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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

LUIS ALEJANDRO MADRIGAL )  
AND LAMBERTO AVITIA )  
PEREZ, )  
Plaintiffs, )  
v. )  
UNITED STATES OF )  
AMERICA, ET AL, )  
Defendants.

Case No. EDCV 15-00261-VAP  
(DTBx)  
**ORDER GRANTING DEFENDANT'S  
MOTION FOR JUDGMENT ON THE  
PLEADINGS WITHOUT LEAVE TO  
AMEND (DOC NO. 52)**  
**[Motion filed on August 3,  
2015]**

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Plaintiffs' Third Amended Complaint (("TAC") Doc. No. 41) alleges that San Bernardino County violated Plaintiffs' civil and constitutional rights by improperly obtaining disclaimers of seized property and failing to sufficiently provide notice to Plaintiffs of the forfeiture of the property. (TAC ¶¶ 47-48.)

1 I. BACKGROUND

2 A. Factual Background

3 In June 2012, a San Bernardino County law enforcement  
4 task force seized money and drugs from a house located at  
5 1007 West D Street in Ontario, California. (TAC ¶ 13.)  
6 Plaintiffs Luis Madrigal and Lamberto Perez were in the  
7 house where the drugs and money were seized and they  
8 disclaimed ownership in writing. (TAC ¶ 23.) Alleging  
9 that the money was being used in connection to drug  
10 transactions, the San Bernardino District Attorney's  
11 Office filed civil forfeiture proceedings and a  
12 California Superior Court granted the application and  
13 ordered that the money be forfeited to the State, in part  
14 based on Plaintiffs' signed disclaimers. (TAC ¶¶ 21-23.)

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16 B. Procedural Background

17 On February 11, 2015, Plaintiffs filed their initial  
18 complaint which was repeatedly amended by stipulations to  
19 dismiss all defendants except Defendant San Bernardino  
20 County and all claims except the Monell liability claim.  
21 (Doc. Nos. 30, 40, 46, 47, 49.) On August 3, 2015,  
22 Plaintiffs filed a motion for summary judgment and  
23 Defendant filed a motion for judgment on the pleadings.  
24 (Doc. Nos. 50 & 52.)



1 To state a claim under section 1983, a plaintiff must  
2 allege (1) a violation of a right secured by the  
3 Constitution or laws of the United States, and (2) that  
4 the alleged violation was committed by a person acting  
5 under the color of state law. West v. Atkins, 487 U.S.  
6 42, 48 (1988). A state actor is not a "person" for  
7 purposes of liability under section 1983. Will v.  
8 Michigan Dep't of State Police, 491 U.S. 58, 66 (1989)  
9 ("We hold that neither a State nor its officials acting  
10 in their official capacities are 'persons' under §  
11 1983."); Howlett v. Rose, 496 U.S. 356, 365 (1990)  
12 ("Persons" does not include 'the State and arms of the  
13 State ... ' which receive sovereign immunity from the  
14 Eleventh Amendment.").

15

16 **A. Was the District Attorney a State Actor?**

17 Defendant argues that Plaintiffs have provided no  
18 authority standing for the proposition that a county can  
19 be held liable for the conduct of a district attorney,  
20 when that district attorney is acting as a state  
21 official. (Reply at 2.) This is not true. While there  
22 is no bright line rule on this issue, Plaintiffs have  
23 cited a number of cases that are instructive.

24

25 In McMillian, the Supreme Court describes the  
26 analysis used to determine whether a policymaker acts on  
27 behalf of the state or local government. McMillian v.

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1 Monroe Cnty., 520 U.S. 781. The Court was clear that the  
2 inquiry is not undertaken in a "categorical, 'all or  
3 nothing' manner," but rather that the "cases on the  
4 liability of local governments under section 1983  
5 instruct us to ask whether governmental officials are  
6 final policymakers for the local government in a  
7 particular area, or on a particular issue." Id. at 785.  
8 The "inquiry is dependent on an analysis of state law."  
9 Id. at 786.

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11 Here, based on an analysis of relevant California  
12 law, the Court concludes that the San Bernardino District  
13 Attorney acts as local policymaker when adopting and  
14 implementing policies and procedures related to civil  
15 forfeiture of personal property. In Pitts v. Cnty. of  
16 Kern, 17 Cal. 4th 340, 363 (1998), the California Supreme  
17 Court concluded that a "district attorney represents the  
18 state, not the county, when preparing to prosecute and  
19 when prosecuting crimes, and when establishing policy and  
20 training employees in these areas." The Pitts court  
21 noted that it was "not seeking to make a characterization  
22 of [California district attorneys] that will hold true  
23 for every type of official activity they engage in," but  
24 instead focused on the district attorney's function "when  
25 preparing to prosecute and when prosecuting criminal  
26 violations of state law." Id. at 352.

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1           The San Bernardino District Attorney's function at  
2 issue here is distinguishable from that confronted in  
3 Pitts. Here, Plaintiffs challenge the District Attorney's  
4 failure to provide proper notice upon forfeiture of  
5 personal property. (Opp. at 13.) The conduct at issue  
6 involves not prosecutorial strategy, but rather  
7 administrative oversight of civil forfeiture proceedings.  
8 The decision in Weiner v. San Diego County, 210 F.3d 1025  
9 (9th Cir. 2000) is of no avail to Defendant either. In  
10 Weiner, the Ninth Circuit held that a "district attorney  
11 act[s] on behalf of the state, not the county, in  
12 deciding to prosecute" a person for a crime, but  
13 acknowledged that "this is not to say that district  
14 attorneys in California are state officers for all  
15 purposes. Id. at 1032. To the contrary, California law  
16 suggests that a "district attorney is a county officer  
17 for some purposes." Id. at 1031.

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19           In Goldstein v. City of Long Beach, 715 F.3d 750, 751  
20 (9th Cir. 2013), the Ninth Circuit found that California  
21 district attorneys act as local policymakers when  
22 adopting and implementing internal policies and  
23 procedures related to the use of jailhouse informants.  
24 Under the court's analysis in Goldstein, other provisions  
25 indicating that the San Bernardino District Attorney here  
26 acts on behalf of the county include the following:

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- District attorney is paid "out of the county treasury," Cal. Gov. Code § 28000, and the board of supervisors "shall prescribe the compensation" of the district attorney, Cal. Gov. Code § 25300.
- Necessary expenses incurred "in the prosecution of criminal cases" are "county charges," and the district attorney must "account for all money received by him in his official capacity and pay it over to the treasurer" of the county board of supervisors. Cal. Gov. Code § 29601.
- The district attorney shall render legal services to the county without fee," Cal. Gov. Code § 26520; is the "legal adviser" for the county if there is no county counsel, Cal. Gov. Code § 26526; cannot "in any way advocate" against the county, Cal. Gov. Code § 26527; and may defend the county against the State of California in a state eminent domain proceeding, Cal. Gov. Code § 26541.

- 1 • Counties are required to defend and indemnify  
2 the district attorney in an action for damages.  
3 Cal. Gov. Code §§ 815.2, 825. The county's  
4 obligation to defend and indemnify the district  
5 attorney in an action for damages is a "crucial  
6 factor [that] weighs heavily[.]" Streit v. Cnty.  
7 of Los Angeles, 236 F.3d 552, 562 (9th Cir.  
8 2001).

9  
10 Read as a whole, these authorities reveal that  
11 although a district attorney acts on behalf of the state  
12 when conducting prosecutions that is not the case where  
13 he or she is carrying out administrative policies such as  
14 those here. Accordingly, the Court finds that the San  
15 Bernardino District Attorney was acting as a local  
16 government official when conducting the forfeiture  
17 proceeding.

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19 **B. Municipality Liability**

20 Section 1983 applies to the actions of "persons"  
21 acting under color of state law. West, 487 U.S. at 48.  
22 A local governmental unit or municipality can be sued as  
23 a "person" under section 1983. Here, the San Bernardino  
24 County District Attorney is a "sub-unit" of the County of  
25 San Bernardino, which is the proper defendant because  
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1 that is the governmental entity considered to be "person"  
2 under section 1983.<sup>1</sup> See Monell v. Department of Social  
3 Servs., 436 U.S. 658, 690 (1978).

4  
5 In Monell, the Supreme Court held that "a  
6 municipality can be found liable under § 1983 only where  
7 the municipality itself causes the constitutional  
8 violation at issue. Monell, 436 U.S. at 694. A section  
9 1983 plaintiff may establish municipal liability in one  
10 of three ways. First, the plaintiff may prove that a  
11 city employee committed the alleged constitutional  
12 violation pursuant to a formal governmental policy or a  
13 "longstanding practice or custom which constitutes the  
14 'standard operating procedure' of the local governmental  
15 entity." Second, the plaintiff may establish that the  
16 individual who committed the constitutional tort was an  
17 official with "final policy-making authority" and that  
18 the challenged action itself thus constituted an act of  
19 official governmental policy. Third, the plaintiff may  
20 prove that an official with final policy-making authority  
21 ratified a subordinate's unconstitutional decision or  
22 action and the basis for it. Gillette v. Delmore, 979  
23 F.2d 1342, 1346-47 (9th Cir. 1992).

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27 <sup>1</sup> Municipal departments and bureaus are generally not  
28 considered "persons" within the meaning of 42 U.S.C. §  
1983. Hervey v. Estes, 65 F.3d 784, 791 (9th Cir. 1995).

1        Here, Defendant argues that Plaintiffs have failed to  
2 plead a sufficient factual basis for Monell liability  
3 because their claims are all conclusory, have not  
4 identified specific unconstitutional practices or  
5 policies, and have not identified an incident, other than  
6 the current one, as a source of liability. (Mot. at 8.)  
7 Plaintiffs argue their complaint factually alleged a  
8 clear constitutional violation - Defendant's failure to  
9 serve Plaintiffs with notice of the civil forfeiture  
10 proceedings. (Opp. at 14; TAC ¶¶47-48.)

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12        To survive a motion to dismiss or judgment on the  
13 pleadings, Plaintiffs must allege "enough facts to state  
14 a claim to relief that is plausible on its face" and  
15 "asks for more than a sheer possibility that a defendant  
16 has acted unlawfully." Bell Atl. Corp. v. Twombly, 550  
17 U.S. 544, 570; Ashcroft v. Iqbal, 556 U.S. 662, 677  
18 (2009). Plaintiffs allege only this incident in support  
19 of their claim; however, Monell liability may not be  
20 based on a single incident of unconstitutional action by  
21 a non-policymaking employee. Davis v. City of  
22 Ellensberg, 869 F.2d 1230, 1233 (9th Cir. 1989).

23  
24        Plaintiffs' complaint does not allege more than mere  
25 legal conclusions and a formulaic recitation of the  
26 elements. The Fourth Cause of Action in the Third  
27 Amended Complaint alleges that the County of San  
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1 Bernardino engaged in an unconstitutional act without  
2 identifying a formal governmental policy, longstanding  
3 practice, or custom as Monell requires. (TAC ¶¶ 47-48.)  
4 Moreover, Plaintiffs do not allege that a "final policy-  
5 making authority" committed or ratified the  
6 unconstitutional act as a part of an official government  
7 policy. Hence, Plaintiffs have failed to state a claim  
8 for Monell liability under the pleading standards of  
9 Twombly and Iqbal.

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11 **C. Leave to Amend**

12 Federal Rule of Civil Procedure 15(a) provides that a  
13 Court "should freely give leave [to amend] when justice  
14 so requires." Fed. R. Civ. P. 15(a)(2). Although  
15 liberally granted, leave to amend is not automatic.  
16 Jackson v. Bank of Hawaii, 902 F.2d 1385, 1387 (9th Cir.  
17 1990). The Ninth Circuit considers a motion for leave to  
18 amend under five factors: bad faith, undue delay,  
19 prejudice to the opposing party, futility of amendment,  
20 and whether plaintiff has already amended the complaint.  
21 In re W. States Wholesale Natural Gas Antitrust Litig.,  
22 715 F.3d 716, 738 (9th Cir. 2013) (quoting Allen v. City  
23 of Beverly Hills, 911 F.2d 367, 373 (9th Cir.1990)).

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25 Plaintiffs do not seek leave to amend in bad faith;  
26 nevertheless, allowing leave to amend would cause undue  
27 delay. This is not a complex case, yet Plaintiffs have  
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1 added claims and dismissed defendants by amending their  
2 complaint through stipulation three times already. (See  
3 Doc. Nos. 30, 40, 46.) The deadline to amend the  
4 pleadings was June 29, 2015. (Doc. No. 32.) At the  
5 motion hearing, Plaintiffs' counsel said he needed to do  
6 more research in order to state a Monell claim against  
7 Defendant, but failed to describe any additional facts  
8 that could support such a claim. Moreover, the complaint  
9 was filed on February 11, 2015, over six months ago, has  
10 been amended three times, and no explanation offered as  
11 to why such research has not already been undertaken.  
12

13       Allowing Plaintiffs to amend the complaint would be  
14 futile. First, Plaintiffs have not been able to state a  
15 claim having three chances to do so. Second, Plaintiffs'  
16 motion for summary judgment as to their single Monell  
17 claim fails to identify specific unconstitutional  
18 practices or policies as required by Monell. See supra  
19 Part III.B. When questioned about the lack of facts  
20 giving rise to Monell liability at the motion hearing,  
21 Plaintiffs were not able to articulate an incident, other  
22 than the current one, as a source of liability. Giving  
23 Plaintiffs more time to research alternative sources of  
24 liability would be futile since Monell is the only way to  
25 bring a constitutional claim against a municipality.  
26 Monell, 436 U.S. at 694.

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1 Finally, while Defendant has not shown prejudice, the  
2 strong showing of the other factors warrants granting the  
3 motion for judgment on the pleadings without leave to  
4 amend. See Eminence Capital, LLC v. Aspeon, Inc., 316  
5 F.3d 1048, 1052 (9th Cir. 2003).

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**IV. CONCLUSION**

For the foregoing reasons, the Court GRANTS Defendant's motion for judgment on the pleadings without leave to amend and renders Plaintiffs' motion for summary judgment MOOT.

Dated: September 3, 2015



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VIRGINIA A. PHILLIPS  
United States District Judge