No. 21-___

In the Supreme Court of the United States

LUIS LORENZO VARGAS,

Petitioner,

v.

CITY OF LOS ANGELES, THE LOS ANGELES POLICE DEPARTMENT, DETECTIVE MONICA QUIJANO, and DETECTIVE SCOTT SMITH,

Respondents.

On Petition for a Writ of Certiorari to the U.S. Court of Appeals for the Ninth Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

This Court decided in *Allen v. McCurry*, 449 U.S. 90, 96-98 (1980), that an extant state criminal judgment retains preclusive effect in a later lawsuit under 42 U.S.C. § 1983 to the extent it would be afforded preclusive effect under state law. Conversely, *Heck v. Humphrey*, 512 U.S. 477, 487-87 (1994), holds that once a state criminal judgment has been vacated, a former prisoner may challenge the constitutionality of that now-defunct judgment using § 1983. See also *McDonough v. Smith*, 139 S. Ct. 2149, 2157-58 (2019). Consistent with this dichotomy and established preclusion principles, this Court and the federal courts of appeals have concluded that, as a matter of federal law, a vacated prior judgment does not retain preclusive effect in subsequent federal civil litigation. In this case, the Ninth Circuit diverged from this federal rule and held, contrary to *Heck*, that petitioner's prior, vacated state conviction precluded his § 1983 claims challenging the constitutionality of his conviction, even though the § 1983 action was filed after petitioner's state conviction had been set aside on grounds that he is actually innocent. The question presented is:

Whether a wrongful state criminal conviction retains preclusive effect in a later federal action under 42 U.S.C. § 1983 challenging the constitutionality of that state conviction when the federal suit is filed after the state conviction has been vacated.

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PETITION FOR A WRIT OF CERTIORARI

Luis Lorenzo Vargas petitions for a writ of certiorari to review the Ninth Circuit's judgment in this case.

OPINIONS BELOW

The Ninth Circuit's opinion (Pet. App. 2a-13a) is unpublished and available at 857 Fed. App'x 360. The district court's opinion (Pet. App. 14a-28a) is published at 694 F.Supp.2d 957.

JURISDICTION

The Ninth Circuit entered its opinion on May 20, 2021, and denied rehearing on June 30, 2021. Pursuant to this Court's March 19, 2020 order, the time to file this petition is extended to 150 days, to November 29, 2021. This Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISIONS INVOLVED

The Fourteenth Amendment provides that "No State shall . . . deprive any person of life, liberty, or property, without due process of law[.]" U.S. Const. amend. XIV, section 1.

STATEMENT OF THE CASE

1. In 1999, petitioner Luis Vargas was wrongly convicted in California of three sexual assaults he had nothing to do with. Pet. App. 31a. Petitioner was exonerated in 2015 when DNA evidence proved he had not committed the crimes. *Id.* at 32a-33a. His convictions were vacated, state prosecutors confessed error, the charges against him were dropped, and the State of California declared him factually innocent. *Id.* at 33a-34a.

In this § 1983 lawsuit, petitioner alleges that respondents violated his right to due process when they fabricated eyewitness identifications from the victims of the three sexual assaults, which were the only evidence implicating petitioner in the crimes and the only evidence used to secure his wrongful conviction. *Id.* at 34a-35a. The victims each wrongly identified petitioner after being shown multiple photo arrays and a live lineup by the respondents, in which petitioner was the only common subject repeated in each of the identification procedures. *Id.* at 56a-62a. Respondents ensured petitioner's photograph stuck out in the arrays—in some of them he was the only subject with an apparent tattoo on his face. And respondents conducted these repeated procedures even after the victims explained that petitioner did not look like the perpetrator. *Id.* at 52a-53a. respondents' efforts resulted in all three victims identifying petitioner as the perpetrator at his criminal trial. *Id.* at 53a-54a.

No other evidence pointed to petitioner. There was not a shred of physical evidence connecting him to the crimes. *Id.* at 31a. He presented alibi evidence that he was working his normal job at Manhattan Bagels when two of the three attacks occurred. *Id.* at 44a, 54a. He did not look like the victims' descriptions of the perpetrator—he was smaller, he had facial hair when the perpetrator had none, and he did not have the same facial tattoo described by the victims. *Id.* at 40a, 54a.

DNA evidence now proves conclusively that petitioner was in fact wrongly identified by the victims. *Id.* at 33a-34a. There is thus no dispute today that, as the result of respondents' identification procedures, all three victims independently identified the same incorrect perpetrator: the person respondents had selected as their suspect. *Id.* at 34a.

In the pretrial proceedings, petitioner's defense attorney moved to suppress the misidentifications, but the motion was denied. Based on respondents' fabricated identifications, petitioner was convicted in 1999. *Id.* at 33a-35a. During his criminal proceedings, petitioner filed a motion to suppress the victims' identifications, which was denied. At sentencing, petitioner professed his innocence, telling the court, "You can sentence me to all the years you want, but as far as I'm concerned . . . the individual that really did these crimes might really be raping someone out there[.]" *Id.* at 32a. Petitioner was sentenced to 55 years to life. *Id.* Only decades later would petitioner learn he was absolutely right.

It turned out the assaults of which petitioner was wrongly convicted were committed by a serial rapist who respondents dubbed the Teardrop Rapist. But respondents suppressed the Teardrop Rapist's existence and his connection to the three assaults throughout petitioner's wrongful prosecution and conviction. *Id.* at 47a-51a.

Unbeknownst to petitioner, all along respondents were investigating the three assaults he was accused of as part of a large pattern of assaults committed by the Teardrop Rapist. *Id.* The Teardrop Rapist's attacks shared a *modus operandi*—the victims were young, Latina women, alone around 6 a.m. when they were each attacked near bus stops in the same area, and the perpetrator had asked for directions before brandishing a weapon, moving them to secondary locations, and assaulting them. *Id.* at 38a. Unlike petitioner, the Teardrop Rapist matched the description given by the three victims who accused petitioner. *Id.* The Teardrop Rapist assaults began before and continued after petitioner was arrested. *Id.* at 47a-51a. Respondents conducted a coordinated investigation of the assaults. *Id.* But evidence about the Teardrop Rapist was not disclosed to petitioner for use in his criminal case. *Id.* at 49a. The Teardrop Rapist remains at large and on the FBI's most wanted list today.

Behind bars, petitioner maintained his innocence and fought for decades to clear his name. Pet. App. 32a-33a. Finally, DNA testing of shorts

and underwear collected from one of the victims at the time of the crimes conclusively showed that petitioner was not the perpetrator. *Id.*

In 2015, a state court vacated petitioner's convictions outright, concluding that the DNA evidence completely "undermines the prosecutor's case and points unerringly to [Vargas]'s innocence." *Id.* at 33a. The Los Angeles District Attorney recognized that DNA exonerated petitioner, all charges were dismissed, and petitioner was finally set free, having spent more than half of his adult life incarcerated for crimes he did not commit. *Id.* at 34a. In 2016, California declared petitioner factually innocent. *Id*.

2. After his convictions were vacated, petitioner filed this action under 42 U.S.C. § 1983. *Id*. at 29a-30a. He alleged that investigative misconduct caused his criminal conviction, and, as relevant here, that respondents violated his right to due process protected by the Fourteenth Amendment by using unduly suggestive identification techniques to obtain false identifications of petitioner from the three victims. *Id.* at 82a, 91a-93a. See also *Manson v. Brathwaite*, 432 U.S. 98, 107-116 (1977) (identifications violate due process where suggestive procedures create a substantial likelihood of misidentification); *Simmons v. U.S.*, 390 U.S. 377, 383-84 (1968) (presenting the same person in recurring arrays is suggestive).[1]

[1] Petitioner asserted other claims that are not at issue here. Respondent Smith was added as a defendant in petitioner's second amended complaint.

Respondents never contended that petitioner's identification claims were insufficiently pleaded; and they never asserted that they were entitled to qualified immunity. Instead, they answered the complaint. After they had answered, however, the district court *sua sponte* ordered briefing and dismissed the identification claims on the pleadings, taking judicial notice of documents filed in petitioner's criminal case. Pet. App. 24a-27a. The court held that petitioner was precluded from vindicating his federal constitutional rights under § 1983 because he had lost his motion to suppress the identifications early in his criminal proceedings, long before his convictions were vacated and the charges against him dismissed. *Id.*

Petitioner challenged this ruling on appeal. The panel affirmed, deciding incorrectly that California preclusion principles, rather than federal preclusion principles, governed the analysis, despite that petitioner's state court conviction had been vacated and so there was no state-court judgment to preclude the § 1983 action. Pet. App. 3a-6a. Judge Paez dissented from the preclusion decision to uphold dismissal of the identification claims. Pet. App. 11a-13a. In Judge Paez's view, equitable principles prevented the application of preclusion in these circumstances. *Id.*

4. Petitioner sought rehearing *en banc*, which the Ninth Circuit denied. Pet. App. 1a.

REASONS FOR GRANTING THE PETITION

This case presents an important and recurring issue in the litigation of constitutional wrongful conviction claims that satisfies this Court's certiorari criteria. The Ninth Circuit concluded that California rules of preclusion applied to give a vacated California criminal conviction preclusive effect in a federal § 1983 case challenging that wrongful state criminal conviction. But the preclusion question should have been governed by federal law, which holds that a vacated judgment has no preclusive effect, and the Ninth Circuit's conclusion otherwise contradicts this Court's decisions, most prominently *Heck*, which dictates that a federal suit challenging a state criminal conviction may proceed under § 1983 after the conviction has been vacated. This Court should grant certiorari to establish a uniform federal rule that prior state court criminal judgments that have been vacated do not have preclusive effect in later § 1983 litigation.

A. The Ninth Circuit's Decision Contradicts This Court's Precedents

As a matter of federal law, preclusion only bars re-litigation of § 1983 claims if there is an extant prior judgment. The Ninth Circuit's conclusion that the vacated state-court criminal judgment in petitioner's case retained preclusive effect in his later § 1983 action even after it had been set aside is wrong and contradicts this Court's precedents.

1. Established preclusion principles dictate that an issue of law or fact previously litigated and essential to a judgment cannot be re-litigated. But for preclusion to apply in the first place a "valid and final judgment" is required. REST. (2D) JUDGMENTS § 27 (1983). This Court decided in *Allen v. McCurry* that § 1983 did not alter these common-law rules of preclusion, and it held that the full faith and credit statute, 28 U.S.C. § 1738, requires "federal courts to give preclusive effect to state-court *judgments* whenever the courts of the State from which the *judgments* emerged would do so[.]" 449 U.S. 90, 96 (1980) (emphases added).

In *Allen*, the respondent had lost a motion to suppress evidence that allegedly had been seized in violation of the Fourth Amendment, he had been convicted in state-court proceedings, and his conviction remained intact at the time he brought his later § 1983 suit re-raising the Fourth Amendment claim. *Id.* at 92-94. This Court decided that, given the extant state-court judgment and the full faith and credit statute, issue preclusion applied to prevent re-litigation of the Fourth Amendment claim to the same extent that the extant state-court judgment would enjoy issue-preclusive effect in the courts of the state where the judgment was rendered. *Id.* at 96. *Migra v. Warren City School District Board of Education* extended the rule, holding that an extant state-court judgment has claim-preclusive effect as well, again to the same extent it would enjoy claim-preclusive effect in the state court from which the judgment arose. 465 U.S. 75, 83-84 (1984) ("Having rejected in *Allen* the view

that state-court judgments have no issue preclusive effect in § 1983 suits, we must reject the view that § 1983 prevents the judgment in petitioner's state-court proceeding from creating a claim preclusion bar in this case.").

This Court's cases considering the preclusive effect of state-court judgments have stressed that the application of the full faith and credit statute and state preclusion rules depends first on there being an extant, valid, and final state-court judgment. *San Remo Hotel, L.P. v. City and County of San Francisco*, 545 U.S. 323, 342 (2005) ("We have repeatedly held . . . that issues actually decided *in valid state-court judgments* may well deprive plaintiffs of the 'right' to have their federal claims relitigated in federal court."); *Lance v. Dennis*, 546 U.S. 459, 466 (2006) ("Congress has directed federal courts to look principally to state law in deciding what effect to give state-court *judgments*."); *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280, 293 (2005) ("In parallel litigation, a federal court may be bound to recognize the claim- and issue-preclusive effects of a state-court *judgment*[.]"); *Semtek Intern. Inc. v. Lockheed Martin Corp.*, 531 U.S. 497, 506-07 (2001) ("By their terms [the Full Faith and Credit Clause and the full faith and credit statute] govern the effects to be given only to state-court *judgments*"); *Thomas v. Gen. Motors Corp.*, 522 U.S. 222, 232-33 (1998) ("Our precedent differentiates the credit owed to laws (legislative measures and common law) and to *judgments*. . . . Regarding judgments . . . the full faith and credit obligation is exacting. A *final judgment* in

one State, if rendered by a court with adjudicatory authority over the subject matter and persons governed by the judgment, qualifies for recognition throughout the land."); *id.* at 232 n.4 ("The first Congress enacted the original full faith and credit statute in May 1790. . . . Although the text of the statute has been revised since then, the command for full faith and credit to *judgments* has remained constant."); *Matsushita Elec. Indus. Co. v. Epstein*, 516 U.S. 367, 375 (1996) ("[W]e conclude that § 1738 is generally applicable in cases in which the state court *judgment* at issue incorporates a class action settlement releasing claims solely within the jurisdiction of the federal courts."); *Marrese v. American Acad. of Orthopedic Surgeons*, 470 U.S. 373, 380 (1985) ("Section 1738 embodies concerns of comity and federalism that allow the States to determine, subject to the requirements of the statute and the Due Process Clause, the preclusive effect of *judgments* in their own courts."); *Kremer v. Chem. Const. Corp.*, 456 U.S. 461, 466 (1982) ("Section 1738 requires federal courts to give the same preclusive effect to state court *judgments* that those judgments would be given in the courts of the State from which the judgments emerged.").

When a state-court judgment has been vacated, there is no judgment at all, and so nothing that might have preclusive effect in a federal suit. *Cf. Astoria Fed. Sav. & Loan Ass'n v. Solimino*, 501 U.S. 104, 109-110 (1991); *McDonald v. City of W. Branch*, 466 U.S. 284, 288 (1984). Without an extant judgment, there is nothing to bring into play the full faith and credit statute. The Ninth Circuit's decision

that California law controlled the preclusion analysis and that petitioner's vacated conviction had issue-preclusive effect contradicts this body of law.

2. The Ninth Circuit's decision also conflicts with *Heck v. Humphrey*, 512 U.S. 477, 487-87 (1994), and that line of cases. Consistent with the preclusion regime just outlined, this Court has held that once a state criminal judgment is vacated (or criminal proceedings come to an end short of a conviction), a §1983 claim can proceed in federal court challenging the constitutionality of the prior state criminal judgment or proceedings. *Heck*, 512 U.S. at 487; *McDonough*, 139 S. Ct. at 2157. This Court observed in *McDonough* that *Heck*'s deferred-accrual rule is intended to avoid "conflicting civil and criminal *judgments*." 139 S. Ct. at 2157 (emphasis added).

When a state court criminal judgment is intact, the full faith and credit statute requires federal courts to apply state preclusion rules to §1983 actions. But when a criminal judgment has been vacated, federal law controls, *Heck* applies, and a § 1983 action challenging the conviction can proceed in federal court. *Heck* holds that once a former criminal defendant's conviction has been "declared invalid by a state tribunal authorized to make such determination"—exactly as petitioner's was here—that individual may proceed under § 1983. 512 U.S. at 486-87. The Ninth Circuit's decision that petitioner's vacated conviction barred his § 1983 claims challenging that conviction cannot be reconciled with *Heck*.

3. Consistent with this framework, federal courts of appeals have recognized repeatedly, as a matter of federal law, that a vacated judgment cannot have preclusive effect. Indeed, the Ninth Circuit itself had applied federal preclusion law in a past case analogous to petitioner's, holding that "[o]nce [a] conviction [i]s reversed" there is "no collateral estoppel of any kind on [subsequent] civil rights claims" relating to that conviction. *Bagley v. CMC Real Estate Corp.*, 923 F.2d 758, 762 (9th Cir. 1991) (considering preclusive effect of vacated federal conviction).

The majority of circuits agree in unequivocal terms that a vacated prior judgment does not have preclusive effect in a later federal civil case. See *Levi Strauss & Co. v. Abercrombie & Fitch Trading Co.*, 719 F.3d 1367, 1372 (Fed. Cir. 2013) (considering the preclusive effect of a reversed federal judgment and concluding that "[d]ating back at least to [1891], a bedrock principle of preclusion law has been that a reversed judgment cannot support preclusion"); *United Brotherhood v. Operative Plasterers*, 721 F.3d 678, 691 (D.C. Cir. 2013) (considering the preclusive effect of a vacated federal judgment and concluding that a "judgment vacated either by the trial court or on appeal has no estoppel effect in a subsequent proceeding"); *Jackson v. Coalter*, 337 F.3d 74, 85 (1st Cir. 2003) ("[I]t is hornbook law that '[a] vacated judgment has no preclusive force either as a matter of collateral estoppel or as a matter of the law of the case.'" (quoting *No East-West Highway Comm. V. Chandler*, 767 F.2d 21, 24 (1st Cir. 1985))); *Lulirama Ltd., Inc. v. Axcess Broad Servs.,*

Inc., 128 F.3d 872, 875 n.2 (5th Cir. 1997) (considering preclusive effect of vacated state court judgment, and concluding that "[a] decree that has been vacated or nullified by an appellate court cannot be given *res judicata* effect" (quoting *Savidge v. Fincannon*, 836 F.2d 898, 906 (5th Cir. 1988))); *Langely v. Prince*, 926 F.3d 145, 164 (5th Cir. 2019) (similar); *Kosinski v. Comm'r*, 541 F.3d 671, 676-77 (6th Cir. 2008) (considering preclusive effect of vacated federal criminal judgment and concluding that "[a] judgment that has been vacated, reversed, or set aside on appeal is thereby deprived of all conclusive effect, both as *res judicata* and as collateral estoppel" (quoting *Erebia v. Chrysler Plastic Prods. Corp.*, 891 F.2d 1212, 1215 (6th Cir. 1989))); *Salton v. Philip Domestic Appliances*, 391 F.3d 871, 881 (7th Cir. 2004) (considering a reversed federal decision and concluding that "once a judgment is reversed it ceases to have collateral estoppel effect"); *United States v. Lacey*, 982 F.2d 410 (10th Cir. 1992) (considering a federal judgment and concluding that the appellant "cannot cite that order as establishing preclusion because the court set it aside"); *Franklin Sav. Ass'n v. Off. Of Thrift Supervision*, 35 F.3d 1466, 1469 (10th Cir. 1994) (similar); *Kobatake v. E.I. DuPont De Nemours & Co.*, 162 F.3d 619, 624 (11th Cir. 1998) (considering reversed federal judgment and concluding that "reversal and remand for further proceedings negates any conclusive effect that the district court's judgment might have had, and thus the doctrine of collateral estoppel is not applicable"); *cf. Sheldon v. Khanal*, 396 F. App'x 737, 739 (2d Cir. 2010) (considering the preclusive effect of a vacated state

court judgment, and concluding that "[a] judgment vacated or set aside has no preclusive effect" (quoting *Stone v. Williams*, 970 F.2d 1043, 1054 (2d Cir. 1992), which applied Alabama law to determine the effect of a state court judgment)); 18A CHARLES ALAN WRIGHT, ET AL., FEDERAL PRACTICE & PROCEDURE § 4432 (3d ed. 2021) ("Reversal and remand for further proceedings on the entire case defeats preclusion entirely until a new final judgment is entered by the trial court or the initial judgment is restored by further appellate proceedings."). The Ninth Circuit's departure from this established federal rule should be corrected.

4. Finally, this Court has recognized that preclusion never applies "if there is reason to doubt the quality, extensiveness, or fairness of procedures followed in prior litigation." *Montana v. U.S.*, 440 U.S. 147, 164 (1979). "A State may not grant preclusive effect in its own courts to a constitutionally infirm judgment," this Court observed in *Kremer*, "and other state and federal courts are not required to accord full faith and credit to such a judgment. . . . In such a case, there could be no constitutionally recognizable preclusion at all." 456 U.S. at, 482-83.

It would be hard to imagine a situation where preclusion would be less appropriate than this one: petitioner could not litigate whether the identification procedures used against him were unreliable in his criminal case because respondents suppressed evidence that would have allowed him to show that the victim's identifications were in fact

incorrect, including evidence that the Teardrop Rapist had committed the assaults. As Judge Paez noted in dissent, "The purposes of the doctrine do not support applying collateral estoppel in this case." Pet. App. 11a (Paez, J, dissenting).

* * *

The Ninth Circuit's decision contradicts this Court's cases holding that an extant state-court judgment is required before state preclusion rules are applied to § 1983 suits; and the corollary rule that federal law controls and that a vacated judgment cannot preclude a later civil suit. In addition, the Ninth Circuit's decision contradicts *Heck*, which authorized precisely the § 1983 suit following vacatur of a state conviction that the Ninth Circuit held in this case was barred. This Court should grant certiorari to impose a uniform national rule that a vacated state criminal judgment does not have preclusive effect in a later § 1983 suit challenging the constitutionality of the state criminal conviction.

B. The Issue Is Important

The question presented also concerns a recurring federal issue of national importance that has not yet been resolved by this Court, which bears directly on whether state actors who abuse the legal process and fabricate false evidence for use in criminal cases can be held accountable for violating the Constitution.

Section 1983 was enacted to provide a remedy for individuals deprived of their federal constitutional rights by state officials who abused of their power or position. One of its principal purposes is to permit challenges to state-court criminal proceedings in which state actors violate federal constitutional rights. *Mitchum v. Foster*, 407 U.S. 225, 240 (1972).

The Ninth Circuit's decision undermines this central purpose of § 1983 because it threatens to eliminate § 1983 suits challenging unconstitutional state criminal proceedings. This Court has established a regime where such challenges can be brought, except in exceptional circumstances, only after the criminal proceedings have ended and any resulting conviction has been set aside. *Heck*, 512 U.S. at 486-87 (1994). The Ninth Circuit's holding that a vacated state judgment continues to have preclusive effect in later § 1983 litigation would eliminate the suit that *Heck* authorized and the only federal remedy that offers redress for violations of constitutional rights that occur during state criminal proceedings. Taken to its logical end, the Ninth Circuit's decision would allow a patently unconstitutional state criminal proceeding to remain unchallenged under § 1983, even in the face of overwhelming evidence that the state proceeding was corrupt. This Court has recently rejected similar limitations on § 1983 actions. See *Knick v. Township of Scott*, 139 S. Ct. 2162, 2169-70 (2019) (noting that such categorical bars to suit render certain constitutional provisions "'to the status of a poor relation' among the provisions of the Bill of Rights," and that "Plaintiffs asserting any other

constitutional claim are guaranteed a federal forum under § 1983").[2]

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[2] Similarly, federal courts have gone to great lengths to avoid bars to federal constitutional challenges to state wrongful convictions. See *Mills v. City of Covina*, 921 F.3d 1161, 1170 & n.2 (9th Cir. 2019) (holding that under both federal and California law, "a conviction or judgment that has been reversed on appeal and vacated cannot serve as collateral estoppel in a later proceeding"); *Stone*, 970 F.2d at 1054 ("A judgment vacated or set aside has no preclusive effect."); *Aguillard v. McGowen*, 207 F.3d 226, 229, 231 (5th Cir. 2000) ("A conviction overturned on appeal cannot constitute a final judgment for purposes of collateral estoppel."); *Peterson v. Heymes*, 931 F.3d 546, 554-55 (6th Cir. 2019) ("[T]he trial court's interlocutory rulings—including those which the court made at the *Walker* hearing—have merged with the final judgment, which means those interlocutory rulings have been vacated too. And vacated rulings have no preclusive effect. . . ."); *Dodrill v. Ludt*, 764 F.2d 442, 4444 (6th Cir. 1985) ("We have found no Ohio law on this specific point, but the general rule is that a judgment which is vacated, for whatever reason, is deprived of its conclusive effect as collateral estoppel."); *Evans v. Katalinic*, 445 F.3d 953, 955-56 (7th Cir. 2006) (concluding that because the plaintiff's criminal convictions were vacated and his criminal record expunged, there is nothing left on which preclusion could be based); *Tillman v. Orange County*, 519 F. App'x 632, 637-38 (11th Cir. 2013) ("A judgment that has been vacated, reversed, or set aside on appeal is thereby deprived of all conclusive effect." (quoting *Kobatake*, 162 F.3d at 624)); *cf. Cosenza v. City of Worcester*, 355 F. Supp. 3d 81, 93-94 & n.2 (D. Mass 2019) (collecting cases to support that vacated convictions cannot have preclusive effect); *Tarlton for McCollum v. Sealey*, No. 5:15-CV-451-BO, 2018 WL 1129976, at *5

Moreover, § 1983 plays the important role of "deter[ring] state actors from using the badge of their authority to deprive individuals of their federally guaranteed rights[.]" *Wyatt v. Cole*, 504 U.S. 158, 161 (1992). This purpose is particularly pronounced where a state actor commits misconduct with the specific intent to deprive a person of their constitutional rights. *Robertson v. Wegmann*, 436 U.S. 584, 599 (1978). The Ninth Circuit's decision works against this deterrence goal as well. A decision that allows the fabrication of evidence for use in plainly unconstitutional criminal proceedings and that precludes a § 1983 action challenging a resulting conviction removes any deterrent to similar acts of misconduct that may occur in our justice system in the future. Any decision that does not strictly deter such misconduct during criminal cases undermines the legitimacy of our system. It creates a regime where there is no accountability for the most egregious violations of federal constitutional rights.

Petitioner's case is a quintessential example: He is unquestionably innocent but was convicted of

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(E.D.N.C. March 1, 2018) ("[I]it is a 'bedrock principle of preclusion law' that a judgment that has been reversed or vacated cannot form the basis of a preclusion defense." (quoting *Levi Strauss & Co.*, 719 F.3d at 1372)); *O'Connell v. Alejo*, No. 18-CV-01359-RBJ, 2020 WL 1244852, at * 4 (D. Colo. March 16, 2020) ("Because Ms. O'Connell's conviction was vacated, overturning not only the judgment of guilt but also the interlocutory decisions preceding it, there is no extant final judgment on the merits, and her claims are not precluded.").

three serious crimes because of fabricated identifications obtained and used in violation of due process, while respondents suppressed evidence that someone else had committed the crimes. To hold that he may not sue the state actors who obtained the unconstitutional state criminal conviction after the conviction was set aside, on the ground that the corrupted conviction itself retains preclusive effect, makes a mockery of petitioner's constitutional rights and federal civil rights laws. The Ninth Circuit's decision presents an issue of exceptional importance, and this Court should grant certiorari for that reason as well.

CONCLUSION

This Court should grant the petition.

Respectfully submitted,

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NOVEMBER 29, 2021

APPENDIX

APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

[Filed June 30 2021]

No. 19-55967

LUIS LORENZO VARGAS,

Plaintiff-Appellant,

v.

CITY OF LOS ANGELES; *et al*.,

Defendants-Appellees.

D.C. No. 2:16-cv-08684-SVW-AFM
Central District of California, Los Angeles

ORDER

Before: PAEZ and VANDYKE, Circuit Judges, and KORMAN,[1] District Judge.

Judge Korman recommended that the panel deny Appellant's Petition for Rehearing En Banc filed June 3, 2021 (ECF No. 69) , and Judges Paez and VanDyke voted to deny the petition.

The full court has been advised of the petition, and no judge has requested a vote on whether to rehear the matter en banc.

Accordingly, the petition is DENIED. Fed. R. App. P. 35.

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[1] The Honorable Edward R. Korman, United States District Judge for the Eastern District of New York, sitting by designation.

APPENDIX B

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

[Filed May 20, 2021]

No. 19-55967

LUIS LORENZO VARGAS,
Plaintiff-Appellant,
v.
CITY OF LOS ANGELES; *et al*.,
Defendants-Appellees.

D.C. No. 2:16-cv-08684-SVW-AFM

MEMORANDUM[*]

Appeal from the United States District Court
for the Central District of California
Stephen V. Wilson, District Judge, Presiding

Argued and Submitted April 12, 2021
Pasadena, California

Before: PAEZ and VANDYKE, Circuit Judges,
and KORMAN,[**] District Judge.

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

[**] The Honorable Edward R. Korman, United States District Judge for the Eastern District of New York, sitting by designation.

Memorandum joined by Judge VANDYKE and
Judge KORMAN, and joined in part by Judge PAEZ

Concurrence by Judge KORMAN
Dissent in part by Judge PAEZ

Appellant Luis Lorenzo Vargas appeals five district court rulings pertaining to his claims raised under 42 U.S.C. § 1983: (1) the court's dismissal of his claim alleging that the identification procedures used during his criminal proceeding violated due process; (2) the court's summary judgment ruling pertaining to his claims raised under *Brady v. Maryland*, 373 U.S. 83 (1963);[1] (3) the court's dismissal of the jury prior to a trial on his claims raised under *Monell v. Department of Social Services*, 436 U.S. 658 (1978); (4) the court's exclusion of evidence pertaining to his innocence; and (5) the court's exclusion of his proffered expert testimony. We have jurisdiction under 28 U.S.C. § 1291, and we affirm in part, reverse in part, and remand for further proceedings.[2]

First, the district court correctly determined that issue preclusion barred re-litigation of Vargas's identification procedures claim. *See Ayers v. City of Richmond*, 895 F.2d 1267, 1270 (9th Cir. 1990) (holding that preclusion issues are reviewed de novo). "State law . . . governs the application of collateral estoppel to a state court judgment in a federal civil rights action." *Mills v. City of Covina*, 921 F.3d 1161, 1169 (9th Cir. 2019).

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[1] Vargas limits his *Brady* arguments to the district court's summary judgment order entered on August 7, 2018. Our decision on this claim is therefore limited to the *Brady* claims addressed by that order. *See Momox-Caselis v. Donohue*, 987 F.3d 835, 842 (9th Cir. 2021).

[2] Because the parties are familiar with the facts, we recite them here only as necessary.

California's collateral estoppel requirements are met here. *See id.* The issue litigated in Vargas's motion to suppress in his criminal case (where he moved to suppress the victims' identifications of Vargas) and in this § 1983 lawsuit is identical: in both instances, Vargas challenged whether the witness identification procedures violated his constitutional right to due process. *See Ayers*, 895 F.2d at 1271; *Textron Inc. v. Travelers Cas. & Sur. Co.*, 259 Cal. Rptr. 3d 26, 36–37 (Cal. Ct. App. 2020), *review denied* (July 8, 2020). And the state court's denial of Vargas's motion to suppress was sufficiently final for the purposes of collateral estoppel: it was not avowedly tentative, the parties were fully heard, and the trial court's reasoned decision was affirmed by the California Court of Appeal. *See Border Bus. Park, Inc. v. City of San Diego*, 49 Cal. Rptr. 3d 259, 280 (Cal. Ct. App. 2006); *Schmidlin v. City of Palo Alto*, 69 Cal. Rptr. 3d 365, 370, 401–02 (Cal. Ct. App. 2007). Vargas also had a fair and full opportunity to litigate the issue in his criminal proceeding because the trial court fairly and fully entertained his oral and written arguments, and Vargas does not complain of any procedural unfairness or defect with respect to that proceeding. *See Ayers*, 895 F.2d at 1271–72. And while Vargas argues that the defendants' alleged suppression of other assaults renders the application of collateral estoppel inequitable, evidence of other assaults is irrelevant to the procedures used in facilitating the three independent victim identifications that he seeks to relitigate. *See United States v. Bagley*, 772 F.2d 482, 492 (9th Cir. 1985); *People v. Cook*, 157 P.3d 950, 963–64 (Cal. 2007). Moreover, applying collateral estoppel here furthers California's public policies by preventing duplicate litigation over conduct that concluded over 20 years ago, particularly when Vargas had a full and

fair opportunity to litigate the relevant facts and arguments at that time. *See Rodriguez v. City of San Jose*, 930 F.3d 1123, 1136 (9th Cir. 2019); *Direct Shopping Network, LLC v. James*, 143 Cal. Rptr. 3d 1, 10 (Cal. Ct. App. 2012).[3]

The dissent argues that "allowing Vargas to litigate this claim in a civil suit under 42 U.S.C. § 1983 is not a significant burden on the judicial system." We disagree. Re-litigating the same issue would pose a substantial burden: not only would it require another trial, but it would also necessitate the unearthing of evidence, witnesses (who are victims of sexual assaults), and materials pertaining to identification processes that took place over 20 years ago.

The dissent also contends that the pre-discovery dismissal of Vargas's identification procedures claim in this case prejudiced him by precluding him from gaining new information pertaining to his wrongful identification. But nothing prevented Vargas from requesting and obtaining evidence relevant to his identification procedures claim in his prior criminal case, which Vargas admitted at oral argument. *See also Magallan v. Superior Ct.*, 121 Cal. Rptr. 3d 841, 845, 856–57 (Cal. Ct. App. 2011) (acknowledging "the defendant's procedural due process right to a full and fair suppression hearing" and concluding that a magistrate judge had the power to grant a motion for discovery in support of a suppression motion). While Vargas asserts he was prejudiced by the inability to obtain discovery in this lawsuit, he fails to point to

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[3] Vargas does not dispute that the issue was actually litigated and necessarily decided in his criminal proceeding, or that the privity requirement is met. *See Mills*, 921 F.3d at 1169. We therefore need not address those issues. *See Momox-Caselis*, 987 F.3d at 842.

any new *relevant* evidence that he could now obtain through discovery that he was barred from obtaining in his criminal case. Thus, the only prejudice collateral estoppel caused to Vargas is the same prejudice every litigant experiences from collateral estoppel: he doesn't get another bite at the apple. But neither Vargas nor the dissent can explain how this bite would produce materially different results than the previous discovery opportunities afforded to Vargas.

Ultimately, the dissent's collateral estoppel analysis makes the same mistake that infects Vargas's arguments—that is, assuming that the later vacatur of Vargas's conviction based on recent DNA evidence must somehow be relevant to the identification procedures. It's not. The fact that *other* later-discovered evidence now supports the conclusion that Vargas did not commit the crimes says nothing about whether the identification procedures themselves were problematic. Completely proper identification procedures may still result in an incorrect identification. Beyond mere speculation, Vargas has provided no indication that there was something improper about the identification procedures in this case that he did not already have the opportunity to pursue in his prior criminal case.

Second, the district court did not err in granting partial summary judgment on Vargas's *Brady* claims because the district court did not actually grant partial summary judgment. Instead, the court explicitly *denied* summary judgment. The district court did not prevent Vargas from attempting to present evidence of those assaults at trial, and subsequent representations by the district court and Vargas support the conclusion that they understood the summary judgment order to constitute a full denial. *See Bordallo v.*

Reyes, 763 F.2d 1098, 1102 (9th Cir. 1985) (looking to the district court's subsequent statements to determine the nature of an order).

Third, the district court erred in dismissing Vargas's *Monell* claims, which it did by dismissing the jury prior to any trial on those claims. The district court predicated its dismissal on *City of Los Angeles v. Heller*, 475 U.S. 796 (1986) (per curiam), but *Heller* concerns excessive force claims that are not at issue here. *See Fairley v. Luman*, 281 F.3d 913, 916–17 (9th Cir. 2002) (per curiam). Because *Heller* does not present a categorical bar to *Monell* liability in the absence of individual liability, we reverse and remand for a final adjudication of Vargas's *Monell* claims, including the scope of the remaining *Monell* claims. But while Vargas is entitled to a final judgment on these claims, we take no position as to whether his *Monell* claims must be tried or whether they could be properly adjudicated prior to trial.

Fourth, the district court did not abuse its discretion in excluding evidence of Vargas's factual innocence. *See C.B. v. City of Sonora*, 769 F.3d 1005, 1021 (9th Cir. 2014) (en banc) (recognizing that evidentiary rulings are reviewed for abuse of discretion). Regardless of whether Vargas invited this alleged error, the district court reasonably excluded evidence of his innocence because that evidence could have confused the issues for the jury, as the trial only concerned liability for the *Brady* claims. *See Nationwide Transp. Fin. v. Cass Info. Sys., Inc.*, 523 F.3d 1051, 1060 (9th Cir. 2008); *Martinez v. Ryan*, 926 F.3d 1215, 1228 (9th Cir. 2019) (holding that *Brady* concerns the evidence available at the time of trial, not "exculpatory evidence [that] later surfaces").

Fifth, the district court did not abuse its discretion in excluding Vargas's proffered expert testimony. *United States v. Arvin*, 900 F.2d 1385, 1388–89 (9th Cir. 1990) (noting that the exclusion of expert testimony is reviewed for abuse of discretion). It reasonably concluded that the experts would inappropriately usurp the jury's function, especially given the trial's first-phase focus on the detectives' credibility. *See Nationwide Transp. Fin.*, 523 F.3d at 1058–59 (the district court did not abuse its discretion in excluding expert witness testimony offering legal conclusions). And even if the district court had erred, the error was harmless. *See United States v. Hermanek*, 289 F.3d 1076, 1092–93 (9th Cir. 2002).[4]

In conclusion, we affirm the district court's dismissal of Vargas's identification claim, its denial of summary judgment issued on August 7, 2018, and its exclusion of evidence pertaining to Vargas's innocence and expert testimony. The district court's dismissal of Vargas's *Monell* claims is reversed and remanded for further proceedings consistent with this disposition.

AFFIRMED in part, and REVERSED and REMANDED in part. The parties shall bear their own costs on appeal.

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[4] We also grant the appellees' Motion for Judicial Notice of Exhibits Being Proffered.

Vargas v. City of Los Angeles, et al., No. 19-55967

Korman, *D.J.*, concurring.

I concur in the memorandum disposition in full. I agree with the majority that "*Heller* does not present a categorical bar to *Monell* liability in the absence of individual liability." But I write separately to express my view that this issue is closer than the majority suggests. Specifically, the record makes clear that the parties and the district court understood that the issue of *Monell* liability would not be submitted to the jury unless Vargas prevailed against the individual defendants.

Before trial, the district court entered an order that it would proceed in three stages: "(1) liability of Defendants Quijano and Smith; (2) *Monell* liability of the City of Los Angeles and the Los Angeles Police Department (*if necessary*); and (3) damages (if necessary)." ER 30 (emphasis added). The critical language, which provided that the second phase of the trial would occur "if necessary," indicated the understanding of the district judge and the parties that this phase would occur only if there was a verdict in favor of Vargas against the individual defendants. Vargas has no persuasive response to this commonsense understanding of the district court's order.

Indeed, the district court's colloquy with the jury and the parties after the verdict for the individual defendants is consistent with the understanding that the second (or *Monell*) phase would only be necessary if there was a verdict in favor of Vargas at the first stage of trial. Specifically, the district court told the jury, "I want to thank you for your close attention to the case. I want to especially thank you for being so punctual and on time. And I hope that the experience

as a juror in Federal Court was an interesting one and the parties and the Court thank you for your careful attention and diligence in this case. Thank you. You are discharged." *Id.* at 1286. While it was obvious that there would be no second phase, Vargas's attorney did not indicate any disagreement with the discharge of the jury before it left the courtroom. Vargas's attorneys thus arguably invited any possible error. But because defendants did not make this argument below when opposing Vargas's motion for a new trial (and have barely mentioned it on appeal), they have forfeited it. *R.L. Inv. Ltd. Partners v. I.N.S.*, 273 F.3d 874, 874–75 (9th Cir. 2001). I therefore concur in the memorandum disposition.

Paez, J., dissenting in part.

I join the majority's disposition except as to Vargas's due process identification procedures claim. As to the majority's disposition of that claim, I respectfully dissent. I would hold that issue preclusion should not apply, and would reverse the district court's dismissal of the claim.

Under California law, when the requirements of collateral estoppel are met, a court still "look[s] to the public policies underlying the doctrine before concluding that collateral estoppel should be applied in a particular setting." *Lucido v. Superior Court*, 51 Cal. 3d 335, 342–43 (1990) (citing *People v. Sims*, 32 Cal. 3d 468, 477 (1982)). The purposes of the doctrine are "(1) to promote judicial economy by minimizing repetitive litigation; (2) to prevent inconsistent judgments which undermine the integrity of the judicial system; and (3) to provide repose by preventing a person from being harassed by vexatious litigation." *People v. Taylor*, 12 Cal. 3d 686, 695 (1974), *overruled on other grounds by People v. Superior Ct. (Sparks)*, 48 Cal. 4th 1 (2010). In weighing those rationales, a court "must balance the need to limit litigation against the right of a fair adversary proceeding in which a party may fully present his case." *Id.*

The purposes of the doctrine do not support applying collateral estoppel in this case. First, although Vargas seeks to relitigate the identification issue, allowing Vargas to litigate this claim in a civil suit under 42 U.S.C. § 1983 is not a significant burden on the judicial system. *See Lucido*, 51 Cal. 3d at 351 (explaining that judicial efficiency does not always outweigh other judicial interests). And by dismissing the claim before

Vargas could conduct discovery, he was denied the opportunity to gain new information on the circumstances surrounding his wrongful identification.[1] The rationale of judicial efficiency should not foreclose Vargas's opportunity to conduct discovery and litigate his claim for the first time in a civil suit.

Second, any inconsistency between the results in this § 1983 lawsuit and the state trial court's denial of Vargas's motion to suppress does not implicate the integrity of the judicial system. *See F.E.V. v. City of Anaheim*, 15 Cal. App. 5th 462, 466 (2017) (giving preclusive effect to a judgment that was based on a decision that was later reversed "erode[s] public confidence in judicial decisions"). Vargas spent over sixteen years incarcerated before being released and receiving a finding of factual innocence under California Penal Code § 851.86. In my view, we do not preserve judicial integrity by preventing litigation that seeks to identify the causes and circumstances of a serious miscarriage of justice, like the one Vargas suffered.

Third, the identification claim does not constitute vexatious litigation. Whether litigation is vexatious is not about "mere repetition," and instead concerns "harassment through baseless or unjustified litigation." *Lucido*, 51 Cal. 3d at 351; *see also People v. Barragan*, 32 Cal. 4th 236, 257 (2004). No one asserts that Vargas seeks to harass the defendants with vexatious litigation; instead, he seeks to remedy a harm that resulted from his wrongful incarceration for over

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[1] Discovery in a § 1983 lawsuit can sometimes reveal how a wrongful conviction occurred. *See Evans v. Katalinic*, 445 F.3d 953, 955–56 (7th Cir. 2006) (declining to give preclusive effect to the denial of a motion to suppress in a decades-later post-exoneration § 1983 lawsuit, where a witness revealed in a deposition that police pressured her to make an identification).

sixteen years. Any burden on the defendants in relitigating this claim over twenty years after Vargas's conviction pales in comparison to the grave injustice experienced by Vargas.

"Finality of judgments, the underpinning of res judicata, is an important policy, but it is a means to an end—justice—and not an end in itself." *F.E.V.*, 15 Cal. App. 5th at 466. Invoking issue preclusion to prevent Vargas from litigating his identification claim because he did not prevail on a motion to suppress in the criminal proceedings that led to his wrongful incarceration does not serve the interests of justice. I would reverse the district court's dismissal of this claim and remand it for further proceedings.

APPENDIX C

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES – GENERAL

Case No. CV 16-08684-SVW-AFM	Date: June 29, 2017
Title	*Luis Lorenzo Vargas v. City of Los Angeles, et al.*
Present: The Honorable	STEPHEN V. WILSON, U.S. DISTRICT JUDGE
Paul M. Cruz	N/A
Deputy Clerk	Court Reporter / Recorder
Attorneys Present for Plaintiffs:	Attorneys Present for Defendants:
N/A	N/A
Proceedings:	IN CHAMBERS ORDER GRANTING IN PART MOTION FOR SUMMARY RY JUDGMENT AND REQUESTING FURTHER BRIEFING [47]

Having read and considered the papers presented by the parties, the Court finds this matter suitable for determination without oral argument. *See* Fed. R. Civ. P. 78; Local Rule 7-15. Accordingly, the hearing scheduled for July 3, 2017 at 1:30 p.m. is VACATED and OFF CALENDAR.

I. INTRODUCTION

Plaintiff Luis Lorenzo Vargas ("Plaintiff' or "Vargas") brings this case against the city of Los Angeles, the Los Angeles Police Department, Office of the Los

Angeles District Attorney, the Los Angeles Sheriff's Department, Officer Monica Quijan ("Quijano"), Officer Richard Tamez ("Tamez"), and Does 1-10 (collectively, "Defendants"). Plaintiff alleges three causes of action under 42 U.S.C. § 1983 and a claim under California Government Code § 815.2. Defendants filed a motion for summary judgment against Plaintiff's allegations of a *Brady* violation and suggestive witness identification procedures. Plaintiff filed an opposition and Defendants filed a reply. For the following reasons, the motion is GRANTED in part, deferred in part, and the Court orders further briefing.

II. BACKGROUND FACTS[1]

Plaintiff Luis Lorenzo Vargas was convicted by a jury in California state court on June 15, 1999, on charges of rape and two attempted rapes. Plaintiff filed a motion for a new trial, which was denied on July 22, 1999. Plaintiff appealed his convictions. The California Court of Appeal affirmed the convictions on June 26, 2000. After spending sixteen years in prison, Plaintiff filed a Petition for a Writ of Habeas Corpus in February, 2015. His Petition was granted due to DNA evidence which exonerated Plaintiff from the rape conviction, and Plaintiff was subsequently found factually innocent of sexually assaulting all three victims.

In this proceeding, Plaintiff alleges that Defendants violated Plaintiffs constitutional rights that ultimately lead to Plaintiff's wrongful imprisonment. Specifically, Plaintiff first argues that Defendants failed to turn

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[1] Unless otherwise noted. these facts are taken from the parties' separate statements of undisputed facts and conclusions of law. Dkt. 49, 53. References to facts that Plaintiff alleges are found in the First Amended Complaint ("FAC"). Dkt. 26.

over *Brady* material both before Plaintiff's conviction and after his conviction became final on appeal. Plaintiff also argues that Defendants used impermissibly suggestive witness identification procedures that lead to all three victims wrongfully identifying Plaintiff as their attacker.

A. Facts Related to Plaintiff's *Brady* Claim

Plaintiff alleges that he was convicted of three assaults that were part of a larger pattern of sexual assaults committed by a *man* called the Teardrop Rapist. Plaintiff alleges thirty-nine sexual assaults linked to the Teardrop Rapist through DNA testing. Some of these occurred prior to Plaintiff's conviction becoming final on appeal, and some occurred afterwards.

i. Pre-Conviction *Brady* Material

Plaintiff was charged with the sexual assault of victims Karen P., Edith G., and Teresa R. The investigation of these assaults began between February 1998 — June 1998. Defendant Tamez, member of the sex crimes unit for the LAPD Newton Division, investigated the sexual assault of Karen P. Defendant Quijano, member of the sex crimes unit for the 77th Division, investigated the assaults of Edith G. and Teresa R.

Plaintiff has identified five sexual assaults that different divisions of the LAPD investigated around this timeframe that Plaintiff alleges are linked to the Teardrop Rapist and constituted *Brady* material. In April 1996, the assault of an unnamed victim was investigated by the Southwest Division. In June 1998, the assault of Shonte S. was investigated by the 77th Division. In July 1998, the assault of Nancy E. was investigated by the Rampart Division. In February 1999, the assault of Anaguni N. was investigated by

the 77th Division. In May 1999, the assault of another unnamed victim was investigated by the 77th Division. In September 1998, Defendant Quijano was reassigned to investigate juvenile crimes in the 77th Division. Accordingly, during the investigation of Shone S. Defendant Quijano was still a member of the sex-crimes unit within the 77th Division, though not the investigating officer, and during the investigations of Anaguni N. and the second unnamed victim Quijano was not investigating sex crimes.

Both Defendants Tamez and Quijano declare that they were subjectively unaware of these other rape investigations throughout Plaintiff's trial and appeal. None of these other investigations were turned over to Plaintiff during his criminal case.

ii. Post-Conviction *Brady* Material

Plaintiff is not as specific about the alleged *Brady* material that came to existence after his conviction, but includes a timeline in his complaint of twenty-four sexual assaults purportedly linked to the Teardrop Rapist that occurred between July 17, 2000, and June 25, 2012. None of these investigations were disclosed to Plaintiff.

B. Facts Related to Plaintiff's Claim of Unduly Suggestive Identification Procedures

Relevant for this motion, Plaintiff has previously litigated the issue of whether pretrial identification procedures were unconstitutionally suggestive no less than three times. Plaintiff first made the argument in a motion to suppress before his criminal trial. Plaintiff

then made the argument in his motion for a new trial, and again in his appeal.[2]

Plaintiff makes new allegations in his FAC and relies on one new piece of evidence. His FAC includes allegations that the officers present for the identifications intentionally and deliberately swayed the witnesses, and Plaintiff's new piece of evidence is that in 2014 Karen P. said in an interview that she felt "reassured" that she had selected the right individual after identifying Plaintiff in the live line-up.

III. LEGAL STANDARD

Summary judgment is appropriate if there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c). The moving party bears the initial responsibility of informing the court of the basis of its motion, and identifying those portions of the pleadings, depositions, answers to interrogatories, admissions, or affidavits that demonstrate the absence of a triable issue of material fact. *Celotex Corp. v. Catrett,* 477 U.S. 317, 323 (1986). In determining a motion for summary judgment, all reasonable inferences from the evidence must be drawn in favor of the nonmoving party. *Anderson v. Liberty Lobby, Inc.,* 477 U.S. 242, 255 (1986). A genuine issue exists if "the evidence is such that a reasonable jury could return a verdict for the nonmoving party," and material facts are those "that might affect the outcome of the suit under the governing law." *Id.* at 248. However, no genuine issue of fact exists "[w]here the record taken as a whole could not lead a rational trier of fact to find for the non-

[2] Plaintiff also made the argument in his habeas Petition, however the order granting the Petition did not rule on it the Petition was granted on other grounds.

moving party." *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.,* 475 U.S. 574, 587 (1986).

A party requesting additional time to oppose a summary judgment motion must demonstrate that it "diligently pursued previous discovery opportunities." *Cornwell v. Electra Central Credit Union,* 439 F.3d 1018, 1026 (9th Cir. 2006) (citation and internal quotation marks omitted). The applicant must also "identify by affidavit the specific facts that further discovery would reveal, and explain why those facts would preclude summary judgment." *Tatum v. City & County of San Francisco,* 441 F.3d 1090, 1100 (9th Cir. 2006); Fed. R. Civ. P. 56(d). In short, to resist entry of summary judgment under Rule 56(d), a party must show that it tried to obtain the evidence necessary to support its claims but was prevented from doing so, and that there is reason to believe it would be more successful if it were given additional time to gather evidence.

IV. DISCUSSION

a. Pre-Conviction *Brady* Discussion

Government prosecutors are required to disclose favorable evidence to criminal defendants. *See Brady v. Maryland,* 373 U.S. 83, 88 (1963). This duty also extends to police officers. *United States v, Blanco,* 392 F.3d 382, 388 (9th Cir. 2004); *Youngblood v. West Virginia,* 547 U.S. 867, 869-70 (2006). A *Brady* violation occurs if (1) there is evidence favorable to the accused in that it is exculpatory or impeachment evidence; (2) the government willfully or inadvertently suppresses the evidence; and (3) defendant is prejudiced by the suppression. *Benn v. Lambert,* 283 F.3d 1040, 1052 (9th Cir. 2002). A plaintiff suing under § 1983 "must show that police officers acted with

deliberate indifference to or reckless disregard for an accused's rights or for the truth in withholding evidence from prosecutors." *Tennison v. City & County of San Francisco,* 570 F.3d 1078, 1088 (9th Cir. 2009). For officers to act with deliberate indifference or reckless disregard in suppressing *Brady* material, they must be subjectively aware the *Brady* material exists. *See Jernigan v. Elliott,* 576 F. App'x 695, 696 (9th Cir. 2014) (reversing district court's denial of qualified immunity based on insufficient evidence to show defendant police officers were subjectively aware of evidence withheld from the prosecutors).

In Defendants' motion, they do not argue that information on these other purported Teardrop Rapist cases is not favorable to the accused or that its suppression was not prejudicial. Defendants only argue that Officers Tamez and Quijano were not subjectively aware of these investigations. In response, Plaintiff argues that he was denied meaningful discovery on this issue. He claims that, despite his requests, Defendants refused to make Rule 26 disclosures and that Defendant Quijano refused to sit for a deposition. Plaintiff's counsel, Jan Stiglitz, identifies in her declaration appropriate discovery that could reveal facts for Plaintiff to oppose summary judgment. *See* dkt. 52-1, Stiglitz Decl. The Court agrees that Plaintiff must have an opportunity to engage in discovery to rebut Quijano and Tamez's declarations.

Certainly, if Plaintiff's claim was nothing more than a fishing expedition it could be discarded before discovery takes place, but it is not such a claim. Even without formal discovery Plaintiff has presented non-frivolous evidence that calls into question Defendants' contention that Quijano and Tamez were unaware of these other investigations. First, Quijano and Tamez

worked in different divisions yet somehow communicated with each other and discovered the similarity of their sexual assault cases. Thus, it is not frivolous to suggest that sex crime investigators in different divisions communicate with each other and are knowledgeable of other cases not in their own divisions. Further, one of the rape investigations was assigned to the 77th division while Quijano worked in that division. It is not frivolous to suggest a sex crime officer in a division would be knowledgeable of sex crime cases assigned to that division, even if she was not the investigating officer. Since Plaintiff could uncover evidence through discovery that would create a triable issue of fact as to Quijano's and Tamez's subjective knowledge of these other investigations, the Court defers ruling on this issue until Plaintiff is given the opportunity to conduct such discovery.

The Court notes, however, that in Defendants reply they briefly argue that information on these other sexual assault investigations would not constitute *Brady* material. These arguments are improperly raised for the first time in the reply. *See Zamani v. Carnes,* 491 F.3d 990, 997 (9th Cir. 2007) ("The district court need not consider arguments raised for the first time in a reply brief.") *(citing Koerner v. Grigas,* 328 F.3d 1039, 1048 (9th Cir.2003)). However, the Court disfavors piecemeal summary judgment litigation and believes that a resolution of this issue would be in the interest of judicial economy. Therefore, the Court orders further briefing on this issue. Defendants may file a supplemental brief by the close of business on July 5, 2017, not to exceed eight (8) pages, fully detailing their argument that failure to disclose the five pre-conviction sexual assault investigations cannot give rise to a § 1983 claim—presuming that Defendants were aware of these investigations. If

Defendants fail to do so, the Court will deem the issue waived and no future motions will be heard on the matter. If Defendants do file their supplemental brief, Plaintiffs may then respond by close of business on July 12, 2017, in a supplemental brief not to exceed eight (8) pages.

b. Post-Conviction *Brady* Discussion

Plaintiff claims twenty-four Teardrop Rapist assaults occurred after Plaintiff's conviction became final on June 26, 2000. Defendants move for summary judgment this claim arguing that Defendants had no continuing obligation under *Brady* after a conviction becomes final. Defendants are correct. Plaintiff argues that such an obligation exists based on *Tennison v. City & Cty. of S. F.,* 570 F.3d 1078 (9th Cir. 2009), in which a *Brady* violation was found when the government failed to disclose a confession from the true murderer a week after defendant's conviction, but before the motion for new trial was decided. The Court held that "[t]he fact that the Inspectors received the tape of the confession after the guilty verdict was rendered is immaterial because the record discloses that they received the tape while they were still involved in the new trial and post-conviction proceedings for both Tennison and Goff." *Id.* at 1094. However, Plaintiffs claim in this case does not relate to evidence discovered while Defendants 'were still involved in the new trial and post-conviction proceedings," but rather to evidence that did not exist until after the motion for new trial was denied and the post-conviction proceedings concluded with the Court of Appeals affirming the conviction. *Tennison,* therefore, does not apply.

To the extent the phrase "post-conviction proceedings" in *Tennison* is read to apply to habeas proceedings as well, the holding squarely contradicts Supreme

Court precedent. The Ninth Circuit specifically found that *Brady* obligations existed for post-conviction proceedings in *Thomas y. Goldsmith.* 979 F.2d 746, 749-50 (9th Cir. 1992) ("[W]e believe the state is under an obligation to come forward with any exculpatory semen evidence in its possession . . . . We do not refer to the state's past duty to turn over exculpatory evidence at trial, but to its present duty to turn over exculpatory evidence relevant to the instant habeas corpus proceeding."). However, in overturning a Ninth Circuit case that relied on *Thomas,* the Supreme Court held that "nothing in our precedents suggested that this *[Brady]* disclosure obligation continued after the defendant was convicted and the case was closed." *DA's Office v. Osborne,* 557 U.S. 52, 68 (2009). Other circuits have found that *Osborne* conclusively shuts the door on *Brady* for post-conviction proceedings. *See In re Bolin,* 811 F.3d 403, 409 (11th Cir. 2016) ("Here, it is undisputed that the purported *Brady* violation with respect to the revelation of the Kasler confession happened in 2013, many years after Bolin's 2001 conviction. Because *Brady* is not a cognizable constitutional right in post-conviction proceedings, Bolin has failed to establish the necessary constitutional violation."); *see also Fields v. Wharrie,* 672 F.3d 505, 516 (7th Cir. 2012).

Thus, the proper reading of *Osborne* and *Tennison* is that new evidence that comes to light after trial, but before a conviction becomes final on direct appeal, falls under prosecutorial *Brady* obligations. Evidence that comes to light after a conviction becomes final on appeal, even if relevant for a collateral attack to the conviction, does not fall wider *Brady. See Osborne, 557*

U.S. at 69 *("Brady* is the wrong framework [for post-conviction relief].").[3]

The Court GRANTS summary judgment for Defendants to the extent Plaintiffs § 1983 claim relies on purported *Brady* material that did not come to light until after his conviction became final.

c. Collateral Estoppel Bars Re-Litigation on the Issue of Suggestive Eyewitness Identification Procedures

A state court judgment is given the same preclusive effect by a federal court as it would be given by a court of the state in which the judgment was rendered. *See* 28 U.S.C. § 1738; *Marrese v. Am. Acad. of Orthopaedic Surgeons,* 470 U.S. 373 (1985); *Haring v. Prosise,* 462 U.S. 306, 313 (1983). In § 1983 actions, state law governs whether issue preclusion is applied to a prior state court judgment. *Allen y. McCurry,* 449 U.S. 90,96, 101 S. Ct. 411,66 L. Ed. 2d 308 (1980). In California, issues necessarily decided in a criminal proceeding have collateral estoppel effect in a subsequent civil action. *Teitelbaum Furs, Inc. v. Dominion Ins. Co., Ltd.,* 58 Cal. 2d 601 (1962). Specifically, *in Davis v. Clark County,* 966 F.Supp.2d 1106 (W.D. Wash 2013), the court found a plaintiffs § 1983 claim based on unconstitutional identification procedures to be collaterally estopped based on the same issue having been litigated and resolved against plaintiff in his criminal proceedings.

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[3] Plaintiffs reliance on the case *Prince v.. Ryan,* 2011 U.S. Dist. LEXIS 154919 (D. Ariz. 2011) is likewise unconvincing. That case also dealt with potential *Brady* material that came to light before defendant's conviction was affirmed on appeal.

There is a five-factor test to determine whether collateral estoppel applies: (1) the issue to be precluded is identical to one decided in a prior proceeding, (2) the issue was actually litigated, (3) the issue was necessarily decided, (4) the decision in the prior proceeding was final and on the merits, and (5) the party against whom preclusion is sought was a party, or in privity with a party, to the former proceeding. *People v. Garcia,* 39 Cal. 4th 1070, 1077 (2006). Further, "[f]or purposes of issue preclusion, however, an 'issue' includes any legal theory or factual matter which could have been asserted in support of or in opposition to the issue which was litigated." *Border Business Park; Inc. v. City of San Diego,* 142 Cal. App. 4th 1538, 1565-66 (2006) (citing *Sutphin v. Speik,* 15 Cal.2d 195, 202 (1940)).

The issue that was previously litigated was whether or not the witness identification procedures violated Plaintiffs constitutional rights to due process. The issue was decided against Plaintiff on the merits, and affirmed on appeal. Plaintiff seeks to reopen the issue here based on the argument that he now alleges a broader scope of Defendants' purported violations based on the newly discovered fact that Karen P. felt "reassured" after identifying Plaintiff in the live line-up. This argument is unpersuasive. The newly discovered evidence from Karen P. is grossly mischaracterized by Plaintiff. Plaintiff argues that Karen P.'s interview creates an issue of fact as to whether a police officer reassured her after she identified Plaintiff in the live line-up. However, Karen P. specifically said in her interview that she does not recall an officer saying anything to her after the live line-up. *See* dkt. 48-1, exh. 3, 86/99. She merely recalls "feeling reassured like I had selected the right individual." *Id.* It would be a legal absurdity to find that there is a new

issue of fact that reopens litigation due to a witness *not remembering* whether or not such a fact occurred. Such a finding would drive a stake through the heart of collateral estoppel, as inevitably eighteen years after any case some witnesses will fail to recall every detail.

Without this newly discovered evidence, Plaintiff merely has conclusory allegations of police interference that are precisely the sort of "legal theory or factual matter which could have been asserted" in the prior proceeding. *See Border Business Park, Inc.,* 142 Cal. App. 4th at 1566.

Plaintiff makes two other frivolous arguments regarding the application of collateral estoppel. First, Plaintiff argues that since his criminal conviction was set aside, the Motion to Suppress ruling cannot be used for collateral estoppel purposes based on *Teitelbaum Furs, Inc.,* 58 Cal. 2d at 606-07. The *Teitelbaum* Court held that a criminal judgment subject to collateral attack cannot be used for res judicata purposes. *Id.* Thus, though Plaintiff's conviction for rape and two convictions for attempted rape cannot be used for res judicata purposes[4], nothing in this case suggests it extends to other rulings in the course of a given criminal proceeding that are not alleged to have been the result of perjured testimony or suppression of evidence. Second, Plaintiff relies on *Lucido v. Superior Court,* 51 Cal. 3d 335, 342-343 (1990) in arguing that public policy will not be advanced by applying collateral estoppel in this case. The Court disagrees. That case recognized that "[t]he

[4] For example, if any of the three victims sued Plaintiff for civil damages clearly he would be allowed to re-litigate the issue as to whether he committed the sexual assaults.

purposes of the doctrine are to promote judicial economy by minimizing repetitive litigation, prevent inconsistent judgments which undermine the integrity of the judicial system and to protect against vexatious litigation." *Id.* The first two policies are present here.

The issue of whether the eyewitness identification procedures were impermissibly suggestive has been litigated no less than three times by the state court and has been necessarily decided against Plaintiff all three times. There is no good cause to allow it to be re-litigated here. Accordingly, the Court GRANTS Defendants' motion for summary judgment on this issue.

V. CONCLUSION

For the foregoing reasons, the Court makes the following rulings:

- Defendants' motion for summary judgment against Plaintiff's claim that the eyewitness identification procedures were unduly suggestive is GRANTED based on a finding that the issue is preclude by the doctrine of collateral estoppel.
- Defendants' motion for summary judgment against Plaintiff's claim of a *Brady* violation for failure to disclose post-conviction evidence is GRANTED based on a finding that *Brady* obligations do not continue after a conviction is final.
- Defendants' motion for summary judgment against Plaintiffs claim of a *Brady* violation for failure to disclose pre-conviction. evidence is deferred pending further briefing. Defendants have until

July 5, 2017, to submit a supplemental brief not to exceed eight (8) pages. Plaintiff has until July 12, 2017, to respond with a supplemental brief not to exceed eight (8) pages. If the claim survives, Plaintiff will be entitled to discovery on the issue of whether Defendants Tamez and Quijano had subjective knowledge of the five pre-conviction sexual assaults.

APPENDIX D

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

[Filed April 14, 2017]

———

Case No. 16-CV-8684

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LUIS LORENZO VARGAS,

Plaintiff,

v.

CITY OF LOS ANGELES; LOS ANGELES POLICE DEPARTMENT; COUNTY OF LOS ANGELES; OFFICE OF THE LOS ANGELES DISTRICT ATTORNEY; LOS ANGELES SHERIFF'S DEPARTMENT; MONICA QUIJANO; RICHARD TAMEZ; AND DOES 1-10 INCLUSIVE,

Defendants.

———

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LUIS LORENZO VARGAS

FIRST AMENDED COMPLAINT FOR DAMAGES

(1) DEPRIVATION OF CIVIL RIGHTS, 42 U.S.C. § 1983, *MONELL* VIOLATIONS;

(2) DEPRIVATION OF CIVIL RIGHTS, 42 U.S.C. § 1983, *BRADY* VIOLATIONS;

(3) DEPRIVATION OF CIVIL RIGHTS, 42 U.S.C. § 1983, FALSE EVIDENCE VIOLATIONS; and

(4) CLAIM UNDER CALIFORNIA STATE LAW, CAL. GOV. CODE § 815.2, FOR RESPONDEAT SUPERIOR AND VICARIOUS LIABILITY

DEMAND FOR JURY TRIAL

I.

JURISDICTION AND VENUE

1. This action is brought by Plaintiff LUIS LORENZO VARGAS ("Vargas" or "Plaintiff") pursuant to 42 U.S.C. § 1983.

2. This Court has jurisdiction under 28 U.S.C. § 1343(4) for violations of the 1871 Civil Rights Enforcement Act, as amended, including 42 U.S.C. § 1983, and under 28 U.S.C. § 1331.

3. The acts and omissions complained of herein commenced on July 21, 1998, and continued until November 23, 2015, within the Central District of California. Therefore, venue lies in this District pursuant to 28 U.S.C. § 1391(b)(2).

II.

SUMMARY OF CLAIMS

4. On June 15, 1999, Luis Lorenzo Vargas was wrongfully convicted by jury of sexually assaulting three victims between February 3, 1998 and June 5, 1998. The prosecution's case at trial relied solely on the tentative and shaky eyewitness identifications from each of the victims. No physical evidence ever linked Vargas to these crimes. The victims originally doubted their identifications of Vargas. However, as time went on, and as the victims were repeatedly shown Vargas in either picture or in person, the victims became more confident in their identifications.

5. Although the eyewitness identifications were flawed and faulty, the prosecution had an ace in the hole: all three attacks were identical in their execution, in how they were carried out, and even in the type of victim the perpetrator selected. Thus, the prosecution's theory at trial was simple and straightforward: based on the wealth of similarities between all three crimes, all three attacks had to have been committed by the same perpetrator. During opening statement, the prosecution repeatedly referenced the similarities between the crimes, and emphasized the similarities between the victims, as the reason the crimes all had to have been committed by one person—Vargas. In other words, if the jury believed Vargas committed one of the rapes, he had to have committed them all. In closing, the prosecutor explained why the jury had to conclude Vargas was responsible stating, "He strikes three times. All strikes are in the same spot. All three of these women identifying the defendant Mr. Vargas." The prosecution went on to say:

> Think about the similarities with the victims. They themselves were similar in terms of targets. They were all petite women. They were all young. They were all Hispanic.
>
> Think about the similarities of these crimes. They were all alone when they were attacked. They were all done at approximately 6:00 a.m. They were all on the street with the purpose to catch the bus to go to school, to go to work. They were all distracted by [Vargas] when he came up and asked them directions. He was able to get into their space.
>
> And as soon as he was closer to them, he pulled out a knife. He threatened them, and he made demands. He made sexual demands in relation to all three women.
>
> And all three of these women were able to come to court and tell you that they are now 100 percent certain that this is the man who attacked them.

7. Based on this theory of the prosecution, the jury convicted Vargas of all three sexual assaults.

8. At sentencing, Vargas pleaded with the court to reconsider the conviction and his guilt, expressing concern ". . . that [the] individual that really did these crimes might really be raping someone out there. . . ." Vargas's pleas went unheard. The court sentenced him to a term of 55 years to life.

9. However, despite the prosecution's theory, Vargas was not responsible for the three attacks, and was completely innocent of all charges.

10. Years later, Vargas sought and obtained DNA testing on clothing from the victims in the case. The

DNA testing revealed a profile attributed to an individual commonly known as the Teardrop Rapist. The Teardrop Rapist has been linked to approximately 39 sexual assaults identical to those for which Vargas was convicted. These rapes occurred between 1996 and 2012, some occurring before Vargas was arrested, and some occurring during Vargas's incarceration. The Teardrop Rapist has never been caught.

11. The subsequent DNA testing in Vargas's case definitively proved the Teardrop Rapist had committed the crimes for which Vargas was in prison. As a result of the testing, Vargas filed a Petition for Writ of Habeas Corpus challenging his conviction and sentence.

12. In 2015, the Office of the Los Angeles County District Attorney stipulated that the new DNA evidence completely undermined the prosecution's theory and pointed unerringly to Vargas's innocence. In conceding the Petition for Writ of Habeas Corpus, the District Attorney stated:

> The Los Angeles County District Attorney's Office (hereinafter "LADA") has concluded that Teresa R., honestly, but mistakenly, identified Vargas at trial as her assailant. When the results of the DNA tests are considered in light of the three victims' tentative pre-trial identifications, the LADA no longer has confidence in the convictions rendered against Mr. Vargas. It is the People's position that Mr. Vargas has met the burden required for the granting of habeas corpus relief based upon "newly discovered evidence" which has "undermine[d] the entire prosecution case and point[s] unerringly to innocence." (*In re Clark* (1993) 5 Cal.4th 750, 766.)

In its concession letter, the District Attorney stated, "The LADA does not intend to refile charges against Mr. Vargas after the convictions are vacated."

13. On November 23, 2015, the Los Angeles Superior Court issued an order granting Vargas's petition on the ground that the DNA evidence completely undermined the prosecution's case and pointed unerringly to innocence. The Los Angeles Superior Court vacated and set aside Vargas's conviction as to all the counts and dismissed the Information.

14. In 2016, Vargas sought an Order from the Los Angeles Superior Court for a finding of factual innocence of all charges relating to the instant case. The Office of the Los Angeles County District Attorney did not oppose the finding.

15. Thus, on October 5, 2016, the Los Angeles Superior Court entered an Order, pursuant to California Penal Code section 851.86, finding Vargas factually innocent of sexually assaulting all three victims.

16. Vargas served approximately 16 years in prison for crimes he did not commit. This wrongful conviction and imprisonment was a direct result of the wrongful actions of the Los Angeles Police Department, the City and County of Los Angeles, the Los Angeles Sheriff's Department, the Office of the Los Angeles District Attorney, and Los Angeles Police Department employees Detective Monica Quijano and Officer Richard Tamez. These defendants deliberately and intentionally withheld evidence in the case which showed Vargas was innocent, and created and used false evidence against Vargas through the use of improper identification procedures.

17. In addition, the policies and customs of the Los Angeles Police Department directly contributed

to the violations of the rights of Vargas. Specifically, the policies and customs of the Los Angeles Police Department relating to eyewitnesses meant that the officers employing these misleading and suggestive identification procedures caused the victims to falsely identify Vargas as the perpetrator.

18. Further, the Los Angeles Police Department, the Los Angeles Sheriff's Department, and the Office of the Los Angeles District Attorney failed to institute administrative policies and practices necessary for ensuring that the office complied with its obligations under *Napue v. Illinois*, 360 U.S. 264 (1959); *Brady v. Maryland*, 373 U.S. 83 (1963), and *Giglio v. United States*, 405 U.S. 150 (1972). Specifically, the policies and practices of these defendants meant that its officers and agents withheld evidence from Luis Vargas. This evidence—of other crimes being committed in the same area at the same time period by the Teardrop Rapist—showed Vargas was innocent.

19. As a result of these actions, inactions, policies, and failures, Vargas became, through no fault of his own, a victim of the criminal justice system. He lost his job, educational opportunities, savings, and most important, time with his family, whom he dearly loves.

III.

PARTIES

20. Plaintiff Luis Lorenzo Vargas is a resident of the State of California and resided within the state of California at all times herein alleged.

21. At all times herein, Defendant City of Los Angeles was a public entity, organized and existing under the laws of the State of California.

22. At all times herein, Defendant Los Angeles Police Department was a public entity, organized and existing under the laws of the State of California. The Los Angeles Police Department was and is, at all times herein, an agency of the City of Los Angeles.

23. At all times herein, Defendant County of Los Angeles was a public entity, organized and existing under the laws of the State of California.

24. At all times herein, Defendant Office of the Los Angeles District Attorney was a public entity, organized and existing under the laws of the State of California. The Office of the Los Angeles District Attorney was and is, at all times herein, an agency of the County of Los Angeles.

25. At all times herein, Defendant Los Angeles Sheriff's Department was a public entity, organized and existing under the laws of the State of California. The Los Angeles Sheriff's Department was and is, at all times herein, an agency of the County of Los Angeles.

26. At all times relevant to this lawsuit, Defendant Monica Quijano was employed by and working on behalf of the Los Angeles Police Department, and resided within the jurisdiction of the State of California. In her capacity as an employee for the Los Angeles Police Department, she was the lead investigator on the investigation of the crimes against Edith G. and Teresa R., and in the investigation and accusation of Vargas. Defendant Quijano is sued in her individual capacity.

27. At all times relevant to this lawsuit, Defendant Richard Tamez was employed by and working on behalf of the Los Angeles Police Department, and resided within the jurisdiction of the State of

California. In his capacity as an employee for the Los Angeles Police Department, he was the lead investigator on the investigation of the crimes against Karen P., and in the investigation and accusation of Vargas. Defendant Tamez is sued in his individual capacity.

28. Plaintiff Luis Lorenzo Vargas is informed, believes, and thereon alleges that Defendants sued herein as Does 1 through 10, inclusive, were employees of the Los Angeles Police Department or the Los Angeles Sheriff's Department, and were at all relevant times acting in the course and scope of their employment and agency. Each Defendant is the agent of the other. Vargas alleges that each of the Defendants named as a "Doe" was in some manner responsible for the acts and omissions alleged herein, and Plaintiff will seek leave of this Court to amend the Complaint to allege such names and responsibility when that information is ascertained.

IV.

GENERAL ALLEGATIONS

29. Plaintiff is informed, believes, and thereon alleges, that, at all times herein mentioned, each of the Defendants was the agent and/or employee of each of the remaining Defendants, and in doing the things hereinafter alleged, was acting within the scope of such agency, employment and/or conspiracy, and with the permission and consent of other co-defendants.

30. Each paragraph of this Complaint is expressly incorporated into each cause of action which is a part of this Complaint.

31. The acts and omissions of all Defendants were engaged in maliciously, callously, oppressively, wan-

tonly, recklessly, and with deliberate indifference to the rights of Plaintiff Luis Vargas.

V.

FACTUAL ALLEGATIONS

A. The Perpetrator Committed Three Sexual Assaults

32. Three victims—Karen P., Edith G., and Teresa R.—were accosted, attacked, and sexually assaulted between February 1998 and June 1998. The crimes shared undeniable similarities. The victims were all Hispanic women between the ages of fifteen and twenty-four. They were all attacked at or near a bus stop, as each was walking alone down the street at approximately 6:00 a.m. All of these attacks occurred within 1.6 miles of each other. Each victim was approached by a man who held a knife to her body, and all assaults were initiated in a substantially similar manner. Most notably, all victims gave an almost identical description of the perpetrator, and two of the victims identified some sort of tattoo under the perpetrator's eye. It was this description—and because Vargas has a faded teardrop tattoo under his one of his eyes—that caused law enforcement to center their attention on him. The subsequent identification procedures used by law enforcement led the victims to identify Vargas, and it caused the prosecution to focus its attention on Vargas. Vargas's conviction for all three crimes was based almost entirely on the similarities among the crimes and on the prosecution's assertion that these similarities meant the same perpetrator must have committed all three assaults.

1. The Attack of Karen P.

33. At approximately 6:00 a.m. on February 3, 1998, seventeen-year-old Karen P. was on her way to school and walking toward the bus stop located at 40th Street and S. Avalon in Los Angeles, California.

34. A man on foot stopped Karen P. and asked her for details about the bus. Karen P. said she did not know anything about directions and continued to walk away. The man walked behind Karen P. and asked her if she wanted to make $20.00. Karen P. responded "no" and told the man to leave her alone. The man continued to follow Karen P. and said to her, "If you show me your underwear, I will give you $20.00." Karen P. became frightened and continued to walk toward the bus stop.

35. Before Karen P. could get to the bus stop, the man pulled her into a driveway and pushed her back up against a fence. He held a knife to her face and neck and then lowered the knife toward her stomach. Karen P. begged the man to let her go. The man insisted she show him her underwear and continued to threaten her with the knife.

36. Karen P. unbuttoned her jeans and showed him her underwear. The perpetrator then told her to lower her underwear. Karen P. obeyed out of fear. The man touched her vagina, pubic hair, and her breasts with one hand while holding the knife in the other hand. A loud noise caused the man to run away.

37. Karen P. continued to the bus stop and went to school at Washington High School. At school, she told her teacher and the principal what had happened.

38. Karen P. described her attacker to Washington High School Police Officer Fernando Contreras as a

Hispanic male, about twenty-five to thirty years old, with black hair and brown eyes, approximately five foot, seven inches tall, medium build, wearing a gray sweatshirt and blue jeans. Karen P. described the perpetrator's height by standing up and putting her hand over her head. Officer Contreras estimated the height at about 5' 7" - 5' 9" tall. Vargas is 5'4" tall. Karen P. did not mention any tattoos on the perpetrator's face.

39. Sometime after the incident, Karen P. met with a sketch artist and provided details about her attacker by viewing various photos and picking out characteristics that fit those of her attacker. The sketch roughly comported with the description she gave of the perpetrator—Hispanic male, about twenty-five to thirty years old, with black hair and brown eyes. Karen P. viewed the sketch after it was prepared.

2. The Attack of Edith G.

40. On May 30, 1998 at around 6:00 a.m., twenty-four year old Edith G. was walking down W. 55th Street toward S. Figueroa Street to catch a bus to work. A man approached her on foot from the opposite direction and asked her about a certain street. Edith G. said the street was far and recommended the man take a bus. As Edith G. continued to walk, the man took a couple of steps toward her until he was right by her side.

41. The man pulled out a knife and placed it against her waist. The man told Edith G. to walk toward a car that was parked in a driveway. Edith G. obeyed. Edith G. leaned her back against the car. The man pointed the blade at her and told her to unzip and unbutton her pants. Edith G. said "no." Edith told the man people were watching him, hoping to discourage him from attacking her. The man decided not to

do anything. Before leaving, he warned Edith G. not to say anything and if she did, he would kill her.

42. Edith G. ran toward Figueroa Street, stopping in the middle of the street and screaming for help, to no avail. She got on a bus and went to work, where she told her manager she had been mugged. Edith G.'s father-in-law picked her up from work and took her to his home, where she called the police.

43. Edith G. described her attacker as Hispanic, five foot, seven inches tall with two tattoos of tear-drops next to his left eye. She could not recall if he had a mustache. Edith G. said her attacker wore a black colored "beanie" cap which made it hard for her to see her attacker's eyes.

3. The Attack on Teresa R.

44. On June 5, 1998, fifteen-year-old Teresa R. and her mother, Juana Corona, spent the night at the home of Teresa's sister, Cecilia Corona. At approximately 6:00 a.m., the next morning, Teresa R. was heading toward the bus stop on S. Avalon and E. 83rd Street in Los Angeles. A man approached Teresa R. at the bus stop and asked her if a particular bus stopped at that location. Teresa R. said it did not. The man asked Teresa R. if she spoke Spanish, and she replied that she did.

45. The man pulled out a knife and told Teresa R. to come with him if she did not want to die. He placed the knife next to Teresa R.'s neck. Teresa R. turned to look for a bus, but the man came closer and asked, "Do you want to die?"

46. Still holding the knife to her neck, the man walked Teresa R. down the street, through a deserted alley, and into a parking lot behind an apartment

complex. The man told Teresa R. to take her clothes off, but Teresa R. said "no" and began crying. The man took off Teresa R.'s shorts and made her face the wall. Teresa R. cried and said, "No. Stop." The man told her to shut up if she did not want to get killed. He pulled her underwear down to her knees and touched her breasts and "private parts." He tried to put his penis in her rectum but could not.

47. The man put Teresa R. on the ground, face up, got on top of her, and put his penis in her vagina. Teresa R. said only part of the perpetrator's penis went into her vagina. She did not know whether the man ejaculated inside of her. A few minutes later, he got off of Teresa R. and left. Teresa R. got up, put her clothes on, and hid behind a tree for 20 minutes. She returned to her sister's house. Her mother, sister, and younger brother were at her sister's house when she arrived. She was hesitant to tell them what happened, finding it hard to speak. The family called 9-1-1 and Teresa R. told the operator she had been raped.

48. When the police arrived, Teresa R. told the police officers some of the details of the attack. The police drove her to the location of the attack and then drove her back to her sister's house where she took a shower. Later in the afternoon, on the advice of a neighbor, Teresa R. and her mother went to a private clinic. The doctor at the clinic called the police, who eventually took her to Daniel Freeman Hospital.

49. Before the police took Teresa R. to the hospital to be examined, they drove her to her sister's house to pick up the clothes she was wearing when she was attacked.

4. Teresa R.'s Medical Examination

50. Chris McClung, a sexual assault nurse, examined Teresa R. and found redness, swelling, and tears in her rectal and vaginal areas. McClung noticed blood-tinged secretions in the cervix which could have been caused by a penis hitting the cervix.

51. McClung did not take an external swab from Teresa R.'s vaginal area because Teresa R. said she had showered before coming to the hospital. McClung believed the shower would have eliminated any evidence on the external area. McClung took internal swabs and did a pubic combing.

52. McClung gave the slides and swabs that she recovered from Teresa R. to Officer Callahan of the Los Angeles Police Department (LAPD). Officer Callahan booked the items into evidence.

53. Elizabeth Swanson of the Scientific Investigation Division of the LAPD examined the external genital swabs and slides and vaginal swabs and slides but detected no spermatozoa or semen.

54. At her medical examination, Teresa R. generally described her attacker. Teresa R. told the nurse her attacker was Hispanic, had teardrops near his left eye, was about five foot, six inches tall, between the ages of 30 and 40, and was wearing "some sort of beanie."

55. Teresa R. met with a sketch artist and described her attacker. The sketch created showed a man with tattoos of two teardrops, one underneath the other, at the far end of the left eye. Teresa R. said her attacker had no mustache.

B. Luis Vargas Was Nowhere Near the Crimes

56. Between January 19, 1998 and April 31, 1998, Vargas worked as a store manager at two of the three Manhattan Bagels locations in Los Angeles. One store was located in Beverly Hills and the other in Hollywood on Sunset Boulevard.

57. Julio Arias was the manager of the Beverly Hills location where Vargas worked in January and February of 1998. Vargas was transferred to the Hollywood location where Arias supervised him in May and the first two weeks of June 1998.

58. Enrique Lopez, the Baker at Manhattan Bagel Company, said when he worked with Vargas at the Beverly Hills store, Vargas would open the store around 5:00 to 5:30 a.m.; Vargas was always there before 6:00 a.m.

59. According to Arias, on Tuesdays, Vargas would normally open the store around 5:00 a.m. to get the store ready to be opened at 6:00 a.m. However, according to Arias's notes, in February of 1998 Vargas was scheduled to work at the Beverly Hills location from noon to 5:30 p.m. The attack of Karen P. occurred on a Tuesday morning around 6:00 a.m.

60. In May and June of 1998, Vargas worked at the Hollywood location at 5:00 a.m. or earlier every Saturday. The attacks of Edith G. and Teresa R. occurred on a Saturday morning around 6:00 a.m.

C. LAPD Officers Quijano and Tamez Concluded the Three Attacks Were Connected

61. Karen P. was attacked on 40th Street and S. Avalon Boulevard in Los Angeles, California. The Newton Division of the Los Angeles Police Department initially investigated Karen P.'s case.

62. Edith G. was attacked on 55th Street and Figueroa Street in Los Angeles, California. Teresa R. was attacked on Avalon Boulevard and 40th Place in Los Angeles, California. The 77th Division of the Los Angeles Police Department originally investigated these two attacks.

63. The sex crime departments at the Newton Division and the 77th Division met once a month and compared relevant sex crimes information.

64. In May of 1998, Los Angeles Police Department Detective Monica Quijano was working in the Sex Crimes unit at the 77th Street Division, which operates under the major assault crimes unit. Quijano investigated Teresa R.'s case, as well as Edith G.'s case.

65. Los Angeles Police Department Detective Richard Tamez, assigned to Sex Crimes in the Newton Division, investigated Karen P.'s case.

66. Quijano and Tamez concluded the same person committed all three attacks. This conclusion arose from the undeniable similarities all three crimes shared. The victims were all women between the ages of fifteen and twenty four. They were all attacked at or near a bus stop, as each was walking down the street alone at 6:00 a.m. Each victim was approached by a man who initiated a conversation, held a knife to her body, relocated her to a secondary location, and either assaulted or attempted to assault her before being scared off. Quijano and Tamez were confident all three attacks were committed by the same perpetrator due to the similarities in the attacks and the descriptions of the suspect.

67. After law enforcement concluded all three crimes were committed by the same person, the "Major

Assault Crimes Unit" consolidated all three assaults in its investigation.

D. Quijano and Tamez Believe Vargas Was the Perpetrator

68. Based on the description of the perpetrator given by two of the victims—Hispanic man with a teardrop tattoo—investigators honed in on Vargas as a suspect. Quijano and Tamez noted that two of the victims described some sort of tattoo under the perpetrator's eye. Vargas has a faded teardrop tattoo under his eye. Because of this, Quijano and Tamez believed Vargas was the perpetrator.

69. Detective Quijano provided Detective Tamez with a photograph of Vargas. Detective Tamez used that picture in the photo array he showed at least one of the victims, Karen P.

E. Quijano and Tamez Got the Victims to Identify Vargas

1. Edith G.'s Identification

70. More than a month and a half after the attack, on July 16, 1998, Detective Quijano showed Edith G. a six-pack photo lineup with Vargas in the lineup. Edith G. identified Vargas, but said that unlike Vargas's photo, her attacker had no hair and was heavier than Vargas. Specifically, Edith noted number 6 (Vargas) "should be without hair and the person is a bit [skinny]."

71. A few days later, on July 21, 1998, Edith identified Vargas in a second photo lineup, but was not 100 percent certain of her identification.

2. Teresa R.'s Identification

72. More than one month after the crime, on July 16, 1998, Teresa R. identified Vargas from a six-pack photo lineup. She identified him by the one teardrop below his left eye and believed his eyes and mouth were the same as those of her assailant. However, Teresa R. said Vargas's nose was different than her attacker's.

73. On July 21, 1998, Teresa R. identified Vargas as her attacker in a second photo lineup, which depicted a more recent photograph of Vargas. She noted that her attacker looked older than Vargas looked in the photograph.

F. Based on the Faulty Identifications, Law Enforcement Falsely Arrested Vargas

74. Based on the tentative identifications of the victims, on July 21, 1998, law enforcement arrested Luis Vargas for these crimes.

G. The Teardrop Rapist Continued to Commit Crimes; Investigators Did Not Disclose the Connections

75. Between 1996 and 2012, Los Angeles was terrorized by an unknown perpetrator commonly referred to as the Teardrop Rapist. Through DNA testing, the Teardrop Rapist has been linked to approximately 39 sexual assaults.[1] The sexual assaults for which the Teardrop Rapist is responsible are identical to those for which Vargas was convicted.

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[1] Los Angeles Times, LAPD's 19-year Hunt For Serial Rapist Filled With Frustration <http://www.latimes.com/local/california/la-me-0114-serial-rapist-20150114-story.html> (as of January 13, 2015.)

The Teardrop Rapist has left his DNA on at least 10 of these attacks.[2]

76. These attacks began before Vargas was even a suspect in this case, and they continued well after his arrest, conviction, and sentence. The table on the following page documents the attacks committed by the Teardrop Rapist, along with significant dates occurring in Vargas's case for reference:

Event	Victim Info	DATE	Investigating Agency
TDR attack		4/20/1996	LAPD
TDR attack*	Karen P.	2/3/1998	LAPD
TDR attack*	Edith G.	5/30/1998	LAPD
TDR attack*	Teresa R.	6/5/1998	LAPD
TDR attack		6/22/1998	LAPD
Vargas Arrested		**7/21/1998**	**LAPD**
TDR attack		7/24/1998	LAPD
TDR attack		2/13/1999	LAPD
TDR attack		5/15/1999	LAPD
Vargas Convicted		**7/22/1999**	**LAPD**
Conviction Affirmed		**6/26/2000**	**LAPD**
TDR attack		7/17/2000	LAPD
TDR attack		8/7/2000	LAPD
TDR attack		9/25/2000	LAPD
TDR attack		11/7/2000	LAPD
TDR attack		11/13/2000	LAPD

[2] Los Angeles Times, Can You Help Locate the Teardrop Rapist? LAPD is Out of Leads <http://www.latimes.com/local/lanow/la-me-ln-teardrop-rapist-los-angeles-20150113-story.html> (as of February 17, 2015.)

TDR attack	12/29/2000	LAPD
TDR attack	2/13/2001	LAPD
TDR attack	3/3/2001	Sheriff
TDR attack	5/14/2001	LAPD
TDR attack	5/14/2001	LAPD
TDR attack	7/8/2001	LAPD
TDR attack	10/13/2001	LAPD
TDR attack	11/26/2001	LAPD
TDR attack	1/18/2002	LAPD
TDR attack	4/13/2002	LAPD
TDR attack	6/27/2002	Sheriff
TDR attack	8/30/2002	LAPD
TDR attack	9/7/2002	LAPD
TDR attack	1/11/2003	LAPD
TDR attack	1/22/2003	LAPD
TDR attack	6/20/2003	LAPD
TDR attack	10/29/2005	Sheriff
TDR attack	11/10/2011	LAPD
TDR attack	6/25/2012	LAPD

77. As shown in the table, by the time Luis Vargas had been arrested for the sexual assaults in the instant case, the Teardrop Rapist had committed two other sexual assaults in the same area.

78. After Vargas was arrested and in custody, and before Vargas was convicted, the Teardrop Rapist committed another three rapes, again in the same area, in the same manner as those with which Vargas had been charged. Perhaps most disturbingly, one of these attacks occurred *three days* after Vargas had been arrested. Nobody from the Los Angeles Police Department—including Quijano and Tamez—disclosed this exculpatory information at any time.

79. Other important information was similarly withheld. According to the FBI's description, the

attacks which occurred in Vargas's case matched perfectly with the Teardrop Rapist's *modus operandi*:

> The suspect typically approaches women who are alone and on their way to school or work or are waiting at a bus stop, between the hours of 5:15 AM and 8:00 AM. The suspect converses with the victim, then threatens to kill the victim with a handgun or a knife. The suspect then forces the victim from the sidewalk to a secondary location, where he sexually assaults her.[3]

80. The fact the attacks on Karen P., Edith G., and Teresa R. are carbon copies of the Teardrop Rapist's *modus operandi* was a fact never disclosed by any actor or agency in case, including the Los Angeles Police Department, the Los Angeles Sheriff's Department, the Office of the Los Angeles County District Attorney, Detective Quijano, or Detective Tamez.

81. Further, as can be seen on the chart on the next page—a chart prepared by the Los Angeles Police Department—many of the Teardrop Rapist's attacks occurred within approximately three miles of the attacks for which Vargas was convicted:

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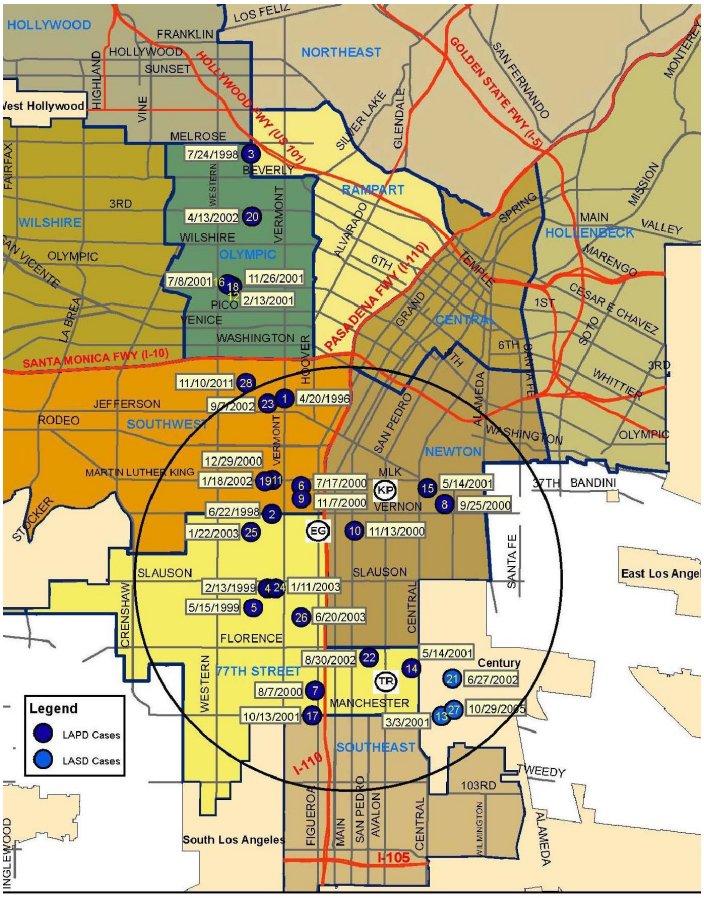
[3] The Federal Bureau of Investigations, Wanted by the FBI <http://www.fbi.gov/wanted/seeking-info/ unknown-subject/view (as of December 10, 2014.)

Los Angeles Police Department
[SEAL] Sexual Assault Stories [SEAL]
(04/20/96-11/10/11)



82. Despite the fact the attacks on Karen P., Edith G., and Teresa R. all occurred within miles of the other attacks committed by the Teardrop Rapist, no law enforcement agency or individual actor disclosed any information regarding the Teardrop Rapists or the other attacks at any time to Vargas.

H. Law Enforcement Continued to Improperly Influence the Victims to Falsely Identify Vargas

83. Almost six months after the attack, and less than a week after arresting Vargas, on July 27, 1998, Detective Tamez sat down with Karen P. to show her a six-pack photo lineup with Vargas's photo included. Tamez had obtained the photo from Detective Quijano. Karen P. identified Luis Vargas from the six-pack photo lineup. She was 85 percent sure Vargas was the perpetrator "because of the bump on his nose."

84. Ten months after the attack, on November 4, 1998, law enforcement brought Karen P. to the station to view Vargas in a live lineup. Karen P. thought her perpetrator was either Vargas or another male.[4] She then rejected her other choice, but was only 70 percent sure about her identification of Vargas. Karen P. said in her 2014 interview that after the live lineup, officers reassured her that she selected the right person.

85. Also at a live lineup, Teresa R. tentatively identified Vargas, but equivocated significantly. This lineup viewing was the third time Teresa R. saw Vargas, either in a photo or in person. To make sure the witnesses selected Vargas, Los Angeles Police Department officers arranged the photo arrays and lineups so that the only person who was the same person in the lineup or in the arrays was Luis Vargas. Karen P. said Vargas's mustache was much fuller and darker at the live lineup than in the six pack photo array.

86. On February 16, 1999, law enforcement brought Edith G. to the station to view Vargas in a

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[4] Karen P. said Vargas's mustache was much fuller and darker at the live lineup than in the six pack photo array.

live lineup. Like Teresa R., this was the third time Edith G. saw Vargas, either in a photo or in person. Each time, Los Angeles Police Department officers had ensured the only person who was the same person in the lineup or in the arrays was Luis Vargas. Even despite the repeated showings, Edith G. could only tentatively identify Vargas in a photograph of a live lineup, stating "I am not too sure, I believe I recognize his face."

G. After LAPD Repeatedly Exposed Vargas's Image to the Victims, the Prosecution Was Able to Get the Victims to Identify Him at Trial

87. At trial, Karen P. described her attacker as a Latino male, approximately five foot, six inches tall, approximately 140 pounds, with a medium build. She remembered her attacker's nose having a distinct shape with a bump. She recalled no facial tattoos or a mustache. At trial, with only Vargas sitting in the defendant's chair, she said she was 100 percent sure Vargas was her attacker.

88. In court, after the prosecutor stood behind Vargas, Edith G. identified him as her attacker. Edith G. said it took a long time for her to identify Vargas in court because she was afraid.

89. Teresa R. testified she was more certain of her identification at the live lineup than with the photo lineup. In court, Teresa R. was certain that Vargas was her attacker.

H. The Defense Presented an Alibi and Inconsistencies in the Prosecution's Case

90. Vargas presented the testimony of Julio Arias, and Enrique Lopez to support and corroborate his alibi that he was at work at the time of the attacks.

In addition, Vargas presented witnesses to explain how Vargas did not match the description of the perpetrator.

91. Julio Arias testified he had always noticed a scar on Vargas's face and one teardrop tattoo under his left eye, which was inconsistent with the descriptions given by all three victims. Enrique Lopez and fellow co-worker Margarita Aparicio also testified they only noticed Vargas had one teardrop tattoo. Arias, Lopez, and Aparicio all testified Vargas had always had facial hair and had facial hair during the period the sexual assaults were committed, which was inconsistent with the descriptions given by the victims.

I. Vargas Was Convicted Based on Identifications and Similarities of Crimes

92. Despite the significant problems with the identifications in the case, the prosecution proceeded with the case, relying on the strength of the in-court identifications and the theory that all of the crimes had to have been committed by the same person. In closing argument, the prosecution reiterated the theme:

> . . . the trademark features of these cases, each one of them are so similar that they were obviously committed by the same individual. The time of day, the location, the type of victim, the manner of attack, the use of the same type of weapon, the language, all of it remarkably similar. They are signature crimes.

93. The jury convicted Vargas on July 22, 1999, one year and one day after he was falsely arrested for the three attacks.

J. Facts Adduced After Vargas's Conviction

1. DNA and Misidentification Statistics

94. DNA testing has become the foremost technique for conclusively identifying and excluding criminal suspects in cases where biological material is left at a crime scene. DNA stands in stark contrast to other kinds of evidence, such as eyewitness identification.[5]

95. The use of DNA in the post-conviction context has, to date, led to the exoneration of hundreds of innocent people from the nation's prisons and death rows, including twenty in California alone.[6] Of the first 325 post-conviction DNA exonerations, DNA testing led to the identification of the true perpetrator in approximately half of the cases. DNA testing identified the true perpetrator in 158 of the 325 cases.[7]

2. Post-Conviction DNA Testing in Vargas's Case

96. Pursuant to a joint stipulation between the Los Angeles District Attorney's Office and the California Innocence Project, Orchid Cellmark, Inc. (Cellmark) conducted DNA testing on numerous items of evidence

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[5] In fact, "[e]yewitness misidentification is the greatest contributing factor to wrongful convictions proven by DNA testing, playing a role in more than 70% of convictions overturned through DNA testing nationwide." (Innocence Project, *Understand the Causes: Eyewitness Misidentification*, <http://innocenceproject.org/causes/Eyewitness-Misidentification/> (as of April 2016).)

[6] National Rgistry of Exonerations, <http://www.law.umich.edu/special/exoneration/Pages/about.aspx> (as of October 2016).

[7] (Innocence Project, *Know the Cases: National View*, <http://www.innocenceproject.org/know/Search-Profiles.php> (as of December 30,2014).)

collected in the Teresa R. investigation. The tested items included the vaginal swabs collected from Teresa R., the jean shorts Teresa R. was wearing at the time of the attack, the panties Teresa R. was wearing at the time of the attack, buccal swab samples from Luis Vargas, and buccal swab samples from Teresa R. Because the police did not collect physical evidence relating to the attacks of Karen P. and Edith G., no testing had been performed on anything from these attacks.

97. In April 2014, Cellmark completed its testing on the vaginal swabs and clothing and issued a report. In June 2014, Cellmark completed its testing on the buccal swab samples from Luis Vargas and Teresa R. The results of the testing definitively showed that Luis Vargas was not the perpetrator of the rapes and sexual assaults for which he was convicted, and that the Teardrop Rapist was that actual perpetrator of these crimes.

3. Problems Inherent with the Eyewitness Identifications in Vargas's Case

98. Since the time of Vargas's conviction, significant research and study has been devoted to the science of eyewitness identifications. Thus, research has called into significant question the nature of eyewitness identification testimony, as well as the often misleading relationship between a witness's confidence in the identification and its accuracy.

99. Misidentifications—whether offered in good faith or perjured—are, without a doubt, one of the primary causes of wrongful convictions in the United

States criminal justice system.[8] Studies have shown that eyewitnesses select non-suspects from photo and live lineups around 20% of the time.[9] In fact, both the California Supreme Court and the United State Supreme Court have agreed with the numerous studies showing that eyewitness identifications are often unreliable.[10] The United States Supreme Court has stated that "[t]he vagaries of eyewitness identification are well known and the annals of criminal law are rife with instances of mistaken identifications."[11]

100. The courts have recognized many factors that contribute to mistaken identification.[12] Indeed, the New Jersey Supreme Court, in a true step of intellectual courage and integrity, published the revolutionary decision of *State v. Henderson*.[13]

101. The *Henderson* court explored all of the scientific data and research regarding witness perception and memory in order to determine the reliability of

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[8] Rob Warden, *How Mistaken and Perjured Eyewitness Identification Testimony Put 46 Innocent Americans on Death Row: An analysis of wrongful convictions since restoration of the death penalty following Furman v. Georgia,* Northwestern School of Law, Center of Wrongful Convictions (2001).

[9] See Wright & McDaid, *Comparing System & Estimator Variables Using Data from Real Lineups* in Applied Cognitive Psychology (1996) pp. 75-80.)

[10] *People v. Cardenas* (1982) 31 Cal. 3d 897, 908, citing *United States v. Wade*, (1967) 388 U.S. 218, 228 and *People v. Bustamante* (1981) 30 Cal.3d 88, 98; see also *People v. McDonald* (1984) 37 Cal.3d 351, 363-364.

[11] *United States v. Wade*, *supra*, 388 U.S. at p. 228.

[12] See *People v. McDonald*, *supra*, 37 Cal.3d at pp. 375-376; *United States v. Wade*, *supra*, 388 U.S. at p. 228-229.

[13] (N.J. 2011) 27 A.3d 812 [*Henderson*].

eyewitness identification evidence.[14] After a ten day hearing, many exhibits, and numerous published scientific studies, the *Henderson* court found a "troubling lack of reliability in eyewitness identifications" and that the possibility of mistaken identification is a very real problem in our legal system.[15] The current scientific research supports the position that the human memory is malleable and that an array of variables can affect memory and lead to misidentifications.[16]

102. The scientific literature has divided those variables into two categories: (1) system variables (factors such as lineup procedures that are within the control of the criminal justice system); and (2) estimator variables (factors related to the witness, the perpetrator, or the event itself—i.e., distance, lighting, or stress—over which the legal system has no control.)[17]

103. With respect to system variables, the *Henderson* court found, in relevant part, there is an increased likelihood of misidentification where: (1) the eyewitness views more than one photo of the suspect because successive views of the same person can make it difficult to know whether the later identification stems from a memory of the original event or a memory of the earlier identification procedure;[18] (2) the identification procedure is administered by someone who knows the identity of the suspect

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[14] *Id*. at p. 877.

[15] *Id*. at pp. 877, 886.

[16] *Id*. at pp. 892, 895.

[17] *Id*. at p. 895.

[18] *Id*. at p. 900-901.

because even the best-intentioned, non-blind administrator can act in a way that inadvertently sways an eyewitness trying to identify a suspect;[19] and (3) either pre- or post-identification feedback is given to the witness by administrators because it can falsely enhance the witnesses recollection of the suspect.[20]

104. In Vargas's case, detectives intentionally and deliberately exposed the victims to Vargas's photo multiple times before trial. Edith G. viewed two photo lineups, each displaying Vargas. Edith G. again had an opportunity to see Vargas at the live lineup. It was not until she viewed Vargas three separate times that Edith G. became positive that Vargas was the perpetrator.

105. Similarly, Teresa R. had three opportunities before trial to see Vargas—twice in two separate photo line ups and once in a live lineup. Again, Teresa R.'s confidence increased at trial, after viewing Vargas on three separate occasions.

106. Karen P. viewed one photo lineup and the live line up before testifying at trial that she was certain Vargas was the perpetrator. Karen P. expressed confidence in her identification again in 2014 stating, "going through the proceedings, seeing the individual, it just jarred [her] memory a little bit more."

107. Dr. Kathy Pezdek is a Professor of Psychology at Claremont Graduate University in Claremont, California and is a Fellow of the Association for Psychological Science. Dr. Pezdek's professional background is in experimental psychology with a speciality

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[19] *Id*. at pp. 896-897.

[20] *Id*. at pp. 899-900.

in memory for real world events. As such, Dr. Pezdek has qualified to testify as an expert witness on eyewitness memory in more than 275 cases in federal and state courts throughout California. Dr. Pezdek's research has been in the area of "factors that affect the accuracy of memory." In addition to many of her accomplishments, Dr. Pezdek has been widely published: she has edited four books on cognitive psychology; published dozens of articles and chapters; and presented her research at numerous national and international professional conferences. Dr. Pezdek's research has been funded by a number of federal grants, from the National Institute of Justice, and from the National Science Foundation.

108. Dr. Pezdek identified three phases of memory: (1) the perception or observation phase; (2) the storage phase; and (3) the identification phase. The perception or observation phase occurs at the time the witness is watching the event. The storage phase is the time period in which the information is being held in the memory. The identification phase is when the witness describes his or her memory or when they select a suspect from a lineup.

109. Many factors during these three phases affect the accuracy of an eyewitness's memory. Five are specific to the case against Vargas, including: (1) weapon focus; (2) disguise; (3) stress; (4) time delay; and (5) eyewitness confidence.

- Weapon Focus: "Research suggests that, when a weapon is present during a crime, witnesses tend to focus their attention on the weapon and not on the face of the person holding the weapon." This results in "(a) increased stress and (b) even less time available to focus on the face of the suspect holding the weapon." All

three victims testified the perpetrator used a knife when they were attacked, thus making it less likely their identifications were accurate.

- Disguise: "Individuals are perceived less accurately and then recognized less accurately if they are observed wearing a hat, hood or other type of disguise." One study proved a 40% reduction in accuracy when the perpetrator wore a cap. Edith G.'s attacker was wearing a beanie that was pulled low on his head; Edith G. could not see her attacker's eyes. Teresa R. also told the nurse and sketch artist that perpetrator was wearing a beanie. Thus, the simple fact that the perpetrator was wearing a cap means there is a likelihood the accuracy of those identifications were significantly decreased.
- Stress: Many recent studies have reported that memory is impaired by high levels of stress. Given the nature of the crimes, Teresa R., Karen P., and Edith G. were under high levels of stress throughout their attacks, decreasing the reliability of those identifications.
- Time Delay: "One of the oldest findings in psychology is the fact that memory declines with the passage of time . . . In a number of more recent studies, it has been reported that after a significant time delay (a) the probability of a correctly identifying a perpetrator decreases, and (b) the probability of incorrectly identifying someone who was not the perpetrator increases." Karen P.'s first identification was made five and a half months after she was attacked; Edith G.'s first identification was made seven weeks after she was attacked; Teresa R.'s first identification was made over a

month after she was attacked. Such time delays increase the likelihood of the types of misidentification seen in the victims of this crime.

- Eyewitness Confidence Can Be Deceiving: The confidence expressed by an eyewitness is not generally a good indication of eyewitness identification accuracy, especially when the identifier's confidence increases after a significant time delay. All the victims in this case initially identified Vargas after a significant time delay. The three victims did not become 100% confident in their identifications until trial,[21] which was eleven months after the attack of Karen P., seven months after the attack of Edith G., and six months after the attack of Teresa R. Given the time delays and what the new DNA evidence now proves, the victims' confidence of their identification is not a reliable factor in their accuracy.

V.

PARTICIPATION, STATE OF MIND, AND DAMAGES

A. Participation and State of Mind

110. As will be alleged, the Defendants took actions that were without authorization of law.

111. Each Defendant participated in the violations alleged herein, or directed the violations alleged

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[21] In *State v. Henderson* (N.J. 2011) 27 A.3d 872 [*Henderson*], successive views of the same person during the identification procedure can make it difficult to know whether the later identification stems from a memory of the original event or a memory of the earlier identification procedure. (*Henderson*, *supra*, 27 A.3d 872, 900-901.)

herein, or knew of the violations alleged herein and failed to act to prevent them. Each defendant ratified, approved, and acquiesced in the violations alleged herein.

112. As joint actors with joint obligations, each defendant was and is responsible for the failures and omissions of the other.

113. Each Defendant acted individually and in concert with the other Defendants and others not named in violating Plaintiff's rights.

114. Each Defendant acted with a deliberate indifference to or reckless disregard for an accused's rights for the truth in withholding evidence from the defense, and/or for the Plaintiff's right to a trial free from constitutional defect, and free of active concealment of material facts, and/or for the Plaintiff's right to due process of law. Their actions were accomplished intentionally strengthen the false identifications against Plaintiff.

1. City of Los Angeles

115. The City of Los Angeles failed to train, supervise, and enact policies regarding eyewitness identification procedures to ensure suggestive identification procedures did not occur, and to reduce or eliminate the likelihood of irreparable misidentification through those procedures. Policymakers within the City of Los Angeles and individual supervisors enacted improper policies, or failed to enact proper policies, regarding proper eyewitness identification interview procedures. In the alternative, the City of Los Angeles failed to properly train or supervise its employees with regards to these policies.

116. In addition, the City of Los Angeles failed to train, supervise, and enact policies regarding the disclosure or *Brady* material and exculpatory third-party culpability information. Policymakers within the City of Los Angeles and individual supervisors enacted improper policies, or failed to enact proper policies, regarding *Brady* and the disclosure of third-party culpability information. In the alternative, the City of Los Angeles failed to properly train or supervise its employees with regards to these policies. At no point was any information regarding the Teardrop Rapist ever disclosed to the defense.

2. Los Angeles Police Department

117. The Los Angeles Police Department failed to train, supervise, and enact policies regarding eyewitness identification procedures to ensure suggestive identification procedures did not occur, and to reduce or eliminate the likelihood of irreparable misidentification through those procedures. Policymakers within the Los Angeles Police Department and individual supervisors enacted improper policies, or failed to enact proper policies, regarding proper eyewitness identification interview procedures. In the alternative, the Los Angeles Police Department failed to properly train or supervise its employees with regards to these policies. Policies which relate to this claim include: ensuring eyewitnesses do not view more than one photo of a suspect; limiting eyewitnesses' viewing of a suspect; ensuring the identification procedure is administered by someone who does not know the identity of the suspect; and avoiding either pre- or post-identification feedback when interviewing eyewitnesses.

118. In addition, the City of Los Angeles failed to train, supervise, and enact policies regarding the

disclosure or *Brady* material and exculpatory third-party culpability information. Policymakers within the City of Los Angeles and individual supervisors enacted improper policies, or failed to enact proper policies, regarding *Brady* and the disclosure of third-party culpability information. In the alternative, the City of Los Angeles failed to properly train or supervise its employees with regards to these policies. At no point was any information regarding the Teardrop Rapist ever disclosed to the defense.

3. County of Los Angeles

119. The County of Los Angeles failed to train, supervise, and enact policies regarding the disclosure or *Brady* material and exculpatory third-party culpability information. Policymakers within the County of Los Angeles and individual supervisors enacted improper policies, or failed to enact proper policies, regarding *Brady* and the disclosure of third-party culpability information. In the alternative, the County of Los Angeles failed to properly train or supervise its employees with regards to these policies. At no point was any information regarding the Teardrop Rapist ever disclosed to the defense, despite investigation into at least three other sexual assaults by agents representing the County of Los Angeles.

4. Office of the Los Angeles District Attorney

120. The Office of the Los Angeles District Attorney failed to train, supervise, and enact policies regarding the disclosure or *Brady* material and exculpatory third-party culpability information. Policymakers within the Office of the Los Angeles District Attorney and individual supervisors enacted improper policies, or failed to enact proper policies, regarding *Brady* and the disclosure of third-party culpability

information. In the alternative, the Office of the Los Angeles District Attorney failed to properly train or supervise its employees with regards to these policies. At no point was any information regarding the Teardrop Rapist ever disclosed to the defense, even after three separate sexual assaults occurred subsequent to Vargas's arrest.

5. Los Angeles Sheriff's Department

121. The Los Angeles Sheriff's Department failed to train, supervise, and enact policies regarding the disclosure or *Brady* material and exculpatory third-party culpability information. Policymakers within the Los Angeles Sheriff's Department and individual supervisors enacted improper policies, or failed to enact proper policies, regarding *Brady* and the disclosure of third-party culpability information. In the alternative, the Los Angeles Sheriff's Department failed to properly train or supervise its employees with regards to these policies. At no point was any information regarding the Teardrop Rapist ever disclosed to the defense, despite investigation into at least three other sexual assaults conducted by Los Angeles Sheriff's Department officers.

6. Monica Quijano

122. Los Angeles Police Department Detective Monica Quijano investigated Teresa R.'s case, as well as Edith G.'s case, before all cases were consolidated. Quijano conducted at least two of the suggestive identification procedures with Teresa R. and Edith G., repeatedly showing these witnesses Vargas's photo or directing them to look at him in a live lineup. Vargas was the only person the police included in every photo array and lineup, and the only one repeated. She also deliberately and intentionally withheld information regarding the Teardrop Rapist

and other third-party culpability information from Vargas and his defense, even after three separate sexual assaults occurred subsequent to Vargas's arrest, and after five total and separate sexual assaults had occurred in the same area, against the same type of victim, with the same *modus operandi*, by the time of Vargas's conviction.

7. Richard Tamez

123. Los Angeles Police Department Detective Richard Tamez, assigned to Sex Crimes in the Newton Division, investigated Karen P.'s case, before all cases were consolidated. Tamez conducted at least one of the suggestive identification procedures with Karen P., repeatedly showing this witness Vargas's photo or directing her to look at him in a live lineup. Vargas was the only person the police included in every photo array and lineup, and the only one repeated. He also deliberately and intentionally withheld information regarding the Teardrop Rapist and other third-party culpability information from Vargas and his defense, even after three separate sexual assaults occurred subsequent to Vargas's arrest incarceration, and after five total and separate sexual assaults had occurred in the same area, against the same type of victim, with the same *modus operandi*, by the time of Vargas's conviction.

B. Damages

124. As a direct and proximate result of the aforesaid acts, omissions, customs, practices, policies, and decisions of the Defendants, Plaintiff has suffered great mental and physical pain, suffering, anguish, fright, nervousness, anxiety, shock, humiliation, indignity, embarrassment, harm to reputation, and apprehension, which have caused Plaintiff to sustain damages in a sum to be determined at trial.

125. Due to the acts of the Defendants, Plaintiff has suffered, and continues to suffer, and is likely to suffer in the future, extreme and severe mental anguish as well as mental and physical pain and injury. For such injury, Plaintiff will incur significant damages based on psychological and medical care.

126. As a further result of the conduct of each of these Defendants, Plaintiff has lost past and future earnings in an amount to be determined according to proof at trial.

127. As a further result of the conduct of each of these Defendants, Plaintiff has been deprived of familial relationships, including not being able to maintain a healthy and intimate relationship with his wife, and to raise a family.

128. The aforementioned acts of the Defendants, and each of them, was willful, wanton, malicious, oppressive, in bad faith and done with reckless disregard or with deliberate indifference to the constitutional rights of the Plaintiff entitling Plaintiff to exemplary and punitive damages from each defendant other than Defendant City of Los Angeles in an amount to be proven at the trial of this matter.

129. By reason of the above described acts and omissions of Defendants, Plaintiff was required to retain an attorney to institute and prosecute the within action, and to render legal assistance to Plaintiff that he might vindicate the loss and impairment of his rights, and by reason thereof, Plaintiff requests payment by Defendants of a reasonable sum for attorney's fees pursuant to 42 U.S.C. § 1988.

FIRST CLAIM FOR RELIEF
DEPRIVATION OF CIVIL RIGHTS
42 U.S.C.§ 1983
BRADY VIOLATIONS

(Against Defendants Quijano, Tamez, Los Angeles Police Department, Los Angeles Sheriff's Department, and Does 1 – 10)

130. Plaintiff hereby incorporates each of the allegations of this Complaint as if fully set forth herein, and further allege as follows:

131. Defendants Quijano, Tamez, LAPD, Los Angeles Sheriff's Department, and Does 1 – 10, while acting under color of law, deprived Plaintiff of his civil rights by violating his right to have material exculpatory evidence and information turned over to the Vargas defense as required by *Brady*.

132. The information regarding the Teardrop Rapist—and more specifically, the failure of the Los Angeles Police Department and the Los Angeles County Sheriff's Department to provide that information to the prosecution or the defense—amounted to a clear and inexcusable violation of its obligations under *Brady*. Investigators working in the Los Angeles Police Department, the LAPD itself, and the Los Angeles County Sheriff's Department had an obligation to turn over information regarding these other assaults, as they would have provided clear exculpatory evidence that a third party, the Teardrop Rapist, had committed the rapes for which Vargas was prosecuted.

133. The Teardrop Rapist committed 39 sexual assaults identical to the ones for which Vargas was wrongfully convicted. The time, manner, and victims of each attack were so unique as to create a criminal

profile that is too commonsensically obvious to be anything but "material" in the context of Vargas' wrongful conviction and incarceration. The facts surrounding the rapes and attempted rapes for which Vargas was wrongfully convicted were so unique the prosecution, police, and public gave a nickname to the true perpetrator: The Teardrop Rapist. This nickname, and the public outcry that came with it, was due to the fact that each attack from the teardrop rapist was exactly the same *modus operandi.*

134. Vargas is informed and believes and thereupon alleges that the investigations of *all* the Teardrop Rapist crimes by both LAPD and the Los Angeles County Sherrif's Department included and encompassed as part of the overall investigation the same specific crimes for which Vargas was wrongfully convicted, as well as all other rapes/attempted rapes committed by the Teardrop Rapist. This means that the LAPD and the Los Angeles County Sheriff's Department knew the at least some of the information concerning these other crimes was known during and throughout Vargas' arrest, trial, and ultimately wrongful incarceration, yet both institutions deliberately and intentionally chose *not* to disclose this information to the prosecution to alert them they had convicted the wrong man, or to Vargas himself, to enable him to prove his innocence.

135. The information withheld from Vargas was indeed favorable. Had the jury in Vargas' trial heard that rapes committed by the true Teardrop Rapist continued while Vargas was *still in custody*, this obviously would have greatly impacted the ultimate results of the criminal trial and made Vargas' conviction extremely unlikely. Likewise, had this same information been disclosed to the wrongfully convicted

Vargas, his release from incarceration would likely have been much earlier in time.

136. Had the information, resultant from the continued and ongoing investigation and attempts to capture the Teardrop rapist, been disclosed to Vargas or the prosecution, it would have put Vargas whole case in such a different light as to undermine the entire confidence of the verdict, and eventual decades of wrongful incarceration.

137. As noted above, by the time Vargas's conviction was final, a serial rapist had committed no fewer than five other rapes in the area and with the same *modus operandi* as occurred in the crimes for which Vargas was convicted. Three of these rapes occurred after Vargas was arrested and incarcerated, when it would have been impossible for Vargas to have committed them.

138. Defendants Quijano, Tamez, Does 1 – 10, the Los Angeles County Sherif's Department and the Los Angeles Police Department had actual and constructive knowledge that another person was committing sexual assaults in the same area with the same *modus operandi*, and committing these attacks against the same types of victims, as in Vargas's case. Further, these defendants had an obligation to turn over this exculpatory information to Vargas and/or the prosecution.

139. Despite this knowledge and this obligation, at no point did any defendant disclose any information regarding the Teardrop Rapist to Vargas, and this failure prevented Vargas from presenting this information before his conviction became final. As a result, his rights were violated and he spent almost two decades in prison for crimes he did not commit.

140. Further, investigators from the Los Angeles Sheriff's Department investigated at least three other assaults committed by the Teardrop Rapist. This additional information never reached Plaintiff or the prosecution, despite its clear ability to exculpate Plaintiff. This failure prevented Vargas from presenting that information to secure his release. As a result, his rights were violated and he spent almost two decades in prison for crimes he did not commit.

141. The actions of each defendant in withholding evidence from the defense were done with deliberate indifference to or reckless disregard for Plaintiff's rights or for the truth.

142. The *Brady* violations asserted herein encompass, but are not limited to:

a. Failing to discover or investigate third-party suspect information regarding the Teardrop Rapist, and connect that information to the crimes for which Plaintiff was accused and convicted; and

b. Failing to turn over information regarding the Teardrop Rapist to the defense at any point during the investigation, arrest, prosecution, conviction, or post-conviction of Plaintiff Luis Vargas.

143. The constitutional source of the obligation to provide *Brady* information is primarily the due process clause of the Fifth and Fourteenth Amendments, and Plaintiff's due process rights were violated by the conduct alleged herein. Plaintiff brings this claim as both a procedural and a substantive due process violation. To the extent that any court were to conclude that the source of Plaintiff's right to *Brady* information is a constitutional source other than due process (such as the Fourth Amendment or Sixth

Amendment right to a fair trial), this claim is brought on those bases as well.

144. Defendants Quijano, Tamez, Los Angeles Police Department, Los Angeles Sheriff's Department, and the other Doe defendants were each jointly and severally responsible to provide *Brady* information to the defense. Each engaged in, knew of, or should have known of the unconstitutional conduct alleged herein and failed to prevent it, which each had a responsibility to do, and each ratified, approved or acquiesced in it.

145. As a result of the defendants' violations, and each of their violations of Vargas's constitutional rights to have *Brady* information turned over to the defense, Vargas was damaged as alleged above.

SECOND CLAIM FOR RELIEF
DEPRIVATION OF CIVIL RIGHTS
42 U.S.C. § 1983

MONELL VIOLATIONS

(Against Defendants City of Los Angeles, Los Angeles Police Department, County of Los Angeles, Office of the Los Angeles District Attorney, and Los Angeles County Sheriff's Department)

146. Plaintiff hereby incorporates each of the allegations of this Complaint as if fully set forth herein, and further allege as follows:

147. Municipal corporations may be named in a lawsuit for deprivation of Constitutional rights, as this lawsuit claims. *Monell v. Dept of Social Services*, 436 U.S. 658, 701 (1978). A municipality is liable when the constitutional injury to the plaintiff resulted from the implementation or "execution of a government's policy or custom, whether made by its lawmakers or

by those . . . said to represent official policy." *Monell*, *supra*, 436 U.S. at 694. Municipalities may also be liable by failing to create, promote, or promulgate policies and practices which would protect the Constitutional rights of individuals. *City of Canton v. Harris*, 489 U.S. 378 (1989).

A. Failure to Train, Supervise, and Enact Policies Regarding Suggestive Identification Procedures

148. In the instant case, detectives exposed the victims to Vargas's photo multiple times before trial. Edith G. viewed two photo lineups, each displaying Vargas. Edith G. again had an opportunity to see Vargas at the live lineup. It was not until she viewed Vargas three separate times that Edith G. became positive that Vargas was the perpetrator. Similarly, Teresa R. had three opportunities before trial to see Vargas—twice in two separate photo line ups and once in a live lineup. Again, Teresa R.'s confidence increased at trial, after viewing Vargas on three separate occasions. Karen P. viewed one photo lineup and the live line up before testifying at trial that she was certain Vargas was the perpetrator. Karen P. expressed confidence in her identification again in 2014, telling law enforcement that "going through the proceedings, seeing the individual, it just jarred [her] memory a little bit more."

149. Based on the research, it is clear the witnesses' positive in-court identifications of Vargas stemmed from the repeated identification procedures employed by law enforcement, where each witness saw Vargas either in a photo or in person on multiple occasions. Karen P.'s 2014 statement—where she admits seeing a photo of Vargas "jarred her memory"—is supported by the scientific evidence that a positive

identification could stem from seeing a photo of the person rather than it coming from the actual event.

150. Due to the similarities across each assault, Defendant Los Angeles Police Department consolidated the three crimes during its investigation. Detective Quijano, who investigated Teresa R.'s and Edith G.'s case, provided Detective Tamez, who investigated Karen P.'s case, a photo of Vargas. Detectives Quijano and Tamez used Vargas's photo in the photo arrays and were present when the three girls made the identifications. Both detectives knew Vargas was the suspect; both intentionally and deliberately swayed the witnesses' identifications of Vargas. In fact, Karen P. said in her 2014 interview that Los Angeles Police Department officers reassured her that she selected the right person after the live lineup. Because they knew the suspect's identity, Detective Quijano and Detective Tamez falsely persuaded Edith G., Teresa R., and Karen P. into identifying Vargas.

151. The failures of Defendant Los Angeles Police Department—to avoid such unnecessarily suggestive identification procedures—arose because Defendant Los Angeles Police Department failed to properly train, supervise, discipline, and enact policies regarding proper eyewitness identification interview procedures. Further, these failures occurred because policymakers within the Los Angeles Police Department, the City of Los Angeles, and individual supervisors failed to properly supervise regarding proper eyewitness identification interview procedures. Clearly, the detectives assigned to this case either received no training, or did not follow the relevant training, in several different critical areas, noted ante. Simply put, the Los Angeles Police Department did not properly train, and did not properly supervise, its investigators in what

should have been standard police practice and procedure for conducting eyewitness identification interviews and avoiding the likelihood of misidentification.

B. Failure to Train, Supervise, and Enact Proper Policies Regarding *Brady* Material

152. Los Angeles Police Department investigators either received no training, or did not follow relevant training, with regard to the sharing of information regarding other similar crimes occurring in the area. The information regarding the other rapes committed by the Teardrop Rapist was shared among agencies, but was not shared with Vargas. The decision of the Los Angeles Police Department to withhold this exculpatory third-party culpability information from Vargas amounted to a clear and inexcusable violation of its obligations under *Brady*. If law enforcement was never trained in this practice, the failure to train directly violated Vargas's rights. In the alternative, if law enforcement had been trained in the proper practice of information sharing, but did not do so, the failure to supervise and to ensure that proper training regarding the sharing of information was followed violated Vargas's rights.

153. Further, the information regarding the Teardrop Rapist—and more specifically, the decision of the Office of the Los Angeles District Attorney to withhold that information to the defense—amounted to a demonstrable and unquestionable violation of its obligations under *Brady*. Both the trial prosecutor, Ms. Robin Allen, and the Office itself had an obligation to turn over information regarding these other assaults, as they would have provided clear exculpatory evidence that a third party, the Teardrop Rapist, had committed the rapes for which Vargas was prosecuted.

154. These failures were compounded subsequent to Vargas's trial by the Los Angeles County Sheriff's Department, who investigated at least two or three other assaults committed by the Teardrop Rapist while Vargas was in custody. The information regarding these other rapes were shared with the Los Angeles Police Department, as well as the Federal Bureau of Investigation. However, the Los Angeles County Sheriff's Department failed to disclose this exculpatory information to the Prosecution or Luis Vargas. We know this because the true Teardrop Rapist was never prosecuted.

155. Employees of the Office of the Los Angeles District Attorney and the Los Angeles Sheriff's Department also either received no training, or did not follow relevant training, with regard to the sharing of information regarding other similar crimes occurring in the area. The information regarding these other rapes should have been shared among agencies, and if law enforcement was never trained in this practice, the failure to train directly violated Vargas's rights. In the alternative, if law enforcement had been trained to share information in the proper practice of information sharing, but did not do so, the failure to supervise and to ensure that proper training regarding the sharing of information was followed violated Vargas's rights.

156. The Teardrop Rapist has been linked to approximately 39 sexual assaults identical to those for which Vargas was convicted, a conviction was nearly entirely obtained based on the prosecution's theory that each rape Vargas was accused was committed in nearly identical fashion, and therefore Vargas must have committed each. Notwithstanding this fact, the Los Angeles Sheriff's Department re-

fused to investigate whether subsequent rapes committed under nearly identical circumstances could have been committed by the same perpetrator of the rapes for which Vargas was at the time serving a prison sentence, which was later proved to be true.

157. Vargas is informed and believes and thereupon alleges that there is a chain of command within the Los Angeles Sheriff's Department, including one or more policy maker(s) at or near the top of the chain of command who is tasked with deciding whether to reopen and/or investigate previous crimes as potentially linked to ongoing / subsequent crimes. Vargas believes that this allegation will likely have evidentiary support after a reasonable opportunity for further investigation and discovery, but the information currently is within the knowledge and possession of the Los Angeles Sheriff's Department.

158. Vargas is informed and believes and thereupon alleges that one or more policy maker(s) at or near the top of the chain of command within the Los Angeles Sheriff's Department at the relevant time period made the affirmative decision not to investigate and/or reopen Vargas's rape convictions upon learning of and investigating nearly identical crimes in March 2001, June 2002, and October 2005. Vargas believes that this allegation will likely have evidentiary support after a reasonable opportunity for further investigation and discovery, but the information currently is within the knowledge and possession of the Los Angeles Sheriff's Department.

159. Vargas is informed and believes and thereupon alleges that he Los Angeles Sheriff's Department pattern, custom, and practice of deliberate indifference in violating Vargas's constitutional rights and the established an express policy that resulted without

correction was a direct and proximate result of the Los Angeles Sheriff's Department's failures to train and supervise its employees, specifically a failure to train on connecting identical crimes, perpetrators that commit them, and failures to train when such material constitutes Brady material and must be disclosed to the defendant, regardless of whether that defendant is currently under investigation or previously convicted.

160. Vargas is informed and believes and thereupon alleges that the policy maker at or near the top of the chain of command within the Los Angeles Sheriff's Department at the relevant time period made the affirmative decision not to provide the prosecution information supporting the link between the rapes Vargas was convicted of and those committed after Vargas's conviction under identical circumstances, i.e. Brady material that could have and ultimately did establish Vargas's innocence. Vargas believes that this allegation will likely have evidentiary support after a reasonable opportunity for further investigation and discovery, but the information currently is within the knowledge and possession of the Los Angeles Sheriff's Department.

161. Vargas is informed and believes and thereupon alleges that the Los Angeles Sheriff's Department failed to train as to disclosing information pertaining to crimes identical to previous investigations and/or convictions, such as those Vargas was convicted of, and the Los Angeles Sheriff's Department failed to train when such material constitutes Brady material and must be provided to the prosecution, regardless of whether that defendant is currently under investigation or previously convicted.

162. Vargas is informed and believes and thereupon alleges that there is a chain of command within

Office of the Los Angeles District Attorney, including one or more policy maker(s) at or near the top of the chain of command who is tasked with deciding whether to reopen and/or investigate previous crimes as potentially linked to ongoing / subsequent crimes. Vargas believes that this allegation will likely have evidentiary support after a reasonable opportunity for further investigation and discovery, but the information currently is within the knowledge and possession of the Los Angeles Sheriff's Department.

163. Vargas is informed and believes and thereupon alleges that one or more policy maker(s) at or near the top of the chain of command within the Los Angeles Sheriff's Department at the relevant time period made the affirmative decision not to investigate and/or reopen Vargas's rape convictions upon learning of numerous nearly identical crimes in subsequent years spanning at least from 1996 through 2012, in addition to numerous identical crimes committed prior to Vargas's conviction. Vargas believes that this allegation will likely have evidentiary support after a reasonable opportunity for further investigation and discovery, but the information currently is within the knowledge and possession of the Los Angeles Sheriff's Department.

164. The Office of the Los Angeles District Attorney's repeated pattern, custom, and practice of deliberate indifference in violating Vargas's constitutional rights took place prior to Vargas's conviction by the policy makers' decisions not to investigate any links to previous, known rapes under similar circumstances, throughout the course of Vargas's prosecution and conviction when these rapes were continuing, and for more than a decade following Vargas's conviction.

165. The Office of the Los Angeles District Attorney and its policy makers repeated deliberate indifference to Vargas's constitutional rights through its policy makers repeated, affirmative decisions not to investigate identical rapes for similarities to Vargas and repeated decisions not to disclose such information to Vargas, which constituted Brady material, directly harmed Vargas by forcing him to serve additional years in prison when the information that ultimately exonerated Vargas was known to the Office of the Los Angeles District Attorney more than a decade prior to Vargas's release.

166. Vargas is informed and believes and thereupon alleges that the Office of the Los Angeles District Attorney pattern, custom, and practice of deliberate indifference in violating Vargas's constitutional rights and the established an express policy that resulted without correction was a direct and proximate result of the Office of the Los Angeles District Attorney failures to train and supervise its employees, specifically a failure to train on connecting identical crimes, perpetrators that commit them, and failures to train when such material constitutes Brady material and must be disclosed to the defendant, regardless of whether that defendant is currently under investigation or previously convicted.

167. Vargas is informed and believes and thereupon alleges that the policy maker at or near the top of the chain of command within the Los Angeles Sheriff's Department at the relevant time period made the affirmative decision not to provide Vargas information supporting the link between the rapes Vargas was convicted of and those committed after Vargas's conviction under identical circumstances, i.e. Brady material that could have and ultimately did establish

Vargas's innocence. Vargas believes that this allegation will likely have evidentiary support after a reasonable opportunity for further investigation and discovery, but the information currently is within the knowledge and possession of the Office of the Los Angeles District Attorney.

C. Deprivation of Civil Rights (*Monell*)

168. The unconstitutional and tortious acts of the officers, employees, and agents were not isolated incidents. Upon information and belief, there was a custom, policy, pattern and practice beginning years before the unjust conviction of Luis Vargas and continuing throughout his incarceration, of condoning, encouraging, ratifying, and acquiescing in the practice of failing to conduct reasonable criminal investigations, conducting unconstitutional interrogations, fabricating evidence including evidence supporting probable cause, committing perjury, failing to investigate alibi evidence, failing to disclose exculpatory evidence, and covering up this unconstitutional misconduct. Upon information and belief, Los Angeles policymakers were on notice of—but deliberately indifferent to—these unconstitutional customs, policies and practices.

169. Upon information and belief, the named Defendants, as well as the individual supervisors in this case, failed to train or supervise investigators to ensure they complied with constitutional requirements in refraining from fabricating evidence, using false testimony, or initiating malicious prosecutions; ensuring that identification procedures were fair and are not unduly suggestive or coercive; and disclosing all exculpatory and impeachment evidence.

170. The named Defendants, as well as the individual supervisors in this case, failed to supervise,

discipline, and investigate allegations of misconduct against its employees, officers, detectives, and agents, thereby creating a culture of misconduct and emboldening said employees to engage in misconduct.

171. As law enforcement failed to properly train, supervise, or provide policies and procedures to its employees in this area, the failure of supervision violated Vargas's rights and led to his conviction and wrongful incarceration. Thus, the unconstitutional policies and practices directly and proximately caused Vargas's wrongful arrest, conviction, and incarceration.

172. Plaintiff is informed and believes, and thereon alleges that, at all times herein mentioned, the named Defendants, and Does 1 – 10, with deliberate indifference, and conscious and reckless disregard to the safety, security, and constitutional and statutory rights of Plaintiff, engaged in the unconstitutional conduct and omissions as is specifically elaborated in paragraphs 1 – 108, above, which consist of the following customs and/or policies:

a. The knowing presentation of false evidence by officers;

b. The deliberately indifferent presentation of false evidence by officers;

c. The presentation of false evidence by deputies and officers in reckless disregard for the truth or the rights of the accused;

d. Officers' failure to provide exculpatory evidence to the defense;

e. Failing to adequately train, supervise and control its officers, employees, and agents in the investigation and questioning of witnesses;

f. Failing to adequately train, supervise and control its officers, employees, and agents to disclose to the defense all exculpatory and impeachment information, including *Giglio* and *Brady* information, which would include impeachment evidence of witnesses, exculpatory evidence, evidence of third-party culpability, and alternative theories which would support the defense;

g. Failing to adequately discipline its officers, employees, and agents involved in dishonesty or otherwise abusing their authority;

h. Condoning and encouraging its officers, employees, and agents in the belief that they can violate the rights of person such as Vargas with impunity, and that such conduct will not adversely affect their opportunities for promotion and employment benefits; and

i. Condoning and encouraging the fabrication of evidence, including but not limited to the filing of materially false police reports, concealing material evidence and improperly influencing witnesses, the use of techniques to influence or shape witness testimony, and/or making false statements to prosecutors to obtain the filing of false charges and obtaining false convictions.

173. Plaintiff is informed and believes that the named Defendants had no established or clear policy regarding the following issues pertaining to the disclosure of exculpatory evidence pursuant to its obligations under *Brady*:

a. Maintaining files and information regarding exculpatory and third-party suspect information;

b. Maintaining and preserving evidence of third-party culpability to ensure the information is disseminated and that the failure to distribute the evidence does not compromise the prosecution of the case;

c. Properly ensuring that evidence of third-party culpability is both developed and distributed to the defense in the case;

d. Properly ensuring the distribution of information regarding exculpatory information to the defense in the case;

e. Ensuring that the information discovered by investigators was reliable, and that the testimony they relied on was credible;

f. Training its agents in the handling of information and the provision of that information to the defense in the case, and in disclosing third-party suspect information to the defense in the case; and

g. Supervising its agents in the obligation to provide exculpatory information to the defense, regardless of whether the information related to suggestive identification procedures or to third-party culpability.

174. Plaintiff is informed and believes that to the extent the named Defendants created or promulgated policies regarding the issues set out in the foregoing paragraphs, the policies were not known to or implemented by its employees and agents assigned to cases like Plaintiff's.

175. In addition, Plaintiff is informed and believes that the named Defendants had *no* established or clear policy regarding the following issues pertaining to the

disclosure of exculpatory evidence and impeachment material:

a. Ensuring that all personnel complied with the requirements of due process, including those set out in *Brady*;

b. Ensuring that personnel, whether through inadvertence or design, did not withhold information to the defense which was either exculpatory, impeaching, or pointed to the culpability of third parties;

c. Fully and completely documenting any interactions with witnesses, particularly witnesses who could have provided information concerning third-party suspects, in the case, and disclosing those documented interactions to the defense;

d. Training its agents and employees to provide to the defense information that is exculpatory, impeaching, or pointed to the culpability of third parties; and

e. Supervising its agents and employees in the provision of exculpatory identification information to the defense.

176. Plaintiff is informed and believes that to the extent the Defendants had policies regarding the issues set out in the foregoing paragraph, the policies were not known to or implemented by its employees and deputy district attorneys assigned to cases.

177. Because the policies, practices and customs of the named Defendants set forth in the foregoing paragraphs meant that certain exculpatory, material information did not reach the defense, and because the information was both exculpatory and pointed to the culpability of third parties, these policies, practices

and customs directly deprived Plaintiff Vargas of a fair trial.

178. Defendants had a duty to create a system in which information pertaining to witnesses and third-party suspects—and particularly information pertaining to the Teardrop Rapist—would be disseminated to the defense, regardless of whether or in what form the witness was to testify. The actions of specific actors in these agencies demonstrate either the agencies had no systems in place, or that the systems were disregarded completely.

179. Defendants Quijano and Tamez, on behalf of the Los Angeles Police Department, investigated the case against plaintiff Vargas and put together the case for prosecution by the Office of the Los Angeles County District Attorney. None of these actors or defendants followed proper procedures for eyewitness identification interviews. All withheld exculpatory and third-party culpability evidence throughout the course of the investigation and prosecution of plaintiff Vargas. All defendants deliberately and intentionally withheld this information from Vargas, even when the information was plainly exculpatory.

180. The decision of the Defendants to create such a system directly resulted in the defense having no access to vital exculpatory evidence, impeachment evidence, and evidence of third-party culpability.

181. Plaintiff is informed and believes that based on the decision to create a system in which information pertaining to witnesses and third-party suspects—and specifically information regarding the Teardrop Rapist—would be accessed by personnel, and would not be shared with the defense, before and during the prosecution of the case, and the failure to

train law enforcement personnel to disseminate information pertaining to such witnesses, the named Defendants had a pattern and practice of violating the rights of individuals like Plaintiff.

182. The actions of the Defendants here set forth in the preceding paragraphs were known or should have been known to the policy makers responsible for the City and County of Los Angeles and occurred with deliberate indifference to either the recurring constitutional violations elaborated above, and/or the strong likelihood that constitutional rights would be violated as a result of failing to train, supervise, or discipline in areas where the need for such training and supervision was obvious.

183. The Office of the Los Angeles District Attorney policy maker's repeated decisions and related orders not to investigate whether rapes committed subsequent to Vargas's convictions could have been committed by the same perpetrator, and by which would have proven Vargas's innocence, created a pattern, custom, and practice of deliberate indifference within the Office of the Los Angeles District Attorney of violating Vargas's constitutional rights because the information was *Brady* material due to the fact it could potentially, and ultimately did, substantiate and confirm Vargas's exoneration and finding of factual innocence.

184. The Office of the Los Angeles District Attorney pattern, custom, and practice of deliberate indifference in withholding *Brady* material and refusing to investigate whether subsequent rapes committed under nearly identical circumstances could potentially be linked to Vargas, created and established knowledge, approval, and repeated failures to correct and rectify the wrongful conduct.

185. The Office of the Los Angeles District Attorney had a strict obligation to disclose any *Brady* material to Vargas, either before, during, or after his prosecution, and no request by Vargas in any scenario is necessary.

186. The Office of the Los Angeles District Attorney pattern, custom, and practice of deliberate indifference in violating Vargas's constitutional rights and the established policy that resulted without correction directly harmed Vargas by forcing him to remain in prison for years beyond which this link should reasonably have been made and *Brady* material disclosed to Vargas which would ultimately have exonerated him much earlier.

187. The Office of the Los Angeles District Attorney policy maker's repeated decisions and related orders not to investigate whether rapes committed subsequent to Vargas's convictions could have been committed by the same perpetrator, and by which would have proven Vargas's innocence, created a pattern, custom, and practice of deliberate indifference within the Office of the Los Angeles District Attorney of violating Vargas's constitutional rights because the information was *Brady* material due to the fact it could potentially, and ultimately did, substantiate and confirm Vargas's exoneration and finding of factual innocence.

188. The Office of the Los Angeles District Attorney pattern, custom, and practice of deliberate indifference in withholding *Brady* material and refusing to investigate whether subsequent rapes committed under nearly identical circumstances could potentially be linked to Vargas, created and established knowledge, approval, and repeated failures to correct and rectify the wrongful conduct.

189. The Office of the Los Angeles District Attorney pattern, custom, and practice of deliberate indifference in violating Vargas's constitutional rights and the established policy that resulted without correction directly harmed Vargas by forcing him to remain in prison for years beyond which this link should reasonably have been made and *Brady* material disclosed to Vargas which would ultimately have exonerated him much earlier.

190. Los Angeles County is liable for the Los Angeles Sheriff's Department's failures to train, as well as for its pattern, custom, and practice of deliberate indifference in violating Vargas's constitutional rights and the established policy that resulted without correction.

191. Los Angeles County is liable for the Office of the Los Angeles District Attorney's failures to train, as well as for its pattern, custom, and practice of deliberate indifference in violating Vargas's constitutional rights and the established policy that resulted without correction.

192. The actions of the named Defendants set forth herein were a motivating force behind the violations of Vargas's constitutional rights as set forth in the Complaint.

193. As a direct and proximate result of Defendants' acts and omissions, condoning, encouraging, ratifying and deliberately ignoring the pattern and practice of Defendants Quijano, Tamez, and Does 1 – 10 as previously described, Plaintiff sustained injury and damage.

194. As a result of Defendants', and each of their violations of Vargas's constitutional rights as set forth herein, Vargas was damaged as alleged above.

THIRD CLAIM FOR RELIEF
DEPRIVATION OF CIVIL RIGHTS
42 U.S.C. § 1983
FALSE EVIDENCE VIOLATIONS

(Against Defendants Quijano,
Tamez, and Does 1 – 10)

195. Plaintiff hereby incorporates each of the allegations of this Complaint as if fully set forth herein, and further allege as follows:

196. As noted ante, investigators assigned to the case, Defendants Quijano and Tamez, exposed the victims to Vargas's photo multiple times before trial, knew Vargas was the suspect when discussing the case with witnesses and when conducting lineups, and gave assurances to at least one victim that they had selected the "right" person from the lineup. The actions of Quijano and Tamez undoubtedly swayed the wrongful identification of Plaintiff.

197. Defendants Quijano, Tamez, and Does 1 – 10, while acting under color of law, deprived Plaintiff of his civil rights, more particularly, his right to due process of law, by providing false evidence in reports and statements, improperly influencing live testimony, improperly influencing witnesses and fabricating and concealing evidence, and deprived Vargas of liberty because they set in motion a reasonably foreseeable chain of events that led to the presentation of false evidence at Plaintiff's criminal trial, his conviction and incarceration.

198. Each Defendant knew or should have known the evidence was false, and the defendant's conduct was done with deliberate indifference to and/or reckless disregard of Plaintiff's rights or for the truth.

199. As noted ante and post, Defendants Quijano, Tamez, and Does 1 – 10, acting under color of state law, deprived Plaintiff of rights, privileges, or immunities secured by the Constitution and laws of the United States, in particular the right to have a trial free from constitutional defect, and free from the introduction of false evidence.

200. Alternatively, as joint actors with joint obligations, each of them was and is responsible for the failures and omissions of each other.

201. Defendants Quijano, Tamez, and Does 1 – 10 knew or should have known that evidence set forth above, was false, and that the witnesses were providing false evidence.

202. The constitutional source against using false evidence is primarily the due process clause of the Fifth and Fourteenth Amendments, and Plaintiff's Due Process rights were violated by the conduct alleged herein. Plaintiff brings this claim as both a procedural and a substantive due process violation. To the extent that any court were to conclude that the source of Plaintiff's right to right to be free from concealed and fabricated evidence that led to a false and wrongful conviction, is any constitutional source other than due process (such as the Fourth Amendment or Sixth Amendment right to a fair trial), this claim is brought on those bases as well.

203. Defendants Quijano, Tamez, and the other Doe defendants were each jointly and severally responsible to not use false evidence against Vargas.

204. Each engaged in, knew or should have known of the unconstitutional conduct alleged herein and failed to prevent it, which each had a responsibility to do, and each ratified, approved or acquiesced in it.

205. As a result of the defendants' violations, and each of their violations of Vargas's constitutional rights to have a fair trial free from constitutional defect and free from the introduction of false evidence, Vargas was damaged as alleged above.

FOURTH CLAIM FOR RELIEF

CLAIM UNDER CALIFORNIA STATE LAW, CAL. GOV. CODE § 815.2, FOR RESPONDEAT SUPERIOR AND VICARIOUS LIABILITY

(Against Defendants Los Angeles Police Department and City of Los Angeles)

206. Plaintiff hereby incorporates each of the allegations of this Complaint as if fully set forth herein, and further allege as follows:

207. Vargas suffered the aforementioned injuries as a proximate result of the misconduct of the individual Officer Defendants.

208. During all relevant times, Defendants were employees of the Los Angeles Police Department and the City of Los Angeles.

209. The acts and omissions of Defendants that proximately caused Vargas's injuries were within the scope of Defendants' employment with the Los Angeles Police Department and the City of Los Angeles.

JURY DEMAND

Trial by jury of all issues is demanded.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Luis Lorenzo Vargas respectfully requests:

a. A trial by jury on each of the Plaintiff's claims;

b. That the Court award compensatory damages to Plaintiff and against Officer Defendants, jointly and severally, in an amount to be determined at trial;

c. That the Court award punitive damages to Plaintiff, and against Defendants, in an amount to be determined at trial, in order to deter such conduct by Officer Defendants in the future;

d. For pre-judgment and post-judgment interest and recovery of costs, including reasonable attorneys' fees pursuant to 42 U.S.C. § 1988 for all 42 U.S.C. § 1983 claims; and

e. For any and all other relief to which he may be entitled.

DATED: April 14, 2017

LAW OFFICES OF JAN STIGLITZ

/s/ Jan Stiglitz, Esq.
Jan Stiglitz, Esq.

Attorneys for Plaintiff
LUIS LORENZO VARGAS

DATED: April 14, 2017

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