXT DAY, NOVEMBER  
12 12<sup>th</sup>, THE SANTA RITA COUNTY JAIL  
13 RELEASED THE PLAINTIFF.

14

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16

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1  
2  
3  
4 DECLARATIONS OF LAW AND FACT

5 THE PLAINTIFF WANTS THE HONORABLE  
6 COURT TO KNOW THAT THE [FACTS]  
7 HEREIN CLEARLY SHOW THAT THE  
8 SANTA RITA COUNTY JAIL "DELIBERATELY  
9 DEPRIVED" THE PLAINTIFF OF HIS  
10 CONSTITUTIONAL RIGHT TO LIBERTY.  
11 FOR CASE LAW STATES THERE MUST  
12 BE [4] DIFFERENT FORMS OF  
13 DEPRIVATIONS IN ORDER FOR A  
14 [MUNICIPALITY] TO BE HELD LIABLE  
15 UNDER 42 U.S.C. § 1983.

16 (1) THE PLAINTIFF POSSESSED A  
17 CONSTITUTIONAL RIGHT OF WHICH  
18 HE OR SHE WAS DEPRIVED;

19  
20 (2) THAT THE MUNICIPALITY HAD A  
21 POLICY;

22  
23 (3) THAT THIS POLICY AMOUNTS TO  
24 DELIBERATE INDIFFERENCE TO  
25 THE PLAINTIFF'S CONSTITUTIONAL  
26 RIGHTS; AND

27  
28 (4) THAT THE POLICY IS THE MOVING

1 FORCE BEHIND THE  
 2 CONSTITUTIONAL VIOLATION.

3  
 4 THE PLAINTIFF SEEKS TO IMPOSE  
 5 MUNICIPAL LIABILITY UNDER 42 U.S.C.  
 6 §1983 FOR A VIOLATION OF  
 7 CONSTITUTIONAL RIGHTS RESULTING FROM  
 8 WANTON, RECKLESS, OR MALICIOUS  
 9 ACTS. FOR THE VIOLATOR HEREIN, THE  
 10 SANTA RITA COUNTY JAIL, DEPRIVED  
 11 THE PLAINTIFF OF FEDERAL RIGHTS  
 12 UNDER COLOR OF STATE LAW. FOR THE  
 13 ACTION OF THE SANTA RITA COUNTY  
 14 JAIL WAS NOT IN [ANY] WAY A  
 15 "DISCRETIONARY FUNCTION," WHICH ARE  
 16 SHIELDED FROM LIABILITY, BUT AN  
 17 INTRINSIC FUNCTION OF THE JAIL  
 18 ITSELF. AND THE "PLAINTIFF POSSESSED  
 19 A CONSTITUTIONAL RIGHT OF WHICH  
 20 HE OR SHE WAS DEPRIVED." THE  
 21 FIRST PRONG OF MUNICIPALITY LIABILITY.

22  
 23 PLAINTIFF HAD BEEN IN FEDERAL  
 24 CUSTODY FOR 21 YEARS. PLAINTIFF HAD  
 25 A 30-YEAR SENTENCE GIVEN BY THE  
 26 COURT. THE SENTENCING COMMISSION  
 27 PASSED A LAW STATING [ALL] DRUG  
 28 CASES GET A TWO-POINT DEPARTURE.

1 ON APRIL 21, 2015, THE PLAINTIFF'S  
 2 SENTENCE WAS REDUCED BY 5 YEARS  
 3 AND 8 MONTHS, FOR A NEW MODIFIED  
 4 SENTENCE OF 292 MONTHS. THE  
 5 PLAINTIFF'S RELEASE DATE OF  
 6 7-29-2020 WAS REDUCED TO NOVEMBER  
 7 29-2014. HOWEVER, THE SENTENCING  
 8 COMMISSION'S 2 POINT REDUCTION  
 9 EFFECTUATED ON NOVEMBER 1<sup>st</sup>, 2015  
 10 AND [NOT] NOVEMBER 1<sup>st</sup>, 2014. SO THE  
 11 PLAINTIFF HAD TO WAIT AN ENTIRE  
 12 YEAR BEFORE HE COULD BE RELEASED  
 13 FROM CUSTODY.

14  
 15 THE PLAINTIFF THEREFORE HAD A  
 16 A "LIBERTY INTEREST" IN BEING  
 17 RELEASED ACCORDING TO STATUTE. FOR  
 18 THE BOP, WHO WAS HOLDING THE  
 19 PLAINTIFF IN CUSTODY, FOLLOWS  
 20 THE STATUTORY SECTION OF 18 U.S.C.  
 21 § 3624 @ THE TIME A PRISONER IS  
 22 TO BE RELEASED. HOWEVER, THE PLAINTIFF  
 23 WAS IN THE CUSTODY OF THE SANTA  
 24 RITA COUNTY JAIL, WHICH USES A  
 25 DIFFERENT STATUTORY SECTION ACCORDING  
 26 TO STATE STANDARDS.

27  
 28 FOR IT WAS THE SUPREME COURT

1 THAT STATED ONE OF OUR BASIC RIGHTS  
 2 IS TO BE FREE FROM RESTRAINT AFTER  
 3 SERVING A DEBT TO SOCIETY. AND THE  
 4 FEDERAL CONSTITUTION GUARANTEES  
 5 THAT RIGHT TO LIBERTY IN MORE  
 6 THAN ONE PLACE. A 21- YEAR SENTENCE  
 7 IS OVER TWO DECADES, OF CONFINEMENT.  
 8 A VERY LONG TIME! SO I PARAPHRASE  
 9 THE SUPREME COURT WHEN THEY  
 10 SAID, "WHEN A MAN CAN TASTE FREEDOM  
 11 WITH HIS TONGUE, SEE FREEDOM WITH  
 12 HIS EYES AND SMELL FREEDOM WITH  
 13 HIS NOSE AND TOUCH FREEDOM WITH  
 14 HIS HANDS, " OUR SYSTEM OF  
 15 GOVERNMENT SHOULD "NEVER DENY A  
 16 MAN THAT RIGHT.

17  
 18 THE SANTA RITA COUNTY JAIL  
 19 DEPRIVED THE PLAINTIFF TO HIS  
 20 CONSTITUTIONAL RIGHT TO LIBERTY,  
 21 WHICH IS SECURED IN PART BY THE  
 22 14<sup>TH</sup> AMENDMENT'S LIBERTY INTEREST.

23  
 24 THE SECOND PRONG OF MUNICIPAL  
 25 LIABILITY REFERS TO THE "POLICY THE  
 26 MUNICIPALITY HAD IN PLACE TO ENSURE  
 27 THAT LIABILITY DOESN'T OCCUR. AS A  
 28 CITY JAIL, THE FACILITY HAS A CONTRACT

1 WITH THE BOP TO [HOLD] THEIR PRISONERS  
 2 FOR A LIMITED TIME. SEE 18 U.S.C.  
 3 §§ 4002, 3624 (c). THERE ARE INMATES  
 4 SERVING SHORT SENTENCES IN . . .  
 5 AND LOCAL JAILS . . . IN THE INSTANT  
 6 CASE, THE SANTA RITA COUNTY JAIL  
 7 MAINTAINS COMPUTER FILES THAT LIST  
 8 ALL INMATES CURRENTLY SERVING  
 9 TIME IN JAIL. THOSE SERVING TIME  
 10 BY STATE COURT ORDER AND THOSE  
 11 SERVING TIME BY CONTRACT. THE LIST  
 12 OF INMATES IS MAINTAINED AND  
 13 UPDATED BY THE JAIL WARDEN AND  
 14 CLERKS DAILY.

15 IT IS PRESUMED THAT THE BOP  
 16 PROVIDED SANTA RITA WITH A COPY  
 17 OF THE PLAINTIFF'S "OFFICIAL" RELEASE  
 18 DATE, AND THE SANTA RITA COUNTY  
 19 JAIL APPLIED THEIR [POLICY] USED  
 20 TO VERIFY THE PLAINTIFF'S OFFICIAL  
 21 RELEASE DATE.

22  
 23 FURTHERMORE, THE THIRD PRONG  
 24 OF MUNICIPAL LIABILITY IS " THAT  
 25 THIS POLICY AMOUNTS TO DELIBERATE  
 26 INDIFFERENCE OF THE PLAINTIFF'S  
 27 CONSTITUTIONAL RIGHTS. " FOR THE  
 28 LEGAL DEFINITION OF "DELIBERATE

1       INDIFFERENCE" IS THE CONSCIOUS  
 2       OR RECKLESS DISREGARD OF THE  
 3       CONSEQUENCES OF ONE'S ACTS OR  
 4       OMISSIONS. IT ENTAILS SOMETHING  
 5       MORE THAN NEGLIGENCE, BUT IS  
 6       SATISFIED BY SOMETHING LESS THAN  
 7       ACTS OR OMISSIONS FOR THE VERY  
 8       PURPOSE OF CAUSING HARM OR  
 9       WITH KNOWLEDGE THAT HARM WILL  
 10      RESULT.

11      FOR DELIBERATE INDIFFERENCE IS  
 12      DEFINED AS REQUIRING (1) AN  
 13      "AWARENESS OF FACTS FROM WHICH  
 14      THE INFERENCE COULD BE DRAWN THAT  
 15      A SUBSTANTIAL RISK OF SERIOUS  
 16      HARM EXISTS" AND (2) THE ACTUAL  
 17      "DRAWING OF THE INFERENCE. " ELLIOT  
 18      V. JONES, 2009 U.S. DIST. LEXIS 9125  
 19      (N.D. FLA. SEPT. 1 2009).

20  
 21      AND IN THE PEREMPTORY, THE  
 22      FINAL DEPRIVATION REFERS TO:  
 23      "THAT POLICY IS THE MOVING FORCE  
 24      BEHIND THE CONSTITUTIONAL VIOLATION  
 25      THE FOURTH PRONG OF MUNICIPALITY  
 26      LIABILITY."

1 CONCLUSION  
2

3 THE PLAINTIFF HAS PRESENTED  
4 TO THE COURT [FACTS] THAT CLEARLY  
5 SHOW HOW SANTA RITA COUNTY  
6 JAIL DELIBERATELY DEPRIVED HIM  
7 OF HIS CONSTITUTIONAL RIGHT TO  
8 LIBERTY. THE PLAINTIFF IS REQUESTING  
9 THE COURT TO HOLD THEM LIABLE  
10 AND REWARD THE PLAINTIFF IN THE  
11 INTEREST OF JUSTICE.

12  
13 RESPECTFULLY SUBMITTED,

14  
15 Eugene R. Washington  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

1 CERTIFICATE OF SERVICE  
2  
3  
4

5 I, EUGENE WASHINGTON, THE  
6 PLAINTIFF, DO SOLEMNLY SWEAR UNDER  
7 PENALTY OF PERJURY UNDER THE  
8 LAWS OF THE UNITED STATES THAT  
9 THE FOREGOING AMENDED PLEADING  
10 WAS MAILED THIS 12<sup>TH</sup> DAY OF  
11 OCTOBER, IN THE YEAR OF OUR LORD,  
12 2018 TO THE DISTRICT COURT, SAN  
JOSE DIVISION.

13  
14 SINCERELY,  
15  
16

17 Eugene R. Washington  
18 EUGENE R. WASHINGTON  
19  
20  
21  
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24  
25  
26  
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28

(Prob12B)

EXHIBIT A

**United States District Court**  
for  
**The Northern District of Illinois**

Judge: Honorable Robert W. Gettleman

Date: November 16, 2015

**Request for Modifying the Conditions or Term of Supervision  
With Consent of Offender**  
*(Probation Form 49, Waiver of Hearing is Attached)*

Offender Name:	<u>Washington, Eugene</u>	Case Number:	<u>94CR00339</u>
Sentencing Judicial Officer:	<u>Suzanne B. Conlon</u>		
Date of Original Sentence:	<u>December 21, 1994</u>		
Original Offense:	<u>Conspiracy to Distribute Cocaine in violation of Title 21, United States Code, Section 846</u> <u>Use of a Communication Facility in Felony Offense in violation of Title 21, United States Code, Section 843(b)</u> <u>Possession with Intent to Distribute Cocaine in violation of Title 21, United States Code, Section 841(a)(1)</u>		
Original Sentence:	<u>360 Months custody</u> <u>60 Months supervised release</u>		
Court Ordered Modifications:	<u>On August 29, 2013, per Order of the Executive Committee, this matter was reassigned to Your Honor.</u> <u>On April 21, 2015, Mr. Washington's sentence was reduced to 292 months, pursuant to Title 18, United States Code, Section 3582(c)(2).</u>		
Type of Supervision:	<u>Supervised Release</u>		
Date Supervision Began:	<u>November 12, 2015</u>	Date Supervision Expires:	<u>November 11, 2020</u>

**SUMMARY**

Mr. Washington was released from the Bureau of Prisons on November 12, 2015, after serving a 21 year custody sentence, and reported to the U.S. Probation Office in the Central District of California, where he will complete his supervision. As stated in the letter by the U.S. Probation Office in the Central District of California, Mr. Washington has severe mental health conditions, as documented by the Bureau of Prisons. During his Bureau of Prisons commitment he sustained brain trauma which led to his civil commitment within the Bureau of Prisons system.

EXHIBIT B

## INMATE SKILLS DEVELOPMENT PLAN

Current Program Review: 04-13-2010



Name: WASHINGTON, EUGENE  
 Register Number: 05972-424  
 Security/Custody: LOW/IN  
 Projected Release: 07-29-2020 / GCT REL

Institution:

LOMPOC FCI  
 3600 GUARD ROAD  
 LOMPOC, CA 93436  
 805-736-4154  
 805-736-1292

Telephone:  
 Fax

Next Review Date: 04-17-2010 Driver's License/State: /  
 Next Custody Review Date: 01-27-2011 FBI Number: 263068FA8  
 Age/DOB/Sex: 53 / [REDACTED] -1957 / M DCDC Number:  
 CIM Status: Y INS Number:  
 If yes, reconciled: Y PDID Number:  
 Other IDs:

Release Residence: [POC] Release Employer: [Name]  
 [Address]  
 Telephone: VAIL, AZ 85641 Contact [POC]  
 [Phone] Telephone: [Phone]

Primary Emergency Contact: Marion Washington, Mother Secondary Emergency [POC]  
 Contact: [Address]  
 Telephone: Seaside, CA 93955 Telephone: [Phone]  
 Telephone: 831-394-3950

## Mentor Information:

Sentence/Supervision: 360 Months / 5 Years - SRA

Sentence Began	Time Served/Jail Credit/Inoperative Time	Days GCT/EGT/SGT	Days FSGT/WSGT/DGCT	Parole Status
12-21-1994	183 Months 23 Days / 212 Days / 0 Days	1393 / 789 / 0	0 / 0 / 21	Hearing Date: Hearing Type: Last USPC Action: NOT ELIGIBLE

Detainers: N  
 Pending Charges: None known

Financial Responsibility	Imposed	Balance	Case No./Court of Jurisdiction	Assgn/Schedule Payment
ASSESSMENT	\$650.00	\$0.00	94 CR 339-1	FINANC RESP-COMPLETED

Financial Plan  
 Active: N Comm Dep-6 mos: \$696.25 Cost of Incarceration  
 Financial Plan Date: [Date] Commissary Fee:  
 Balance: \$35.74 Waived based on  
 inability to pay

## Payments

Commensurate: [Y,N]  
 Missed: [Y,N]

Judicial Recommendations: Tex / N/A / N/A

Special Conditions of Supervision: See Judgement

USPO Sentencing: Richard L. Tracy, CUSPO USPO Relocation: [POC]  
 55 East Monroe Street [Address]  
 Chicago, IL 60603 Telephone: [Phone]  
 Telephone: 312-435-5700  
 Fax: 312-408-5045

EXHIBIT C[Quick Links](#)[Search ACGOV](#)[Skip County Header](#)[ONLINE SERVICES](#)[About Inmate Locator](#)**INMATE LOCATOR****SHERIFF'S OFFICE**[Frequently Asked Questions](#) | [Sheriff's Office](#) | [New Query](#)**Inmate Detail Custody Information**

Name	PFN	Sex	Race	Occupation	DOB	Eye Color	Hair Color	Height	Weight
WASHINGTON, EUGENE	ULZ044	M	BLACK		■■■/1957	BROWN	BLACK	6'00"	200

Arrest			Arrest Charge(s)	
Date	Time	City	Code	Description
10/03/2015	02:00 PM	OAKLAND	US 183583(A F	
Event				
5330584			05972-424	
Booking				
Date	Time	Booking Type		
10/03/2015	07:54 PM	ENROUTE		
Holding Facility				
SANTA RITA JAIL			BOOKING	
Docket	Bail Type	Bail Amount	Next Hearing(s)	
05972424	NOT CODED	NO BAIL		

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EXHIBIT D

11/11/2015      Inmate Locator      A-Z Topics      Site Map      FOIA

Search bop.gov

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**Find an inmate.**

Locate the whereabouts of a federal inmate incarcerated from 1982 to the present.

First	Middle	Last	Race	Age	Sex
Eugene		Washington	Black	58	Male

2 Results for search **Eugene Washington**, Race: Black, Age: 58, Sex: Male       Clear Form     

Name	Register #	Age	Race	Sex	Release Date	Location
EUGENE WASHINGTON	24667-016	58	Black	Male	01/24/2006	RELEASED
EUGENE WASHINGTON	05972-424	58	Black	Male	11/12/2015	Sacramento RRM

About the inmate locator & record availability

About Us	Inmates	Locations	Jobs	Business	Resources	Resources For
About Our Agency	<a href="#">Find an Inmate</a>	<a href="#">List of our Facilities</a>	<a href="#">Life at the BOP</a>	<a href="#">Acquisitions</a>	<a href="#">Policy &amp; Forms</a>	<a href="#">Victims &amp; Witnesses</a>
About Our Facilities	<a href="#">Communications</a>	<a href="#">Map of our Locations</a>	<a href="#">Explore Opportunities</a>	<a href="#">Solicitations &amp; Awards</a>	<a href="#">News Articles</a>	<a href="#">Employees</a>
Historical Information	<a href="#">Custody &amp; Care</a>	<a href="#">Search for a Facility</a>	<a href="#">Current Openings</a>	<a href="#">Reentry Contracting</a>	<a href="#">Publications</a>	<a href="#">Ex-Offenders</a>
Statistics	<a href="#">Visiting</a>		<a href="#">Our Hiring Process</a>		<a href="#">Research &amp; Reports</a>	<a href="#">Media Reps</a>
	<a href="#">Voice a Concern</a>					

1 DONNA R. ZIEGLER [142415]  
2 County Counsel  
3 By JILL P. SAZAMA [214215]  
4 Deputy County Counsel  
5 Office of the County Counsel, County of Alameda  
6 1221 Oak Street, Suite 450  
7 Oakland, California 94612  
8 Telephone: (510) 272-6700

9 Attorney for County of Alameda (erroneously named herein  
10 as "Santa Rita County Jail")

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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

EUGENE WASHINGTON

Case No.: 18-CV-03420-LHK

Plaintiff,

v.

SANTA RITA COUNTY JAIL, et al.,

Defendants.

**COUNTY OF ALAMEDA'S NOTICE  
OF MOTION AND MOTION TO  
DISMISS AMENDED COMPLAINT;  
MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT  
THEREOF**

**Date: Thursday, April 11, 2019  
Time: 1:30 p.m.  
Courtroom 8, 4<sup>th</sup> Floor**

**TO PLAINTIFF IN PROPIA PERSONA:**

18 PLEASE TAKE NOTICE THAT on April 11, 2019, at 1:30 p.m. or as soon thereafter  
19 as the matter may be heard, in Courtroom 8 on the 4<sup>th</sup> Floor of the above-captioned court, located  
20 at San Jose Courthouse, 280 South 1<sup>st</sup> Street in San Jose, defendant COUNTY OF ALAMEDA  
21 (sued erroneously herein as "Santa Rita County Jail") will and hereby does move to dismiss  
22 plaintiff's Amended Complaint filed in this case on October 22, 2018, pursuant to Federal Rule  
23 of Civil Procedure 12(b)(6), on the grounds that the Amended Complaint fails to allege sufficient  
24 facts to support a cause of action, and is barred by the applicable statute of limitations.

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This motion is based on this notice, the memorandum of points and authorities in support thereof below, the accompanying request for judicial notice, all exhibits to the foregoing, and such other material on file with the court herein or of which judicial notice can be taken.

DATED: December 18, 2018

DONNA R. ZIEGLER,

County Counsel in and for the County of  
Alameda, State of California

By /s/ Jill P. Sazama, Esq.

JILL SAZAMA

## Deputy County Counsel

Attorneys for County of Alameda  
and for Sheriff Gregory J. Ahern

## **MEMORANDUM OF POINTS AND AUTHORITIES**

## I. ALLEGATIONS AND JUDICIALLY NOTICEABLE FACTS

Plaintiff, a former federal prisoner suing in propria persona, brings this 42 U.S.C. section 1983 action for violation of his 14<sup>th</sup> Amendment rights, against the “Santa Rita County Jail” (part of the County of Alameda), because he asserts that he was entitled to be released from the County’s jail on November 1, 2015, but he was not released until November 12, 2015. (Am. Compl., at pp. 2-3 [¶¶ 1-2], 7-8 [¶ 11].) The County, however, was instructed at the time by the federal Bureau of Prisons that Mr. Washington’s release date was, in fact, November 12, 2015, and thus Mr. Washington’s release on that date was proper. (Req. Jud. Not. at ¶ *passim*; Exhibit A.) Primarily for that reason, but also because of other defects in plaintiff’s Amended Complaint, the County hereby moves to dismiss this case.

Plaintiff alleges that on September 16, 2015 he was “released from Terminal Island Federal Prison,” and flew from Los Angeles to Oakland, and was assigned to the GEO Halfway House in San Francisco. (Am. Compl., at pp. 3:19 – 4:13.) While at this halfway house, he had a problem with his roommate and so left the halfway house, and went wandering in San Francisco for two hours. (*Id.* at pp. 4-5.) His sister picked him up thereafter and took him back to the halfway house. (*Id.* at p. 5.) The halfway house staff then allegedly told her to take him to a hospital, and so she took him to Highland Hospital in Oakland, where he stayed for 3 days. (*Id.* at p. 5.) Thereafter he was transferred to John George Psychiatric Pavilion where he stayed until October 3<sup>rd</sup>, at which time he was transported by U.S. Marshals to Santa Rita County Jail. (*Ibid.*)

Plaintiff then contacted his sister regarding his release date, and she in turn contacted the jail, who advised her that no release date had been set, and that she should check the jail's website (the Alameda County Inmate Locator database, *see* Exhibit C to Amended Complaint, *compare with* [https://www.acgov.org/sheriff\\_app/](https://www.acgov.org/sheriff_app/) ) for a release date. (Am. Compl. at p. 6, and Exhibit C thereto). She did check that website from October 23 to October 30<sup>th</sup>, 2015, but no release date was shown. (*Id.* at p. 6.) Plaintiff's sister then contacted Terminal Island Prison, who advised her to contact the Federal Bureau of Prisons in Sacramento, which she did around

1 November 3<sup>rd</sup>, 2015. (*Id.* at p. 7.) She was advised by someone at the Federal Bureau of Prisons  
 2 that the jail would “eventually post” the release date for plaintiff on the website. (*Ibid.*)  
 3 Plaintiff’s sister then checked the website on various days up to November 11, 2015, when the  
 4 website showed a release date of November 12<sup>th</sup> for plaintiff. (*Ibid.*) Plaintiff was then released  
 5 on November 12<sup>th</sup>. (*Id.* at p. 8.)

6 Meanwhile, the Alameda County Sheriff’s Office received a letter plus attachments from  
 7 the Federal Bureau of Prisons in Sacramento (all attached as **Exhibit A** to the Request for  
 8 Judicial Notice). These stated that Mr. Washington’s release date was November 12, 2015.  
 9 (**Exhibit A**; Req. Jud. Not., *passim*.)

10 Plaintiff claims his 14<sup>th</sup> Amendment liberty interest “in being released according to  
 11 statute” was violated by the County. (Am. Compl., at pp. 11-12.) Plaintiff “presume[s] that the  
 12 BOP provided Santa Rita with a copy of the plaintiff’s ‘official’ release date” and that the “Santa  
 13 Rita County Jail applied their [policy] used to verify the plaintiff’s official release date.” (*Id.* at  
 14 p. 13.)

15 **II. LEGAL STANDARD**

16 Federal Rule of Civil Procedure 12(b)(6) permits a defendant to move to dismiss a  
 17 complaint where that complaint fails to allege sufficient facts to support a cause of action. Under  
 18 a 12(b)(6) motion, factual allegations are accepted as true, but legal conclusions are not. *Ashcroft*  
 19 *v. Iqbal*, 556 U.S.662, 678 (2009). Judicially noticeable facts and documents referenced in the  
 20 complaint may also be considered, and will be accepted as true over factual allegations. *Baublitz*  
 21 *v. W. Valley Coll. Chancellor's Office*, No. C-97-3799 VRW, 1998 WL 345396, at \*1 (N.D. Cal.  
 22 June 16, 1998); *United States v. Ritchie*, 342 F.3d 903, 908 (9th Cir. 2003). In addition, “mere  
 23 conclusory statements[ ] do not suffice,” (*ibid.*), and “only a complaint that states a plausible  
 24 claim for relief survives . . . .” *Id.* at 679.

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1       **III.    LEGAL ARGUMENT**

2       **A.      The Federal Bureau of Prisons Advised the County that Plaintiff's Official**  
 3       **Release Date was November 12, 2015**

4       “Liberty is protected from unlawful state deprivation by the due process clause of the  
 5       Fourteenth Amendment.” *Haygood v. Younger*, 769 F.2d 1350, 1354 (9th Cir. 1985). In order to  
 6       impose liability based on a policy of deliberate inaction, the “plaintiff must establish: (1) that he  
 7       possessed a constitutional right of which he was deprived; (2) that the municipality had a policy;  
 8       (3) that this policy ‘amounts to deliberate indifference’ to the plaintiff’s constitutional right; and  
 9       (4) that the policy [was] the ‘moving force behind the constitutional violation.’ ” *Berry v. Baca*,  
 10      379 F.3d 764, 767 (9th Cir. 2004), citing *Oviatt v. Pearce*, 954 F.2d 1470, 1474 (9<sup>th</sup> Cir. 1992)  
 11      (quoting *City of Canton*, 489 U.S. at 389-91, 109 S.Ct. 1197).

12       Plaintiff admits that he was a federal prisoner being held in the County’s custody, and  
 13      that the Federal Bureau of Prisons would determine his “official” release date. (Am. Compl., at  
 14      p. 13 [“It is presumed that the BOP provided Santa Rita with a copy of the plaintiff’s ‘official’  
 15      release date.”].) He contends that his official release date was November 1, 2015, however  
 16      judicially noticeable facts show that, as far as the County knew, plaintiff’s official release date  
 17      was November 12, 2015. (**Exhibit A**) The Federal Bureau of Prisons sent the County a letter on  
 18      November 10, 2015 advising the the County that Mr. Washington’s official release date was  
 19      November 12, 2015. (**Exhibit A**). It was reasonable for the County to rely on the Federal  
 20      Bureau of Prisons’ statement regarding Mr. Washington’s official release date. It is not disputed  
 21      that the County released Mr. Washington on November 12, 2015. (Am. Comp., at pp. 7-8.)  
 22      Because the County released Mr. Washington on the date that it was told by the Bureau of  
 23      Prisons was his release date, they did not violate Mr. Washington’s liberty right under the Due  
 24      Process Clause.

25       **B.      Insufficient Facts Alleged to Support 42 U.S.C. § 1983 Liability**

26       Even if the foregoing were not the case, plaintiff’s claims also fail to allege sufficient  
 27      facts to support liability on the part of the County under 42 U.S.C. section 1983. To state a claim  
 28

1 for violation of federal civil rights pursuant to 42 U.S.C. section 1983, a plaintiff must allege  
 2 facts to show that each defendant proximately caused a constitutional violation. *Gibson v. United*  
 3 *States*, 781 F.2d 1334, 1338 (9th Cir. 1986); *see also Pistor v. Garcia*, 791 F.3d 1104, 1114 (9th  
 4 Cir. 2015); *Long v. Cty. of Los Angeles*, 442 F.3d 1178, 1185 (9th Cir. 2006). The defendant's  
 5 conduct must be more than merely negligent; “[t]he Due Process Clause is not implicated by a  
 6 state official's negligent act causing unintended loss or injury to life, liberty, or property.” *See*  
 7 *Daniels v. Williams*, 474 U.S. 327 (1986); *Davidson v. Cannon*, 474 U.S. 344 (1986); *Pantell v.*  
 8 *Antioch Unified Sch. Dist.*, No. C 14-1381 PJH, 2014 WL 4808798, at \*6 (N.D. Cal. Sept. 26,  
 9 2014). A local governmental unit is also not liable merely for employing a tortfeasor, i.e. for  
 10 respondeat superior liability; rather such an entity is liable only where its official actions, i.e. its  
 11 customs, policies or practices are a moving force behind the violation of plaintiff's constitutional  
 12 rights. *See Bd. of Cty. Comm'r's v. Brown*, 520 U.S. 397, 403 (1997); *Collins v. City of Harker*  
 13 *Heights*, 503 U.S. 115, 121 (1992); *City of Canton, Ohio v. Harris*, 489 U.S. 378, 385 (1989);  
 14 *Monell v. Dep't of Soc. Servs.*, 436 U.S. 658, 691 (1978); *Fogel v. Collins*, 531 F.3d 824, 834  
 15 (9th Cir. 2008). Furthermore, allegations of entity liability must be factually specific; conclusory  
 16 recitations of the elements of *Monell* liability, or statements that the entity has a custom, policy  
 17 or practice of committing wrongs of the type alleged elsewhere in the complaint, are insufficient  
 18 to support such liability. *AE ex rel. Hernandez v. County of Tulare*, 666 F.3d 631, 637 (9th Cir.  
 19 2012) (hereafter *AE*); *Bagley v. City of Sunnyvale*, No. 16-CV-02250-LHK, 2017 WL 344998, at  
 20 \*13-\*15 (N.D. Cal. Jan. 24, 2017).

21 Plaintiff claims that he was entitled to be released on November 1, 2015, but was not  
 22 released until November 12, 2015. Even if the Bureau of Prison's letter stating Mr.  
 23 Washington's official release date was November 12, 2015, was inaccurate, there are no facts  
 24 alleged to suggest that the County's reliance on that letter was unreasonable, or even negligent,  
 25 let alone reckless or intentional; any such allegations to the contrary are purely conclusory. (Am.  
 26 Compl. at pp. 13-14.)

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1 Plaintiff also does not state factually what County police, practice or custom caused a  
 2 violation of his rights. He alleges that the County violated the “policy [it] had in place to ensure  
 3 that liability doesn’t occur,” (*id.* at p. 12:24-27), and that the County had a policy to “verify”  
 4 plaintiff’s official release date, which it (presumably) violated. (*Id.* at p. 13:18-21.) Such  
 5 allegations are not factually specific enough to state a *Monell* claim. In addition, the policies that  
 6 plaintiff posits are actually *consistent* with (rather than contrary to) the Constitution: a policy to  
 7 avoid liability or a policy to verify plaintiff’s official release date. Such policies, assuming that  
 8 they existed, would not violate the Constitution and thus could not support a *Monell* claim.

9 **C. Plaintiff’s Claim is Barred by the Statute of Limitations**

10 Finally, even if the allegations and judicially noticeable facts did support a Due Process  
 11 violation, plaintiff failed to file his complaint within the applicable 2-year statute of limitations.  
 12 42 U.S.C. section 1983 does not contain its own limitations period; rather it borrows the forum  
 13 state’s statute of limitations for personal injury actions. *See Wilson v. Garcia*, 471 U.S. 261,  
 14 279-80 (1985), *partially superseded by statute as stated in Jones v. R.R. Donnelley & Sons Co.*,  
 15 541 U.S. 369, 377-78 (2004). In California, a two-year statute of limitations applies to personal  
 16 injury actions, and thus it is also the statute of limitations for section 1983 claims. *See* Code Civ.  
 17 Proc. § 335.1; *Maldonado v. Harris*, 370 F.3d 945, 954 (9th Cir. 2004); *see e.g.*, *Jackson v.*  
 18 *Barnes*, 794 F.3d 755, 761 (9th Cir. 2014) (applying a two-year statute of limitations to a § 1983  
 19 claim accruing in California). Plaintiff asserts that he should have been released from jail on  
 20 November 1, 2015, but he was not actually released until November 12, 2015. Plaintiff did not  
 21 bring this suit until June 8, 2018, well over two years after either November 1 or November 12,  
 22 2015. As such, plaintiff’s suit is time-barred.

23 **IV. CONCLUSION**

24 For the reasons set forth above, defendant County of Alameda hereby requests that the  
 25 Amended Complaint against it be dismissed.

26 ///

27 ///

1 DATED: December 18, 2018

DONNA R. ZIEGLER,  
2 County Counsel in and for the County of  
Alameda, State of California

3  
4 By /s/ Jill P. Sazama, Esq.  
5 JILL SAZAMA  
6 Deputy County Counsel  
7 Attorneys for County of Alameda  
and for Sheriff Gregory J. Ahern

1 DONNA R. ZIEGLER [142415]  
2 County Counsel  
3 By JILL P. SAZAMA [214215]  
4 Deputy County Counsel  
5 Office of the County Counsel, County of Alameda  
6 1221 Oak Street, Suite 450  
7 Oakland, California 94612  
8 Telephone: (510) 272-6700

9 Attorney for County of Alameda (erroneously named herein  
10 as "Santa Rita County Jail")

11 UNITED STATES DISTRICT COURT

12 NORTHERN DISTRICT OF CALIFORNIA

13 EUGENE WASHINGTON,

14 Plaintiff,

15 v.

16 SANTA RITA COUNTY JAIL, et al.

17 Defendants.

18 Case No.: 18-CV-03420-LHK

19 **COUNTY OF ALAMEDA'S  
REQUEST FOR JUDICIAL NOTICE  
IN SUPPORT OF MOTION TO  
DISMISS AMENDED COMPLAINT;**

20 **Date: Thursday, April 11, 2019**

21 **Time: 1:30 p.m.**

22 **Courtroom 8, 4<sup>th</sup> Floor**

23 Defendant COUNTY OF ALAMEDA (sued erroneously herein as "Santa Rita County  
24 Jail") will and hereby does request judicial notice be taken of the following pursuant to Federal  
25 Rule of Evidence 201(b):

26 1. The letter and attachments sent by the federal Bureau of Prisons to the County of  
27 Alameda's Santa Rita Jail regarding the release date of plaintiff Eugene Washington, true and  
28 correct copies of which are attached hereto as **Exhibit A**. Fed. R. Evid 201(b)(2); *United States  
v. Ritchie*, 342 F.3d 903, 908 (9th Cir. 2003) (judicial notice may be taken of a document  
referred to in plaintiff's complaint); Am. Compl., at p. 13:15-19 ["It is presumed that the BOP  
provided Santa Rita with a copy of the plaintiff's 'official' release date."]; *Laboy v. Colvin*, 631  
Fed.Appx. 468, 468 n. 1 (9<sup>th</sup> Cir. 2016) (taking judicial notice of an SSA letter).

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1 DATED: December 18, 2018

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DONNA R. ZIEGLER,  
County Counsel in and for the County of  
Alameda, State of California

By /s/ Jill P. Sazama, Esq.  
JILL SAZAMA  
Deputy County Counsel  
Attorneys for County of Alameda

# EXHIBIT A



U.S. Department of Justice

Federal Bureau of Prisons  
Residential Reentry Office

Federal Building & U.S. Courthouse  
501 I Street, Suite 9-400  
Sacramento, CA 95814  
Tel (916) 930-2010  
Fax (916) 930-2008

Date: 11-10-15

Facility: Santa Rita Jail

SUBJECT: TRANSMITTAL OF  Sentence Computation  
 Release Documents

Name: Washington, Eugene

Reg. No. 059724124  
Jail No. 1112 044

Release Date: 11-12-15

Release Method: GCR REL

Sentence Monitoring Computation Data  
Upon receipt, distribute as marked below:

Copy 1 - Jail/CCC File  
 Give copy to Inmate

Notice of Release and Arrival - *Please send filled out copy before*  
At time of release, please complete this form. Copy and distribute as  
marked below:  
*no release*

Copy 1 - Give to inmate  
 Copy 2 - Return to BOP, Sacramento  
 Copy 3 - Send to U.S. Probation Office in Sentencing District ORDA  
 Copy 4 - Send to U.S. Probation Office in Relocation District CCAL

Supervision Release Plan - *Please send filled out copy to me before*  
To be completed and sent 90 days prior to release, or as requested.  
*release*

Return to BOP, Sacramento  
 Give copy to inmate  
 Send to U.S. Probation Office

Please complete and return the Supervision Release Plan as soon as  
possible

Installment Schedule Agreement for Unpaid Fines  
As soon as possible, have form signed and dated by the inmate and CCC  
staff. Copy and distribute as marked below:

Return original signed form to Bureau of Prisons  
 Give copy to inmate  
 Give copy to Supervising U. S. Probation Officer

N/A

Notice of Release of Inmate with Criminal Fine Judgment  
At time of release, complete form and distribute as marked below.

Send original to Bureau of Prisons  
 Give copy to inmate

N/A

Release of Immigration Detainee With Supervision to Follow

Please complete Block #14 and return a xerox copy to our office. Give copies to U.S. Immigration & Customs Enforcement.

If any agency files a detainer, please fill in the detainer section of the Notice of Release and Arrival with the address on the detainer.  
Please fax a copy of any detainers to our office at 916-930-2008  
 Has a current none detainer.

Thanks for your assistance,

*Ethel Sours*

Ethel Sours  
Legal Instruments Examiner

BP-S522.051  
SEP 99

## SUPERVISION RELEASE PLAN

CDPRM

U.S. DEPARTMENT OF JUSTICE

FEDERAL BUREAU OF PRISONS

Institution Name: Alameda County Sheriff's Office  
 Address: Santa Rita Jail  
 5325 Broder Blvd.  
 Dublin, CA 94568  
 Phone Number: 925-551-6500

Date  
11-10-2015

Federal Bureau of Prisons  
 U.S. Department of Justice  
 Washington, D.C.

Gentlemen:

Under the law I become eligible for RELEASE  Supervised Release  
 Parole  Mandatory Release on 11-12-2015  
 (date)

In accordance therewith I submit the following as my plans for the service of the remainder of my sentence under supervision. Pursuant to my sentence, I must report in person to the United States Probation Office within 72 hours of my release.

(Type or Print)

RESIDENCE  
 Address

With Whom

Relationship

Telephone Number (if available)

EMPLOYER  
 Name

Address

Telephone Number (if available)

Nature of Business

## TO BE COMPLETED BY INSTITUTION STAFF

SENTENCING DISTRICT	Northern District of Illinois
RELOCATION DISTRICT	Northern District of California
DETAINERS	
SPECIAL CONDITIONS	5 Years Supervised Release - Please see attached Special Conditions of Supervision.
REMARKS	Report to U.S. Probation Office within 72 hours of release.

Printed Name and Signature of Inmate  WASHINGTON, Eugene	Register No. 05972-424 ULZ044
Witness (Case Manager) Printed Name and Signature	Date

This form is to be completed by all individuals subject to supervision by the U.S. Probation Office. This includes Supervised Release, Parole, Mandatory Release, Mandatory Release to Special Parole, Special Parole and Court Designated Parole.

Record Copy - Institution; Copy - U.S. Probation Office; Copy - Inmate (This form may be replicated via w/F)

BP-S714.056

APR 03  
U.S. DEPARTMENT OF JUSTICE

## NOTICE OF RELEASE AND ARRIVAL

CDFRM

FEDERAL BUREAU OF PRISONS

Inmate Name: <b>WASHINGTON, Eugene</b>	Reg No.: 05972-424 FBI No.: 263068FAS (Misc No.):	Institution/Address: Alameda Co. Sheriff's Dept Santa Rita County Jail 5325 Broder Blvd. Dublin, CA 94568
Release Date: 11-12-2015	Release Method: Good Conduct Time Release	
Public Law Days 0	Supervision to follow release: (if yes, advise inmate of obligation to report for supervision) <input checked="" type="checkbox"/> YES ( 5 years      months) <input type="checkbox"/> NO	

RELEASED TO: (Check one)	
<input checked="" type="checkbox"/> Community Transportation arranged to: <b>OAKLAND, CA</b> (City and State) Method of transportation: <b>bus</b> (Name of common carrier or other) Date of expected arrival at residence: <b>11/21/15</b>	<input type="checkbox"/> Detainer Detaining Agency: _____ Agency Address: _____ _____

SUPERVISION JURISDICTION(s)	
Sentencing District Chief/Director: Jeanne G. Walsh Supervision Agency: U.S. Probation Office District: Northern Illinois Address: 55 East Monroe Street Room 1500 Chicago, IL 60603 Phone: (312) 435-5700	District of Residence (for relocation cases) Chief/Director: Yador J. Marrell Supervision Agency: U.S. Probation Office District: Northern California Address: 450 Golden Gate Ave. Suite 17-5884 P.O. Box 36057 San Francisco, CA 94102 Phone: (415) 436-7540
Address of proposed residence: <b>OAKLAND, CA</b>	

DNA STATUS		
DNA sample required: <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO	If YES date sample taken 05-13-2011	DNA Number TCP00530

Obligation to Report for Supervision: If you were sentenced to, or otherwise required to serve, a term of supervision, this term begins immediately upon your discharge from imprisonment, and you are directed to report for supervision within 72 hours. If you are released from a detaining authority, you shall report for supervision within 72 hours after your release by the detaining authority. If you cannot report for supervision in the district of your approved residence within 72 hours, you must report to the nearest U.S. Probation Office for instruction. Failure to obey the reporting requirements described above will constitute a violation of release conditions.

Inmate's Signature (file copy only)  
*Eugene R. Washington*

Distribution: Inmate Central File (Section 5), Inmate, Chief Supervision Officer in Sentencing District, Chief Supervision Officer in District of Residence, and U.S. Parole Commission (if applicable)  
(This form may be replicated via WP)

This form replaces BP-S714 dtd FEB 02

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

EUGENE WASHINGTON,

Plaintiff,

v.

THE SANTA RITA COUNTY JAIL,

Defendant.

Case No. 5:18-cv-03420-LHK

**CLERK'S NOTICE VACATING  
HEARING ON MOTION TO DISMISS**

Re: Dkt. No. 21

Pursuant to this notice, the Motion to Dismiss for April 11, 2019 at 1:30 p.m. is VACATED. The Court to issue written ruling.

Dated: 1/30/2019

Susan Y. Soong  
Clerk, United States District Court

By: Elizabeth C. Garcia  
Elizabeth Garcia, Deputy Clerk to the  
Honorable Lucy H. Koh

12 EUGENE WASHINGTON,

13 Plaintiff,

14 v.

15 THE SANTA RITA COUNTY JAIL,

16 Defendant.

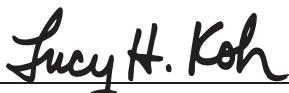
12 Case No. 18-CV-03420-LHK

13 **JUDGMENT**

18 On August 7, 2019, the Court dismissed this action with prejudice. The Clerk shall enter  
19 judgment in favor of defendant. The Clerk shall close the file.

20 **IT IS SO ORDERED.**

21 DATED: August 7, 2019

  
22 LUCY H. KOH  
23 UNITED STATES DISTRICT JUDGE

EUGENE WASHINGTON (PRO SE)

2420 107<sup>th</sup> Ave.

1 OAKLAND, CA. 94603

FILED

SEP 03 2019

2 SUSAN Y. SOONG  
3 CLERK, U.S. DISTRICT COURT  
4 NORTHERN DISTRICT OF CALIFORNIA  
5 SAN JOSENO  
Fee1  
2 THE UNITED STATES DISTRICT COURT FOR  
3 THE NORTHERN DISTRICT OF CALIFORNIA  
4 SAN JOSE DIVISION5  
6 EUGENE WASHINGTON,  
7 PLAINTIFF,

8 CASE #18-CV-03420-LHK

9 Vs.

10 THE HONORABLE  
11 Lucy Koh  
12 PRESIDING.13 THE SANTA RITA COUNTY JAIL,  
14 DEFENDANT.

## 15 NOTICE OF APPEAL

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20 On AUGUST 7<sup>th</sup>, 2019, THE  
21 HONORABLE LUCY KOH ENTERED  
22 JUDGMENT IN THE ABOVE TITLED  
23 CASE. HOWEVER, PERSONS ASSISTING  
24 THE PLAINTIFF ARE AWARE THAT  
25 THE JUDGMENT WAS NOT IN  
26  
27

1 ACCORDANCE WITH FEDERAL LAW,  
2 THEREFORE, IN THE INTEREST OF JUSTICE  
3 THE PLAINTIFF SEEKS AN APPEAL TO  
4 THE NINTH CIRCUIT TO RESOLVE  
5 ISSUES OF FACT AND ISSUES OF  
6 LAW.

7  
8  
9 IN A CIVIL CASE IN FEDERAL  
10 COURT, THE PLAINTIFF HAS 30-DAYS TO  
11 APPEAL BY LAW. THE COURT ISSUED  
12 JUDGMENT ON AUGUST 7<sup>th</sup> AND THE  
13 PLAINTIFF SUBMITS THIS APPEAL  
14 NOTICE IN ACCORDANCE TO FEDERAL  
15 RULES.

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21 SINCERELY SUBMITTED,  
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24 Eugene R. Washington  
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1  
2 CERTIFICATE OF SERVICE  
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4 I, EUGENE WASHINGTON, DO  
5 SOLEMNLY SWEAR UNDER PENALTY  
6 OF PERJURY UNDER THE LAWS OF THE  
7 UNITED STATES THAT A TRUE AND  
8 CORRECT COPY OF THIS NOTICE OF  
9 APPEAL WAS MAILED THIS 30<sup>th</sup>  
10 DAY OF AUGUST, 2019, TO THE  
11 DISTRICT COURT.  
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17 SINCERELY,  
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21 Eugene P. Washington  
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UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

**FILED**

SEP 04 2019

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

---

EUGENE WASHINGTON,  
Plaintiff - Appellant,  
v.  
COUNTY OF ALAMEDA SANTA  
RITA COUNTY JAIL,  
Defendant - Appellee,  
and  
BUREAU OF PRISONS,  
Defendant.

No. 19-16723

D.C. No. 5:18-cv-03420-LHK  
U.S. District Court for Northern  
California, San Jose

**REFERRAL NOTICE**

This matter is referred to the district court for the limited purpose of determining whether in forma pauperis status should continue for this appeal or whether the appeal is frivolous or taken in bad faith. *See* 28 U.S.C. § 1915(a)(3); *see also* *Hooker v. American Airlines*, 302 F.3d 1091, 1092 (9th Cir. 2002) (revocation of forma pauperis status is appropriate where district court finds the appeal to be frivolous).

If the district court elects to revoke in forma pauperis status, the district court is requested to notify this court and the parties of such determination within 21 days of the date of this referral. If the district court does not revoke in forma pauperis status, such status will continue automatically for this appeal pursuant to Fed. R. App. P. 24(a).

This referral shall not affect the briefing schedule previously established by this court.

FOR THE COURT:

MOLLY C. DWYER  
CLERK OF COURT

By: Cyntharee K. Powells  
Deputy Clerk  
Ninth Circuit Rule 27-7

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

EUGENE WASHINGTON,  
Plaintiff,  
v.  
SANTA RITA COUNTY JAIL and  
FEDERAL BUREAU OF PRISONS,  
Defendants.

Case No. 18-CV-03420-LHK

**ORDER REVOKING PLAINTIFF'S IN  
FORMA PAUPERIS STATUS IN  
RESPONSE TO NINTH CIRCUIT  
REFERRAL**

Before the Court is the Ninth Circuit's referral to this Court for a determination of whether to revoke Plaintiff's in forma pauperis status because Plaintiff's appeal is frivolous. 9th Cir. Case No. 19-16723, Dkt. No. 2. Having considered the relevant law and the record in this case, the Court CERTIFIES that Plaintiff's appeal is frivolous and REVOKES Plaintiff's in forma pauperis status. Below, the Court discusses why Plaintiff's appeal is frivolous.

**I. THE COMPLAINT WAS DISMISSED WITH PREJUDICE IN PART AND WITH  
LEAVE TO AMEND IN PART**

On June 8, 2018, Plaintiff, a former federal prisoner proceeding *pro se*, filed a complaint against Santa Rita County Jail ("SRC Jail") and the Federal Bureau of Prisons ("BOP") because Plaintiff was unconstitutionally incarcerated for eleven days past his official release date of

1 November 1, 2015. ECF No. 1 at 1. Pursuant to 28 U.S.C. § 1915A(a), the Court screened the  
2 complaint. ECF No. 10 at 1. The Court liberally construed the complaint as is required for *pro se*  
3 pleadings, *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1988), and determined  
4 that Plaintiff's complaint asserted a *Bivens* claim against the BOP and a claim brought under 42  
5 U.S.C. § 1983 against SRC Jail, ECF No. 10 at 2-3.

6 As to the *Bivens* claim against the BOP, the Court concluded that the BOP was an  
7 improper defendant because the *Bivens* remedy exists solely against individual federal officials,  
8 *Kreines v. United States*, 33 F.3d 1105, 1109 (9th Cir. 1994), and not against the United States  
9 government or a federal agency, *FDIC v. Meyer*, 510 U.S. 471, 484-86 (1994). Thus, the Court  
10 dismissed the BOP from the instant suit with prejudice.

11 As to the § 1983 claim against SRC Jail, the Court determined that Plaintiff failed to allege  
12 facts to support a claim against SRC Jail. To impose municipal liability under § 1983 for a local  
13 governmental entity's violation of constitutional rights resulting from governmental inaction or  
14 omission, a plaintiff must show: (1) that the plaintiff possessed a constitutional right of which he  
15 or she was deprived; (2) that the municipality had a policy; (3) that this policy amounts to  
16 deliberate indifference to the plaintiff's constitutional rights; and (4) that the policy is the moving  
17 force behind the constitutional violation. *Plumeau v. School Dist. #40 Cty. of Yamhill*, 130 F.3d  
18 432, 438 (9th Cir. 1997). Plaintiff's complaint failed to allege facts in support of any of the above  
19 requirements necessary to impose municipal liability under § 1983 on SRC Jail. However, the  
20 Court gave leave to amend should Plaintiff be able to allege sufficient facts to cure the deficiency.  
21 ECF No. 10 at 3.

## 22 **II. THE AMENDED COMPLAINT WAS DISMISSED WITH PREJUDICE**

23 On October 16, 2018, Plaintiff filed an amended complaint ("AC") in which the only  
24 Defendant was SRC Jail. ECF No. 16 at 1. On December 18, 2018, SRC Jail filed a motion to  
25 dismiss the AC. ECF No. 21. Plaintiff failed to file an opposition, and SRJ Jail did not file a reply.  
26 On August 7, 2019, the Court granted Plaintiff's motion to dismiss the AC with prejudice. ECF  
27

1 No. 24. The Court gave two separate, independently dispositive reasons for which dismissal of the  
2 AC with prejudice was proper. First, the Court determined that Plaintiff failed to adequately state a  
3 claim against SRC Jail. *Id.* at 5-6. Second, assuming Plaintiff even properly asserted a claim  
4 against SRC Jail, such a claim would be time barred. Below, the Court addresses each reason in  
5 turn.

6 First, the Court determined that Plaintiff failed to adequately state a claim. The AC alleged  
7 that SRC Jail “deliberately deprived” the plaintiff of his constitutional right to liberty.” AC at 9.  
8 Indeed, a “prisoner’s petition for damages for excessive custody can be a legitimate § 1983  
9 claim.” *Haygood v. Younger*, 769 F.2d 1350, 1359 (9th Cir. 1985) (en banc). For such a claim to  
10 ripen into a litigable constitutional violation, however, “it was or should have been known [by the  
11 defendant] that the [plaintiff] was entitled to release.” *Gant v. Cty. of L.A.*, 772 F.3d 608, 620 (9th  
12 Cir. 2014). Here, the Court held that SRC Jail, a local agency, did not know federal prisoner  
13 Plaintiff’s correct release date of November 1, 2015, because the BOP provided SRC Jail with the  
14 wrong release date. Specifically, the BOP sent SRC Jail a letter stating that Plaintiff’s release date  
15 was November 12, 2015. ECF No. 21-1, Ex. A. Attached to the BOP’s letter were two documents  
16 called a “Supervision Release Plan” and “Notice of Release and Arrival,” both of which  
17 incorrectly listed Plaintiff’s release date as November 12, 2015. *Id.* Moreover, Plaintiff did not  
18 allege how SRC Jail *should have known* that Plaintiff was entitled to release on November 1,  
19 2015. Consequently, because SRC Jail lacked knowledge of Plaintiff’s correct release date,  
20 Plaintiff could not state an excessive custody claim against SRC Jail.

21 Second, the Court determined that Plaintiff’s claim was time barred. § 1983 “borrows” a  
22 statute of limitations from the forum state’s statute of limitations for personal injury actions.  
23 *Wilson v. Garcia*, 471 U.S. 261, 278-80 (1985). In California, that statute of limitations is two  
24 years. Cal. Code Civ. Proc. § 335.1. The statute of limitations begins to run when a “plaintiff  
25 knows or has some reason to know of the injury which is the basis of his action.” *Stanley v.*  
26 *Trustees v. Cal. State Univ.*, 433 F.3d 1129, 1136 (9th Cir. 2006). The AC indicated that Plaintiff  
27

1 was aware of Plaintiff's release date. For instance, Plaintiff alleged that his sentence reduction was  
2 calculated on April 21, 2015, but was "effectuated on November 1, 2015 . . . so the plaintiff had to  
3 wait an entire year before he could be released from custody." AC at 11. The fact that Plaintiff  
4 admitted he had to "wait . . . before he could be released" demonstrates that Plaintiff knew that his  
5 proper release date was November 1, 2015. *Id.* Thus, Plaintiff knew of his injury by November 1,  
6 2015. Therefore, Plaintiff needed to have filed suit by November 1, 2017, two years from  
7 November 1, 2015. However, Plaintiff did not file the instant suit until May 29, 2018, nearly seven  
8 months too late.

9 The Court noted that Plaintiff's failure to bring a claim within the statute of limitations  
10 could not be cured by tolling the statute of limitations, and as Plaintiff did not respond to SRC  
11 Jail's motion to dismiss, Plaintiff has not raised grounds on which the statute of limitations could  
12 have been tolled. The Court also found that Plaintiff was not eligible for equitable tolling. The  
13 Ninth Circuit held that equitable tolling focuses on "whether there was excusable delay by the  
14 plaintiff: if a reasonable plaintiff would not have known of the existence of a possible claim within  
15 the limitations period, then equitable tolling will serve to extend the statute of limitations for filing  
16 suit until the plaintiff can gather what information he needs." *Johnson v. Henderson*, 314 F.3d  
17 409, 414 (9th Cir. 2002). The burden is on the litigant seeking equitable tolling to establish "(1)  
18 that he has been pursuing his rights diligently, and (2) that some extraordinary circumstance stood  
19 in his way." *Holland v. Florida*, 560 U.S. 631, 655 (2010). Here, Plaintiff waited approximately  
20 two and a half years to bring suit with no indication that Plaintiff did not know that he had a  
21 potential claim or that he had been diligently pursuing his rights. Thus, Plaintiff's claim could not  
22 be equitably tolled, and Plaintiff's claim is still time barred.

### 23 III. PLAINTIFF'S APPEAL IS FRIVOLOUS

24 As noted above, the Ninth Circuit has referred this Court to determine whether to revoke  
25 Plaintiff's in forma pauperis status because Plaintiff's appeal is frivolous. 9th Cir. Case No. 19-  
26 16723, Dkt. No. 2. "A claim is legally frivolous when it lacks an arguable basis either in law or in  
27

fact.” *Williams v. Vincent*, 2012 WL 1232112, at \*1 (E.D. Cal. Apr. 12, 2012) (citing *Neitzke v. Williams*, 490 U.S. 319, 325 (1989)). The Court will first discuss the claim against the BOP, then the claim against SRC Jail.

Plaintiff’s original complaint asserted a *Bivens* claim against the BOP. ECF No. 10 at 2-3. However, there is no arguable basis in law for such a claim. The United States Supreme Court has determined that the United States government or a federal agency are not subject to *Bivens* claims. *FDIC*, 510 U.S. at 484-86. Thus, Plaintiff’s claim against the BOP was frivolous.

Plaintiff’s original and amended complaints asserted a § 1983 claim against SRC Jail. The Court dismissed the original complaint’s § 1983 claim against SRC Jail because Plaintiff’s complaint failed to allege facts in support of the requirements necessary to impose municipal liability under § 1983 on SRC Jail. Furthermore, the Court dismissed the AC’s § 1983 claim against SRC Jail for two reasons. First, SRC Jail, a local agency, did not know Plaintiff’s correct release date of November 1, 2015, because the BOP provided SRC Jail with the wrong release date. Second, Plaintiff’s § 1983 claim against SRC Jail was time barred. Thus, Plaintiff’s § 1983 claim against SRC Jail lacked an arguable basis either in law or in fact.

In sum, the Court concludes that Plaintiff’s claims in the original and first amended complaints lack an arguable basis in law or fact and fail to present a non-frivolous issue for appeal. Thus, Plaintiff’s appeal is not taken in good faith and is frivolous.

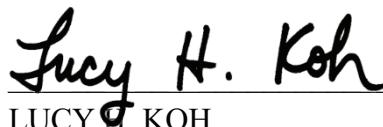
Accordingly, the Court hereby CERTIFIES that Plaintiff’s appeal is frivolous pursuant to 28 U.S.C. § 1915(a)(3), and REVOKES Plaintiff’s in forma pauperis status. Any further request to proceed on appeal in forma pauperis should be directed, on motion, to the Ninth Circuit in accordance with Federal Rule of Appellate Procedure 24.

The Clerk shall notify the Ninth Circuit of the Court’s instant order.

**IT IS SO ORDERED.**

United States District Court  
Northern District of California

1 Dated: September 10, 2019  
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LUCY H. KOH  
United States District Judge

**FILED**

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

OCT 9 2019

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

EUGENE WASHINGTON,

Plaintiff-Appellant,

v.

COUNTY OF ALAMEDA SANTA RITA  
COUNTY JAIL,

Defendant-Appellee,

and

BUREAU OF PRISONS,

Defendant.

No. 19-16723

D.C. No. 5:18-cv-03420-LHK  
Northern District of California,  
San Jose

ORDER

A review of the district court's docket reflects that the district court has certified that this appeal is not taken in good faith and has revoked appellant's in forma pauperis status. *See* 28 U.S.C. § 1915(a). This court may dismiss a case at any time, if the court determines the case is frivolous. *See* 28 U.S.C. § 1915(e)(2).

Within 35 days after the date of this order, appellant must:

- (1) file a motion to dismiss this appeal, *see* Fed. R. App. P. 42(b), or
- (2) file a statement explaining why the appeal is not frivolous and should go forward.

If appellant files a statement that the appeal should go forward, appellant also must:

- (1) file in this court a motion to proceed in forma pauperis, OR
- (2) pay to the district court \$505.00 for the filing and docketing fees for this appeal AND file in this court proof that the \$505.00 was paid.

If appellant does not respond to this order, the Clerk will dismiss this appeal for failure to prosecute, without further notice. *See* 9th Cir. R. 42-1. If appellant files a motion to dismiss the appeal, the Clerk will dismiss this appeal, pursuant to Federal Rule of Appellate Procedure 42(b). If appellant submits any response to this order other than a motion to dismiss the appeal, the court may dismiss this appeal as frivolous, without further notice.

If appellant files a statement that the appeal should go forward, appellee may file a response within 10 days after service of appellant's statement.

The briefing schedule for this appeal is stayed.

The Clerk shall serve on appellant: (1) a form motion to voluntarily dismiss the appeal, (2) a form statement that the appeal should go forward, and (3) a Form 4 financial affidavit. Appellant may use the enclosed forms for any motion to dismiss the appeal, statement that the appeal should go forward, and/or motion to proceed in forma pauperis.

FOR THE COURT:

MOLLY C. DWYER  
CLERK OF COURT

By: Joseph Williams  
Deputy Clerk  
Ninth Circuit Rule 27-7

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

9th Cir. Case No. \_\_\_\_\_

Appellant(s),

v.

Appellee(s).

**MOTION TO VOLUNTARILY DISMISS APPEAL**

Pursuant to Federal Rule of Appellate Procedure 42(b), appellant(s)

\_\_\_\_\_ hereby move(s)

the court for an order dismissing appeal No. \_\_\_\_\_ - \_\_\_\_\_.

Dated: \_\_\_\_\_

Print Name(s)

\_\_\_\_\_  
Signature(s)

Appellant(s) in Pro Se

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

9th Cir. Case No. \_\_\_\_\_

Appellant(s),

v.

Appellee(s).

**STATEMENT THAT APPEAL SHOULD GO FORWARD**  
(attach additional sheets as necessary)

1. Date(s) of entry of judgment or order(s) you are challenging in this appeal:

\_\_\_\_\_.

2. What claims did you raise to the court below?

3. What do you think the court below did wrong? (You may, but need not, refer to cases and statutes.)

4. Why are these errors serious enough that this appeal should go forward?

5. Additional Information:

Dated: \_\_\_\_\_

Print Name(s)

---

Signature(s)

Appellant(s) in Pro Se

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

**INSTRUCTIONS for Form 4.  
Motion and Affidavit for Permission to Proceed in Forma Pauperis**

Use Form 4 or an equivalent financial declaration to ask the court to waive the filing fees for an appeal or petition for review **in any civil case**.

For criminal and habeas corpus cases, use Form 23 CJA Financial Affidavit instead of Form 4 to request a fee waiver or to ask for appointment of counsel.

- Answer **all** questions on the form even if the answer is “0” or “N/A” (not applicable).
- Include your case number and sign the form. You do not need to have the form notarized.
- **Do not** include your Social Security number.

If you are a self-represented party who is not registered for electronic filing, mail the completed form to: U.S. Court of Appeals for the Ninth Circuit, P.O. Box 193939, San Francisco, CA 94119-3939.

To file Form 4 electronically, use the electronic document filing type “Motion for Any Type of Relief” and “motion to proceed in forma pauperis” as the relief.

**How to prepare fill-in forms for filing:**

- If you have Adobe Acrobat or another tool that lets you save completed forms:
  1. Complete the form.
  2. Print the completed form to your PDF printer (File > Print > select Adobe PDF or another PDF printer listed in the drop-down list).
- If you do not have Adobe Acrobat or another tool that lets you save completed forms:
  1. Complete the form.
  2. Print the completed form to your printer.
  3. Scan the completed form to a PDF file.

**Note:** The fill-in PDF version of the form is available on the court’s website at <http://www.ca9.uscourts.gov/forms/>.

***Do not file this instruction page***

Feedback or questions about this form? Email us at [forms@ca9.uscourts.gov](mailto:forms@ca9.uscourts.gov)

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

**Form 4. Motion and Affidavit for Permission to Proceed in Forma Pauperis**

*Instructions for this form: <http://www.ca9.uscourts.gov/forms/form04instructions.pdf>*

**9th Cir. Case Number(s)**

**Case Name**

**Affidavit in support of motion:** I swear under penalty of perjury that I am financially unable to pay the docket and filing fees for my appeal. I believe my appeal has merit. I swear under penalty of perjury under United States laws that my answers on this form are true and correct. 28 U.S.C. § 1746; 18 U.S.C. § 1621.

**Signature**

**Date**

The court may grant a motion to proceed in forma pauperis if you show that you cannot pay the filing fees **and** you have a non-frivolous legal issue on appeal. Please state your issues on appeal. (*attach additional pages if necessary*)

1. For both you and your spouse, estimate the average amount of money received from each of the following sources during the past 12 months. Adjust any amount that was received weekly, biweekly, quarterly, semiannually, or annually to show the monthly rate. Use gross amounts, that is, amounts before any deductions for taxes or otherwise.

<b>Income Source</b>	<b>Average monthly amount during the past 12 months</b>		<b>Amount expected next month</b>	
	<b>You</b>	<b>Spouse</b>	<b>You</b>	<b>Spouse</b>
Employment	\$ <input type="text"/>	\$ <input type="text"/>	\$ <input type="text"/>	\$ <input type="text"/>
Self-Employment	\$ <input type="text"/>	\$ <input type="text"/>	\$ <input type="text"/>	\$ <input type="text"/>
Income from real property (such as rental income)	\$ <input type="text"/>	\$ <input type="text"/>	\$ <input type="text"/>	\$ <input type="text"/>
Interest and Dividends	\$ <input type="text"/>	\$ <input type="text"/>	\$ <input type="text"/>	\$ <input type="text"/>
Gifts	\$ <input type="text"/>	\$ <input type="text"/>	\$ <input type="text"/>	\$ <input type="text"/>
Alimony	\$ <input type="text"/>	\$ <input type="text"/>	\$ <input type="text"/>	\$ <input type="text"/>
Child Support	\$ <input type="text"/>	\$ <input type="text"/>	\$ <input type="text"/>	\$ <input type="text"/>
Retirement (such as social security, pensions, annuities, insurance)	\$ <input type="text"/>	\$ <input type="text"/>	\$ <input type="text"/>	\$ <input type="text"/>
Disability (such as social security, insurance payments)	\$ <input type="text"/>	\$ <input type="text"/>	\$ <input type="text"/>	\$ <input type="text"/>
Unemployment Payments	\$ <input type="text"/>	\$ <input type="text"/>	\$ <input type="text"/>	\$ <input type="text"/>
Public-Assistance (such as welfare)	\$ <input type="text"/>	\$ <input type="text"/>	\$ <input type="text"/>	\$ <input type="text"/>
Other (specify) <input type="text"/>	\$ <input type="text"/>	\$ <input type="text"/>	\$ <input type="text"/>	\$ <input type="text"/>
<b>TOTAL MONTHLY INCOME:</b>	\$ <input type="text"/>	\$ <input type="text"/>	\$ <input type="text"/>	\$ <input type="text"/>

## 2. List your employment history for the past two years, most recent employer first.

(Gross monthly pay is before taxes or other deductions.)

Employer	Address	Dates of Employment	Gross Monthly Pay
		From <input type="text"/>	\$ <input type="text"/>
		To <input type="text"/>	
		From <input type="text"/>	\$ <input type="text"/>
		To <input type="text"/>	
		From <input type="text"/>	\$ <input type="text"/>
		To <input type="text"/>	

## 3. List your spouse's employment history for the past two years, most recent employer first.

(Gross monthly pay is before taxes or other deductions.)

Employer	Address	Dates of Employment	Gross Monthly Pay
		From <input type="text"/>	\$ <input type="text"/>
		To <input type="text"/>	
		From <input type="text"/>	\$ <input type="text"/>
		To <input type="text"/>	
		From <input type="text"/>	\$ <input type="text"/>
		To <input type="text"/>	
		From <input type="text"/>	\$ <input type="text"/>
		To <input type="text"/>	

4. How much cash do you and your spouse have? \$

Below, state any money you or your spouse have in bank accounts or in any other financial institution.

Financial Institution	Type of Account	Amount You Have	Amount Your Spouse Has
<span style="border: 1px solid black; display: inline-block; width: 150px; height: 30px; vertical-align: middle;"></span>	<span style="border: 1px solid black; display: inline-block; width: 150px; height: 30px; vertical-align: middle;"></span>	\$ <span style="border: 1px solid black; display: inline-block; width: 50px; height: 20px; vertical-align: middle;"></span>	\$ <span style="border: 1px solid black; display: inline-block; width: 50px; height: 20px; vertical-align: middle;"></span>
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**If you are a prisoner seeking to appeal a judgment in a civil action or proceeding, you must attach a statement certified by the appropriate institutional officer showing all receipts, expenditures, and balances during the last six months in your institutional accounts. If you have multiple accounts, perhaps because you have been in multiple institutions, attach one certified statement of each account.**

5. List the assets, and their values, which you own or your spouse owns. Do not list clothing and ordinary household furnishing.

Home	Value	Other Real Estate	Value
<span style="border: 1px solid black; display: inline-block; width: 150px; height: 50px; vertical-align: middle;"></span>	\$ <span style="border: 1px solid black; display: inline-block; width: 100px; height: 20px; vertical-align: middle;"></span>	<span style="border: 1px solid black; display: inline-block; width: 150px; height: 50px; vertical-align: middle;"></span>	\$ <span style="border: 1px solid black; display: inline-block; width: 100px; height: 20px; vertical-align: middle;"></span>

Motor Vehicle 1: Make & Year	Model	Registration #	Value
<span style="border: 1px solid black; display: inline-block; width: 150px; height: 50px; vertical-align: middle;"></span>	<span style="border: 1px solid black; display: inline-block; width: 150px; height: 30px; vertical-align: middle;"></span>	<span style="border: 1px solid black; display: inline-block; width: 150px; height: 30px; vertical-align: middle;"></span>	\$ <span style="border: 1px solid black; display: inline-block; width: 100px; height: 20px; vertical-align: middle;"></span>
Motor Vehicle 2: Make & Year	Model	Registration #	Value
<span style="border: 1px solid black; display: inline-block; width: 150px; height: 50px; vertical-align: middle;"></span>	<span style="border: 1px solid black; display: inline-block; width: 150px; height: 30px; vertical-align: middle;"></span>	<span style="border: 1px solid black; display: inline-block; width: 150px; height: 30px; vertical-align: middle;"></span>	\$ <span style="border: 1px solid black; display: inline-block; width: 100px; height: 20px; vertical-align: middle;"></span>

Other Assets	Value
	\$ <input type="text"/>
	\$ <input type="text"/>
	\$ <input type="text"/>

6. State every person, business, or organization owing you or your spouse money, and the amount owed.

Person owing you or your spouse	Amount owed to you	Amount owed to your spouse
	\$ <input type="text"/>	\$ <input type="text"/>
	\$ <input type="text"/>	\$ <input type="text"/>
	\$ <input type="text"/>	\$ <input type="text"/>

7. State the persons who rely on you or your spouse for support. If a dependent is a minor, list only the initials and not the full name.

Name	Relationship	Age

8. Estimate the average monthly expenses of you and your family. Show separately the amounts paid by your spouse. Adjust any payments that are made weekly, biweekly, quarterly, semiannually, or annually to show the monthly rate.

	You	Spouse
Rent or home-mortgage payment (include lot rented for mobile home)	\$ <input type="text"/>	\$ <input type="text"/>
- Are real estate taxes included? <input type="radio"/> Yes <input type="radio"/> No		
- Is property insurance included? <input type="radio"/> Yes <input type="radio"/> No		
Utilities (electricity, heating fuel, water, sewer, and telephone)	\$ <input type="text"/>	\$ <input type="text"/>
Home maintenance (repairs and upkeep)	\$ <input type="text"/>	\$ <input type="text"/>
Food	\$ <input type="text"/>	\$ <input type="text"/>
Clothing	\$ <input type="text"/>	\$ <input type="text"/>
Laundry and dry-cleaning	\$ <input type="text"/>	\$ <input type="text"/>
Medical and dental expenses	\$ <input type="text"/>	\$ <input type="text"/>
Transportation (not including motor vehicle payments)	\$ <input type="text"/>	\$ <input type="text"/>
Recreation, entertainment, newspapers, magazines, etc.	\$ <input type="text"/>	\$ <input type="text"/>
Insurance (not deducted from wages or included in mortgage payments)		
- Homeowner's or renter's	\$ <input type="text"/>	\$ <input type="text"/>
- Life	\$ <input type="text"/>	\$ <input type="text"/>
- Health	\$ <input type="text"/>	\$ <input type="text"/>
- Motor Vehicle	\$ <input type="text"/>	\$ <input type="text"/>
- Other <input type="text"/>	\$ <input type="text"/>	\$ <input type="text"/>
Taxes (not deducted from wages or included in mortgage payments)		
Specify <input type="text"/>	\$ <input type="text"/>	\$ <input type="text"/>

Feedback or questions about this form? Email us at [forms@ca9.uscourts.gov](mailto:forms@ca9.uscourts.gov)

	You	Spouse
Installment payments		
- Motor Vehicle	\$ <input type="text"/>	\$ <input type="text"/>
- Credit Card (name) <input type="text"/>	\$ <input type="text"/>	\$ <input type="text"/>
- Department Store (name) <input type="text"/>	\$ <input type="text"/>	\$ <input type="text"/>
Alimony, maintenance, and support paid to others	\$ <input type="text"/>	\$ <input type="text"/>
Regular expenses for the operation of business, profession, or farm (attach detailed statement)	\$ <input type="text"/>	\$ <input type="text"/>
Other (specify) <input type="text"/>	\$ <input type="text"/>	\$ <input type="text"/>
<b>TOTAL MONTHLY EXPENSES</b>	\$ <input type="text"/>	\$ <input type="text"/>

9. Do you expect any major changes to your monthly income or expenses or in your assets or liabilities during the next 12 months?  Yes  No

If Yes, describe on an attached sheet.

10. Have you spent—or will you be spending—any money for expenses or attorney fees in connection with this lawsuit?  Yes  No

If Yes, how much? \$

11. Provide any other information that will help explain why you cannot pay the docket fees for your appeal.

12. State the city and state of your legal residence.

City

State

Your daytime phone number (ex., 415-355-8000)

Your age

Your years of schooling

RECEIVED  
U.S. COURT OF APPEALS  
OCT 11 2019  
FILED  
DOCKETED

UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

**Form 4. Motion and Affidavit for Permission to Proceed in ~~Forma Pauperis~~**

Instructions for this form: <http://www.ca9.uscourts.gov/forms/form04instructions.pdf> INITIAL

9th Cir. Case Number(s) 19-16723

Case Name EUGENE WASHINGTON v. SANTA RITA COUNTY JAIL,

**Affidavit in support of motion:** I swear under penalty of perjury that I am financially unable to pay the docket and filing fees for my appeal. I believe my appeal has merit. I swear under penalty of perjury under United States laws that my answers on this form are true and correct. 28 U.S.C. § 1746; 18 U.S.C. § 1621.

Signature Eugene R. Washington Date 10-8-2019

The court may grant a motion to proceed in forma pauperis if you show that you cannot pay the filing fees **and** you have a non-frivolous legal issue on appeal.

Please state your issues on appeal. (attach additional pages if necessary)

MY ISSUE ON APPEAL IS A §1983  
VIOLATION BY THE SANTA RITA  
COUNTY JAIL. FOR FULL DISCUSSION,  
SEE THE ATTACHED MOTION  
TO PROCEED IN FORMA  
PAUPERIS.

Feedback or questions about this form? Email us at [forms@ca9.uscourts.gov](mailto:forms@ca9.uscourts.gov)

1. For both you and your spouse, estimate the average amount of money received from each of the following sources during the past 12 months. Adjust any amount that was received weekly, biweekly, quarterly, semiannually, or annually to show the monthly rate. Use gross amounts, that is, amounts before any deductions for taxes or otherwise.

Income Source	Average monthly amount during the past 12 months		Amount expected next month	
	You	Spouse	You	Spouse
Employment	\$ <i>N/A</i>	\$ <i>N/A</i>	\$ <i></i>	\$ <i></i>
Self-Employment	\$ <i>N/A</i>	\$ <i>N/A</i>	\$ <i></i>	\$ <i></i>
Income from real property (such as rental income)	\$ <i>N/A</i>	\$ <i>N/A</i>	\$ <i></i>	\$ <i></i>
Interest and Dividends	\$ <i>N/A</i>	\$ <i>N/A</i>	\$ <i></i>	\$ <i></i>
Gifts	\$ <i>100</i>	\$ <i>N/A</i>	\$ <i>100</i>	\$ <i></i>
Alimony	\$ <i>N/A</i>	\$ <i>N/A</i>	\$ <i></i>	\$ <i></i>
Child Support	\$ <i>N/A</i>	\$ <i>N/A</i>	\$ <i></i>	\$ <i></i>
Retirement (such as social security, pensions, annuities, insurance)	\$ <i>N/A</i>	\$ <i>N/A</i>	\$ <i></i>	\$ <i></i>
Disability (such as social security, insurance payments)	\$ <i>808</i>	\$ <i>N/A</i>	\$ <i>808</i>	\$ <i>N/A</i>
Unemployment Payments	\$ <i>N/A</i>	\$ <i>N/A</i>	\$ <i>N/A</i>	\$ <i>N/A</i>
Public-Assistance (such as welfare)	\$ <i>N/A</i>	\$ <i>N/A</i>	\$ <i>N/A</i>	\$ <i>N/A</i>
Other (specify) <i></i>	\$ <i>N/A</i>	\$ <i>N/A</i>	\$ <i>N/A</i>	\$ <i>N/A</i>
<b>TOTAL MONTHLY INCOME:</b>	\$ <i>908</i>	\$ <i>N/A</i>	\$ <i>908</i>	\$ <i>N/A</i>

2. List your employment history for the past two years, most recent employer first.  
(Gross monthly pay is before taxes or other deductions.)

Employer	Address	Dates of Employment	Gross Monthly Pay
N/A		From <input type="text"/> To <input type="text"/>	\$ <input type="text"/>
APPELLANT IS FULLY DISABLED BY SOCIAL SEC	AS DETERMINED CURITY,	From <input type="text"/> To <input type="text"/>	\$ <input type="text"/>
		From <input type="text"/> To <input type="text"/>	\$ <input type="text"/>
		From <input type="text"/> To <input type="text"/>	\$ <input type="text"/>

3. List your spouse's employment history for the past two years, most recent employer first.  
(Gross monthly pay is before taxes or other deductions.)

Employer	Address	Dates of Employment	Gross Monthly Pay
SPOUSE IS	DECEASED	From <input type="text"/> To <input type="text"/>	\$ <input type="text"/>
		From <input type="text"/> To <input type="text"/>	\$ <input type="text"/>
		From <input type="text"/> To <input type="text"/>	\$ <input type="text"/>
		From <input type="text"/> To <input type="text"/>	\$ <input type="text"/>

4. How much cash do you and your spouse have? \$ 660.00

Below, state any money you or your spouse have in bank accounts or in any other financial institution.

Financial Institution	Type of Account	Amount You Have	Amount Your Spouse Has
CHASE BANK	CHECKING	\$ 660.00	\$ NONE
		\$	\$
		\$	\$
		\$	\$

If you are a prisoner seeking to appeal a judgment in a civil action or proceeding, you must attach a statement certified by the appropriate institutional officer showing all receipts, expenditures, and balances during the last six months in your institutional accounts. If you have multiple accounts, perhaps because you have been in multiple institutions, attach one certified statement of each account.

5. List the assets, and their values, which you own or your spouse owns. Do not list clothing and ordinary household furnishing.

Home	Value	Other Real Estate	Value
NONE	\$	NONE	\$

Motor Vehicle 1: Make & Year	Model	Registration #	Value
NONE			\$
Motor Vehicle 2: Make & Year	Model	Registration #	Value
NONE			\$

Other Assets	Value
<i>None!</i>	\$ <input type="text" value="0"/>
<input type="text"/>	\$ <input type="text"/>
<input type="text"/>	\$ <input type="text"/>

6. State every person, business, or organization owing you or your spouse money, and the amount owed.

Person owing you or your spouse	Amount owed to you	Amount owed to your spouse
<i>None</i>	\$ <input type="text"/>	\$ <input type="text"/>
<input type="text"/>	\$ <input type="text"/>	\$ <input type="text"/>
<input type="text"/>	\$ <input type="text"/>	\$ <input type="text"/>

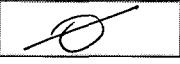
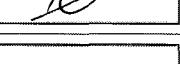
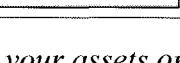
7. State the persons who rely on you or your spouse for support. If a dependent is a minor, list only the initials and not the full name.

Name	Relationship	Age
<i>None</i>	<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>

8. Estimate the average monthly expenses of you and your family. Show separately the amounts paid by your spouse. Adjust any payments that are made weekly, biweekly, quarterly, semiannually, or annually to show the monthly rate.

	You	Spouse
Rent or home-mortgage payment (include lot rented for mobile home)	\$ <u>550</u>	\$ <u></u>
- Are real estate taxes included? <input type="radio"/> Yes <input checked="" type="radio"/> No		
- Is property insurance included? <input type="radio"/> Yes <input checked="" type="radio"/> No		
Utilities (electricity, heating fuel, water, sewer, and telephone)	\$ <u>INCLUDED</u>	\$ <u></u>
Home maintenance (repairs and upkeep)	\$ <u>11 11</u>	\$ <u></u>
Food	\$ <u>200/month</u>	\$ <u></u>
Clothing	\$ <u>100/quarter</u>	\$ <u></u>
Laundry and dry-cleaning	\$ <u>20/month</u>	\$ <u></u>
Medical and dental expenses	\$ <u>MEDICAL</u>	\$ <u></u>
Transportation (not including motor vehicle payments)	\$ <u>100/month</u>	\$ <u></u>
Recreation, entertainment, newspapers, magazines, etc.	\$ <u>0</u>	\$ <u></u>
Insurance (not deducted from wages or included in mortgage payments)		
- Homeowner's or renter's	\$ <u>0</u>	\$ <u></u>
- Life	\$ <u>0</u>	\$ <u></u>
- Health	\$ <u>0</u>	\$ <u></u>
- Motor Vehicle	\$ <u>0</u>	\$ <u></u>
- Other <u></u>	\$ <u>0</u>	\$ <u></u>
Taxes (not deducted from wages or included in mortgage payments)		
Specify <u></u>	\$ <u></u>	\$ <u></u>

Feedback or questions about this form? Email us at [forms@ca9.uscourts.gov](mailto:forms@ca9.uscourts.gov)

	You	Spouse
Installment payments		
- Motor Vehicle	\$ 	\$ <input type="text"/>
- Credit Card (name) <input type="text"/>	\$ 	\$ <input type="text"/>
- Department Store (name) <input type="text"/>	\$ 	\$ <input type="text"/>
Alimony, maintenance, and support paid to others	\$ 	\$ <input type="text"/>
Regular expenses for the operation of business, profession, or farm (attach detailed statement)	\$ 	\$ <input type="text"/>
Other (specify) <input type="text"/>	\$ 	\$ <input type="text"/>
<b>TOTAL MONTHLY EXPENSES</b>	\$ 	\$ <input type="text"/>

9. Do you expect any major changes to your monthly income or expenses or in your assets or liabilities during the next 12 months?  Yes  No

If Yes, describe on an attached sheet.

10. Have you spent—or will you be spending—any money for expenses or attorney fees in connection with this lawsuit?  Yes  No

If Yes, how much? \$

11. Provide any other information that will help explain why you cannot pay the docket fees for your appeal.

**I AM ON DISABILITY AND CANNOT PAY THE FEE.**

12. State the city and state of your legal residence.

City

State

Your daytime phone number (ex., 415-355-8000)

**415-218-5507**

Your age

**62**

Your years of schooling

**12**

## FINANCIAL AFFIDAVIT

IN SUPPORT OF REQUEST FOR ATTORNEY, EXPERT OR OTHER COURT SERVICES WITHOUT PAYMENT OF FEE

IN UNITED STATES

 MAGISTRATE  DISTRICT APPEALS COURT

or

 OTHER PANEL (Specify below)

IN THE CASE

EUGENE WASHINGTON SANTA RITA  
County Jail

FOR

AT

LOCATION NUMBER


PERSON REPRESENTED (Show your full name)

EUGENE RAY WASHINGTON

CHARGE/OFFENSE (describe if applicable &amp; check box →)

 Felony  
 Misdemeanor

1	Defendant-Adult
2	Defendant - Juvenile
3	Appellant
4	Probation Violator
5	Parole Violator
6	Habeas Petitioner
7	2255 Petitioner
8	Material Witness
9	Other

DOCKET NUMBERS
Magistrate
District Court
18-CV-03420
Court of Appeals
19-16723

## ANSWERS TO QUESTIONS REGARDING ABILITY TO PAY

EMPLOY- MENT	Are you now employed? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> Am Self-Employed			
	Name and address of employer: <u>A/A</u>			
	<b>IF YES</b> , how much do you earn per month? \$ _____			
OTHER INCOME	If married is your Spouse employed? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No			
	<b>IF YES</b> , how much does your Spouse earn per month? \$ <u>A/A</u>			
	If married is your Spouse employed? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No			
ASSETS	Have you received within the past 12 months any income from a business, profession or other form of self-employment, or in the form of rent payments, interest, dividends, retirement or annuity payments, or other sources? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No			
	<b>IF YES, GIVE THE AMOUNT RECEIVED &amp; IDENTIFY THE SOURCES</b> \$ _____ RECEIVED \$ _____ RECEIVED & IDENTIFY THE SOURCES \$ _____ RECEIVED \$ _____ RECEIVED & IDENTIFY THE SOURCES \$ _____ RECEIVED			
	<u>NONE!</u> SOURCES			
OBLIGATIONS & DEBTS	CASH Have you any cash on hand or money in savings or checking accounts? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <b>IF YES, state total amount</b> \$ <u>660.00</u>			
	PROPERTY Do you own any real estate, stocks, bonds, notes, automobiles, or other valuable property (excluding ordinary household furnishings and clothing)? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No			
	<b>IF YES, GIVE THE VALUE AND DESCRIBE IT</b> \$ _____ VALUE \$ _____ \$ _____ \$ _____			
DEPENDENTS	MARITAL STATUS <input checked="" type="checkbox"/> SINGLE <input type="checkbox"/> MARRIED <input type="checkbox"/> WIDOWED <input type="checkbox"/> SEPARATED OR <input type="checkbox"/> DIVORCED	Total No. of Dependents <u>0</u>	List persons you actually support and your relationship to them	
	DEBTS & MONTHLY BILLS (LIST ALL CREDITORS, INCLUDING BANKS, LOAN COMPANIES, CHARGE ACCOUNTS, ETC.)	APARTMENT OR HOME: <u>550/MONTH</u>	Creditors <u>NONE</u>	Total Debt \$ _____ \$ _____ \$ _____ \$ _____
				Monthly Paymt. \$ _____ \$ _____ \$ _____ \$ _____

I certify under penalty of perjury that the foregoing is true and correct.

Executed on (date)

10-7-19

SIGNATURE OF DEFENDANT  
(OR PERSON REPRESENTED)Eugene R. Washington  
071

1 | Eugene Washington  
2420 107<sup>th</sup> Avenue  
2 | Oakland, CA 94603

IN THE UNITED STATES OF APPEALS  
FOR THE NINTH CIRCUIT

## MOTION IN SUPPORT OF

## PROCEEDING IN FORMER PAPERIS

15 On September 10, 2019, The United States District Court for the Northern District of  
16 California issued an order revoking former pauperis status on referral from the Ninth Circuit.  
17 However, the District Courts “order” is in error of [facts] the appellant presented to the District  
18 Court in the original complaint filed on June 8, 2018 and the amended complaint filed on  
19 October 16, 2018.  
20

21 For in the original complaint, the Appellant stated how he found out about the 11 days he was  
22 held illegally by the Santa Rita County Jail, see Exhibit A. For prior to the Appellant's release  
23 from Terminal Island Prison, the Appellant was in the Shu. On April 21, 2015, the Judge in  
24 Chicago granted the Appellant's 3582 to correct his sentence. Individuals in the Shu who  
25 studied Law in prison stated that the Appellant's "possible" release date was November 1<sup>st</sup> of  
26

1 2015. They stated this date was tentative based on BOP official records, IE. Shots that may  
2 have taken away good time. Appellant was released from the Shu in September of 2015 and  
3 flew home.  
4

5 Therefore, it wasn't until the Appellant submitted a plethora of documents to the  
6 Monterey College of Law in March of 2018, regarding a Social Security Disability claim that he  
7 found out about the illegal actions of the Santa Rita County Jail. See Exhibit A. And this is  
8 when a concerned legal mind @ the Monterey College of Law assisted the Appellant with filing  
9 the original complaint on June 8, 2018.  
10

11 Thus, it was not until March of 2018 that the Appellant became aware of the illegal  
12 actions of the Santa Rita County Jail. In addition, in the amended complaint, the Appellant  
13 presented an exhibit from the District Court in Chicago. The Exhibit is the order issued by the  
14 court on April 21, 2015; changing his sentence. See Exhibit B, the order stating Washington's  
15 Mental Health condition and new sentence.  
16

17 These [ two] Exhibits are clear that the Appellant was not aware of his official release date  
18 [and] did not actually find out until the Monterey College of Law "RESEARCHED" A Disability  
19 Claim with Social Security in March of 2018. Therefore, the order issued by the District Court  
20 on September 10<sup>th</sup>, 2019 failed to consider the facts presented herein under Exhibits A and B.  
21  
22

23 It is the Appellant's propensity that the District Court "overlooked" the facts presented  
24 hereto. And the Appellant is therefore not appealing a frivolous issue by law. The facts  
25 presented to the District Court are debatable among jurist of reason and the Honorable Ninth  
26 Circuit should grant Forma- Pauperis.  
27  
28

Sincerely Submitted,

Eugene B. Washington  
Eugene Washington

## Eugene Washington

**CERTIFICATE OF SERVICE**

I EUGENE WASHINGTON do solemnly swear under penalty of perjury under the Law of the United States, that a true copy of this pleading was mailed to the court on this 7th day of OCTOBER, 2019.

Sincerely Submitted,

Sincerely Submitted,  
  
Eugene R. Washington

## Eugene Washington

EUGENE WASHINGTON  
 P.O. BX #1177  
 SEASIDE, CA 93955  
 PRO. SE.

EXHIBIT A

UNITED STATES DISTRICT COURT  
 FOR THE NORTHERN DISTRICT OF CALIFORNIA

EUGENE WASHINGTON,  
 PLAINTIFF,  
 VS.

CASE No. To Be Assigned  
 CRIMINAL No. 94CR-339  
 NORTHERN DISTRICT  
 OF ILLINOIS.

THE SANTA RITA COUNTY  
 JAIL AND THE BUREAU  
 OF PRISONS, RESPONDANTS.

MOTION FOR FALSE  
 IMPRISONMENT

18

19

INTRODUCTION

21

22

23 THE INSTANT MOTION ARISE  
 24 OUT OF RESEARCH WASHINGTON  
 25 REQUESTED FROM "MONTEREY COLLEGE  
 26

28

1 OF LAW. "A [CONCERNED LEGAL MIND]  
2 AT MONTEREY COLLEGE OF LAW  
3 REVIEWED "DOCUMENTS" WASHINGTON  
4 PROVIDED IN A [TWO-PART DISABILITY  
5 CLAIM] AGAINST "SOCIAL SECURITY."  
6 AFTER REVIEWING [ALL] DOCUMENTS  
7 WASHINGTON PROVIDED, THE CONCERNED  
8 LEGAL MIND COULD SEE THAT  
9 WASHINGTON WAS HELD ILLEGALLY  
10 [11-DAYS] PAST HIS [OFFICIAL] RELEASE  
11 DATE OF NOVEMBER 1<sup>ST</sup>, 2015. THIS  
12 WAS MARCH OF 2018 WHEN THIS HAPPEN.

13 , THE BOP RECORDS STATE THAT  
14 WASHINGTON HAS A "SEVERE MENTAL  
15 HEALTH CONDITION." THEREFORE, HE  
16 WAS NOT AWARE OF THIS OVERSIGHT  
17 BY THE SANTA RITA COUNTY JAIL,  
18 SEE EXHIBIT A, ORDER FROM  
19 THE DISTRICT COURT STATING  
20 WASHINGTON'S MENTAL HEALTH  
21 CONDITION. FOR WASHINGTON'S  
22 JUDGMENT FROM HIS CRIMINAL  
23 CASE, EXHIBIT B, CALCULATES THAT  
24 WASHINGTON'S [OFFICIAL] RELEASE  
25 DATE WAS NOVEMBER 1<sup>ST</sup>, 2015 AND  
26 [NOT] NOVEMBER 12, 2015, THE DAY  
27 THE SANTA RITA COUNTY JAIL RELEASED  
28 HIM.

1                   FACTS ARISING OUT OF  
2                   THIS CLAIM

3

4                   1) ON SEPTEMBER 16, 2015, WASHINGTON  
5                   WAS RELEASED FROM TERMINAL ISLAND  
6                   FEDERAL PRISON IN SAN PEDRO,  
7                   CALIFORNIA. WASHINGTON ORIGINALLY  
8                   HAD A 30 YEAR SENTENCE, SEE  
9                   EXHIBIT B, CRIMINAL JUDGMENT.  
10                  HOWEVER, DUE TO THE SENTENCING  
11                  COMMISSION PASSING A NEW-LAW  
12                  IN WHICH [ALL] DRUG CASES RECEIVED  
13                  A 2-POINT DOWNWARD DEPARTURE  
14                  OFF THEIR SENTENCES, WASHINGTON'S  
15                  SENTENCE WAS THEN REDUCED TO  
16                  292-MONTHS BY THE DISTRICT COURT  
17                  ON APRIL 21, 2015. THE REDUCTION  
18                  THEN GAVE WASHINGTON A  
19                  [NEW OUTDATE] OF NOVEMBER 1<sup>ST</sup>,  
20                  2015.

21

22                  2) THEREFORE, ON SEPTEMBER 16<sup>TH</sup>,  
23                  2015, WASHINGTON REGISTERED AT  
24                  GEO HALFWAY-HOUSE IN SAN FRANCISCO  
25                  TO COMPLETE THE REMAINDER OF HIS  
26                  SENTENCE UNTIL NOVEMBER 1<sup>ST</sup>, 2015,  
27                  AT WHICH TIME HE WAS TO GO

1 TO HIS SISTER'S HOUSE IN OAKLAND,  
2 CALIFORNIA. WHILE AT GEO HALFWAY-  
3 HOUSE, WASHINGTON WAS ASSIGNED  
4 TO A ROOM WITH AN INMATE THAT  
5 HARRASSED HIM DAILY TO MOVE. STAFF  
6 WAS AWARE OF THIS BUT DID  
7 NOTHING TO PREVENT IT FROM  
8 CONTINUING TO HAPPEN.

9  
10 3.) ON THE MORNING OF SEPTEMBER  
11 20<sup>th</sup>, 2015, WASHINGTON "FEARED"  
12 FOR HIS LIFE AND LEFT THE  
13 HALFWAY-HOUSE ON FOOT SEEKING  
14 TO PROTECT HIMSELF. AFTER  
15 WANDERING THROUGH THE STREETS  
16 OF SAN FRANCISCO FOR ABOUT  
17 2-HOURS, WASHINGTON'S SISTER,  
18 LUCILLE CUNNINGHAM, PICKED HIM  
19 UP AND TOOK HIM BACK TO THE  
20 HALFWAY-HOUSE.

21  
22 4.) STAFF THEN DIRECTED MRS.  
23 CUNNINGHAM TO TAKE WASHINGTON  
24 TO A HOSPITAL. MRS. CUNNINGHAM  
25 THEN TOOK WASHINGTON TO "HIGHLAND  
26 HOSPITAL" IN OAKLAND. WASHINGTON  
27 REMAINED AT HIGHLAND HOSPITAL  
28 FOR ABOUT 5 DAYS.

1 5.) WASHINGTON WAS THEN  
2 TRANSFERRED TO "JOHN GEORGE  
3 PSYCHIATRIC HOSPITAL" IN SAN LEANDRO.  
4 WASHINGTON REMAINED AT JOHN  
5 GEORGE PSYCHIATRIC HOSPITAL UNTIL  
6 OCTOBER 3, 2015, AT WHICH TIME  
7 THE UNITED STATES MARSHALLS  
8 TRANSPORTED WASHINGTON TO THE  
9 SANTA RITA COUNTY JAIL IN  
10 DUBLIN, CALIFORNIA, SEE EXHIBIT  
11 C, INMATE CUSTODY INFORMATION.

12 6.) WASHINGTON REMAINED AT  
13 THE SANTA RITA COUNTY JAIL  
14 UNTIL NOVEMBER 12<sup>th</sup>, 2015, WHICH  
15 WAS [11-DAYS] PAST HIS [OFFICIAL  
16 RELEASE DATE] OF NOVEMBER 1<sup>st</sup>,  
17 2015, SEE EXHIBIT D, FIND IN  
18 INMATE WASHINGTON'S RELEASE ON  
19 NOVEMBER 12<sup>th</sup>, 2015, HE THEN  
20 REPORTED TO THE PROBATION OFFICE  
21 IN OAKLAND, CALIFORNIA TO START  
22 SERVING A 5- YEAR PERIOD OF  
23 SUPERVISED RELEASE.

24  
25 7.) WASHINGTON HAS BEEN SERVING  
26 THE PERIOD OF SUPERVISED RELEASE  
27 UNDER OFFICER JUAN FLORES AT

1 THE SAN JOSE OFFICE. WASHINGTON  
2 SEES A PSYCHIATRIST ONCE A MONTH  
3 AT BEHAVIOR HEALTH CLINIC IN  
4 MARINA, CALIFORNIA UNDER DR.  
5 PEREZ. AND WASHINGTON SEES A  
6 [THERAPIST] ONCE A WEEK AT  
7 VALLEY HEALTH ASSOCIATES IN  
8 SALINAS, CALIFORNIA, A MR.  
9 TIM WORK.

10

11

## LEGAL ARGUMENT

12

13

14

15 IT IS THE [LAW] THAT GOVERNS  
16 A CLAIM OF "FALSE IMPRISONMENT,  
17 SEE TREZEVANT V. CITY OF TAMPA  
et al., 741 F.2d 336 (1984) APP.  
18 LEXIS 18863, ELEVENTH CIRCUIT (FAI-  
19 LURE TO ADEQUATELY PROTECT HIS  
20 CONSTITUTIONAL RIGHT TO LIBERTY  
21 DIRECTLY RESULTED FROM INADEQUA-  
22 CIES IN POLICY SET BY THE CITY AND  
23 COUNTY BOARD OF CRIMINAL JUSTICE).

24

25

26

27

28

IN THE INSTANT CASE, WASHINGTON  
SPENT 21-YEARS "INCARCERATED" IN  
THE FEDERAL BUREAU OF PRISONS

EXHIBIT B

(Prob12B)

**United States District Court**  
**for**  
**The Northern District of Illinois**

Judge: Honorable Robert W. Gettleman

Date: November 16, 2015

**Request for Modifying the Conditions or Term of Supervision**  
**With Consent of Offender**  
*(Probation Form 49, Waiver of Hearing is Attached)*

Offender Name:	Washington, Eugene	Case Number:	94CR00339
Sentencing Judicial Officer:	Suzanne B. Conlon		
Date of Original Sentence:	December 21, 1994		
Original Offense:	Conspiracy to Distribute Cocaine in violation of Title 21, United States Code, Section 846 Use of a Communication Facility in Felony Offense in violation of Title 21, United States Code, Section 843(b) Possession with Intent to Distribute Cocaine in violation of Title 21, United States Code, Section 841(a)(1)		
Original Sentence:	360 Months custody 60 Months supervised release		
Court Ordered Modifications:	On August 29, 2013, per Order of the Executive Committee, this matter was reassigned to Your Honor. On April 21, 2015, Mr. Washington's sentence was reduced to 292 months, pursuant to Title 18, United States Code, Section 3582(c)(2).		
Type of Supervision:	Supervised Release		
Date Supervision Began:	November 12, 2015	Date Supervision Expires:	November 11, 2020

**SUMMARY**

Mr. Washington was released from the Bureau of Prisons on November 12, 2015, after serving a 21 year custody sentence, and reported to the U.S. Probation Office in the Central District of California, where he will complete his supervision. As stated in the letter by the U.S. Probation Office in the Central District of California, Mr. Washington has severe mental health conditions, as documented by the Bureau of Prisons. During his Bureau of Prisons commitment he sustained brain trauma which led to his civil commitment within the Bureau of Prisons system.

Prob12B (*Summary*)  
U.S. Probation Office

**United States District Court**  
For the  
**Northern District of Illinois**

---

RE: Client Name: **Eugene Washington**

Pacts No: 48711

Docket No: **94CR00339**

Date: November 16, 2015

**IDENTIFYING DATA:**

**Date of Birth:** [REDACTED] 1957

**Race:** Black or African American

**Sex:** Male

**SSN#:** [REDACTED]-4903

**USM#:** 05972-424

**Residence Address:** 2420 107th Avenue  
Oakland, California 94603

**Aliases** Shariff Shabazz  
The Colonel Washington  
Sharif Shabazz  
Eugene Ray Washington

*PROB 12B (Summary)*

RE: Washington, Eugene  
Docket No: 1:94CR00339

Page 3 of 6  
PACTS#: 48711

### **U.S. Probation Officer Action:**

The 1994 Judgment and Commitment Order contains a pre-guideline sentence, and the offender does not have any special conditions. Attached is signed Waiver of Hearing to Modify Conditions of Supervised Release signed by the offender, following his release. It is requested that the Court modify the conditions to add mental health, reasonable search, and substance abuse testing. It is the opinion of the United States Probation Office in the Northern District of California that these conditions will assist them in appropriately monitoring the offender during the community based portion of his sentence.

### **PETITIONING THE COURT**

- To extend the term of supervision for [Mos] months, for a total term of [Months] months.
- To modify the conditions of supervision as follows:
  - 1). The defendant shall participate in a program for testing and treatment for drug abuse, as directed by the probation officer, until such time as the defendant is released from treatment by the probation officer. The defendant is to pay part or all of the cost of this treatment, at an amount not to exceed the cost of treatment, as deemed appropriate by the probation officer. Payments shall never exceed the cost of urinalysis or counseling. The actual co-payment shall be determined by the probation officer.
  - 2). The defendant shall participate in a mental health treatment program, as directed by the probation officer, until such time as the defendant is released from treatment by the probation officer. The defendant is to pay part or all of the cost of this treatment, at an amount not to exceed the cost of treatment, as deemed appropriate by the probation officer. Payments shall never exceed the cost of mental health counseling. The actual co-payment shall be determined by the probation officer.
  - 3). The defendant shall submit to a search of his person, residence, office, vehicle, or any property under his control. Such a search shall be conducted by a U.S. Probation Officer or any federal, state, or local law enforcement officer at any time with or without suspicion. Failure to submit to a search may be grounds for revocation; the defendant shall warn any residents that the premises may be subject to searches.

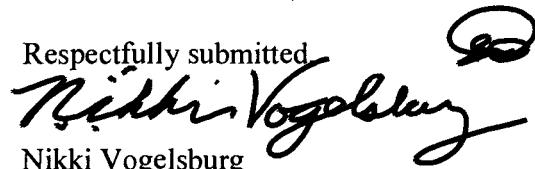
*PROB 12B (Summary)*

RE: Washington, Eugene  
Docket No: 1:94CR00339

Page 4 of 6  
PACTS#: 48711

I declare under penalty of perjury that the foregoing is true and correct.

Respectfully submitted



Nikki Vogelsburg  
U.S. Probation Officer  
Tel: 312-435-5732

Reviewed by:



Brian R. Driver  
Supervising U.S. Probation Officer  
Tel: 312-435-5836

Enclosures: Probation Form 49  
Letter from U.S. Probation in California  
Judgment in a Criminal Case

cc: Morris Pasqual  
Assistant U.S. Attorney  
U. S. Attorney's Office  
219 South Dearborn Street, 5th Floor  
Chicago, IL 60604  
312 353-5300

MiAngel C. Cody  
Attorney at Law  
Federal Defender Program  
55 E. Monroe Street, Suite 2800  
Chicago, IL 60603  
312 621-8300

Eugene Washington  
2420 107th Avenue  
Oakland, California 94603

J.D. Woods  
U.S. Probation Officer  
1301 Clay Street – Suite 220S  
Oakland, California 94612

DONNA R. ZIEGLER [142415]  
County Counsel  
By JILL P. SAZAMA [214215]  
Deputy County Counsel  
Office of the County Counsel, County of Alameda  
1221 Oak Street, Suite 450  
Oakland, California 94612  
Telephone: (510) 272-6700

Attorney for County of Alameda (erroneously also named herein  
as “Santa Rita County Jail”)

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

EUGENE WASHINGTON

Plaintiff-Appellant,

v.

COUNTY OF ALAMEDA SANTA RITA  
COUNTY JAIL,

Defendant-  
Appellee

And

BUREAU OF PRISONS,

Defendant.

App. case no. 19-16723

D.C. case no.: 18-CV-03420-LHK

**APPELLEE COUNTY OF  
ALAMEDA’S OPPOSITION TO  
APPELLANT’S MOTION FOR  
PERMISSION TO PROCEED IN  
FORMA PAUPERIS**

Defendant-Appellee County of Alameda (erroneously also named as “Santa Rita County Jail”) hereby opposes plaintiff-appellant Eugene Washington’s (hereafter “Appellant”) Motion for Permission to Proceed In Forma Pauperis (App. Dckt. No. 4) (“IFP Motion”). Because Appellant’s appeal is frivolous, and his IFP Motion does not alter that analysis, his appeal should be dismissed. 28 U.S.C. § 1915(e)(2)(B)(i) & (ii).

**I. ALLEGATIONS AND PROCEDURAL HISTORY**

Appellant, a former federal prisoner suing in propria persona, initiated the underlying suit on June 8, 2018. (Dist. Ct Civ. Dkt. 1.) His initial pleading was dismissed

with partial leave to amend, and he then filed a First Amended Complaint on October 22, 2018, alleging that the “Santa Rita County Jail” (part of the County of Alameda, hereafter the “County”), violated his 14<sup>th</sup> Amendment rights by not releasing Appellant from the County’s jail until November 12, 2015; Appellant alleges that he was supposed to have been released on November 1, 2015. (**Exhibit A** [Am. Compl.], at pp. 3-4 [¶¶ 1-2], 7-8 [¶ 11].)

On December 18, 2018, the County moved to dismiss the First Amended Complaint on three grounds: (1) the federal Bureau of Prisons had advised the County that Appellant’s release date was, in fact, November 12, 2015, and thus the County did not violate Appellant’s 14<sup>th</sup> Amendment right by releasing him on that date; (2) the First Amended Complaint did not allege sufficient facts to support a *Monell* claim, and (3) the allegations showed that the foregoing claim was barred by the statute of limitations. (**Exhibit B** [Mot. To Dismiss; Req. Jud. Not. ISO Mot. To Dismiss], *passim*.)

Appellant filed no response of any kind to the Motion to Dismiss. Indeed, Appellant filed nothing in the eight months that followed the Motion’s filing. *See* electronic docket for *Washington v. Santa Rita County Jail*, N.D. Cal. case no. 18-CV-03420 LHK, found on pacer.gov.

On August 7, 2018, the district court granted the Motion to Dismiss, ruling that no constitutional violation was shown and that Appellant’s 42 U.S.C. section 1983 claim was time-barred. (**Exhibit C.**) It entered Judgment in the County’s favor on that same day.

Less than a month later, on September 3, 2019, Appellant filed a Notice of Appeal.

This Court, on September 4, 2019, referred to the district court the issue of whether Appellant should retain his *in forma pauperis* status. On September 10, 2019, the district court issued an order revoking Appellant's status because Appellant's appeal was, in its view, frivolous. (**Exhibit D, *passim*.**)

Thereafter on October 9, 2019, this Court issued an order advising Appellant that he had 35 days to either file a motion to dismiss his appeal, or file a statement explaining why his appeal was not frivolous. If he filed the latter statement, then he must also either pay the filing fee or file a new motion to proceed in forma pauperis. That same order gave the County ten (10) days to respond to any statement that Appellant might file.

On October 11, 2019, Appellant filed the IFP Motion *without* filing a statement explaining why his appeal was not frivolous. It is not clear if Appellant had seen this Court's October 9<sup>th</sup> order prior to filing the IFP Motion. In an abundance of caution, the County submits this response to it.

Appellant's IFP Motion does not clearly explain why his appeal is *not* frivolous. On pages 9 through 11, Appellant argues that, when a judge issued an April 2015 order correcting his sentence, “[i]ndividuals in the Shu [sic] who studied Law in prison stated that the Appellant's ‘possible’ release date was November 1<sup>st</sup> of 2015,” but that “this date was tentative based on BOP official records.” Appellant claims that it “wasn’t until the Appellant submitted a plethora of documents to the Monterey College of Law in March of 2018 regarding a Social Security Disability claim that he found out about the illegal actions of the Santa Rita County Jail.” (IFP Motion, Dkt. No. 4, at pp. 9-10.) As support, he cites “exhibit B” to the IFP Motion (Dkt. No. 4, starting at p. 19), but this “exhibit”

nowhere opines that Appellant's true release date was November 1, 2015. At most, the first page of "exhibit B" states that Appellant's supervised release began on November 12, 2015. (*Ibid.*)

## II. LEGAL ARGUMENT

The district court correctly concluded that Appellant's appeal was frivolous. In 2015, the County received information from the Bureau of Prisons stating that Appellant's release date was November 12, 2015. (**Exhibit B**, at pp. 12-15.) The County reasonably relied on this statement; indeed, it had no other way to know Appellant's release date, because that date was determined by the federal Bureau of Prisons, not by the County. Even had the date been inaccurate, nothing suggested that the County was aware of any inaccuracy.

Any alleged over-detention claim was also time-barred. A 42 U.S.C. section 1983 claim accrues "when the plaintiff knows or has reason to know of the injury that is the basis of the action." *Belanus v. Clark*, 796 F.3d 1021, 1025 (9th Cir. 2015) (citations omitted). Appellant believed prior to November 2015 that his release date was, or could be, November 1, 2015. (IFP Motion at pp. 9-10.) Thus Appellant knew or had reason to know of an injury when he was not released on that date. A false imprisonment claim accrues whenever the false imprisonment "ends" – such as, when a plaintiff is released from custody, here on November 12, 2015. *Mimms v. Lewis*, No. CV 12-10769 DMG(JC), 2016 WL 5329625, at \*5 (C.D. Cal. May 3, 2016), report and recommendation adopted, No. CV 12-10769 DMG(JC), 2016 WL 5329552 (C.D. Cal. Sept. 20, 2016), aff'd, 698 F. App'x 522 (9th Cir. 2017); *Belanus v. Clark*, 796 F.3d 1021,

1025 (9th Cir. 2015). Appellant did not initiate this suit, however, until June 2018, more than two and a half years later.

Appellant's attempt to assert delayed discovery, for the first time on appeal, is unavailing. Appellant admits that he suspected in September 2015 that his release date was November 1, 2015, before he was released from jail. Yet after his release from jail, he apparently took no action to explore whether this was true, until he happened to research a disability claim in March 2018. (It is not clear how this caused him to discover the instant claim.) He offers no evidence that he was diligent in investigating his claim between November 12, 2015 and March 2018. *Roches v. Cty. of Santa Clara*, No. 17-CV-06077-BLF, 2018 WL 905940, at \*3-\*4 (N.D. Cal. Feb. 15, 2018) (rejecting delayed discovery where no evidence of any diligence in investigating claims). His delayed discovery contention appears meritless. Even if it were not, however, Appellant never raised it below. He nowhere explains this failure. He cannot offer these arguments for the first time on appeal, after remaining silent for eight months below. Any such arguments are now waived. *Saks v. Int'l Longshore & Warehouse Union-Pac. Mar. Ass'n Benefit Plans*, 637 F. App'x 282, 283–84 (9th Cir. 2015).

### **III. CONCLUSION**

For the reasons set forth above, this appeal should be dismissed. 28 U.S.C. 1915(b). The appeal is frivolous, and Appellant cannot save it by advancing arguments never raised below, which are, therefore, waived.

//

DATED: October 21, 2018

DONNA R. ZIEGLER,  
County Counsel in and for the County of  
Alameda, State of California

By /s/ Jill P. Sazama, Esq.  
JILL SAZAMA  
Deputy County Counsel

**PROOF OF SERVICE**

I, Lizette A. Figueroa, declare:

I am employed by the Office of the County Counsel, County of Alameda, in the State of California. I am over the age of 18 years and not a party to the within case. My business address is 1221 Oak Street, Suite 450, Oakland, CA 94612-4296, which is located in the city where the below-described service occurred.

I am readily familiar with the business practice at my place of business for collection and processing of correspondence for mailing with the United States Postal Service. In the ordinary course of business, outgoing correspondence is collected every day from a designated place for collection and deposited with the United States Postal Service the same day.

On October 21, 2019, following ordinary business practices, I placed a true and correct copy of each of the following documents, in fully pre-paid envelopes sealed and addressed as follows, for collection and mailing with the United States Postal Service.

**DOCUMENTS SERVED:**

**1. APPELLEE COUNTY OF ALAMEDA'S OPPOSITION TO APPELLANT'S MOTION FOR PERMISSION TO PROCEED IN FORMA PAUPERIS**

**PARTY/IES SERVED:**

Eugene Washington  
2420 107th Ave.  
Oakland, CA 94603

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct to the best of my knowledge. Executed at Oakland, California, on October 21, 2019.

*/s/ Lizette A. Figueroa*

Lizette A. Figueroa

# **EXHIBIT A**

2420 107<sup>th</sup> Ave.  
OAKLAND, CA. 94603  
PRO. SE.

UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

EUGENE WASHINGTON,  
PLAINTIFF,

Vs.

DEFENDANT,  
SANTA RITA COUNTY JAIL.

CASE No. 18-CV-03420-LHK

FILED

OCT 22 2018

SUSAN Y. SOONG  
CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE

AMENDED COMPLAINT  
PURSUANT TO, THE COURT'S ORDER  
ON AUGUST 27, 2018

19 BACKGROUND

20  
21 1) ON JUNE 8<sup>th</sup>, 2018, THE PLAINTIFF,  
22 EUGENE WASHINGTON, FILED A CIVIL  
23 ACTION IN THE UNITED STATES DISTRICT  
24 COURT FOR THE NORTHERN DISTRICT OF  
25 CALIFORNIA. UPON FILING, THE OAKLAND  
26 DIVISION "TRANSFERRED" THE COMPLAINT  
27 TO THE SAN FRANCISCO DIVISION WHO  
28 THEN "TRANSFERRED" THE COMPLAINT TO

1 THE SAN JOSE DIVISION PURSUANT TO  
2 THE PLAINTIFF RESIDING IN MONTEREY  
3 COUNTY. THIS FINAL TRANSFER TOOK  
4 PLACE ON JULY 2, 2018.

5  
6 2) THE HONORABLE LUCY H. KOH DID A  
7 PRELIMINARY REVIEW OF THE COMPLAINT  
8 AND DETERMINED THAT IN ORDER FOR  
9 THE COMPLAINT TO PROCEED FORWARD,  
10 THE PLAINTIFF NEEDED TO "AMEND" THE  
11 COMPLAINT. THE HONORABLE KOH ISSUED  
12 THE COURT ORDER ON AUGUST 27<sup>th</sup>, HOWEVER,  
13 THE PLAINTIFF WAS IN THE PROCESS  
14 OF "MOVING" AND SOMEHOW THE ORDER  
15 WAS NEVER RECEIVED. PLAINTIFF NOTIFIED  
16 THE COURT OF THE CHANGE OF ADDRESS,  
17 HOWEVER, IT WASN'T UNTIL "PERSONS"  
18 ASSISTING THE PLAINTIFF VIEWED A  
19 COMPUTER FILE AND OBSERVED THAT  
20 THE COURT HAD ISSUED AN ORDER TO  
21 AMEND. THE REVIEW TOOK PLACE ABOUT  
22 3 DAYS PRIOR TO THE "EXPIRATION"  
23 DATE ON THE ORDER, SEPTEMBER 26<sup>th</sup>.  
24

25 3) A STATUS MOTION HAD ALREADY  
26 BEEN SENT OUT. AND THEREFORE, A MOTION  
27 FOR EXTENSION OF TIME TO FILE THE  
28 AMENDED COMPLAINT WAS THEN SENT

1 OUT ON 9-23-18. FOR THE PLAINTIFF  
2 [OFFICIALLY] RECEIVED NOTICE TO AMEND  
3 "3-DAYS" PRIOR TO THE EXPIRATION  
4 DATE OF 9-26-18. THEREFORE, THE  
5 PLAINTIFF WAS NOT AWARE SOON ENOUGH  
6 IN ORDER TO AMEND THE COMPLAINT.  
7 THUS AN EXTENSION OF TIME WAS  
8 REQUESTED IN THE INTEREST OF  
9 JUSTICE.

10 4) PLAINTIFF IS NOW PRESENTING  
11 HIS "AMENDED COMPLAINT" HEREIN SO  
12 THAT THE COURT CAN PROCEED WITH  
13 THE ADJUDICATION OF THE CLAIM.

14  
15 FACTS SUPPORTING THE  
16 AMENDED COMPLAINT

17  
18 1) ON SEPTEMBER 16, 2015, THE PLAINTIFF,  
19 WASHINGTON, WAS RELEASED FROM  
20 TERMINAL ISLAND FEDERAL PRISON IN  
21 SAN PEDRO, CALIFORNIA. THE RELEASE WAS  
22 IN PURSUANT TO EXHIBIT A, COURT  
23 ORDER. EXHIBIT A STATES THAT THE  
24 PLAINTIFF'S SENTENCE WAS "MODIFIED"  
25 ON APRIL 21, 2015. THE MODIFICATION  
26 STATES THAT THE SENTENCE OF 360  
27 MONTHS WAS REDUCED TO 292 MONTHS

1) HOWEVER, EXHIBIT B, PROGRAM REVIEW  
2) FROM STAFF CASE MANAGER, STATES A  
3) PROJECTED RELEASE DATE OF JULY  
4) 29, 2020, AND EXHIBIT A [REDUCES]  
5) THE PROJECTED RELEASE DATE TO  
6) NOVEMBER 1<sup>ST</sup>, 2015.

7) 3) THE PLAINTIFF THEN FLEW FROM  
8) LOS ANGELES TO OAKLAND, CALIFORNIA.  
9) THE PLAINTIFF WAS ASSIGNED TO THE  
10) GEO HALFWAY-HOUSE IN SAN FRANCISCO  
11) TO COMPLETE THE REMAINDER OF HIS  
12) SENTENCE.

13) 4) WHILE @ GEO HALFWAY-HOUSE, THE  
14) PLAINTIFF WAS ASSIGNED TO A ROOM  
15) WITH AN INMATE WHO HARRASSED HIM  
16) DAILY TO MOVE TO ANOTHER ROOM.  
17) STAFF WAS AWARE OF THE INMATE'S  
18) ACTIONS TOWARD THE PLAINTIFF BUT  
19) DID NOTHING TO DETER THEM.

20) 5) ON THE MORNING OF SEPTEMBER  
21) 20<sup>th</sup>, 2015, THE PLAINTIFF FEARED FOR  
22) HIS [LIFE] AND LEFT THE HALFWAY-  
23) HOUSE ON FOOT SEEKING TO PROTECT  
24) HIMSELF. AFTER WANDERING THROUGH  
25) THE STREETS OF SAN FRANCISCO FOR

1 OVER 2 HOURS, THE PLAINTIFF'S  
2 SISTER, LUCILLE CUNNINGHAM, PICKED  
3 HIM UP AND TOOK HIM BACK TO THE  
4 HALFWAY-HOUSE.

5  
6 b) STAFF THEN DIRECTED MRS. CUNNINGHAM  
7 TO TAKE THE PLAINTIFF TO A HOSPITAL.  
8 SEE EXHIBIT A, SUMMARY, WHERE  
9 THE PLAINTIFF'S IMPRISONMENT LED  
10 TO A "CIVIL COMMITMENT" DUE TO  
11 A SEVERE BRAIN ACCIDENT. MRS.  
12 CUNNINGHAM TOOK THE PLAINTIFF TO  
13 HIGHLAND HOSPITAL IN OAKLAND  
14 WHERE HE STAYED APPROXIMATELY  
15 3-DAYS.

16  
17 7) THE PLAINTIFF WAS THEN TRANSFERRED  
18 TO JOHN GEORGE PSYCHIATRIC HOSPITAL  
19 IN SAN LEANDRO, CA. THE PLAINTIFF  
20 REMAINED AT JOHN GEORGE PSYCHIATRIC  
21 HOSPITAL UNTIL OCTOBER 3<sup>RD</sup> 2015, @  
22 WHICH TIME THE U.S. MARSHALLS  
23 TRANSPORTED THE PLAINTIFF TO  
24 SANTA CLARA COUNTY JAIL IN DUBLIN,  
25 CA. SEE EXHIBIT C, INMATE CUSTODY  
26 INFORMATION.

8) WHILE @ THE SANTA RITA  
1 COUNTY JAIL, THE PLAINTIFF CALLED  
2 HIS SISTER, LUCILLE CUNNINGHAM, TO  
3 FIND OUT IF GEO-HALFWAY-HOUSE HAD  
4 WROTE HIM AN "INCIDENT REPORT" ABOUT  
5 THE ALTERCATION ON SEPTEMBER 20<sup>th</sup>.  
6 MRS. CUNNINGHAM SAID SHE CONTACTED  
7 MRS. WASHINGTON, THE DIRECTOR OF  
8 GEO, AND SHE STATED "NO."

9) AROUND OCTOBER 20<sup>th</sup>, THE  
10 PLAINTIFF CALLED MRS. CUNNINGHAM  
11 REGARDING HIS RELEASE. MRS.  
12 CUNNINGHAM STATED SHE CONTACTED  
13 THE SANTA RITA COUNTY JAIL, PERSON  
14 UNKNOWN, AND THE JAIL SAID THAT  
15 [NO] RELEASE DATE HAD BEEN SET  
16 YET. AND THAT IF SHE WANTED TO  
17 KNOW A SET RELEASE DATE, SHE  
18 NEEDED TO GO TO THE WEB-SITE  
19 CALLED "FIND AN INMATE" AND THE  
20 POSTING SHOULD BE THERE. MRS.  
21 CUNNINGHAM STATED SHE CHECKED  
22 THE WEB-SITE FROM OCTOBER 23 TO  
23 OCTOBER 30<sup>th</sup> AND NO RELEASE DATE  
24 WAS SHOWING FOR THOSE 8 DAYS.  
25  
26  
27  
28

10) SINCE [NO] RELEASE DATE WAS  
1 SHOWING ON THE WEB-SITE, MRS. CUNNINGHAM  
2 THEN CONTACTED TERMINAL ISLAND  
3 PRISON. A PERSON IN R&D, A  
4 WOMAN, TOLD MRS. CUNNINGHAM  
5 THAT SANTA RITA SHOULD HAVE POSTED  
6 IT. IF [NO] DATE WAS SHOWING, TO  
7 CONTACT THE BOP OFFICE IN  
8 SACRAMENTO. MRS. CUNNINGHAM  
9 STATED AROUND NOVEMBER 3<sup>RD</sup>, SHE  
10 CONTACTED SACRAMENTO. SHE SAID  
11 SHE SPOKE TO A MR. DAN PAINTER.  
12 AND THAT MR. PAINTER STATED  
13 THAT THE SANTA RITA COUNTY JAIL  
14 HAD THAT INFORMATION. MRS. CUNNINGHAM  
15 ASKED MR. PAINTER ABOUT WHY  
16 THE BOP COULDN'T GIVE HER THE  
17 EXACT DAY. MR. PAINTER STATED  
18 THAT THE SANTA RITA COUNTY JAIL  
19 WILL EVENTUALLY POST IT ON THE  
20 WEB-SITE.  
21

22  
23 II) MRS. CUNNINGHAM SAID THAT SHE  
24 CHECKED THE WEB-SITE, ON VARIOUS  
25 DAYS LEADING UP TO NOVEMBER 11<sup>TH</sup>.  
26 THAT ON THIS DAY, NOVEMBER 11<sup>TH</sup>, THE  
27 WEB-SITE SHOWED AN OUTDATE OF  
28 NOVEMBER 12<sup>TH</sup>. MRS. CUNNINGHAM

1 SAID THAT WHEN THE OUT DATE OF  
2 NOVEMBER 12<sup>th</sup> POPPED UP, SHE  
3 COPIED THE PAGE OFF THE WEB -  
4 SITE FOR HER RECORDS. SEE EXHIBIT  
5 D, FIND AN INMATE, WHERE THE DATE  
6 SHOWING ON THE FORM IS 11-11-2015.  
7 MRS. CUNNINGHAM SAID THAT SHE  
8 THEN CONTACTED HER NEPHEW, GREG  
9 COMICK, AND ASKED HIM TO PICK  
10 THE PLAINTIFF UP THE NEXT  
11 DAY. THE VERY NEXT DAY, NOVEMBER  
12<sup>th</sup>, THE SANTA RITA COUNTY JAIL  
13 RELEASED THE PLAINTIFF.

14

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## 1 DECLARATIONS OF LAW AND FACT

### 2

### 3

4 THE PLAINTIFF WANTS THE HONORABLE  
5 COURT TO KNOW THAT THE [FACTS]  
6 HEREIN CLEARLY SHOW THAT THE  
7 SANTA RITA COUNTY JAIL "DELIBERATELY  
8 DEPRIVED" THE PLAINTIFF OF HIS  
9 CONSTITUTIONAL RIGHT TO LIBERTY.  
10 FOR CASE LAW STATES THERE MUST  
11 BE [4] DIFFERENT FORMS OF  
12 DEPRIVATIONS IN ORDER FOR A  
13 [MUNICIPALITY] TO BE HELD LIABLE  
14 UNDER 42 U.S.C. § 1983.

15  
16 (1) THE PLAINTIFF POSSESSED A  
17 CONSTITUTIONAL RIGHT OF WHICH  
18 HE OR SHE WAS DEPRIVED;

19  
20 (2) THAT THE MUNICIPALITY HAD A  
21 POLICY;

22  
23 (3) THAT THIS POLICY AMOUNTS TO  
24 DELIBERATE INDIFFERENCE TO  
25 THE PLAINTIFF'S CONSTITUTIONAL  
26 RIGHTS; AND

27  
28 (4) THAT THE POLICY IS THE MOVING

1 FORCE BEHIND THE  
2 CONSTITUTIONAL VIOLATION.

3  
4 THE PLAINTIFF SEEKS TO IMPOSE  
5 MUNICIPAL LIABILITY UNDER 42 U.S.C.  
6 §1983 FOR A VIOLATION OF  
7 CONSTITUTIONAL RIGHTS RESULTING FROM  
8 WANTON, RECKLESS, OR MALICIOUS  
9 ACTS. FOR THE VIOLATOR HEREIN, THE  
10 SANTA RITA COUNTY JAIL, DEPRIVED  
11 THE PLAINTIFF OF FEDERAL RIGHTS  
12 UNDER COLOR OF STATE LAW. FOR THE  
13 ACTION OF THE SANTA RITA COUNTY  
14 JAIL WAS NOT IN [ANY] WAY A  
15 "DISCRETIONARY FUNCTION," WHICH ARE  
16 SHIELDED FROM LIABILITY, BUT AN  
17 INTRINSIC FUNCTION OF THE JAIL  
18 ITSELF. AND THE "PLAINTIFF POSSESSED  
19 A CONSTITUTIONAL RIGHT OF WHICH  
20 HE OR SHE WAS DEPRIVED." THE  
21 FIRST PRONG OF MUNICIPALITY LIABILITY.

22  
23 PLAINTIFF HAD BEEN IN FEDERAL  
24 CUSTODY FOR 21 YEARS. PLAINTIFF HAD  
25 A 30-YEAR SENTENCE GIVEN BY THE  
26 COURT. THE SENTENCING COMMISSION  
27 PASSED A LAW STATING [ALL] DRUG  
28 CASES GET A TWO-POINT DEPARTURE.

1 ON APRIL 21, 2015, THE PLAINTIFF'S  
2 SENTENCE WAS REDUCED BY 5 YEARS  
3 AND 8 MONTHS, FOR A NEW MODIFIED  
4 SENTENCE OF 292 MONTHS. THE  
5 PLAINTIFF'S RELEASE DATE OF  
6 7-29-2020 WAS REDUCED TO NOVEMBER  
7 29-2014. HOWEVER, THE SENTENCING  
8 COMMISSION'S 2 POINT REDUCTION  
9 EFFECTUATED ON NOVEMBER 1<sup>st</sup>, 2015  
10 AND [NOT] NOVEMBER 1<sup>st</sup>, 2014. SO THE  
11 PLAINTIFF HAD TO WAIT AN ENTIRE  
12 YEAR BEFORE HE COULD BE RELEASED  
13 FROM CUSTODY.

14  
15 THE PLAINTIFF THEREFORE HAD A  
16 A "LIBERTY INTEREST" IN BEING  
17 RELEASED ACCORDING TO STATUTE. FOR  
18 THE BOP, WHO WAS HOLDING THE  
19 PLAINTIFF IN CUSTODY, FOLLOWS  
20 THE STATUTORY SECTION OF 18 U.S.C.  
21 § 3624 @ THE TIME A PRISONER IS  
22 TO BE RELEASED. HOWEVER, THE PLAINTIFF  
23 WAS IN THE CUSTODY OF THE SANTA  
24 RITA COUNTY JAIL, WHICH USES A  
25 DIFFERENT STATUTORY SECTION ACCORDING  
26 TO STATE STANDARDS.

27  
28 FOR IT WAS THE SUPREME COURT

1 THAT STATED ONE OF OUR BASIC RIGHTS  
2 IS TO BE FREE FROM RESTRAINT AFTER  
3 SERVING A DEBT TO SOCIETY. AND THE  
4 FEDERAL CONSTITUTION GUARANTEES  
5 THAT RIGHT TO LIBERTY IN MORE  
6 THAN ONE PLACE. A 21- YEAR SENTENCE  
7 IS OVER TWO DECADES, OF CONFINEMENT.  
8 A VERY LONG TIME! SO I PARAPHRASE  
9 THE SUPREME COURT WHEN THEY  
10 SAID, "WHEN A MAN CAN TASTE FREEDOM  
11 WITH HIS TONGUE, SEE FREEDOM WITH  
12 HIS EYES AND SMELL FREEDOM WITH  
13 HIS NOSE AND TOUCH FREEDOM WITH  
14 HIS HANDS, " OUR SYSTEM OF  
15 GOVERNMENT SHOULD "NEVER DENY A  
16 MAN THAT RIGHT.

17  
18 THE SANTA RITA COUNTY JAIL  
19 DEPRIVED THE PLAINTIFF TO HIS  
20 CONSTITUTIONAL RIGHT TO LIBERTY,  
21 WHICH IS SECURED IN PART BY THE  
22 14<sup>TH</sup> AMENDMENT'S LIBERTY INTEREST.

23  
24 THE SECOND PRONG OF MUNICIPAL  
25 LIABILITY REFERS TO THE "POLICY THE  
26 MUNICIPALITY HAD IN PLACE TO ENSURE  
27 THAT LIABILITY DOESN'T OCCUR. AS A  
28 CITY JAIL, THE FACILITY HAS A CONTRACT

1 WITH THE BOP TO [HOLD] THEIR PRISONERS  
2 FOR A LIMITED TIME. SEE 18 U.S.C.  
3 §§ 4002, 3624 (c). THERE ARE INMATES  
4 SERVING SHORT SENTENCES IN . . .  
5 AND LOCAL JAILS . . . IN THE INSTANT  
6 CASE, THE SANTA RITA COUNTY JAIL  
7 MAINTAINS COMPUTER FILES THAT LIST  
8 ALL INMATES CURRENTLY SERVING  
9 TIME IN JAIL. THOSE SERVING TIME  
10 BY STATE COURT ORDER AND THOSE  
11 SERVING TIME BY CONTRACT. THE LIST  
12 OF INMATES IS MAINTAINED AND  
13 UPDATED BY THE JAIL WARDEN AND  
14 CLERKS DAILY.

15 IT IS PRESUMED THAT THE BOP  
16 PROVIDED SANTA RITA WITH A COPY  
17 OF THE PLAINTIFF'S "OFFICIAL" RELEASE  
18 DATE, AND THE SANTA RITA COUNTY  
19 JAIL APPLIED THEIR [POLICY] USED  
20 TO VERIFY THE PLAINTIFF'S OFFICIAL  
21 RELEASE DATE.

22  
23 FURTHERMORE, THE THIRD PRONG  
24 OF MUNICIPAL LIABILITY IS " THAT  
25 THIS POLICY AMOUNTS TO DELIBERATE  
26 INDIFFERENCE OF THE PLAINTIFF'S  
27 CONSTITUTIONAL RIGHTS. " FOR THE  
28 LEGAL DEFINITION OF "DELIBERATE

1 "INDIFFERENCE" IS THE CONSCIOUS  
2 OR RECKLESS DISREGARD OF THE  
3 CONSEQUENCES OF ONE'S ACTS OR  
4 OMISSIONS. IT ENTAILS SOMETHING  
5 MORE THAN NEGLIGENCE, BUT IS  
6 SATISFIED BY SOMETHING LESS THAN  
7 ACTS OR OMISSIONS FOR THE VERY  
8 PURPOSE OF CAUSING HARM OR  
9 WITH KNOWLEDGE THAT HARM WILL  
10 RESULT.

11 FOR DELIBERATE INDIFFERENCE IS  
12 DEFINED AS REQUIRING (1) AN  
13 "AWARENESS OF FACTS FROM WHICH  
14 THE INFERENCE COULD BE DRAWN THAT  
15 A SUBSTANTIAL RISK OF SERIOUS  
16 HARM EXISTS" AND (2) THE ACTUAL  
17 "DRAWING OF THE INFERENCE." ELLIOT  
18 V. JONES, 2009 U.S. DIST. LEXIS 9125  
19 (N.D. Fla. Sept. 1 2009).

20  
21 AND IN THE PEREMPTORY, THE  
22 FINAL DEPRIVATION REFERS TO:  
23 "THAT POLICY IS THE MOVING FORCE  
24 BEHIND THE CONSTITUTIONAL VIOLATION  
25 THE FOURTH PRONG OF MUNICIPALITY  
26 LIABILITY."

1 CONCLUSION  
2

3 THE PLAINTIFF HAS PRESENTED  
4 TO THE COURT [FACTS] THAT CLEARLY  
5 SHOW HOW SANTA RITA COUNTY  
6 JAIL DELIBERATELY DEPRIVED HIM  
7 OF HIS CONSTITUTIONAL RIGHT TO  
8 LIBERTY. THE PLAINTIFF IS REQUESTING  
9 THE COURT TO HOLD THEM LIABLE  
10 AND REWARD THE PLAINTIFF IN THE  
11 INTEREST OF JUSTICE.

12  
13 RESPECTFULLY SUBMITTED,  
14

15 Eugene R. Washington  
16  
17  
18  
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1 CERTIFICATE OF SERVICE  
2  
3  
4

5 I, EUGENE WASHINGTON, THE  
6 PLAINTIFF, DO SOLEMNLY SWEAR UNDER  
7 PENALTY OF PERJURY UNDER THE  
8 LAWS OF THE UNITED STATES THAT  
9 THE FOREGOING AMENDED PLEADING  
10 WAS MAILED THIS 12<sup>th</sup> DAY OF  
11 OCTOBER, IN THE YEAR OF OUR LORD,  
12 2018 TO THE DISTRICT COURT, SAN  
JOSE DIVISION.

13  
14 SINCERELY,  
15  
16

17 Eugene R. Washington  
18 EUGENE R. WASHINGTON  
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(Prob12B)

**United States District Court**  
**for**  
**The Northern District of Illinois**

Judge: Honorable Robert W. Gettleman

Date: November 16, 2015

**Request for Modifying the Conditions or Term of Supervision**  
**With Consent of Offender**  
*(Probation Form 49, Waiver of Hearing is Attached)*

Offender Name:	Washington, Eugene	Case Number:	94CR00339
Sentencing Judicial Officer:	Suzanne B. Conlon		
Date of Original Sentence:	December 21, 1994		
Original Offense:	Conspiracy to Distribute Cocaine in violation of Title 21, United States Code, Section 846 Use of a Communication Facility in Felony Offense in violation of Title 21, United States Code, Section 843(b) Possession with Intent to Distribute Cocaine in violation of Title 21, United States Code, Section 841(a)(1)		
Original Sentence:	360 Months custody 60 Months supervised release		
Court Ordered Modifications:	On August 29, 2013, per Order of the Executive Committee, this matter was reassigned to Your Honor. On April 21, 2015, Mr. Washington's sentence was reduced to 292 months, pursuant to Title 18, United States Code, Section 3582(c)(2).		
Type of Supervision:	Supervised Release		
Date Supervision Began:	November 12, 2015	Date Supervision Expires:	November 11, 2020

**SUMMARY**

Mr. Washington was released from the Bureau of Prisons on November 12, 2015, after serving a 21 year custody sentence, and reported to the U.S. Probation Office in the Central District of California, where he will complete his supervision. As stated in the letter by the U.S. Probation Office in the Central District of California, Mr. Washington has severe mental health conditions, as documented by the Bureau of Prisons. During his Bureau of Prisons commitment he sustained brain trauma which led to his civil commitment within the Bureau of Prisons system.

EXHIBIT B

## INMATE SKILLS DEVELOPMENT PLAN

Current Program Review: 04-13-2010



Name: WASHINGTON, EUGENE  
 Register Number: 05972-424  
 Security/Custody: LOW/IN  
 Projected Release: 07-29-2020 / GCT REL

Institution:

LOMPOC FCI  
 3600 GUARD ROAD  
 LOMPOC, CA 93436  
 805-736-4154  
 805-736-1292

Telephone:  
 Fax

Next Review Date: 04-17-2010 Driver's License/State: /  
 Next Custody Review Date: 01-27-2011 FBI Number: 263068FA8  
 Age/DOB/Sex: 53 / [REDACTED] -1957 / M DCDC Number:  
 CIM Status: Y INS Number:  
 If yes, reconciled: Y PDID Number:  
 Other IDs:

Release Residence: [POC] Release Employer: [Name]  
 [Address]  
 Telephone: VAIL, AZ 85641 Contact [POC]  
 [Phone] Telephone: [Phone]

Primary Emergency Contact: Marion Washington, Mother Secondary Emergency [POC]  
 Contact [Address]  
 Telephone: Seaside, CA 93955 Telephone: [Phone]  
 Telephone: 831-394-3950

## Mentor Information:

Sentence/Supervision: 360 Months / 5 Years - SRA

Sentence Began	Time Served/Jail Credit/Inoperative Time	Days GCT/EGT/SGT	Days FSGT/WSGT/DGCT	Parole Status
12-21-1994	183 Months 23 Days / 212 Days / 0 Days	1393 / 789 / 0	0 / 0 / 21	Hearing Date: Hearing Type: Last USPC Action: NOT ELIGIBLE

Detainers: N  
 Pending Charges: None known

Financial Responsibility	Imposed	Balance	Case No./Court of Jurisdiction	Assgn/Schedule Payment
ASSESSMENT	\$650.00	\$0.00	94 CR 339-1	FINANC RESP-COMPLETED

Financial Plan  
 Active: N Comm Dep-6 mos: \$696.25 Cost of Incarceration  
 Financial Plan Date: [Date] Commissary Fee:  
 Balance: \$35.74 Waived based on  
 inability to pay

## Payments

Commensurate: [Y,N]  
 Missed: [Y,N]

Judicial Recommendations: Tex / N/A / N/A

Special Conditions of Supervision: See Judgement

USPO Sentencing: Richard L. Tracy, CUSPO USPO Relocation: [POC]  
 55 East Monroe Street [Address]  
 Chicago, IL 60603 Telephone: [Phone]  
 Telephone: 312-435-5700  
 Fax: 312-408-5045

EXHIBIT C[Quick Links](#)[Search ACGOV](#)[Skip County Header](#)[ONLINE SERVICES](#)[About Inmate Locator](#)**INMATE LOCATOR****SHERIFF'S OFFICE**[Frequently Asked Questions](#) | [Sheriff's Office](#) | [New Query](#)**Inmate Detail Custody Information**

Name	PFN	Sex	Race	Occupation	DOB	Eye Color	Hair Color	Height	Weight
WASHINGTON, EUGENE	ULZ044	M	BLACK		■■■/1957	BROWN	BLACK	6'00"	200

Arrest			Arrest Charge(s)	
Date	Time	City	Code	Description
10/03/2015	02:00 PM	OAKLAND	US 183583(A F	
Event				
5330584			05972-424	
Booking				
Date	Time	Booking Type		
10/03/2015	07:54 PM	ENROUTE		
Holding Facility				
SANTA RITA JAIL			BOOKING	
Docket	Bail Type	Bail Amount	Next Hearing(s)	
05972424	NOT CODED	NO BAIL		

[View Aliases](#)Alameda County © 2015 • All Rights Reserved • [Legal / Disclaimers](#) • [Accessibility](#)

EXHIBIT D

11/11/2015      Inmate Locator      A-Z Topics      Site Map      FOIA

Search bop.gov

Home    About Us    Inmates    Locations    Jobs    Business    Resources    Contact Us

**Find an inmate.**  
Locate the whereabouts of a federal inmate incarcerated from 1982 to the present.

First Eugene	Middle	Last Washington	Race Black	Age 58	Sex Male
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2 Results for search **Eugene Washington**, Race: Black, Age: 58, Sex: Male       Clear Form     

Name	Register #	Age	Race	Sex	Release Date	Location
EUGENE WASHINGTON	24667-016	58	Black	Male	01/24/2006	RELEASED
EUGENE WASHINGTON	05972-424	58	Black	Male	11/12/2015	Sacramento RRM

About the inmate locator & record availability

About Us	Inmates	Locations	Jobs	Business	Resources	Resources For
About Our Agency	<a href="#">Find an Inmate</a>	<a href="#">List of our Facilities</a>	<a href="#">Life at the BOP</a>	<a href="#">Acquisitions</a>	<a href="#">Policy &amp; Forms</a>	<a href="#">Victims &amp; Witnesses</a>
About Our Facilities	<a href="#">Communications</a>	<a href="#">Map of our Locations</a>	<a href="#">Explore Opportunities</a>	<a href="#">Solicitations &amp; Awards</a>	<a href="#">News Articles</a>	<a href="#">Employees</a>
Historical Information	<a href="#">Custody &amp; Care</a>	<a href="#">Search for a Facility</a>	<a href="#">Current Openings</a>	<a href="#">Reentry Contracting</a>	<a href="#">Publications</a>	<a href="#">Ex-Offenders</a>
Statistics	<a href="#">Visiting</a>		<a href="#">Our Hiring Process</a>		<a href="#">Research &amp; Reports</a>	<a href="#">Media Reps</a>
	<a href="#">Voice a Concern</a>					

# **EXHIBIT B**

1 DONNA R. ZIEGLER [142415]  
2 County Counsel  
3 By JILL P. SAZAMA [214215]  
4 Deputy County Counsel  
5 Office of the County Counsel, County of Alameda  
6 1221 Oak Street, Suite 450  
7 Oakland, California 94612  
8 Telephone: (510) 272-6700

9 Attorney for County of Alameda (erroneously named herein  
10 as "Santa Rita County Jail")

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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

EUGENE WASHINGTON

Case No.: 18-CV-03420-LHK

Plaintiff,

v.

SANTA RITA COUNTY JAIL, et al.,

Defendants.

**COUNTY OF ALAMEDA'S NOTICE  
OF MOTION AND MOTION TO  
DISMISS AMENDED COMPLAINT;  
MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT  
THEREOF**

**Date: Thursday, April 11, 2019  
Time: 1:30 p.m.  
Courtroom 8, 4<sup>th</sup> Floor**

**TO PLAINTIFF IN PROPIA PERSONA:**

**PLEASE TAKE NOTICE THAT** on April 11, 2019, at 1:30 p.m. or as soon thereafter  
as the matter may be heard, in Courtroom 8 on the 4<sup>th</sup> Floor of the above-captioned court, located  
at San Jose Courthouse, 280 South 1<sup>st</sup> Street in San Jose, defendant COUNTY OF ALAMEDA  
(sued erroneously herein as "Santa Rita County Jail") will and hereby does move to dismiss  
plaintiff's Amended Complaint filed in this case on October 22, 2018, pursuant to Federal Rule  
of Civil Procedure 12(b)(6), on the grounds that the Amended Complaint fails to allege sufficient  
facts to support a cause of action, and is barred by the applicable statute of limitations.

25   ///

26   ///

This motion is based on this notice, the memorandum of points and authorities in support thereof below, the accompanying request for judicial notice, all exhibits to the foregoing, and such other material on file with the court herein or of which judicial notice can be taken.

DATED: December 18, 2018

DONNA R. ZIEGLER,

County Counsel in and for the County of  
Alameda, State of California

By /s/ Jill P. Sazama, Esq.

JILL SAZAMA

**Deputy County Counsel**

Attorneys for County of Alameda  
and for Sheriff Gregory J. Ahern

## **MEMORANDUM OF POINTS AND AUTHORITIES**

## I. ALLEGATIONS AND JUDICIALLY NOTICEABLE FACTS

Plaintiff, a former federal prisoner suing in propria persona, brings this 42 U.S.C. section 1983 action for violation of his 14<sup>th</sup> Amendment rights, against the “Santa Rita County Jail” (part of the County of Alameda), because he asserts that he was entitled to be released from the County’s jail on November 1, 2015, but he was not released until November 12, 2015. (Am. Compl., at pp. 2-3 [¶¶ 1-2], 7-8 [¶ 11].) The County, however, was instructed at the time by the federal Bureau of Prisons that Mr. Washington’s release date was, in fact, November 12, 2015, and thus Mr. Washington’s release on that date was proper. (Req. Jud. Not. at ¶ *passim*; Exhibit A.) Primarily for that reason, but also because of other defects in plaintiff’s Amended Complaint, the County hereby moves to dismiss this case.

Plaintiff alleges that on September 16, 2015 he was “released from Terminal Island Federal Prison,” and flew from Los Angeles to Oakland, and was assigned to the GEO Halfway House in San Francisco. (Am. Compl., at pp. 3:19 – 4:13.) While at this halfway house, he had a problem with his roommate and so left the halfway house, and went wandering in San Francisco for two hours. (*Id.* at pp. 4-5.) His sister picked him up thereafter and took him back to the halfway house. (*Id.* at p. 5.) The halfway house staff then allegedly told her to take him to a hospital, and so she took him to Highland Hospital in Oakland, where he stayed for 3 days. (*Id.* at p. 5.) Thereafter he was transferred to John George Psychiatric Pavilion where he stayed until October 3<sup>rd</sup>, at which time he was transported by U.S. Marshals to Santa Rita County Jail. (*Ibid.*)

Plaintiff then contacted his sister regarding his release date, and she in turn contacted the jail, who advised her that no release date had been set, and that she should check the jail's website (the Alameda County Inmate Locator database, *see* Exhibit C to Amended Complaint, *compare with* <[https://www.acgov.org/sheriff\\_app/](https://www.acgov.org/sheriff_app/)> ) for a release date. (Am. Compl. at p. 6, and Exhibit C thereto). She did check that website from October 23 to October 30<sup>th</sup>, 2015, but no release date was shown. (*Id.* at p. 6.) Plaintiff's sister then contacted Terminal Island Prison, who advised her to contact the Federal Bureau of Prisons in Sacramento, which she did around

1 November 3<sup>rd</sup>, 2015. (*Id.* at p. 7.) She was advised by someone at the Federal Bureau of Prisons  
 2 that the jail would “eventually post” the release date for plaintiff on the website. (*Ibid.*)  
 3 Plaintiff’s sister then checked the website on various days up to November 11, 2015, when the  
 4 website showed a release date of November 12<sup>th</sup> for plaintiff. (*Ibid.*) Plaintiff was then released  
 5 on November 12<sup>th</sup>. (*Id.* at p. 8.)

6 Meanwhile, the Alameda County Sheriff’s Office received a letter plus attachments from  
 7 the Federal Bureau of Prisons in Sacramento (all attached as **Exhibit A** to the Request for  
 8 Judicial Notice). These stated that Mr. Washington’s release date was November 12, 2015.  
 9 (**Exhibit A**; Req. Jud. Not., *passim*.)

10 Plaintiff claims his 14<sup>th</sup> Amendment liberty interest “in being released according to  
 11 statute” was violated by the County. (Am. Compl., at pp. 11-12.) Plaintiff “presume[s] that the  
 12 BOP provided Santa Rita with a copy of the plaintiff’s ‘official’ release date” and that the “Santa  
 13 Rita County Jail applied their [policy] used to verify the plaintiff’s official release date.” (*Id.* at  
 14 p. 13.)

15 **II. LEGAL STANDARD**

16 Federal Rule of Civil Procedure 12(b)(6) permits a defendant to move to dismiss a  
 17 complaint where that complaint fails to allege sufficient facts to support a cause of action. Under  
 18 a 12(b)(6) motion, factual allegations are accepted as true, but legal conclusions are not. *Ashcroft*  
 19 *v. Iqbal*, 556 U.S. 662, 678 (2009). Judicially noticeable facts and documents referenced in the  
 20 complaint may also be considered, and will be accepted as true over factual allegations. *Baublitz*  
 21 *v. W. Valley Coll. Chancellor's Office*, No. C-97-3799 VRW, 1998 WL 345396, at \*1 (N.D. Cal.  
 22 June 16, 1998); *United States v. Ritchie*, 342 F.3d 903, 908 (9th Cir. 2003). In addition, “mere  
 23 conclusory statements[ ] do not suffice,” (*ibid.*), and “only a complaint that states a plausible  
 24 claim for relief survives . . . .” *Id.* at 679.

25 ///

26 ///

27 ///

1       **III.    LEGAL ARGUMENT**

2           **A.    The Federal Bureau of Prisons Advised the County that Plaintiff's Official**  
3           **Release Date was November 12, 2015**

4           “Liberty is protected from unlawful state deprivation by the due process clause of the  
5          Fourteenth Amendment.” *Haygood v. Younger*, 769 F.2d 1350, 1354 (9th Cir. 1985). In order to  
6          impose liability based on a policy of deliberate inaction, the “plaintiff must establish: (1) that he  
7          possessed a constitutional right of which he was deprived; (2) that the municipality had a policy;  
8          (3) that this policy ‘amounts to deliberate indifference’ to the plaintiff’s constitutional right; and  
9          (4) that the policy [was] the ‘moving force behind the constitutional violation.’ ” *Berry v. Baca*,  
10       379 F.3d 764, 767 (9th Cir. 2004), citing *Oviatt v. Pearce*, 954 F.2d 1470, 1474 (9<sup>th</sup> Cir. 1992)  
11       (quoting *City of Canton*, 489 U.S. at 389-91, 109 S.Ct. 1197).

12       Plaintiff admits that he was a federal prisoner being held in the County’s custody, and  
13       that the Federal Bureau of Prisons would determine his “official” release date. (Am. Compl., at  
14       p. 13 [“It is presumed that the BOP provided Santa Rita with a copy of the plaintiff’s ‘official’  
15       release date.”].) He contends that his official release date was November 1, 2015, however  
16       judicially noticeable facts show that, as far as the County knew, plaintiff’s official release date  
17       was November 12, 2015. (**Exhibit A**) The Federal Bureau of Prisons sent the County a letter on  
18       November 10, 2015 advising the the County that Mr. Washington’s official release date was  
19       November 12, 2015. (**Exhibit A**). It was reasonable for the County to rely on the Federal  
20       Bureau of Prisons’ statement regarding Mr. Washington’s official release date. It is not disputed  
21       that the County released Mr. Washington on November 12, 2015. (Am. Comp., at pp. 7-8.)  
22       Because the County released Mr. Washington on the date that it was told by the Bureau of  
23       Prisons was his release date, they did not violate Mr. Washington’s liberty right under the Due  
24       Process Clause.

25           **B.    Insufficient Facts Alleged to Support 42 U.S.C. § 1983 Liability**

26       Even if the foregoing were not the case, plaintiff’s claims also fail to allege sufficient  
27       facts to support liability on the part of the County under 42 U.S.C. section 1983. To state a claim  
28

1 for violation of federal civil rights pursuant to 42 U.S.C. section 1983, a plaintiff must allege  
 2 facts to show that each defendant proximately caused a constitutional violation. *Gibson v. United*  
 3 *States*, 781 F.2d 1334, 1338 (9th Cir. 1986); *see also Pistor v. Garcia*, 791 F.3d 1104, 1114 (9th  
 4 Cir. 2015); *Long v. Cty. of Los Angeles*, 442 F.3d 1178, 1185 (9th Cir. 2006). The defendant's  
 5 conduct must be more than merely negligent; “[t]he Due Process Clause is not implicated by a  
 6 state official's negligent act causing unintended loss or injury to life, liberty, or property.” *See*  
 7 *Daniels v. Williams*, 474 U.S. 327 (1986); *Davidson v. Cannon*, 474 U.S. 344 (1986); *Pantell v.*  
 8 *Antioch Unified Sch. Dist.*, No. C 14-1381 PJH, 2014 WL 4808798, at \*6 (N.D. Cal. Sept. 26,  
 9 2014). A local governmental unit is also not liable merely for employing a tortfeasor, i.e. for  
 10 respondeat superior liability; rather such an entity is liable only where its official actions, i.e. its  
 11 customs, policies or practices are a moving force behind the violation of plaintiff's constitutional  
 12 rights. *See Bd. of Cty. Comm'r's v. Brown*, 520 U.S. 397, 403 (1997); *Collins v. City of Harker*  
 13 *Heights*, 503 U.S. 115, 121 (1992); *City of Canton, Ohio v. Harris*, 489 U.S. 378, 385 (1989);  
 14 *Monell v. Dep't of Soc. Servs.*, 436 U.S. 658, 691 (1978); *Fogel v. Collins*, 531 F.3d 824, 834  
 15 (9th Cir. 2008). Furthermore, allegations of entity liability must be factually specific; conclusory  
 16 recitations of the elements of *Monell* liability, or statements that the entity has a custom, policy  
 17 or practice of committing wrongs of the type alleged elsewhere in the complaint, are insufficient  
 18 to support such liability. *AE ex rel. Hernandez v. County of Tulare*, 666 F.3d 631, 637 (9th Cir.  
 19 2012) (hereafter *AE*); *Bagley v. City of Sunnyvale*, No. 16-CV-02250-LHK, 2017 WL 344998, at  
 20 \*13-\*15 (N.D. Cal. Jan. 24, 2017).

21 Plaintiff claims that he was entitled to be released on November 1, 2015, but was not  
 22 released until November 12, 2015. Even if the Bureau of Prison's letter stating Mr.  
 23 Washington's official release date was November 12, 2015, was inaccurate, there are no facts  
 24 alleged to suggest that the County's reliance on that letter was unreasonable, or even negligent,  
 25 let alone reckless or intentional; any such allegations to the contrary are purely conclusory. (Am.  
 26 Compl. at pp. 13-14.)

27 ///

28

1 Plaintiff also does not state factually what County police, practice or custom caused a  
 2 violation of his rights. He alleges that the County violated the “policy [it] had in place to ensure  
 3 that liability doesn’t occur,” (*id.* at p. 12:24-27), and that the County had a policy to “verify”  
 4 plaintiff’s official release date, which it (presumably) violated. (*Id.* at p. 13:18-21.) Such  
 5 allegations are not factually specific enough to state a *Monell* claim. In addition, the policies that  
 6 plaintiff posits are actually *consistent* with (rather than contrary to) the Constitution: a policy to  
 7 avoid liability or a policy to verify plaintiff’s official release date. Such policies, assuming that  
 8 they existed, would not violate the Constitution and thus could not support a *Monell* claim.

9 **C. Plaintiff’s Claim is Barred by the Statute of Limitations**

10 Finally, even if the allegations and judicially noticeable facts did support a Due Process  
 11 violation, plaintiff failed to file his complaint within the applicable 2-year statute of limitations.  
 12 42 U.S.C. section 1983 does not contain its own limitations period; rather it borrows the forum  
 13 state’s statute of limitations for personal injury actions. *See Wilson v. Garcia*, 471 U.S. 261,  
 14 279-80 (1985), *partially superseded by statute as stated in Jones v. R.R. Donnelley & Sons Co.*,  
 15 541 U.S. 369, 377-78 (2004). In California, a two-year statute of limitations applies to personal  
 16 injury actions, and thus it is also the statute of limitations for section 1983 claims. *See* Code Civ.  
 17 Proc. § 335.1; *Maldonado v. Harris*, 370 F.3d 945, 954 (9th Cir. 2004); *see e.g.*, *Jackson v.*  
 18 *Barnes*, 794 F.3d 755, 761 (9th Cir. 2014) (applying a two-year statute of limitations to a § 1983  
 19 claim accruing in California). Plaintiff asserts that he should have been released from jail on  
 20 November 1, 2015, but he was not actually released until November 12, 2015. Plaintiff did not  
 21 bring this suit until June 8, 2018, well over two years after either November 1 or November 12,  
 22 2015. As such, plaintiff’s suit is time-barred.

23 **IV. CONCLUSION**

24 For the reasons set forth above, defendant County of Alameda hereby requests that the  
 25 Amended Complaint against it be dismissed.

26 ///

27 ///

1 DATED: December 18, 2018

2 DONNA R. ZIEGLER,  
3 County Counsel in and for the County of  
4 Alameda, State of California

5 By /s/ Jill P. Sazama, Esq.  
6 JILL SAZAMA  
7 Deputy County Counsel  
8 Attorneys for County of Alameda  
9 and for Sheriff Gregory J. Ahern

1 DONNA R. ZIEGLER [142415]  
2 County Counsel  
3 By JILL P. SAZAMA [214215]  
4 Deputy County Counsel  
5 Office of the County Counsel, County of Alameda  
6 1221 Oak Street, Suite 450  
7 Oakland, California 94612  
8 Telephone: (510) 272-6700  
9 Attorney for County of Alameda (erroneously named herein  
10 as "Santa Rita County Jail")

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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

EUGENE WASHINGTON,

Plaintiff,

v.

SANTA RITA COUNTY JAIL, et al.

Defendants.

Case No.: 18-CV-03420-LHK

**COUNTY OF ALAMEDA'S  
REQUEST FOR JUDICIAL NOTICE  
IN SUPPORT OF MOTION TO  
DISMISS AMENDED COMPLAINT;**

**Date: Thursday, April 11, 2019**

**Time: 1:30 p.m.**

**Courtroom 8, 4<sup>th</sup> Floor**

Defendant COUNTY OF ALAMEDA (sued erroneously herein as "Santa Rita County  
Jail") will and hereby does request judicial notice be taken of the following pursuant to Federal  
Rule of Evidence 201(b):

1. The letter and attachments sent by the federal Bureau of Prisons to the County of  
Alameda's Santa Rita Jail regarding the release date of plaintiff Eugene Washington, true and  
correct copies of which are attached hereto as **Exhibit A**. Fed. R. Evid 201(b)(2); *United States  
v. Ritchie*, 342 F.3d 903, 908 (9th Cir. 2003) (judicial notice may be taken of a document  
referred to in plaintiff's complaint); Am. Compl., at p. 13:15-19 ["It is presumed that the BOP  
provided Santa Rita with a copy of the plaintiff's 'official' release date."]; *Laboy v. Colvin*, 631  
Fed.Appx. 468, 468 n. 1 (9<sup>th</sup> Cir. 2016) (taking judicial notice of an SSA letter).

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1 DATED: December 18, 2018

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DONNA R. ZIEGLER,  
County Counsel in and for the County of  
Alameda, State of California

By /s/ Jill P. Sazama, Esq.  
JILL SAZAMA  
Deputy County Counsel  
Attorneys for County of Alameda

# EXHIBIT A



U.S. Department of Justice

Federal Bureau of Prisons  
Residential Reentry Office

Federal Building & U.S. Courthouse  
501 I Street, Suite 9-400  
Sacramento, CA 95814  
Tel (916) 930-2010  
Fax (916) 930-2008

Date: 11-10-15

Facility: Santa Rita Jail

SUBJECT: TRANSMITTAL OF  Sentence Computation  
 Release Documents

Name: Washington, Eugene Reg. No. 05972-424  
Jail No. 112-044

Release Date: 11-12-15 Release Method: GCR REL

Sentence Monitoring Computation Data  
Upon receipt, distribute as marked below:

Copy 1 - Jail/CCC File  
 Give copy to Inmate

Notice of Release and Arrival - *Please send filled out copy before*  
At time of release, please complete this form. Copy and distribute as  
marked below:  
*no release*

Copy 1 - Give to inmate  
 Copy 2 - Return to BOP, Sacramento  
 Copy 3 - Send to U.S. Probation Office in Sentencing District ORDA  
 Copy 4 - Send to U.S. Probation Office in Relocation District CONI

Supervision Release Plan - *Please send filled out copy to me before*  
To be completed and sent 90 days prior to release, or as requested.  
*release*

Return to BOP, Sacramento  
 Give copy to inmate  
 Send to U.S. Probation Office

Please complete and return the Supervision Release Plan as soon as  
possible

Installment Schedule Agreement for Unpaid Fines  
As soon as possible, have form signed and dated by the inmate and CCC  
staff. Copy and distribute as marked below:

Return original signed form to Bureau of Prisons  
 Give copy to inmate  
 Give copy to Supervising U. S. Probation Officer

N/A

Notice of Release of Inmate with Criminal Fine Judgment

At time of release, complete form and distribute as marked below.

Send original to Bureau of Prisons  
 Give copy to inmate

N/A

Release of Immigration Detainee With Supervision to Follow

Please complete Block #14 and return a xerox copy to our office. Give copies to U.S. Immigration & Customs Enforcement.

If any agency files a detainer, please fill in the detainer section of the Notice of Release and Arrival with the address on the detainer.  
Please fax a copy of any detainers to our office at 916-930-2008  
 Has a current none detainer.

Thanks for your assistance,

*Ethel Sours*

Ethel Sours  
Legal Instruments Examiner

BP-S522.051  
SEP 99

## SUPERVISION RELEASE PLAN

CDPRM

U.S. DEPARTMENT OF JUSTICE

FEDERAL BUREAU OF PRISONS

Institution Name: Alameda County Sheriff's Office  
 Address: Santa Rita Jail  
 5325 Broder Blvd.  
 Dublin, CA 94568  
 Phone Number: 925-551-6500

Date  
11-10-2015

Federal Bureau of Prisons  
 U.S. Department of Justice  
 Washington, D.C.

Gentlemen:

Under the law I become eligible for RELEASE  Supervised Release  
 Parole  Mandatory Release on 11-12-2015  
 (date)

In accordance therewith I submit the following as my plans for the service of the remainder of my sentence under supervision. Pursuant to my sentence, I must report in person to the United States Probation Office within 72 hours of my release.

(Type or Print)

RESIDENCE  
 Address

With Whom

Relationship

Telephone Number (if available)

EMPLOYER  
 Name

Address

Telephone Number (if available)

Nature of Business

## TO BE COMPLETED BY INSTITUTION STAFF

SENTENCING DISTRICT	Northern District of Illinois
RELOCATION DISTRICT	Northern District of California
DETAINERS	
SPECIAL CONDITIONS	5 Years Supervised Release - Please see attached Special Conditions of Supervision.
REMARKS	Report to U.S. Probation Office within 72 hours of release.

Printed Name and Signature of Inmate  WASHINGTON, Eugene	Register No. 05972-424 ULZ044
Witness (Case Manager) Printed Name and Signature	Date

This form is to be completed by all individuals subject to supervision by the U.S. Probation Office. This includes Supervised Release, Parole, Mandatory Release, Mandatory Release to Special Parole, Special Parole and Court Designated Parole.

Record Copy - Institution; Copy - U.S. Probation Office; Copy - Inmate (This form may be replicated via w/c)

BP-S714.056

## NOTICE OF RELEASE AND ARRIVAL

CDFRM

APR 03  
U.S. DEPARTMENT OF JUSTICE

FEDERAL BUREAU OF PRISONS

Inmate Name: <b>WASHINGTON, Eugene</b>	Reg No.: 05972-424 FBI No.: 263068FAS (Misc No.):	Institution/Address: Alameda Co. Sheriff's Dept Santa Rita County Jail 5325 Broder Blvd. Dublin, CA 94568
Release Date: 11-12-2015	Release Method: Good Conduct Time Release	
Public Law Days 0	Supervision to follow release: (if yes, advise inmate of obligation to report for supervision) <input checked="" type="checkbox"/> YES ( 5 years    months) <input type="checkbox"/> NO	

RELEASED TO: (Check one)	
<input checked="" type="checkbox"/> Community Transportation arranged to: <b>OAKLAND, CA</b> (City and State) Method of transportation: <b>USC</b> (Name of common carrier or other) Date of expected arrival at residence: <b>11/25</b>	<input type="checkbox"/> Detainer Detaining Agency: _____ Agency Address: _____

SUPERVISION JURISDICTION(s)	
Sentencing District Chief/Director: <b>Jeanne G. Walsh</b> Supervision Agency: <b>U.S. Probation Office</b> District: <b>Northern Illinois</b> Address: <b>55 East Monroe Street</b> Room 1500 <b>Chicago, IL 60603</b> Phone: <b>(312) 435-5700</b>	District of Residence (for relocation cases) Chief/Director: <b>Yador J. Marrell</b> Supervision Agency: <b>U.S. Probation Office</b> District: <b>Northern California</b> Address: <b>450 Golden Gate Ave.</b> <b>Suite 17-5884</b> <b>F.O. Box 36057</b> <b>San Francisco, CA 94102</b> Phone: <b>(415) 436-7540</b>
Address of proposed residence: <b>OAKLAND, CA</b>	

DNA STATUS		
DNA sample required: <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO	If YES date sample taken <b>05-13-2011</b>	DNA Number <b>TCP00530</b>

Obligation to Report for Supervision: If you were sentenced to, or otherwise required to serve, a term of supervision, this term begins immediately upon your discharge from imprisonment, and you are directed to report for supervision within 72 hours. If you are released from a detaining authority, you shall report for supervision within 72 hours after your release by the detaining authority. If you cannot report for supervision in the district of your approved residence within 72 hours, you must report to the nearest U.S. Probation Office for instruction. Failure to obey the reporting requirements described above will constitute a violation of release conditions.

Inmate's Signature (file copy only)  
*Eugene R. Washington*

Distribution: Inmate Central File (Section 5), Inmate, Chief Supervision Officer in Sentencing District, Chief Supervision Officer in District of Residence, and U.S. Parole Commission (if applicable)  
(This form may be replicated via WP)

This form replaces BP-S714 dtd FEB 02

# **EXHIBIT C**

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

EUGENE WASHINGTON,  
Plaintiff,  
v.  
THE SANTA RITA COUNTY JAIL,  
Defendant.

Case No. 18-CV-03420-LHK

**ORDER GRANTING MOTION TO  
DISMISS WITH PREJUDICE**

Re: Dkt. No. 21

Plaintiff, a former federal prisoner proceeding *pro se*, filed a civil rights complaint under 42 U.S.C. § 1983, and claimed he was detained in Santa Rita County Jail (“SRC Jail”) for 11 days past his release date. Defendant SRC Jail moved to dismiss (“Motion”), and argued that plaintiff’s claim was time-barred and that judicially noticeable facts showed plaintiff failed to state a claim. *See* Dkt. No. 21. Defendant also asked the Court to take judicial notice of three documents in support of the motion to dismiss (“RJN”). *See* Dkt. No. 21-01. Plaintiff did not file an opposition, and defendant did not file a reply.

For the reasons stated below, the Court **GRANTS** defendant’s RJN and Motion.

1 **I. BACKGROUND**

2 **A. Plaintiff's Injury**

3 On December 21, 1994, plaintiff was sentenced to 360 months in custody. Am. Compl.,  
4 Ex. A. On April 21, 2015, plaintiff's sentence was reduced to 292 months. *Id.* Plaintiff was  
5 released from federal prison on September 16, 2015, and was assigned to live in a "halfway  
6 house" in San Francisco. *Id.* After plaintiff suffered some undisclosed injury, he was taken to a  
7 hospital in Oakland and then a hospital in San Leandro. *Id.* at 5. Upon plaintiff's release from the  
8 San Leandro hospital, U.S. Marshals transported plaintiff to SRC Jail. *Id.*

9 Plaintiff alleged that he should have been released from SRC Jail on November 1, 2015,  
10 because his sentence reduction took effect on that date. *Id.* at 11. SRC Jail did not release  
11 plaintiff until November 12, 2015. *Id.* at 8. Plaintiff alleged that SRC Jail "maintains computer  
12 files that list all inmates currently serving time," and implied that his correct release date should  
13 have been in those files. *Id.* at 13.

14 Defendant represented that the Federal Bureau of Prisons ("BOP") sent "a letter plus  
15 attachments" to SRC Jail, which "stated that [plaintiff's] release date was November 12, 2015."  
16 Mot. at 2; *see also* RJN & Exs.

17 **B. Proceedings in this Court**

18 Plaintiff filed the instant civil rights suit on May 29, 2018. Dkt. No. 1-1 (stating the Court  
19 received plaintiff's complaint on that date). Prisoners are entitled to benefit from the "mailbox  
20 rule," under which a complaint is deemed filed from the moment the prisoner hands the complaint  
21 to prison authorities for mailing. *See Douglas v. Noelle*, 567 F.3d 1103, 1109 (9th Cir. 2009)  
22 (applying the mailbox rule to prisoner's § 1983 complaint) (relying on *Houston v. Lack*, 487 U.S.  
23 266 (1988)). However, plaintiff is no longer "an 'inmate confined in an institution,'" and so "is  
24 not entitled to the benefit of the prison mailbox rule." *McCloskey v. Borders*, No. 18-55179, 2018  
25 WL 2221884, at \*1 (9th Cir. Apr. 20, 2018) (citation omitted).

26 The Court dismissed plaintiff's complaint with leave to amend and explained that plaintiff  
27 could not pursue claims against SRC Jail unless he identified some policy of the jail that led to his  
28

1 injury. *See* Dkt. No. 10. The Court also dismissed the BOP from suit, because “there is no  
2 indication that the federal government has waived sovereign immunity.” *Id.* at 2. Finally, the  
3 Court outlined the procedures plaintiff must follow in order to bring a claim against the BOP  
4 under the Federal Tort Claims Act. *Id.* at 3-4.

5 Plaintiff filed an amended complaint (“Amended Complaint”) and explained that SRC Jail  
6 must have some policy of verifying an inmate’s release date. *See* Am. Compl. at 13. The  
7 Amended Complaint did not seek to bring a Federal Tort Claims Act claim against the BOP. *See*  
8 *generally, id.*

9 The Court found that, liberally construed, plaintiff had stated a cognizable claim that his  
10 constitutional rights were violated. *See* Dkt. No. 17 at 2. On November 14, 2018, the Court  
11 ordered defendant to respond to plaintiff’s Amended Complaint. *See id.*

12 Defendant moved to dismiss and sought judicial notice of three documents in support of  
13 that motion. *See* Mot, RJN. Plaintiff did not file an opposition, and defendant did not file a reply.  
14 *See generally, Dkt.*

## 15 **II. REQUEST FOR JUDICIAL NOTICE**

16 Defendant sought judicial notice of three documents submitted in support of the motion to  
17 dismiss: a letter from the BOP to SRC Jail, which identified plaintiff’s release date as “11-12-15”;  
18 a document entitled “Supervision Release Plan” from the BOP, which likewise identified  
19 plaintiff’s release date as “11-12-2015”; and a “Notice of Release and Arrival” from the BOP,  
20 which again identified plaintiff’s release date as “11-12-2015” (together, “BOP Documents”).  
21 RJN, Ex. A at 1-4.

22 Defendant argued that judicial notice is proper because plaintiff referred to the BOP  
23 Documents in his Amended Complaint. *See* RJN at 1. Although courts generally are confined to  
24 the pleadings on a Rule 12(c) motion, “[a] court may, however, consider certain materials –  
25 documents attached to the complaint, documents incorporated by reference in the complaint, or  
26 matters of judicial notice – without converting the motion to dismiss into a motion for summary  
27 judgment.” *United States v. Ritchie*, 342 F.3d 903, 908 (9th Cir. 2003); *In re Silicon Graphics*

1 *Inc. Sec. Litig.*, 183 F.3d 970, 986 (9th Cir. 1999).

2 Here, as justification for holding SRC Jail liable, plaintiff stated, “It is presumed that the  
3 BOP provided [SRC Jail] with a copy of the plaintiff’s ‘official’ release date. And the [SRC] Jail  
4 applied their policy used to verify the plaintiff’s official release date.” Am. Compl. at 13. The  
5 Amended Complaint thereby referred to any document in which the BOP informed defendant of  
6 plaintiff’s release date, and so judicial notice of the BOP Documents is proper.

7 Defendant argued, in the alternative, that the BOP Documents are within a class of  
8 documents of which courts routinely take judicial notice. *See* RJN at 1 (citing *Laboy v. Colvin*,  
9 631 F. App’x 468, 469 n.1 (9th Cir. 2016) (taking judicial notice of a letter from a federal agency)).  
10 Defendant appears to be correct; the Ninth Circuit has recognized that “courts routinely take  
11 judicial notice of letters published by the government.” *Smith v. Los Angeles Unified Sch. Dist.*,  
12 830 F.3d 843, 851 n.10 (9th Cir. 2016). Accordingly, the Court may properly take judicial notice  
13 of the fact that the BOP Documents identified plaintiff’s release date as November 12, 2015. *See*  
14 *Cal. Sportfishing Prot. All. v. Shiloh Grp., LLC*, 268 F. Supp. 3d 1029, 1038 (N.D. Cal. 2017)  
15 (taking judicial notice of a letter from a public agency for the existence of that letter’s contents).<sup>1</sup>  
16 The Court does not, however, assume that the BOP calculated plaintiff’s release date correctly.  
17 *See id.* (distinguishing between taking judicial notice of the existence of a document’s contents,  
18 and of the truth of the document’s contents).

19 Accordingly, the RJN is **GRANTED**.

20 **III. LEGAL STANDARD**

21 Dismissal for failure to state a claim is a ruling on a question of law. *See Parks Sch. of*  
22 *Bus., Inc., v. Symington*, 51 F.3d 1480, 1483 (9th Cir. 1995). “The issue is not whether plaintiff

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23  
24 <sup>1</sup> *See also Foronda v. Wells Fargo Home Mortg., Inc.*, No. 14-CV-03513-LHK, 2014 WL  
25 6706815, at \*3 (N.D. Cal. Nov. 26, 2014) (taking judicial notice of, *inter alia*, a letter from the  
26 Office of Thrift Supervision because “[t]hese documents are true and correct copies of government  
27 records and public documents not subject to reasonable dispute”); *Smith v. Cty. of Santa Cruz*, No.  
“obviously [a] public record[]”).

1 will ultimately prevail, but whether he is entitled to offer evidence to support his claim.” *Usher v.*  
 2 *City of L.A.*, 828 F.2d 556, 561 (9th Cir. 1987). “While a complaint attacked by a Rule 12(b)(6)  
 3 motion to dismiss does not need detailed factual allegations, . . . a plaintiff’s obligation to provide  
 4 the ‘grounds of his ‘entitle[ment] to relief’ requires more than labels and conclusions, and a  
 5 formulaic recitation of the elements of a cause of action will not do . . . . Factual allegations must  
 6 be enough to raise a right to relief above the speculative level.” *Bell Atl. Corp. v. Twombly*, 550  
 7 U.S. 544, 555 (2007) (citations omitted).

8 A motion to dismiss should be granted if the complaint does not proffer “enough facts to  
 9 state a claim for relief that is plausible on its face.” *Id.* at 570. A dismissal under Rule 12(b)(6) is  
 10 generally proper only where there “is no cognizable legal theory or an absence of sufficient facts  
 11 alleged to support a cognizable legal theory.” *Navarro v. Block*, 250 F.3d 729, 732 (9th Cir. 2001)  
 12 (citing *Balistreri v. Pacifica Police Dep’t*, 901 F.2d 696, 699 (9th Cir. 1988)). The court is not  
 13 “required to accept as true allegations that are merely conclusory, unwarranted deductions of fact,  
 14 or unreasonable inferences.” *Sprewell v. Golden St. Warriors*, 266 F.3d 979, 988 (9th Cir. 2001).

#### 15 **IV. DISCUSSION**

16 Defendant argued that plaintiff’s claim should be dismissed because the BOP Documents  
 17 reveal plaintiff has failed to state a claim. In the alternative, defendant argued that plaintiff’s  
 18 claim is time-barred. The Court will address each argument in turn.

##### 19 **A. Plaintiff fails to state a claim.**

20 Plaintiff alleged that defendant “‘deliberately deprived’ the plaintiff of his constitutional  
 21 right to liberty.” Am. Compl. at 9.

22 “A prisoner’s petition for damages for excessive custody can be a legitimate § 1983  
 23 claim.” *Haygood v. Younger*, 769 F.2d 1350, 1359 (9th Cir. 1985) (en banc). However, “[i]t is not  
 24 every erroneous administration of state law that results in a denial of due process.” *Id.* at 1357. A  
 25 wrongful detention can ripen into a due process violation if “‘it was or should have been known  
 26 [by the defendant] that the [plaintiff] was entitled to release.’” *Gant v. Cty. of L.A.*, 772 F.3d 608,  
 27 620 (9th Cir. 2014) (quotation omitted; alterations in original). “Cases holding that an

1 incarceration violated the Due Process Clause because defendants should have known the plaintiff  
2 was entitled to release fit at least one of two categories: (1) the circumstances indicated to the  
3 defendants that further investigation was warranted, or (2) the defendants denied the plaintiff  
4 access to the courts for an extended period of time.” *Id.* at 621 (quotation omitted).

5 Here, the BOP Documents reveal that defendants did not know plaintiff’s correct release  
6 date was November 1, 2015. The BOP Documents, incorporated by reference into the Amended  
7 Complaint, show that the BOP told SRC Jail at least three separate times that plaintiff’s release  
8 date was November 12, 2015. *See* RJN, Ex. A at 1-4. Plaintiff did not explain how a local agency  
9 such as SRC Jail would know, or should have known, that a federal agency’s calculation of a  
10 federal prison sentence was erroneous. *See generally*, Am. Compl. (failing to explain how SRC  
11 Jail would acquire knowledge of BOP’s internal calculations); *see also id.* at 3 (stating plaintiff  
12 was released from federal prison), 11 (“the BOP, who was holding the plaintiff in custody”). In  
13 fact, plaintiff argued that the BOP would have told SRC Jail plaintiff’s release date, *see id.* at 13  
14 (explaining that SRC Jail contracts to hold BOP prisoners for short sentences, and “presume[ing]  
15 that the BOP provided [SRC Jail] with a copy of the plaintiff’s ‘official’ release date”), which  
16 suggests that plaintiff agrees SRC Jail should rely on the date provided by the BOP. Accordingly,  
17 plaintiff has not shown that defendant knew or should have known that plaintiff’s correct release  
18 date was November 1, 2015.

19 Moreover, it does not appear that the instant case falls into the category of cases where  
20 “the circumstances indicated to the defendants that further investigation was warranted,” because  
21 there is no indication that plaintiff drew the attention of SRC Jail officials to any possible error in  
22 computing plaintiff’s sentence. *Cf. Alexander v. Perrill*, 916 F.2d 1392, 1394-99 (9th Cir. 1990)  
23 (holding federal prison officials liable for over-detention where plaintiff brought over-detention to  
24 the officials’ attention, requested an investigation, and the officials took no action). Plaintiff  
25 explained that his sister checked SRC Jail’s website in the latter half of October, 2015, to discover  
26 plaintiff’s release date. *See* Am. Compl. at 6-8. Plaintiff does not allege that his sister believed  
27 plaintiff’s projected release date to be erroneous or that she notified the jail of any potential error.

1       See generally, *id.* Nor does plaintiff describe any actions he took to dispute his release date or  
2       alert SRC Jail of an error. See generally, *id.*

3               Finally, there are no facts that suggest the instant matter falls into the category of cases  
4       where the defendant denied the plaintiff access to the courts. As noted above, plaintiff did not  
5       describe any efforts he made to bring the miscalculation to the attention of SRC Jail officers, much  
6       less any efforts taken to challenge this miscalculation in the courts.

7               Because it is clear from the Amended Complaint and the judicially noticeable BOP  
8       Documents that SRC Jail did not know that plaintiff's sentence had been miscalculated, plaintiff  
9       has failed to state a claim for deprivation of due process.

10               **B. Plaintiff's claim is time-barred.**

11               As an alternative basis to dismiss plaintiff's claim, defendant argued that plaintiff's claim  
12       is time-barred. See Mot. at 5. The Court finds that defendant is correct.

13               Section 1983 "borrows" a statute of limitations from the forum state's statute of limitations  
14       for personal injury actions. See *Wilson v. Garcia*, 471 U.S. 261, 278-80 (1985). Here, that statute  
15       of limitations is two years. See Cal. Code Civ. Proc. § 335.1. "Although state law determines the  
16       length of the limitations period, 'the determination of the point at which the limitations period  
17       begins to run is governed solely by federal law.'" *McCoy v. S.F., City & Cty.*, 14 F.3d 28, 29 (9th  
18       Cir. 1994) (citation omitted). "[T]he touchstone for determining the commencement of the  
19       limitations period is notice: 'a cause of action generally accrues when a plaintiff knows or has  
20       reason to know of the injury which is the basis of his action.'" *Stanley v. Trustees of Cal. State*  
21       *Univ.*, 433 F.3d 1129, 1136 (9th Cir. 2006).

22               Here, the Amended Complaint revealed that plaintiff was aware of his injury on or before  
23       November 1, 2015. Plaintiff stated that the reduction in his sentence was calculated on April 21,  
24       2015," but was "effectuated on November 1, 2015 . . . so the plaintiff had to wait an entire year  
25       before he could be released from custody." Am. Compl. at 11. Plaintiff did not explain why he  
26       waited a year. Nonetheless, the fact that plaintiff was "waiting" to be released on November 1,  
27       2015, shows that he knew that was his proper release date. Plaintiff thus knew of his injury on

1 November 1, 2015, when he was not released.

2 Because plaintiff's cause of action accrued on November 1, 2015, the two-year statute of  
3 limitations for his due process claim began to run on that date. To bring a timely claim, plaintiff  
4 had to file a civil rights suit by November 1, 2017, two years from November 1, 2015. However,  
5 as noted above, plaintiff did not file the instant civil rights suit until May 29, 2018 – nearly seven  
6 months too late.

7 Plaintiff's delayed filing is not cured by tolling of the statute of limitations. Plaintiff did  
8 not respond to defendant's Motion, and so raised no grounds on which the statute of limitations  
9 could have been tolled. Upon independent review, the Court concludes that plaintiff is not entitled  
10 to equitable tolling because, as noted above, he knew of his injury on November 1, 2015. *See*  
11 *Johnson v. Henderson*, 314 F.3d 409, 414 (9th Cir. 2002) (Equitable tolling focuses on “whether  
12 there was excusable delay by the plaintiff: if a reasonable plaintiff would not have known of the  
13 existence of a possible claim within the limitations period, then equitable tolling will serve to  
14 extend the statute of limitations for filing suit until the plaintiff can gather what information he  
15 needs.”). And although California tolls the statute of limitations for persons “imprisoned on a  
16 criminal charge, or in execution under the sentence of a criminal court for a term of less than for  
17 life,” Cal. Civ. Proc. Code § 352.1(a), this does not cure plaintiff's tardiness. Plaintiff was only  
18 imprisoned for eleven days of the limitations period, and so tolling under California's procedure  
19 would render plaintiff's civil rights suit six-and-one-half months late, rather than seven months  
20 late. This still falls outside the statute of limitations.

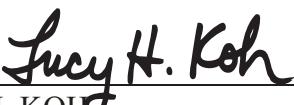
21 Accordingly, plaintiff's claim is time-barred and must be dismissed.

22 **V. CONCLUSION**

23 For the foregoing reasons, the Court **GRANTS** defendant's RJN and Motion. This action  
24 is **DISMISSED** with prejudice.

25 **IT IS SO ORDERED.**

26 DATED: August 7, 2019

  
27 LUCY H. KOH  
UNITED STATES DISTRICT JUDGE  
28

# **EXHIBIT D**

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

EUGENE WASHINGTON,  
Plaintiff,  
v.  
SANTA RITA COUNTY JAIL and  
FEDERAL BUREAU OF PRISONS,  
Defendants.

Case No. 18-CV-03420-LHK

**ORDER REVOKING PLAINTIFF'S IN  
FORMA PAUPERIS STATUS IN  
RESPONSE TO NINTH CIRCUIT  
REFERRAL**

Before the Court is the Ninth Circuit's referral to this Court for a determination of whether to revoke Plaintiff's in forma pauperis status because Plaintiff's appeal is frivolous. 9th Cir. Case No. 19-16723, Dkt. No. 2. Having considered the relevant law and the record in this case, the Court CERTIFIES that Plaintiff's appeal is frivolous and REVOKES Plaintiff's in forma pauperis status. Below, the Court discusses why Plaintiff's appeal is frivolous.

**I. THE COMPLAINT WAS DISMISSED WITH PREJUDICE IN PART AND WITH  
LEAVE TO AMEND IN PART**

On June 8, 2018, Plaintiff, a former federal prisoner proceeding *pro se*, filed a complaint against Santa Rita County Jail ("SRC Jail") and the Federal Bureau of Prisons ("BOP") because Plaintiff was unconstitutionally incarcerated for eleven days past his official release date of

1 November 1, 2015. ECF No. 1 at 1. Pursuant to 28 U.S.C. § 1915A(a), the Court screened the  
 2 complaint. ECF No. 10 at 1. The Court liberally construed the complaint as is required for *pro se*  
 3 pleadings, *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1988), and determined  
 4 that Plaintiff's complaint asserted a *Bivens* claim against the BOP and a claim brought under 42  
 5 U.S.C. § 1983 against SRC Jail, ECF No. 10 at 2-3.

6 As to the *Bivens* claim against the BOP, the Court concluded that the BOP was an  
 7 improper defendant because the *Bivens* remedy exists solely against individual federal officials,  
 8 *Kreines v. United States*, 33 F.3d 1105, 1109 (9th Cir. 1994), and not against the United States  
 9 government or a federal agency, *FDIC v. Meyer*, 510 U.S. 471, 484-86 (1994). Thus, the Court  
 10 dismissed the BOP from the instant suit with prejudice.

11 As to the § 1983 claim against SRC Jail, the Court determined that Plaintiff failed to allege  
 12 facts to support a claim against SRC Jail. To impose municipal liability under § 1983 for a local  
 13 governmental entity's violation of constitutional rights resulting from governmental inaction or  
 14 omission, a plaintiff must show: (1) that the plaintiff possessed a constitutional right of which he  
 15 or she was deprived; (2) that the municipality had a policy; (3) that this policy amounts to  
 16 deliberate indifference to the plaintiff's constitutional rights; and (4) that the policy is the moving  
 17 force behind the constitutional violation. *Plumeau v. School Dist. #40 Cty. of Yamhill*, 130 F.3d  
 18 432, 438 (9th Cir. 1997). Plaintiff's complaint failed to allege facts in support of any of the above  
 19 requirements necessary to impose municipal liability under § 1983 on SRC Jail. However, the  
 20 Court gave leave to amend should Plaintiff be able to allege sufficient facts to cure the deficiency.  
 21 ECF No. 10 at 3.

## 22 **II. THE AMENDED COMPLAINT WAS DISMISSED WITH PREJUDICE**

23 On October 16, 2018, Plaintiff filed an amended complaint ("AC") in which the only  
 24 Defendant was SRC Jail. ECF No. 16 at 1. On December 18, 2018, SRC Jail filed a motion to  
 25 dismiss the AC. ECF No. 21. Plaintiff failed to file an opposition, and SRJ Jail did not file a reply.  
 26 On August 7, 2019, the Court granted Plaintiff's motion to dismiss the AC with prejudice. ECF  
 27

1 No. 24. The Court gave two separate, independently dispositive reasons for which dismissal of the  
 2 AC with prejudice was proper. First, the Court determined that Plaintiff failed to adequately state a  
 3 claim against SRC Jail. *Id.* at 5-6. Second, assuming Plaintiff even properly asserted a claim  
 4 against SRC Jail, such a claim would be time barred. Below, the Court addresses each reason in  
 5 turn.

6 First, the Court determined that Plaintiff failed to adequately state a claim. The AC alleged  
 7 that SRC Jail “deliberately deprived” the plaintiff of his constitutional right to liberty.” AC at 9.  
 8 Indeed, a “prisoner’s petition for damages for excessive custody can be a legitimate § 1983  
 9 claim.” *Haygood v. Younger*, 769 F.2d 1350, 1359 (9th Cir. 1985) (en banc). For such a claim to  
 10 ripen into a litigable constitutional violation, however, “it was or should have been known [by the  
 11 defendant] that the [plaintiff] was entitled to release.”” *Gant v. Cty. of L.A.*, 772 F.3d 608, 620 (9th  
 12 Cir. 2014). Here, the Court held that SRC Jail, a local agency, did not know federal prisoner  
 13 Plaintiff’s correct release date of November 1, 2015, because the BOP provided SRC Jail with the  
 14 wrong release date. Specifically, the BOP sent SRC Jail a letter stating that Plaintiff’s release date  
 15 was November 12, 2015. ECF No. 21-1, Ex. A. Attached to the BOP’s letter were two documents  
 16 called a “Supervision Release Plan” and “Notice of Release and Arrival,” both of which  
 17 incorrectly listed Plaintiff’s release date as November 12, 2015. *Id.* Moreover, Plaintiff did not  
 18 allege how SRC Jail *should have known* that Plaintiff was entitled to release on November 1,  
 19 2015. Consequently, because SRC Jail lacked knowledge of Plaintiff’s correct release date,  
 20 Plaintiff could not state an excessive custody claim against SRC Jail.

21 Second, the Court determined that Plaintiff’s claim was time barred. § 1983 “borrows” a  
 22 statute of limitations from the forum state’s statute of limitations for personal injury actions.  
 23 *Wilson v. Garcia*, 471 U.S. 261, 278-80 (1985). In California, that statute of limitations is two  
 24 years. Cal. Code Civ. Proc. § 335.1. The statute of limitations begins to run when a “plaintiff  
 25 knows or has some reason to know of the injury which is the basis of his action.” *Stanley v.*  
 26 *Trustees v. Cal. State Univ.*, 433 F.3d 1129, 1136 (9th Cir. 2006). The AC indicated that Plaintiff  
 27

1 was aware of Plaintiff's release date. For instance, Plaintiff alleged that his sentence reduction was  
 2 calculated on April 21, 2015, but was "effectuated on November 1, 2015 . . . so the plaintiff had to  
 3 wait an entire year before he could be released from custody." AC at 11. The fact that Plaintiff  
 4 admitted he had to "wait . . . before he could be released" demonstrates that Plaintiff knew that his  
 5 proper release date was November 1, 2015. *Id.* Thus, Plaintiff knew of his injury by November 1,  
 6 2015. Therefore, Plaintiff needed to have filed suit by November 1, 2017, two years from  
 7 November 1, 2015. However, Plaintiff did not file the instant suit until May 29, 2018, nearly seven  
 8 months too late.

9 The Court noted that Plaintiff's failure to bring a claim within the statute of limitations  
 10 could not be cured by tolling the statute of limitations, and as Plaintiff did not respond to SRC  
 11 Jail's motion to dismiss, Plaintiff has not raised grounds on which the statute of limitations could  
 12 have been tolled. The Court also found that Plaintiff was not eligible for equitable tolling. The  
 13 Ninth Circuit held that equitable tolling focuses on "whether there was excusable delay by the  
 14 plaintiff: if a reasonable plaintiff would not have known of the existence of a possible claim within  
 15 the limitations period, then equitable tolling will serve to extend the statute of limitations for filing  
 16 suit until the plaintiff can gather what information he needs." *Johnson v. Henderson*, 314 F.3d  
 17 409, 414 (9th Cir. 2002). The burden is on the litigant seeking equitable tolling to establish "(1)"  
 18 that he has been pursuing his rights diligently, and (2) that some extraordinary circumstance stood  
 19 in his way." *Holland v. Florida*, 560 U.S. 631, 655 (2010). Here, Plaintiff waited approximately  
 20 two and a half years to bring suit with no indication that Plaintiff did not know that he had a  
 21 potential claim or that he had been diligently pursuing his rights. Thus, Plaintiff's claim could not  
 22 be equitably tolled, and Plaintiff's claim is still time barred.

### 23 III. PLAINTIFF'S APPEAL IS FRIVOLOUS

24 As noted above, the Ninth Circuit has referred this Court to determine whether to revoke  
 25 Plaintiff's in forma pauperis status because Plaintiff's appeal is frivolous. 9th Cir. Case No. 19-  
 26 16723, Dkt. No. 2. "A claim is legally frivolous when it lacks an arguable basis either in law or in  
 27

1 fact.” *Williams v. Vincent*, 2012 WL 1232112, at \*1 (E.D. Cal. Apr. 12, 2012) (citing *Neitzke v. Williams*, 490 U.S. 319, 325 (1989)). The Court will first discuss the claim against the BOP, then the claim against SRC Jail.

4 Plaintiff’s original complaint asserted a *Bivens* claim against the BOP. ECF No. 10 at 2-3.  
5 However, there is no arguable basis in law for such a claim. The United States Supreme Court has  
6 determined that the United States government or a federal agency are not subject to *Bivens* claims.  
7 *FDIC*, 510 U.S. at 484-86. Thus, Plaintiff’s claim against the BOP was frivolous.

8 Plaintiff’s original and amended complaints asserted a § 1983 claim against SRC Jail. The  
9 Court dismissed the original complaint’s § 1983 claim against SRC Jail because Plaintiff’s  
10 complaint failed to allege facts in support of the requirements necessary to impose municipal  
11 liability under § 1983 on SRC Jail. Furthermore, the Court dismissed the AC’s § 1983 claim  
12 against SRC Jail for two reasons. First, SRC Jail, a local agency, did not know Plaintiff’s correct  
13 release date of November 1, 2015, because the BOP provided SRC Jail with the wrong release  
14 date. Second, Plaintiff’s § 1983 claim against SRC Jail was time barred. Thus, Plaintiff’s § 1983  
15 claim against SRC Jail lacked an arguable basis either in law or in fact.

16 In sum, the Court concludes that Plaintiff’s claims in the original and first amended  
17 complaints lack an arguable basis in law or fact and fail to present a non-frivolous issue for appeal.  
18 Thus, Plaintiff’s appeal is not taken in good faith and is frivolous.

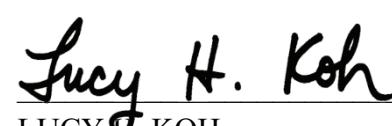
19 Accordingly, the Court hereby CERTIFIES that Plaintiff’s appeal is frivolous pursuant to  
20 28 U.S.C. § 1915(a)(3), and REVOKES Plaintiff’s in forma pauperis status. Any further request to  
21 proceed on appeal in forma pauperis should be directed, on motion, to the Ninth Circuit in  
22 accordance with Federal Rule of Appellate Procedure 24.

23 The Clerk shall notify the Ninth Circuit of the Court’s instant order.

24  
25 **IT IS SO ORDERED.**

United States District Court  
Northern District of California

1 Dated: September 10, 2019  
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LUCY H. KOH  
United States District Judge