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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

DAVID FONTANA, LISA FONTANA,)
)
 Plaintiffs,)
)
 v.)
)
 ALPINE COUNTY, ALPINE COUNTY)
 BOARD OF SUPERVISORS, ALPINE)
 COUNTY SHERIFF'S OFFICE, ALPINE)
 COUNTY DISTRICT ATTORNEY'S)
 OFFICE, SHERIFF JOHN CRAWFORD,)
)
 SHERIFF ROB LEVY, SERGEANT)
)
 RON MICHITARIAN, OFFICER ED)
 BRAZ, OFFICER SPENCER CASE,)
)
 DISTRICT ATTORNEY WILL RICHMOND,)
)
 and DOES 1-100,)
)
 Defendants.)

Case No. 2:10-CV-00710 JAM-KJN
ORDER DENYING IN PART AND
GRANTING IN PART
DEFENDANTS' MOTION TO DISMISS

Fontana et al v. Alpine County et al

Doc. 12

This matter comes before the Court on Defendants' Alpine County, Alpine County Board of Supervisors, Alpine County Sheriff's Office, Alpine County District Attorney's Office, Sheriff John Crawford ("Crawford"), Under Sheriff Rob Levy ("Levy"), Sergeant Ron Michitarian ("Michitarian"), Officer Ed Braz ("Braz"), Officer Spencer Case ("Case"), and District Attorney Will Richmond ("Richmond"), (collectively "Defendants"), Motion to Dismiss (Doc. 8), the Complaint filed

1 by David Fontana ("Mr. Fontana") and Lisa Fontana ("Mrs.
2 Fontana"), collectively, ("Plaintiffs"), on grounds of absolute
3 and qualified immunity and for failure to state a claim,
4 pursuant to Federal Rule of Civil Procedure 12(b)(6).
5 Plaintiffs oppose the motion.¹

6 I. FACTUAL AND PROCEDURAL BACKGROUND

7 On or about July 2006, two girls who were friends with Mr.
8 Fontana's daughter accused Mr. Fontana of touching them
9 inappropriately. After an investigation, Mr. Fontana was charged
10 and tried for the alleged crime. He was acquitted.

11 The Complaint (Doc. 1) alleges that Defendants violated Mr.
12 Fontana's civil rights under 42 U.S.C. § 1983 by infringing on his
13 Fourth, Sixth, and Fourteenth Amendment rights. Mr. Fontana seeks
14 compensatory and punitive damages and Mrs. Fontana seeks damages
15 for loss of consortium. The Defendants ask this Court to dismiss
16 the Complaint.

17 The Complaint alleges that the two girls made false
18 accusations which they quickly recanted, but Alpine County
19 continued to pursue the case. Plaintiffs allege that the
20 investigation was improperly conducted because Officer Braz,
21 Sheriff Crawford, Under Sheriff Levy, and Sergeant Michitarian had
22 no training related to sexual abuse investigations.

23 Plaintiffs allege that those Defendants ignored the recanted
24 accusations, fabricated evidence, withheld exculpatory evidence,
25 intentionally destroyed evidence, spoiled evidence, and denied Mr.
26 Fontana due process. Additionally, the Complaint alleges that

27 _____
28 ¹ This motion was determined to be suitable for decision without
oral argument. E.D.Cal. L.R. 230(g).

1 Sheriff Crawford and Under Sheriff Levy failed to supervise the
2 investigation.

3 The Complaint claims that Mr. Fontana was improperly arrested.
4 It alleges that the arresting officers did not have a warrant when
5 they arrested Mr. Fontana at gunpoint from his home.

6 The Complaint alleges that Defendants violated a gag order and
7 made false statements to third parties regarding the pending
8 investigation and that many of those statements were
9 unsubstantiated. Plaintiffs further allege that District Attorney
10 Will Richmond pursued the case without sufficient evidence and that
11 during the trial Defendants perjured themselves.

12 13 II. OPINION

14 A. Legal Standard

15 1. Motion to Dismiss

16 A party may move to dismiss an action for failure to state
17 a claim upon which relief can be granted pursuant to Federal
18 Rule of Civil Procedure 12(b)(6). In considering a motion to
19 dismiss, the court must accept the allegations in the complaint
20 as true and draw all reasonable inferences in favor of the
21 plaintiff. Scheuer v. Rhodes, 416 U.S. 232, 236 (1975),
22 overruled on other grounds by Davis v. Scherer, 468 U.S. 183
23 (1984); Cruz v. Beto, 405 U.S. 319, 322 (1972). Assertions that
24 are mere "legal conclusions," however, are not entitled to the
25 assumption of truth. Ashcroft v. Iqbal, 129 S. Ct. 1937, 1950
26 (2009), citing Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555
27 (2007). To survive a motion to dismiss, a plaintiff needs to
28 plead "enough facts to state a claim to relief that is plausible

1 on its face." Twombly, 550 U.S. at 570. Dismissal is
2 appropriate where the plaintiff fails to state a claim
3 supportable by a cognizable legal theory. Balistreri v.
4 Pacifica Police Department, 901 F.2d 696, 699 (9th Cir. 1990).

5 Upon granting a motion to dismiss for failure to state
6 a claim, the court has discretion to allow leave to amend the
7 complaint pursuant to Federal Rule of Civil Procedure 15(a).
8 "Dismissal with prejudice and without leave to amend is not
9 appropriate unless it is clear . . . that the complaint could
10 not be saved by amendment." Eminence Capital, L.L.C. v. Aspeon,
11 Inc., 316 F.3d 1048, 1052 (9th Cir. 2003).

12 2. Section 1983

13 Plaintiffs' claims against Defendants are brought under 42
14 U.S.C. § 1983. To prevail in a § 1983 civil action against
15 state actors for the deprivation of "rights, privileges, or
16 immunities secured by the Constitution and laws, a plaintiff
17 must show that (1) acts by the defendants (2) under color of
18 state law (3) deprived him of federal rights, privileges or
19 immunities and (4) caused him damage. Section 1983 is not
20 itself a source of substantive rights, but merely provides a
21 method for vindicating federal rights elsewhere conferred.
22 Accordingly, the conduct complained of must have deprived the
23 plaintiff of some right, privilege or immunity protected by the
24 Constitution or laws of the United States." Thornton v. City of
25 St. Helens, 425 F.3d 1158, 1163-64 (9th Cir. 2005) (internal
26 citations omitted).

27 B. Claims for Relief

28 Defendants ask the Court to dismiss the Complaint based on

1 the Defendants' absolute and qualified immunity and based on
2 Fed.R.Civ.P. 12(b)(6). The Court will first analyze the
3 immunity arguments because absolute and qualified immunity are
4 intended to provide "immunity from suit rather than a mere
5 defense to liability." Mitchell v. Forsyth, 472 U.S. 511, 511
6 (1985). As such, if Defendants can properly plead immunity,
7 they are "entitled to dismissal. . . ." Id. at 526.

8 The second part of this Order will address Defendants'
9 12(b)(6) motion as it pertains to the remaining Defendants.

10 1. Absolute Immunity

11 a. District Attorney Will Richmond

12 Plaintiffs allege that District Attorney Richmond pursued
13 the criminal case against Mr. Fontana without sufficient
14 evidence. Defendants counter that Plaintiffs are unable to
15 state a claim because Richmond acted in his role as a prosecutor
16 and is protected under absolute immunity in his official
17 capacity and qualified immunity in his personal capacity.
18 Plaintiffs ask the Court to allow discovery to assess the full
19 extent of Richmond's involvement in the investigation and
20 prosecution of the case.

21 States and state officials acting in their official
22 capacities are immune from § 1983 liability because they are not
23 considered "persons" under the statute. Will v. Michigan
24 Department of State Police, 491 U.S. 59, 71 (1989).

25 To assess whether the district attorney is considered a
26 state official, and thus immune from § 1983 liability, the court
27 must conduct two inquiries: (1) whether the government official
28 is a "final policymaker[]" for the local government in a

1 particular area, or on a particular issue" and (2) whether that
2 official has "final policymaking authority" which is a question
3 of state law. McMillian v. Monroe County, 520 U.S. 781, 785-86
4 (1997).

5 In McMillian, the Supreme Court reviewed Alabama's
6 constitution, statutes, and case law to determine whether a
7 county sheriff was a state or county official for purposes of
8 § 1983 liability. Id. at 787-93. On balance, the Court
9 determined that, under Alabama law, a county sheriff was a state
10 official when carrying out his law enforcement duties. Id. at
11 791-93.

12 Here, the Court turns to California law to determine
13 whether a district attorney is a state or county official. In
14 Pitts v. County of Kern, 17 Cal. 4th 340 (1998), the California
15 Supreme Court, following McMillian, analyzed California law to
16 hold that a district attorney was a state official for purposes
17 of § 1983 liability while acting in his prosecutorial capacity.
18 Pitts, 17 Cal. 4th at 928-34. That decision was embraced by the
19 Ninth Circuit in Weiner v. San Diego County, 210 F.3d 1025, 1031
20 (9th Cir. 2000) which held that a district attorney is a state
21 official and is not subject to § 1983 liability when deciding
22 whether to proceed with a criminal prosecution. Accordingly,
23 Richmond is considered a state official and is immune from
24 § 1983 liability in his official capacity.

25 Plaintiffs argue that while Richmond is generally entitled
26 to immunity, prosecutorial immunity does not extend to Richmond
27 in his investigatory capacity. See Hartman v. Moore, 547 U.S.
28 250, 262 n.8 (2006) (finding that absolute immunity does not

1 extend to a prosecutor's investigatory capacity). Plaintiffs
2 ask the Court to allow this case to continue into discovery
3 because "the parties cannot know the full extent of defendant
4 Richmond's involvement in the investigation and prosecution of
5 the case." Plaintiffs' Opposition to Motion to Dismiss at 3.

6 However, Plaintiffs have not asserted any plausible
7 allegations to suggest that Richmond engaged in unconstitutional
8 investigatory conduct. Plaintiffs' only allegation against
9 Richmond is that he "pursued the case without sufficient
10 evidence." Complaint at 5. Even assuming this were true, "in
11 initiating a prosecution and in presenting the State's case, the
12 prosecutor is immune from a civil suit for damages under
13 § 1983." Imbler v. Pachtman, 424 U.S. 409, 431 (1976).

14 Plaintiffs' request is essentially asking permission to
15 conduct a fishing expedition. Plaintiffs have not pled any
16 facts that would indicate Richmond acted unconstitutionally
17 during the investigation. "Without some factual allegation in
18 the complaint, it is hard to see how a claimant could satisfy
19 the requirement of "providing not only 'fair notice' of the
20 nature of the claim, but also 'grounds' on which the claim
21 rests." Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555 N.3
22 (2007). It is inappropriate to assume that Plaintiffs "can
23 prove facts which [they have] not alleged or that the defendants
24 have violated the ... laws in ways that have not been alleged."
25 Associated General Contractors of Cal., Inc. v. California State
26 Council of Carpenters, 459 U.S. 519, 526 (1983). Therefore,
27 because Richmond is protected by prosecutorial immunity and
28 Plaintiffs have failed to provide any allegations that would

1 justify discovery, Defendants' motion to dismiss all claims
2 against Richmond is GRANTED WITHOUT PREJUDICE.

3 b. Alpine County District Attorney's Office

4 Plaintiffs make no specific allegations against the Alpine
5 County District Attorney's Office. Since Richmond is protected
6 by prosecutorial immunity, the District Attorney's Office is
7 immune as well. See Van Kamp v. Goldstein, 129 S.Ct. 855, 862
8 (2009) (holding that all prosecutors in an office enjoy absolute
9 immunity to protect the proper functioning of the office)
10 (internal citations omitted). Moreover since the District
11 Attorney's office is an arm of the County and the County is
12 still a defendant in this action, not dismissing the District
13 Attorney's Office is redundant. Accordingly, Defendants' motion
14 to dismiss all claims against the Alpine County District
15 Attorney's Office is GRANTED WITH PREJUDICE.

16 c. Sheriff Crawford and Under Sheriff Levy

17 Plaintiffs allege that Sheriff Crawford and Under Sheriff
18 Levy failed to supervise the investigation by Officer Braz and
19 Sergeant Michitarian and by their actions, Crawford and Levy
20 authorized and/or ratified the officers' misconduct and are
21 liable in their official and personal capacities. Defendants
22 argue that Crawford and Levy are state actors who are protected
23 by Eleventh Amendment sovereign immunity in their official
24 capacities.

25 To determine immunity, this Court again utilizes the
26 McMillian analysis. See McMillian, 520 U.S. at 785-86. There
27 is a split between California law and Ninth Circuit law as to
28 whether a sheriff is a state or county actor. In Venegas v.

1 County of Los Angeles, 32 Cal. 4th 820 (2004), the California
2 Supreme Court examined applicable California law to reach the
3 conclusion that "sheriffs act on behalf of the state when
4 performing law enforcement duties." Venegas, 32 Cal. 4th at
5 826.

6 However, before the Venegas decision, the Ninth Circuit
7 reached the opposite conclusion in Brewster v. Shasta County,
8 275 F.3d 803 (9th Cir.2001)- county sheriffs in California act
9 on behalf of their county, not the state, during the course of
10 investigating crime. Brewster predates Venegas and the Ninth
11 Circuit has not yet addressed Venegas directly.

12 The issue is which court's interpretation of California law
13 should control. At first glance, the United States Supreme
14 Court's holding in McMillian, 520 U.S. at 786, suggests that the
15 more recent pronouncement in Venegas should control because
16 McMillian held that the policymaker determination is a question
17 of state law. However, the Ninth Circuit does not have to
18 follow the determinations of the California courts in § 1983
19 lawsuits. In Streit v. County of Los Angeles, 236 F.3d 552
20 (2001), a § 1983 action, the Ninth Circuit held that "even if
21 the case were on all fours we would not be bound by [the
22 California court's] conclusion regarding section 1983 liability
23 because such questions implicate federal, not state, law."
24 Streit, 236 F.3d at 563.

25 Since Venegas, district courts in California have continued
26 to follow Brewster and have held sheriffs to be county actors
27 who are not immune to § 1983 liability when investigating a
28 crime. See e.g. Lopez v. Youngblood, No. 1:07cv0474, 2009 WL

1 2062883, at *7-8 (E.D.Cal. 2009); Armstrong v. Siskiyou County
2 Sheriff's Department, No. CIV-S-07-1046, 2008 WL 686888, at *6-7
3 (E.D.Cal. 2008); Faulkner v. County of Kern, No. 1:04-CV-05964,
4 2006 WL 1795107, *15-16 (E.D.Cal. 2006). This Court will follow
5 the Ninth Circuit and other district court precedents and find
6 that when investigating crimes, sheriffs are county actors who
7 are not protected by Eleventh Amendment immunity.

8 Defendants argue that since the County is a Defendant and
9 since the Court finds Crawford and Levy may be liable in their
10 official capacities, a suit against both the County and Crawford
11 and Levy in their official capacities is redundant. "Section
12 1983 claims against government officials in their official
13 capacities are really suits against the governmental employer
14 because the employer must pay any damages awarded." Butler v.
15 Elle, 281 F.3d 1014, 1023 n.8 (9th Cir.2002). "For this reason,
16 when both an officer and the local government entity are named
17 in a lawsuit and the officer is named in official capacity only,
18 the officer is a redundant defendant and may be dismissed."
19 Luke v. Abbott, 954 F.Supp. 202, 203 (C.D.Cal. 1997). Thus,
20 while Crawford and Levy may be liable in both their official and
21 personal capacities, since the County of Alpine is a defendant
22 in this action, it would be redundant to maintain a suit against
23 Crawford and Levy in their official capacities and against the
24 County.

25 Accordingly, Defendants' motion to dismiss based on
26 absolute immunity for Crawford and Levy is DENIED. However,
27 because the County of Alpine remains a defendant, Crawford and
28 Levy are dismissed in their official capacities but will remain

1 as defendants in their personal capacities.

2 d. Immunity for Alpine County Sheriff's Office

3 Since the Court has concluded that Sheriff Crawford and
4 Under Sheriff Levy are county actors and therefore not entitled
5 to Eleventh Amendment immunity, the Alpine County Sheriff's
6 Office is also not immune from § 1983 liability.

7 Defendants contend, however, that since the Sheriff's
8 Office is an arm of the County, and the County is still a
9 defendant in this action, it is tantamount to and redundant of
10 suing the County itself if the Sheriff's Office is not dismissed
11 as a defendant. The Court agrees. Accordingly, the motion to
12 dismiss the Alpine County Sheriff's Office is GRANTED WITH
13 PREJUDICE.

14 e. Alpine County Board of Supervisors

15 Plaintiffs allege that the Alpine Board of Supervisors
16 failed to train its employees, agents, and/or servants on its
17 policies and procedures. Defendants argue that the Alpine
18 County Board of Supervisors should be dismissed because suing
19 them in their official capacities is the same as suing the
20 County and would be redundant. In addition, Defendants argue
21 that the Board of Supervisors should be dismissed in their
22 personal capacities because Plaintiffs failed to plead facts to
23 suggest that any member of the Board of Supervisors had personal
24 involvement in the investigation and prosecution of Mr. Fontana.
25 Plaintiffs do not dispute that the Alpine County Board of
26 Supervisors should be dismissed from this action and stipulate
27 to the dismissal of this defendant. Accordingly, Defendants'
28 motion to dismiss the Alpine County Board of Supervisors is

1 GRANTED WITH PREJUDICE.

2 f. Sergeant Ron Michitarian, Officer Ed Braz,
3 Officer Spencer Case

4 Plaintiffs allege that Sergeant Michitarian and Officer
5 Braz engaged in a negligent investigation in which they
6 fabricated evidence, withheld exculpatory evidence, failed to
7 investigate, intentionally destroyed evidence, and spoiled
8 evidence. Additionally, Plaintiffs allege that Michitarian and
9 Braz had no training related to child abuse investigations.
10 Defendants argue that the suit against the officers in their
11 official capacities should be dismissed as duplicative since
12 they argue that an official capacity suit is the same as suing
13 the municipality. Plaintiffs respond that they should be
14 allowed to continue to sue these two defendants in both their
15 official capacity and personal capacity at least until
16 discovery.

17 As discussed supra, suing a defendant in his official
18 capacity is generally an alternative means of suing the entity
19 of which the defendant is an officer or agent. Kentucky v.
20 Graham, 473 U.S. 159, 165-66 (1985).

21 In contrast, "[p]ersonal-capacity suits ... seek to impose
22 individual liability upon a government officer for actions taken
23 under color of state law." Hafer, 502 U.S. at 25; Suever v.
24 Connell, 579 F.3d 1047, 1060 (9th Cir. 2009). To establish
25 personal liability in a § 1983 action, a plaintiff need only
26 show that an official acting under color of state law deprived
27 him or her of a federal right. Id. A defendant in a personal-
28 capacity claim may be able to assert personal immunity defenses,

1 such as reasonable reliance on existing law. Id.

2 As with Crawford and Levy, it is redundant for Plaintiffs
3 to sue Alpine County and the officers in their official
4 capacities. Therefore, because Alpine County remains a
5 defendant, Defendants' motion to dismiss the § 1983 claims
6 against Michitarian, Braz, and Case in their official capacities
7 is GRANTED WITH PREJUDICE. The § 1983 claims against the
8 officers in their personal capacities remain. Therefore, the
9 motion to dismiss the officers in their personal capacities is
10 DENIED.

11 2. Motion to Dismiss Under Federal Rule of Civil
12 Procedure 12(b)(6)

13 a. First Cause of Action: Violation of Civil Rights
14 Under § 1983

15 The Complaint consists of two causes of action and a demand
16 for damages. The First Cause of Action alleges that Defendants
17 were acting under color of state law when they committed several
18 torts and should be held liable under § 1983. Defendants argue
19 that the First Cause of Action should be dismissed because
20 Plaintiffs fail to allege any substantive federal rights in
21 their § 1983 claim. Plaintiffs respond that § 1983 is
22 appropriate when coupled with other violations of federal law.

23 As discussed supra, § 1983 is a method for vindicating
24 federal rights elsewhere conferred. Thornton, 425 F.3d 1158 at
25 1164. In the First Cause of Action, Plaintiffs merely allege
26 that the Defendants committed torts under state law and do not
27 invoke any federal rights. Plaintiffs fail to explain in their
28 opposition how their First Cause of Action differs from their
Second Cause of Action. It appears to this Court that

1 Plaintiffs have identically pled two claims for relief: one for
2 violation of their rights under Section 1983 and the second for
3 violations of their rights under the Fourth, Sixth, and
4 Fourteenth Amendments. Section 1983 is a vehicle by which
5 Plaintiffs may sue for violation of their constitutional rights.
6 Accordingly, the First Cause of Action is duplicative and fails
7 as a matter of law. Therefore, Defendants' motion to dismiss
8 the First Cause of Action is GRANTED WITH PREJUDICE.

9 b. Second Cause of Action: Mr. Fontana's Sixth
10 Amendment Rights

11 In their Second Cause of Action, Plaintiffs allege that
12 Defendants violated Mr. Fontana's Sixth Amendment rights by not
13 disclosing exculpatory evidence. Defendants reply that
14 Plaintiffs fail to suggest a cognizable violation of the Sixth
15 Amendment.

16 The Supreme Court has never squarely held that the Sixth
17 Amendment Compulsory Process Clause requires the government to
18 produce exculpatory evidence. Pennsylvania v. Ritchie, 480 U.S.
19 39, 56 (1987). Instead, the Court traditionally has evaluated
20 exculpatory evidence claims under the broader protections of the
21 Due Process Clause of the Fourteenth Amendment. See United
22 States v. Bagley, 473 U.S. 667 (1985); Brady v. Maryland, 373
23 U.S. 83 (1963).

24 While it is unclear whether withholding exculpatory
25 evidence violates the Sixth Amendment or the Fourteenth
26 Amendment, it is well settled that the government has the
27 obligation to turn over evidence in its possession that is both
28 favorable to the accused and material to guilt or punishment.

1 Brady v. Maryland, 373 U.S. at 87. "[E]vidence is material only
2 if there is a reasonable probability that, had the evidence been
3 disclosed to the defense, the result of the proceeding would
4 have been different. A 'reasonable probability' is a
5 probability sufficient to undermine confidence in the outcome."
6 Bagley, 473 U.S. at 682 (opinion of BLACKMUN, J.).

7 Here, Mr. Fontana was acquitted at trial. Despite the
8 acquittal, Plaintiffs allege that the withheld evidence was to
9 their "detriment," a vague allegation. It is unclear how the
10 alleged withholding of evidence violated Mr. Fontana's Sixth
11 Amendments rights given his acquittal. Accordingly, Defendants'
12 motion to dismiss this portion of the Second Cause of Action is
13 GRANTED WITHOUT PREJUDICE.

14 c. Second Cause of Action: State Law Claims

15 Defendants argue that Plaintiffs did not timely file a
16 Government Tort Claim for the state causes of action, as
17 required by the Government Tort Claims Act. Plaintiffs counter
18 that a Government Tort Claim was submitted to the County of
19 Alpine on November 18, 2009. Plaintiffs argue the filing
20 occurred within the proscribed six-month time frame beginning on
21 May 29, 2009 when a jury acquitted Mr. Fontana.

22 The Court finds the Complaint is confusing with respect to
23 the state law claims. Since the Plaintiffs lumped all of their
24 claims into two causes of action, it is unclear whether
25 Plaintiffs are trying to recover on each state law claim
26 separately or if the claims are part of the § 1983 claim. If
27 Plaintiffs are seeking separate relief for each state law claim,
28 then they should have pled each claim separately and included an

1 allegation as to when the claim accrued. Accordingly,
2 Defendants' motion to dismiss the state law claims is GRANTED
3 WITHOUT PREJUDICE.

4 d. Second Cause of Action: Lisa Fontana's
5 Constitutional Claims

6 Defendants argue that Mrs. Fontana has failed to plead
7 facts sufficient to state a cognizable claim for violation of
8 her constitutional rights. Plaintiffs' response clarified that
9 she is not pleading a violation of her constitutional rights;
10 her sole claim is for loss of consortium as a result of the
11 mental, emotional, and physical toll that the criminal
12 prosecution took on her husband. Like the other state law
13 claims, Plaintiffs should have pled Mrs. Fontana's loss of
14 consortium claim separately and included an allegation as to
15 when the claim accrued. Thus, Defendants' motion to dismiss
16 Mrs. Fontana's claims is GRANTED WITHOUT PREJUDICE.

17 e. Punitive Damages Against County of Alpine

18 Plaintiffs request punitive damages, in addition to
19 compensatory damages and attorney's fees against all Defendants.
20 Defendants argue that as a matter of law, Plaintiffs cannot
21 obtain punitive damages from the County of Alpine. Plaintiffs
22 stipulate to the dismissal of the punitive damages claim against
23 the County. Accordingly, the Defendants' motion to dismiss
24 punitive damages claims against the County of Alpine is GRANTED
25 WITH PREJUDICE.

26 III. ORDER

27 For the reasons set forth above,

28 The following Defendants are DISMISSED WITH PREJUDICE:

1 Alpine County District Attorney's Office, Sheriff Crawford in
2 his official capacity, Under Sheriff Levy in his official
3 capacity, Alpine County Sheriff's Office, Alpine County Board of
4 Supervisors, Sergeant Michitarian in his official capacity,
5 Officer Braz in his official capacity, Officer Case in his
6 official capacity;

7 The following Defendant is DISMISSED WITHOUT PREJUDICE:
8 District Attorney Richmond;

9 Defendants' motion to dismiss the First Cause of Action is
10 GRANTED WITH PREJUDICE;

11 Defendants' motion to dismiss the Sixth Amendment claims in
12 the Second Cause of Action is GRANTED WITHOUT PREJUDICE;

13 Defendants' motion to dismiss all state law claims is
14 GRANTED WITHOUT PREJUDICE;

15 Defendants' motion to dismiss Mrs. Fontana's loss of
16 consortium claim is GRANTED WITHOUT PREJUDICE; and

17 Defendants' motion to dismiss the punitive damages claim
18 against the County of Alpine is GRANTED WITH PREJUDICE.

19 Plaintiffs shall file their Amended Complaint within twenty
20 (20) days from the date of this Order.

21 IT IS SO ORDERED.

22 Dated: September 30, 2010


JOHN A. MENDEZ,
UNITED STATES DISTRICT JUDGE

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