

EXHIBIT A

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**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
SACRAMENTO DIVISION**

JESSE I. SANTANA AND DAVID
VASQUEZ

Plaintiffs,

v.

THE COUNTY OF YUBA, YUBA
COUNTY DISTRICT ATTORNEY
PATRICK MCGRATH, YUBA COUNTY
DEPUTY DISTRICT ATTORNEY MELANIE
BENDORF, FORMER YUBA COUNTY
DEPUTY DISTRICT ATTORNEY JOHN
VACEK, YUBA COUNTY DISTRICT
ATTORNEY INVESTIGATOR MARY
BARR, YUBA COUNTY DISTRICT
ATTORNEY INVESTIGATOR GENE
STOBER, TIMOTHY J. EVANS, AND
DOES 1 THROUGH 20, inclusive,

Defendants.

CASE NO. 2:15-cv-00794 KJM-EFB

**THIRD AMENDED COMPLAINT
FOR DAMAGES**

- 1) Fourteenth Amendment – Malicious Prosecution (42 U.S.C. § 1983)
- 2) Monell Claim - Municipal Liability – Action by Policymaker (42 U.S.C. 1983)
- 4) Fourteenth Amendment - Substantive Due Process (42 U.S.C. §1983)
- 5) Fourteenth Amendment - Conspiracy (42 U.S.C. §§ 1983 & 1985)
- 6) Malicious Prosecution (State Law Claim)
- 7) Conspiracy (State Law Claim)

[JURY TRIAL DEMANDED]

1 Plaintiffs, JESSE SANTANA and DAVID VASQUEZ, hereby allege as follows:

2 **I. INTRODUCTION**

3 1. This is a civil action seeking damages as a result of the illegal and unconstitutional
4 conduct and malicious prosecution of Plaintiffs Jesse Santana ("SANTANA") and David
5 Vasquez ("VASQUEZ") by defendants County of Yuba ("YUBA COUNTY"); Yuba County
6 District Attorney Patrick McGrath ("MCGRATH"), Deputy District Attorney Melanie Bendorf
7 ("BENDORF"), Deputy District Attorney John Vacek ("VACEK"), Yuba County District
8 Attorney Investigator Mary Barr ("BARR"), and Yuba County District Attorney Investigator
9 Gene Stober ("STOBER") [Collectively, "YUBA COUNTY DEFENDANTS"]; and Timothy J.
10 Evans ("ATTORNEY EVANS").

11 2. As a result of defendants' illegal conduct, and other acts and omissions, SANTANA
12 and VASQUEZ were unlawfully and maliciously prosecuted without probable cause in violation
13 of their Fourteenth Amendment rights.

14 3. Plaintiffs' prosecution was fueled by Defendants' unconstitutional custom, practice and
15 policy of discriminating against the Plaintiffs based on their Hispanic ethnicity and in order to
16 keep the local judicial bench racially homogenous and exclusive of non-whites. YUBA COUNTY
17 DEFENDANTS abused their authority and acted outside the scope of their roles as prosecutors
18 and ATTORNEY EVANS conspired, aided and abetted the co-defendants in their unlawful and
19 unconstitutional conduct to prosecute SANTANA and VASQUEZ without probable cause and in
20 violation of their constitutional rights.

21 4. On April 25, 2014, after almost seven years of defending themselves against the
22 unconstitutional acts by Defendants, SANTANA and VASQUEZ were acquitted on all charges.
23 Plaintiffs' personal and professional lives were, and have been, damaged irreparably. Plaintiffs'
24 professional reputations were also irreparably damaged and they continue to suffer emotional
25 anguish. SANTANA and VASQUEZ now pursue this action to expose the wrongdoing that led to
26 their illegal prosecution, to vindicate their civil rights, to obtain awards of compensatory damages
27 for their losses, and to obtain awards of punitive damages to deter Defendants and others from
28 engaging in unconstitutional conduct such as occurred herein.

1 **II. JURISDICTION AND VENUE**

2 5. This Court has jurisdiction of the subject matter of this action under 42 U.S.C. Sections
3 1983 and 1985 for the deprivation of rights secured by the Fourth and Fourteenth Amendments to
4 the Constitution of the United States. The jurisdiction of this court is predicated upon 28 U.S.C.
5 Section 1331.

6 6. The Court has personal jurisdiction over each Defendant named herein because
7 Plaintiffs are informed and believe, and on that basis allege, that each defendant is currently
8 domiciled in the State of California.

9 7. The court has pendant and supplemental jurisdiction over the state law claims alleged
10 herein pursuant to 28 U.S.C. Section 1367. The pendant state law claims contained in this
11 Complaint arise from the same nucleus of operative facts, and involve identical issues of fact and
12 law, as the federal claims, such that the entire action constitutes a single case appropriate for
13 prosecution as a single proceeding.

14 8. On or about October 22, 2014, Plaintiffs presented a written claim for damages with
15 the YUBA COUNTY DEFENDANTS pursuant to California Government Code Section 910 et
16 seq.

17 9. The County of Yuba issued a Notice of Rejection of Claim on October 30, 2014. This
18 Complaint is thus timely and properly commenced on all state claims pursuant to applicable
19 provisions of the Government Code.

20 10. Venue is proper in the Eastern District of California, under 28 U.S.C. Section
21 1391(b)(1) and (2) because the defendants to this action reside in this District and because a
22 substantial part, if not all, of the events or omissions giving rise to Plaintiffs' claims occurred in
23 this judicial district.

24 **III. INTRADISTRICT ASSIGNMENT**

25 11. Pursuant to Eastern District Civil Local Rule 120 (d), intradistrict assignment to the
26 Sacramento Division of the Court is proper because a substantial part of the events or omissions
27 giving rise to the claims herein occurred in the County of Yuba.

1 **IV. PARTIES**

2 12. The Plaintiffs in this case are Jesse Santana ("SANTANA"), who at all relevant times
3 hereto, was a resident of the County of Sutter, State of California, and David Vasquez
4 ("VASQUEZ"), who at all relevant times hereto, was a resident of the County of Yuba, State of
5 California.

6 13. At all times herein mentioned, Defendant YUBA COUNTY is a political subdivision
7 of the State of California duly organized and existing under the laws thereof, and has the capacity
8 to sue and be sued. The Yuba County DISTRICT ATTORNEY'S OFFICE is an official
9 subdivision of YUBA COUNTY, and all attorneys and investigators employed by the DISTRICT
10 ATTORNEY'S OFFICE are employees of YUBA COUNTY.

11 14. Defendant MCGRATH, sued herein in his personal capacity, was at all relevant times
12 herein the District Attorney for the Yuba County DISTRICT ATTORNEY'S OFFICE and he at
13 all times possessed the power and authority, and was charged by law with the responsibility, to
14 enact policies and to prescribe rules and practices concerning the operation of the Yuba County
15 DISTRICT ATTORNEY'S OFFICE.

16 15. Defendant BENDORF, sued herein in her personal capacity, was at all relevant times
17 a Deputy District Attorney employed by YUBA COUNTY who, in committing the acts alleged
18 herein, acted within the course and scope of her duties, under the color of law, and with authority
19 and ratification of her principal, YUBA COUNTY.

20 16. Defendant VACEK, sued individually, was a former Deputy District Attorney and, at
21 the time of committing the acts alleged herein, a duly authorized employee of YUBA COUNTY
22 acting within the course and scope of his duty, under the color of law and with complete authority
23 and ratification of his principal, YUBA COUNTY

24 17. Defendant BARR, sued individually, was an Investigator and, at the time of
25 committing the acts alleged herein, a duly authorized employee of YUBA COUNTY acting
26 within the course and scope of her duties, under the color of law and with complete authority and
27 ratification of her principal, YUBA COUNTY.

1 18. Defendant STOBER, sued individually, was an Investigator and, at the time of
2 committing the acts alleged herein, a duly authorized employee of YUBA COUNTY acting
3 within the course and scope of his duty, under the color of law and with complete authority and
4 ratification of his principal, YUBA COUNTY.

5 19. All acts complained of herein by Plaintiffs against YUBA COUNTY were done and
6 performed by its authorized agents, servants, and/or employees, including the above-named
7 individual Defendants, each of whom was acting within the course, purpose and scope of said
8 agency, service and/or employment capacity and under the color of law. Moreover, Defendant
9 YUBA COUNTY and its agents ratified all of the acts complained of herein.

10 20. Defendant ATTORNEY EVANS, sued herein in his personal capacity, was at all
11 relevant times a private attorney licensed by the State of California to practice law, and, in doing
12 the things complained of herein, was acting in concert and in agreement with all other
13 Defendants.

14 21. Each of the Defendants caused and is responsible for the unlawful conduct described
15 herein and the resulting injuries by, among other things, (a) personally participating in the
16 unlawful conduct or acting jointly or conspiring with others who did so; (b) authorizing,
17 acquiescing in or setting in motion policies, plans or actions that led to the unlawful and
18 unconstitutional conduct; (c) failing to take action to prevent the unlawful and unconstitutional
19 conduct; (d) failing and refusing, with deliberate indifference to Plaintiffs' rights, to initiate and
20 maintain adequate training and supervision; and (e) ratifying the unlawful conduct committed by
21 others, and failing to take remedial or disciplinary action with reference to said unlawful conduct.

22 22. All individual defendants are guilty of fraud, oppression, and/or malice that would
23 justify the imposition of punitive and exemplary damages.

24 V. FACTUAL ALLEGATIONS

25 A. Police investigation and civil settlement negotiations in 2007.

26 23. Plaintiffs repeat and re-allege each and every allegation in paragraphs 1 through 22 of
27 this Complaint with the same force and effect as if fully set forth herein.

28 24. On November 9, 2007, Socorro Gonzalez ("Gonzalez") and two of her daughters,
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1 Socorro Acevedo ("Socorro") and Laura Acevedo ("Laura"), met with Marysville Police
2 Detective Randall Elliott. Socorro, a minor less than eighteen years old who was employed as a
3 dispatcher at a local towing business known as Mitchell's Towing, told Detective Elliott that she
4 had been sexually assaulted and physically abused by her employer, Joseph Griesa ("Griesa").
5 Socorro said Griesa touched her breasts and buttocks and put his hands down her pants, with
6 force and without consent.

7 25. At the meeting, Socorro provided Detective Elliott with her cell phone, which
8 contained an array of sexually inappropriate text messages from Griesa to Socorro as well as a
9 recording of a telephone conversation between Griesa and Socorro which substantiated Socorro's
10 allegations. Socorro also showed Detective Elliott bruises on her forearm and shin, which she said
11 Griesa had caused. Detective Elliott photographed the bruising and had a female officer
12 photograph additional bruises on Socorro's torso.

13 26. Detective Elliott informed Socorro that it would be difficult to prosecute any criminal
14 charges against Griesa because the case would come down to "he said/she said," and hence it was
15 unlikely that criminal charges would be filed against Griesa. Detective Elliott recommended to
16 Socorro that she pursue a civil claim against Griesa, citing as an example the unsuccessful
17 homicide prosecution of O.J. Simpson, followed by successful civil litigation against him for
18 wrongful death.

19 27. After her interview with Detective Elliott, Socorro, accompanied by her mother and
20 sister, consulted with Plaintiff SANTANA to explore the possibility of pursuing a civil claim
21 against Griesa as Detective Elliott had suggested. Socorro explained that she did not want to
22 testify in open court against Griesa and thereby have the whole embarrassing story become public
23 knowledge. She particularly feared what might happen if her father and brother found out what
24 Griesa had done to her. She felt that her father, who was in poor health, could suffer a stroke if he
25 found out, and that her brother, who was hot-tempered and overprotective, might try to physically
26 attack Griesa. In addition, she wanted to put the whole matter behind her as soon as possible, in
27 that she planned to leave the area to attend college.

1 28. SANTANA confirmed what Detective Elliott had told them, namely that Socorro
2 could file a civil lawsuit seeking money damages from Griesa. SANTANA explained that such
3 lawsuits are often settled without a trial and sometimes even settled before the lawsuits are filed.
4 He pointed out that while a judge would have to approve any settlement since Socorro was still a
5 minor, she would not have to give detailed testimony about what Griesa had done to her as would
6 happen at trial, and that seeking such judicial approval would typically give rise to little, if any,
7 publicity. SANTANA also told them that Socorro, as a sexual assault victim, had a right not to
8 testify in open court if she chose not to do so, but it was ultimately up to the judge to decide
9 whether Socorro was in contempt for not testifying.

10 29. SANTANA offered to represent Socorro, together with her mother as guardian ad
11 litem, on a pro bono basis, and Socorro and her mother agreed to the arrangement.

12 30. On November 16, 2007, Detective Elliott phoned Griesa to inform him of the abuse
13 allegations that Socorro had made against Griesa and advised Griesa to contact a lawyer before
14 providing any statement on the matter. Griesa agreed. Later that day, Griesa met with
15 VASQUEZ, and VASQUEZ then phoned Detective Elliott, who explained Socorro's abuse
16 allegations and the criminal charges he was considering. VASQUEZ advised Detective Elliott
17 that he was about to leave on a ten day vacation and asked Detective Elliott to postpone sending
18 any investigation report to the District Attorney until VASQUEZ had an opportunity following
19 his return to discuss the matter further with Griesa. Detective Elliott agreed to the request

20 31. On or about November 19, 2007, a sister of Socorro phoned Detective Elliott to
21 request that he obtain a search warrant for Griesa's office because she learned that Griesa was
22 removing his computer, video camera equipment, and other items from his office at Mitchell's
23 Towing, and she believed said items contained evidence that would corroborate Socorro's
24 allegations. Detective Elliott declined to do so, explaining that a search warrant would not be
25 worth the effort and that the case ultimately boiled down to a "he said-she said" matter.

26 32. In the latter part of November, 2007, Griesa met again with VASQUEZ to explore
27 negotiating an early civil settlement with Socorro. VASQUEZ told Griesa that, while the District
28 Attorney would decide whether to file criminal charges, the District Attorney might be less likely

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1 to do so if Griesa and Socorro promptly reached a civil settlement. Griesa deposited \$50,000.00
2 into VASQUEZ' trust account so VASQUEZ could open settlement negotiations with a good
3 faith settlement offer in that amount.

4 33. On or about November 28, Detective Elliott continued his investigation into the sex
5 abuse allegations by speaking with two employees of Mitchell's Towing who reported having
6 seen a bruise on Socorro's face which reportedly resulted from Griesa striking her during an
7 incident in which he exposed himself to her.

8 34. During the latter part of November and early part of December, 2007, SANTANA
9 and VASQUEZ engaged in numerous settlement negotiations which resulted in a tentative
10 settlement of Socorro's civil claims against Griesa for \$100,000.00, and began preparation of a
11 written release to be approved and signed by their respective clients. They agreed that once the
12 release was thus approved and signed, judicial approval would be required for the settlement to
13 become final in that Socorro was a minor. As to the language of the release, they agreed to refer
14 to Socorro's wishes regarding her wanting to settle her civil claims against Griesa, her wanting no
15 criminal charges filed so that there would not be any publicity of her ordeal at the hands of
16 Griesa, and her wanting to exercise any privilege she may have pursuant to law not to testify in
17 any proceeding. In its final version, the release stated the following:

18
19 "In consideration of the sum of one hundred thousand dollars
20 (\$100,000.00), Socorro Acevedo will request that criminal
21 charges not be filed against Joe Griesa, and will exercise any
22 privilege she may have pursuant to law, not to testify in any
23 proceedings, and she will not file any civil action, arising out
24 of the underlying facts, against Joe Griesa. Joe Griesa will
25 pay \$50,000.00 now and the remaining \$50,000.00 within
26 60 days. In exchange, Socorro Acevedo forever releases and
27 discharges Joe Griesa from all claims, demands,
28 actions, and causes of action of every kind and nature in any way
related to Joe Griesa's interactions with Socorro Acevedo."

35. While preparation of the release was underway during December, VASQUEZ told

Detective Elliott of the possible civil settlement, and Detective Elliott responded that this would

1 be a good resolution of the matter. VASQUEZ also told BENDORF of the proposed settlement
2 and asked if finalization of the settlement would have any effect on whether the District
3 Attorney's office would file any criminal charges against his client. Also, SANTANA phoned
4 Detective Elliott to inform him of his client's wishes that she wanted to settle her civil claims
5 against Griesa, that she wanted to move to the Bay Area to attend college, that a possible civil
6 settlement between Socorro and Griesa was being worked on, that she no longer desired a
7 criminal prosecution of Griesa for his sexual abuse of her, she did not want to testify against
8 Griesa and that SANTANA would have to be present if Detective Elliott wanted to interview her.
9 In addition, Griesa told Detective Elliott of the proposed settlement for \$100,000.00. Detective
10 Elliott's response was that Griesa should see another attorney for a second opinion and
11 recommended ATTORNEY EVANS as the attorney whom Griesa should see.

12 36. On December 14, Detective Elliott submitted to the District Attorney's office his
13 report on his investigation into Socorro's sex abuse allegations. In the report, Detective Elliott
14 made no recommendation on whether criminal charges should be filed against Griesa. He also
15 noted his belief that VASQUEZ and SANTANA had reached a settlement for their clients in
16 which Griesa would pay money to Socorro, and Detective Elliott recommended that consideration
17 consequently be given to bribery charges against SANTANA and VASQUEZ. Plaintiffs are
18 informed and believe that Detective Elliott was encouraged or pressured by one or more of the
19 YUBA COUNTY DEFENDANTS to insert into his report (i) the false allegation that SANTANA
20 had told him in the December 11 phone call that SANTANA had flatly instructed Socorro not to
21 talk further with Detective Elliott; and (ii) the recommendation that the DISTRICT
22 ATTORNEY'S OFFICE investigate VASQUEZ and SANTANA for bribery (despite Detective
23 Elliott's knowledge from his law enforcement experience that victims of sexual assaults are often
24 afraid to come forward and don't want to face their accusers or testify in court, and hence that
25 Socorro's reported reluctance to testify against Griesa may well have been the consequence solely
26 of Socorro's experience as a sexual assault victim, and not of any effort by SANTANA or
27 VASQUEZ to bribe her into refusing to respond to any subpoena to appear in any court
28 proceeding against Griesa). Upon receiving Detective Elliott's report, the District Attorney's

1 office refrained from filing any criminal charges against Griesa and immediately began
2 investigating the possible bribery charges against SANTANA and VASQUEZ.

3 37. On or about December 13, Socorro and her mother both signed the release. However,
4 Griesa did not promptly sign the release because there was no guarantee he would not be
5 criminally prosecuted. On December 21, Socorro notified SANTANA that her father had learned
6 about the sex abuse by Griesa and wanted him criminally prosecuted, and that she therefore
7 changed her mind about the settlement and wanted to proceed instead with the criminal
8 prosecution. SANTANA recommended that she retain another attorney, Michael Trezza, to
9 represent her. Socorro did so. SANTANA then immediately informed both VASQUEZ and
10 Detective Elliott of this turn of events. SANTANA also offered Detective Elliott the name and
11 number of Socorro's new attorney so he could interview her. Detective Elliott declined the
12 information and said he was not interested. VASQUEZ returned to Griesa the \$50,000.00 that the
13 latter had deposited into VASQUEZ' trust account for settlement purposes.

14 **B. Derailment of SANTANA's judgeship application and unwarranted**
15 **prosecution of both SANTANA and VASQUEZ.**

16 38. During 2007, before undertaking representation of Socorro, SANTANA had
17 submitted his application to the Governor's Office for a judicial appointment to the vacant seat on
18 the Sutter County Superior Court. SANTANA was a prominent Hispanic attorney whose law
19 practice primarily entailed representation of criminal defendants. His application for judicial
20 appointment was strongly supported by the local Hispanic community, including another
21 prominent Hispanic attorney, VASQUEZ. The other application for the judicial appointment was
22 by former Sutter County Deputy District Attorney Susan Green ("Green"), who is Caucasian.
23 Green is a friend of the Defendants and member of the Defendants' inner circle.

24 39. Sutter County and YUBA COUNTY are neighboring, and their respective Superior
25 Courts are less than two miles apart. Although Hispanics make up approximately twenty-five
26 percent of the population in each of said Counties, no Hispanic has ever been a judge in either of
27 said Superior Courts. As Hispanics, both VASQUEZ and SANTANA are members of a

28 protected class.

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1 40. Defendants have adhered to a custom and practice of favoring and encouraging the
2 judicial appointments of Caucasians, and resisting or preventing any judicial appointments of
3 Hispanics or other persons from ethnic minorities, in the Superior Courts of said two counties.
4 This custom and practice by the Defendants would keep the local judiciary racially homogenous -
5 all Caucasian.

6 41. Pursuant to said custom and practice, Defendants actively supported Green's
7 application for appointment to fill the above-referenced judicial vacancy, and opposed
8 SANTANA's application for said judicial appointment. Defendants feared the Governor's office
9 was making strong efforts to diversify the local judiciary.

10 42. On or around early December 2007, Green and Defendants MCGRATH, BENDORF,
11 and ATTORNEY EVANS attended a secret lunch meeting in which MCGRATH proposed to
12 further said custom and practice by implementing a plan to derail SANTANA's application for
13 said judicial appointment ("Derailment Plan"), and the other meeting participants agreed to the
14 Derailment Plan. Soon after said meeting, MCGRATH and the other meeting participants
15 enlisted the remaining Defendants to join in the Derailment Plan.

16 43. The core of the Derailment Plan was to institute an aggressive criminal investigation
17 of SANTANA for bribery and related criminal charges purportedly arising from SANTANA's
18 above-described representation of Socorro in connection with her allegations of sexual
19 misconduct by Griesa. Defendants knew that once SANTANA became aware that he was the
20 object of a criminal investigation, he would be obligated immediately to disclose same to the state
21 commission ("State Commission") responsible for screening judicial applicants, and that the State
22 Commission would automatically disqualify SANTANA upon learning that he was the object of a
23 criminal investigation. Defendants were also aware that the Governor could select a candidate to
24 fill said judicial vacancy as early as June 2008.

25 44. For the criminal investigation of SANTANA to appear bona fide, the Derailment
26 Plan included also making VASQUEZ an object of the criminal investigation, as well as
27 eventually proceeding with criminal prosecutions of both SANTANA and VASQUEZ. Pivotal to
28 Defendants' decision to also include VASQUEZ was that, like SANTANA, VASQUEZ is

1 Hispanic, in that Defendants believed that their contention that SANTANA illegally interacted
2 with another attorney would appear plausible only if both attorneys were Hispanic. As to how the
3 criminal investigation and prosecutions would be conducted, the Derailment Plan was to
4 disregard established and lawful procedural constraints on the gathering of evidence in criminal
5 investigations, as well as to disregard any evidence or applicable law that would demonstrate or
6 tend to demonstrate that neither SANTANA nor VASQUEZ had committed the crimes with
7 which Defendants planned to charge them. Defendants agreed to pursue the Derailment Plan by
8 falsely characterizing the settlement efforts of SANTANA and VASQUEZ as seeking to conclude
9 a "secret" settlement between Socorro, whereunder Socorro was induced by the payment of
10 money from Griesa to refuse to communicate further with Detective Elliott concerning his
11 criminal investigation of Griesa, and, if subpoenaed, to refuse to appear at any hearing concerning
12 Griesa. Defendants so agreed despite their knowledge that (i) the proposed settlement provided
13 for Griesa to pay money to Socorro in settlement of her civil claim against him for her damages
14 from his sexual misconduct, and added only that Socorro would request that the criminal
15 investigation against Griesa not proceed further (not to refuse to cooperate in any ongoing
16 investigation), and would exercise any available privilege under the law not to testify in court
17 against Griesa (not to refuse to appear in court if subpoenaed); (ii) SANTANA informed
18 Detective Elliott not that SANTANA had instructed Socorro not to talk further with Detective
19 Elliott, but rather that SANTANA would have to be present if Detective Elliott wished to talk
20 further with Socorro; and (iii) the proposed settlement was not "secret," but rather disclosed by
21 VASQUEZ as a possible alternative to criminal prosecution of Griesa (with Defendants then
22 responding positively to that possibility) and disclosed by SANTANA in support of his client
23 Socorro's wishes; and (iv) the handling of the proposed settlement by SANTANA and
24 VASQUEZ was consistent with accepted practice among police, prosecutors, and private
25 attorneys dealing with conduct by a perpetrator that may be the subject of civil claims and
26 criminal prosecution, when in accord with the victim's wishes.

27 45. In their ensuing criminal investigation of SANTANA and VASQUEZ pursuant to
28 their Derailment Plan, Defendants gave legal advice to the police and investigators, engaged in

1 their unconstitutional and illegal investigatory and administrative functions, fabricated evidence
2 during the investigation, held defamatory press conferences, and acted illegally and improperly,
3 including but not limited to the following respects:

4 (a) ATTORNEY EVANS agreed to represent Griesa, and thereby received from Griesa a
5 copy of the client file that VASQUEZ turned over to Griesa when replaced by ATTORNEY
6 EVANS. ATTORNEY EVANS then violated the attorney-client privilege that protected the
7 client file by presenting the file and its entire contents to the YUBA COUNTY DEFENDANTS
8 for examination without informing Griesa that he was doing so, much less seeking a waiver by
9 Griesa of said attorney-client privilege.

10 (b) On May 5, 2008, assisted by other Defendants, BARR prepared and filed an
11 application for a search warrant authorizing the search of the Law Offices of SANTANA,
12 VASQUEZ, and Trezza. In the application, BARR falsely represented that the proposed
13 settlement between Socorro and Griesa amounted to bribery in violation of Penal Code §138,
14 subdivision (a), namely the proposed payment of money to Socorro in exchange for her refusal to
15 attend a criminal trial of Griesa if subpoenaed thereto as a witness. Instead the proposed
16 settlement contemplated Socorro exercising any privilege available under the law to decline to
17 testify if she were thus subpoenaed, and it was already Socorro's intention, independent of any
18 settlement agreement with Griesa, to avail herself of any such privilege if subpoenaed to attend
19 Griesa's trial. In addition, BARR's application withheld the fact that Socorro believed Griesa had
20 sodomized her while she was not fully conscious, in addition to subjecting her to lesser forms of
21 sex abuse. Inclusion of that fact would have materially impaired the probable cause showing that
22 BARR sought to make in her application, in that the sodomy allegation entitled Socorro to decline
23 to testify in court about Griesa's sex abuse, pursuant to Code of Civil Procedure §1219,
24 subdivision (b), whereas BARR contended in her application that Socorro was not so entitled, and
25 hence that the discussion in the proposed settlement about Socorro not testifying was an
26 egregious departure from the law. Pursuant to their Derailment Plan, the Defendants had Barr
27 certify "under the penalty of perjury" that the facts, assertions and innuendos underlying the
28 application for the search warrant were true.

1 (c) During June 2008, ATTORNEY EVANS had Griesa continue to cooperate with
2 Defendants in their investigation of VASQUEZ and SANTANA by (i) formally waiving, in open
3 court, his attorney-client privilege in connection with documents generated by VASQUEZ during
4 his representation of Griesa, and (ii) agreeing to undergo a lengthy interrogation by Defendants
5 that dealt only with the attempt by VASQUEZ and SANTANA to negotiate a civil settlement
6 between Griesa and Socorro, to the exclusion of any inquiry into Griesa's sexual misconduct with
7 Socorro. Pursuant to the Derailment Plan, Defendants then and thereafter encouraged and
8 accepted Griesa's cooperation and assistance in prosecuting SANTANA and VASQUEZ, and at
9 least tacitly agreed not to investigate or prosecute Griesa on any serious felony charges despite
10 Defendants' knowledge of an incident in which Griesa had induced Socorro to drink a chemical-
11 laced beverage that impaired her consciousness and then digitally penetrated and/or sodomized
12 her, and hence that, if fully investigated and prosecuted, Griesa could face lengthy incarceration
13 and potentially life imprisonment. In thus encouraging and accepting Griesa's said cooperation,
14 Defendants in bad faith abused and exceeded the bounds of their prosecutorial discretion.

15 (d) On July 15 and 17, 2008, Defendants BENDORF, VACEK and STOBBER interrogated
16 Socorro, who was a minor, for a total of six hours. In that the focus of the interrogation was
17 bribery, Socorro faced the risk of prosecution for offering to receive a bribe. Nonetheless, said
18 Defendants refused her request for her attorney, Michael Trezza, to be present during the
19 interrogation. During her interrogation, Socorro stated that, when the proposed settlement with
20 Griesa was being discussed, it was already her intention, independent of any such settlement, not
21 to testify against him, and neither SANTANA nor VASQUEZ made any attempt to influence her
22 not to testify. From her perspective, the only purpose of the proposed settlement with Griesa was
23 for him to compensate her for the personal injuries he had inflicted on her, in lieu of Socorro
24 civilly pursuing her personal injury claim against him in court. Although Socorro's said
25 statements to the interrogating Defendants constituted material exonerating evidence for
26 SANTANA and VASQUEZ, said Defendants suppressed or ignored the exonerating evidence.
27 During the interrogation Socorro disclosed in detail that GRIESA had given her a grape drink
28 with a chemical that caused her to lose consciousness and he raped and sodomized her. The

1 incident occurred in late 2007, near Township Road, in Sutter County. BENDORF, VACEK and
2 STOBER were personally present when this disclosure was made and covered that case up in
3 order for GRIESA to cooperate with them. As an investigator, STOBER had a mandatory duty to
4 report the incident to law enforcement, which he failed to do. Griesa was never charged with the
5 rape and sodomy of Socorro.

6 (e) Defendants suppressed the material exonerating evidence that (i) when Socorro first
7 reported to Detective Elliott that Griesa had sexually abused her, Detective Elliott discouraged
8 her from seeking criminal prosecution of Griesa and encouraged her instead to pursue a civil
9 claim against Griesa; (ii) Detective Elliott thereafter expressed approval to VASQUEZ of the
10 proposed settlement then being negotiated between Socorro and Griesa; and (iii) that VASQUEZ
11 indicated to Deputy District Attorney BENDORF that Griesa would not conclude the proposed
12 civil settlement with Socorro if criminal charges were filed against Griesa.

13 46. On or about May 14, 2008, one week after his judicial interview with the Governor's
14 office, SANTANA became aware of the foregoing criminal investigation when his law office was
15 searched pursuant to the search warrant issued upon BARR's above-referenced application. As he
16 was required to do, SANTANA immediately notified the State Commission that he had become
17 the subject of a criminal investigation, and the State Commission consequently disqualified him
18 as a judicial candidate. Governor Schwarzenegger subsequently appointed Susan Green, the only
19 remaining candidate, to the judgeship for which she and SANTANA had been vying.

20 47. In October 2008, the YUBA COUNTY DEFENDANTS conducted a grand jury
21 against SANTANA and VASQUEZ. In November, 2008, the grand jury returned an indictment
22 against SANTANA and VASQUEZ on the felonies of bribery, dissuading a witness, and
23 obstruction of justice. SANTANA and VASQUEZ were booked, arraigned, ordered to make all
24 future court appearances. During this process, as well as their ensuing court appearances, they
25 missed work. They feared that, if convicted, they would face incarceration as well as become
26 disbarred as attorneys, and lose their reputation and their livelihood.

27 48. On May 16, 2012, the Court of Appeal voided the indictment against SANTANA in
28 its entirety because the presiding judge was biased against SANTANA and therefore the court.

1 lacked fundamental jurisdiction to convene the grand jury for SANTANA. The indictment
2 against VASQUEZ was dismissed after SANTANA'S indictment was voided.

3 49. The California State Attorney General's Office ("Attorney General") then replaced
4 Defendants in the further prosecution of SANTANA and VASQUEZ. The Attorney General filed
5 a criminal complaint against SANTANA and VASQUEZ for obstructing justice and dissuading a
6 witness, while refraining from again charging them with bribery. In a jury trial conducted in
7 March and April 2014, a jury acquitted SANTANA and VASQUEZ of all charges after
8 deliberating for less than an hour. Following the jury verdict, MCGRATH was quoted in the
9 local newspaper stating, "Our investigation was solid and we stand by our prosecution of Mr.
10 Santana and Mr. Vasquez."

11 **FIRST CLAIM**

12 **Fourteenth Amendment - Malicious Prosecution**
13 **(Equal Protection)**
14 **(42 U.S.C. §1983)**
15 **(Against All Individual Defendants)**

16 50. Plaintiffs herein re-allege Paragraphs 1 through 49 hereinabove, and each and every
17 allegation thereof, as though fully set forth herein.

18 51. By conducting an illegal and improper criminal investigation of SANTANA and
19 VASQUEZ in bad faith, Defendants caused and induced them to be prosecuted without probable
20 cause on felony charges of bribery, dissuading a witness, and obstruction of justice.

21 52. In thus prosecuting SANTANA and VASQUEZ, Defendants expressly discriminated
22 against them on the basis of their Hispanic ancestry, thereby violating their rights to equal
23 protection as protected by the Fourteenth Amendment.

24 53. Said prosecution terminated in the favor of SANTANA and VASQUEZ in that a jury
25 subsequently returned verdicts of not guilty on the remaining charges of dissuading a witness and
26 obstruction of justice.

27 54. As the proximate result of said unconstitutional conduct by Defendants, Plaintiffs
28 were forced to undergo lengthy criminal prosecution, and have suffered loss of liberty, costs of
defense, loss of reputation, loss of earnings, and consternation, worry, anxiety, and other

1 emotional distress.

2 55. Defendants acted as hereinabove alleged intentionally, maliciously, oppressively and
3 in reckless disregard for Plaintiffs' constitutional rights, thereby entitling Plaintiffs to awards of
4 punitive damages against each Defendant.

5 56. Upon prevailing herein, Plaintiffs are entitled to their reasonable attorney's fees
6 pursuant to 42 U.S.C. §1988.

7 **SECOND CLAIM**
8 **Monell Claim - Action by Policymaker**
9 **(42 U.S.C. §1983)**
10 **(As against Defendant Yuba County)**

11 57. Plaintiffs herein re-allege Paragraphs 1 through 56, hereinabove, and each and every
12 allegation thereof, as though fully set forth herein.

13 58. Defendant YUBA COUNTY is liable for the above alleged conduct of the individual
14 Defendants because District Attorney MCGRATH, acting as a final policymaker of YUBA
15 COUNTY, intentionally and in bad faith formulated and carried out the above-alleged Derailment
16 Plan whereby SANTANA's judicial candidacy would be derailed by subjecting SANTANA and
17 VASQUEZ to malicious prosecution in violation of their rights to equal protection.

18 59. Defendant MCGRATH and Does 1-20, inclusive, furthermore facilitated and
19 advanced his Derailment Plan, both before and after putting it into place, by establishing and
20 carrying out a policy of failing and refusing to adequately or properly train, supervise, discipline,
21 or control all of the other individually named YUBA COUNTY DEFENDANTS, in the exercise
22 of their duties as prosecutors and investigators, including by failing and refusing to take
23 reasonable and necessary steps to assure that their conduct was constrained by the strictures of the
24 U.S. Constitution.

25 60. As the proximate result of said unconstitutional conduct by and on behalf of YUBA
26 COUNTY, Plaintiffs have been substantially damaged in that they were forced to undergo
27 lengthy criminal prosecution, and have suffered loss of liberty, costs of defense, loss of
28 reputation, loss of earnings, consternation, worry, humiliation, anxiety, and emotional distress.

1 61. Upon prevailing herein, Plaintiffs are entitled to their reasonable attorney's fees
2 pursuant to 42 U.S.C. §1988.

3 **FOURTH CLAIM**
4 **Substantive Due Process - Stigma Plus**
5 **(42 U.S.C. §1983)**
6 **(All individual Defendants)**

7 68. Plaintiffs herein re-allege Paragraphs 1 through 67 hereinabove, and each and every
8 allegation thereof, as though fully set forth herein.

9 69. Following the acquittal of Plaintiffs on or about April 25, 2014, at the conclusion of
10 the above-alleged criminal investigation and prosecution of Plaintiffs in violation of their
11 constitutional rights to equals protection, MCGRATH, aided and abetted by the other individual
12 Defendants, conducted a press conference and/or issued a press release on or about May 4, 2014,
13 in connection with said unconstitutional investigation and prosecution, in which he defamed
14 Plaintiffs by stating that "at every stage of this proceeding, evidence was found that wrongdoing
15 had occurred by Santana and Vasquez," that MCGRATH was "as comfortable with [his] job in
16 investigating this case as any [he has] investigated in 30 years," that the actions of Santana and
17 Vasquez that MCGRATH had investigated were "absolutely irregular," and that the acquittal of
18 Santana and Vasquez was merely the result of many adverse rulings by the trial judge that
19 "prevented [the prosecutor] from presenting" a full and effective case.

20 70. Said statements by MCGRATH expressly and by innuendo portrayed Santana and
21 Vasquez as dishonorable and unethical attorneys, and thereby substantially further injured their
22 reputations, both personal and professional, and caused significant damage to their law practices.

23 71. Defendants acted as hereinabove alleged intentionally, maliciously, oppressively and
24 in reckless disregard for Plaintiffs' constitutional rights, thereby entitling Plaintiffs to awards of
25 punitive damages against each Defendant.

26 72. Upon prevailing herein, Plaintiffs are entitled to their reasonable attorney's fees
27 pursuant to 42 U.S.C. §1988.

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1 **FIFTH CLAIM**
2 **(Conspiracy)**
3 **(42 U.S.C. §1983 and §1985)**
4 **(Against All Individual Defendants)**

5 73. Plaintiffs herein re-allege Paragraphs 1 through 72 hereinabove, and each and every
6 allegation thereof, as though fully set forth herein.

7 74. All individual Defendants entered into a conspiracy for the purpose of derailing
8 SANTANA's candidacy for judicial appointment, and their overt acts pursuant to the conspiracy
9 included formulating and implementing the Derailment Plan, including by conducting in bad faith
10 an illegal and improper criminal investigation of SANTANA and VASQUEZ, and formulating
11 and conducting the above-alleged press conference or press release challenging the jury acquittals
12 of SANTANA and VASQUEZ. Plaintiffs are informed, believe and allege that in doing the
13 things alleged, Defendants, and each of them, assisted, cooperated, coordinated and acted in
14 concert with each of the other Defendants.

15 75. As the proximate result of said unconstitutional conduct by Defendants, Plaintiffs
16 were substantially damaged in that they were forced to undergo lengthy criminal prosecution, and
17 have suffered loss of liberty, costs of defense, loss of reputation, loss of earnings, consternation,
18 worry, humiliation, anxiety, and emotional distress.

19 76. Defendants acted as hereinabove alleged intentionally, maliciously, oppressively and
20 in reckless disregard for Plaintiffs' constitutional rights, thereby entitling Plaintiffs to awards of
21 punitive damages against each Defendant.

22 77. Upon prevailing herein, Plaintiffs are entitled to their reasonable attorney's fees
23 pursuant to 42 U.S.C. §1988.

24 **SIXTH CLAIM**
25 **Malicious Prosecution (State Law)**
26 **(Defendant ATTORNEY EVANS only)**

27 78. Plaintiffs herein reallege Paragraphs 1 through 77 hereinabove, and each and every
28 allegation thereof, as though fully set forth herein.

1 79. Acting in bad faith, and despite the absence of probable cause to support his doing so,
2 ATTORNEY EVANS aided, abetted, and caused the above-alleged illegal and improper criminal
3 investigation and prosecution of SANTANA and VASQUEZ on felony charges of bribery,
4 dissuading a witness, and obstruction of justice.

5 80. Said prosecution terminated in the favor of SANTANA and VASQUEZ in certain of
6 said charges were set aside by court order as legally unfounded, and, on April 25, 2014, a jury
7 returned verdicts of not guilty on the remaining charges of dissuading a witness and obstruction
8 of justice.

9 81. As the proximate result of said unconstitutional conduct by Defendants, Plaintiffs
10 were substantially damaged, in that they were forced to undergo lengthy criminal prosecution,
11 and they have suffered loss of liberty, costs of defense, loss of reputation, loss of earnings, and
12 consternation, worry, anxiety, and other emotional distress.

13 82. In acting as hereinabove alleged, ATTORNEY EVANS acted intentionally,
14 maliciously, oppressively, and despicably, thereby entitling Plaintiffs to awards of punitive
15 damages against him.

16 **SEVENTH CLAIM**
17 **Conspiracy (State Law)**
18 **(Defendant ATTORNEY EVANS only)**

19 83. Plaintiffs herein reallege Paragraphs 1 through 82 hereinabove, and each and every
20 allegation thereof, as though fully set forth herein.

21 84. Defendant Attorney Evans entered into a conspiracy with the other individual
22 Defendants for the purpose of derailing SANTANA's candidacy for judicial appointment, and
23 their overt acts pursuant to the conspiracy included conducting in bad faith an illegal and
24 improper criminal investigation of SANTANA and VASQUEZ, thereby causing the prosecution
25 without probable cause of SANTANA and VASQUEZ on felony charges of bribery, dissuading a
26 witness, and obstruction of justice, and formulating and conducting the above-alleged press
27 conference or press release challenging the jury acquittals of SANTANA and VASQUEZ.

1 84. As the proximate result of the above alleged conduct of ATTORNEY EVANS,
2 Plaintiffs were forced to undergo lengthy criminal prosecution, and have suffered loss of liberty,
3 costs of defense, loss of reputation, loss of earnings, consternation, worry, humiliation, anxiety,
4 and other emotional distress, all to their damage in sums to be established according to proof.

5 85. In acting as hereinabove alleged, ATTORNEY EVANS acted intentionally,
6 maliciously, oppressively, and despicably, thereby entitling Plaintiffs to awards of punitive
7 damages against him.

8 **VI. PRAYER FOR RELIEF**

9 WHEREFORE, Plaintiffs pray for judgment against Defendants, and each of them, as
10 follows:

11 A. For compensatory damages against all defendants, jointly and severally, in an amount
12 to be proven at trial;

13 B. For special damages against all defendants, jointly and severally, in an amount to be
14 proven at trial:

15 C. For punitive and exemplary damages against the individual defendants, jointly and
16 severally, in an amount to be proven at trial;

17 D. For attorneys fees under 42 U.S.C. §1988;

18 E. For costs of suit; and

19 F. For any further relief, including injunctive relief, as may be just and proper.

20 **VII. JURY DEMANDED**

21 Plaintiffs hereby demand a trial by jury on any and all issues triable by a jury.

22
23 DATED: March 02, 2018

LAW OFFICES OF MORALES & LEAÑOS

24 By: /s/ Jaime A. Leños
25 JAIME A. LEAÑOS
26 ATTORNEY FOR PLAINTIFFS
27 JESSE SANTANA
DAVID VASQUEZ

EXHIBIT B

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9 Jesse I. Santana
10 David Vasquez

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**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
SACRAMENTO DIVISION**

JESSE I. SANTANA AND DAVID
VASQUEZ

Plaintiffs,

v.

THE COUNTY OF YUBA, YUBA
COUNTY DISTRICT ATTORNEY
PATRICK MCGRATH, YUBA COUNTY
DEPUTY DISTRICT ATTORNEY MELANIE
BENDORF, FORMER YUBA COUNTY
DEPUTY DISTRICT ATTORNEY JOHN
VACEK, YUBA COUNTY DISTRICT
ATTORNEY INVESTIGATOR MARY
BARR, YUBA COUNTY DISTRICT
ATTORNEY INVESTIGATOR GENE
STOBER, TIMOTHY J. EVANS, AND
DOES 1 THROUGH 20, inclusive,

Defendants.

CASE NO. 2:15-cv-00794 KJM-EFB

**SECOND AMENDED COMPLAINT
FOR DAMAGES**

- 1) Fourteenth Amendment – Malicious Prosecution (42 U.S.C. § 1983)
- 2) Monell Claim - Municipal Liability – Action by Policymaker (42 U.S.C. 1983)
- 3) ~~Monell Claim – Municipal Liability – Custom, Policy and Practice (42 U.S.C. 1983)~~
- 4) Fourteenth Amendment - Substantive Due Process (42 U.S.C. §1983)
- 5) Fourteenth Amendment - Conspiracy (42 U.S.C. §§ 1983 & 1985)
- 6) Malicious Prosecution (State Law Claim)
- 7) Conspiracy (State Law Claim)

[JURY TRIAL DEMANDED]

1 Plaintiffs, JESSE SANTANA and DAVID VASQUEZ, hereby allege as follows:

2 **I. INTRODUCTION**

3 1. This is a civil action seeking damages as a result of the illegal and unconstitutional
4 conduct and malicious prosecution of Plaintiffs Jesse Santana ("SANTANA") and David
5 Vasquez ("VASQUEZ") by defendants County of Yuba ("YUBA COUNTY"); Yuba County
6 District Attorney Patrick McGrath ("MCGRATH"), Deputy District Attorney Melanie Bendorf
7 ("BENDORF"), Deputy District Attorney John Vacek ("VACEK"), Yuba County District
8 Attorney Investigator Mary Barr ("BARR"), and Yuba County District Attorney Investigator
9 Gene Stober ("STOBER") [Collectively, "YUBA COUNTY DEFENDANTS"]; and Timothy J.
10 Evans ("ATTORNEY EVANS").

11 2. As a result of defendants' illegal conduct, and other acts and omissions, SANTANA
12 and VASQUEZ were unlawfully and maliciously prosecuted without probable cause in violation
13 of their Fourteenth Amendment rights.

14 3. Plaintiffs' prosecution was fueled by Defendants' unconstitutional custom, practice and
15 policy of discriminating against the Plaintiffs based on their Hispanic ethnicity and in order to
16 keep the local judicial bench racially homogenous and exclusive of non-whites. YUBA COUNTY
17 DEFENDANTS abused their authority and acted outside the scope of their roles as prosecutors
18 and ATTORNEY EVANS conspired, aided and abetted the co-defendants in their unlawful and
19 unconstitutional conduct to prosecute SANTANA and VASQUEZ without probable cause and in
20 violation of their constitutional rights.

21 4. On April 25, 2014, after almost seven years of defending themselves against the
22 unconstitutional acts by Defendants, SANTANA and VASQUEZ were acquitted on all charges.
23 Plaintiffs' personal and professional lives were, and have been, damaged irreparably. Plaintiffs'
24 professional reputations were also irreparably damaged and they continue to suffer emotional
25 anguish. SANTANA and VASQUEZ now pursue this action to expose the wrongdoing that led to
26 their illegal prosecution, to vindicate their civil rights, to obtain awards of compensatory damages
27 for their losses, and to obtain awards of punitive damages to deter Defendants and others from
28 engaging in unconstitutional conduct such as occurred herein.

1 **II. JURISDICTION AND VENUE**

2 5. This Court has jurisdiction of the subject matter of this action under 42 U.S.C. Sections
3 1983 and 1985 for the deprivation of rights secured by the Fourth and Fourteenth Amendments to
4 the Constitution of the United States. The jurisdiction of this court is predicated upon 28 U.S.C.
5 Section 1331.

6 6. The Court has personal jurisdiction over each Defendant named herein because
7 Plaintiffs are informed and believe, and on that basis allege, that each defendant is currently
8 domiciled in the State of California.

9 7. The court has pendant and supplemental jurisdiction over the state law claims alleged
10 herein pursuant to 28 U.S.C. Section 1367. The pendant state law claims contained in this
11 Complaint arise from the same nucleus of operative facts, and involve identical issues of fact and
12 law, as the federal claims, such that the entire action constitutes a single case appropriate for
13 prosecution as a single proceeding.

14 8. On or about October 22, 2014, Plaintiffs presented a written claim for damages with
15 the YUBA COUNTY DEFENDANTS pursuant to California Government Code Section 910 et
16 seq.

17 9. The County of Yuba issued a Notice of Rejection of Claim on October 30, 2014. This
18 Complaint is thus timely and properly commenced on all state claims pursuant to applicable
19 provisions of the Government Code.

20 10. Venue is proper in the Eastern District of California, under 28 U.S.C. Section
21 1391(b)(1) and (2) because the defendants to this action reside in this District and because a
22 substantial part, if not all, of the events or omissions giving rise to Plaintiffs' claims occurred in
23 this judicial district.

24 **III. INTRADISTRICT ASSIGNMENT**

25 11. Pursuant to Eastern District Civil Local Rule 120 (d), intradistrict assignment to the
26 Sacramento Division of the Court is proper because a substantial part of the events or omissions
27 giving rise to the claims herein occurred in the County of Yuba.

1 **IV. PARTIES**

2 12. The Plaintiffs in this case are Jesse Santana ("SANTANA"), who at all relevant times
3 hereto, was a resident of the County of Sutter, State of California, and David Vasquez
4 ("VASQUEZ"), who at all relevant times hereto, was a resident of the County of Yuba, State of
5 California.

6 13. At all times herein mentioned, Defendant YUBA COUNTY is a political subdivision
7 of the State of California duly organized and existing under the laws thereof, and has the capacity
8 to sue and be sued. The Yuba County DISTRICT ATTORNEY'S OFFICE is an official
9 subdivision of YUBA COUNTY, and all attorneys and investigators employed by the DISTRICT
10 ATTORNEY'S OFFICE are employees of YUBA COUNTY.

11 14. Defendant MCGRATH, sued herein in his personal capacity, was at all relevant times
12 herein the District Attorney for the Yuba County DISTRICT ATTORNEY'S OFFICE and he at
13 all times possessed the power and authority, and was charged by law with the responsibility, to
14 enact policies and to prescribe rules and practices concerning the operation of the Yuba County
15 DISTRICT ATTORNEY'S OFFICE.

16 15. Defendant BENDORF, sued herein in her personal capacity, was at all relevant times
17 a Deputy District Attorney employed by YUBA COUNTY who, in committing the acts alleged
18 herein, acted within the course and scope of her duties, under the color of law, and with authority
19 and ratification of her principal, YUBA COUNTY.

20 16. Defendant VACEK, sued individually, was a former Deputy District Attorney and, at
21 the time of committing the acts alleged herein, a duly authorized employee of YUBA COUNTY
22 acting within the course and scope of his duty, under the color of law and with complete authority
23 and ratification of his principal, YUBA COUNTY

24 17. Defendant BARR, sued individually, was an Investigator and, at the time of
25 committing the acts alleged herein, a duly authorized employee of YUBA COUNTY acting
26 within the course and scope of her duties, under the color of law and with complete authority and
27 ratification of her principal, YUBA COUNTY.

1 18. Defendant STOBBER, sued individually, was an Investigator and, at the time of
2 committing the acts alleged herein, a duly authorized employee of YUBA COUNTY acting
3 within the course and scope of his duty, under the color of law and with complete authority and
4 ratification of his principal, YUBA COUNTY.

5 19. All acts complained of herein by Plaintiffs against YUBA COUNTY were done and
6 performed by its authorized agents, servants, and/or employees, including the above-named
7 individual Defendants, each of whom was acting within the course, purpose and scope of said
8 agency, service and/or employment capacity and under the color of law. Moreover, Defendant
9 YUBA COUNTY and its agents ratified all of the acts complained of herein.

10 20. Defendant ATTORNEY EVANS, sued herein in his personal capacity, was at all
11 relevant times a private attorney licensed by the State of California to practice law, and, in doing
12 the things complained of herein, was acting in concert and in agreement with all other
13 Defendants.

14 21. Each of the Defendants caused and is responsible for the unlawful conduct described
15 herein and the resulting injuries by, among other things, (a) personally participating in the
16 unlawful conduct or acting jointly or conspiring with others who did so; (b) authorizing,
17 acquiescing in or setting in motion policies, plans or actions that led to the unlawful and
18 unconstitutional conduct; (c) failing to take action to prevent the unlawful and unconstitutional
19 conduct; (d) failing and refusing, with deliberate indifference to Plaintiffs' rights, to initiate and
20 maintain adequate training and supervision; and (e) ratifying the unlawful conduct committed by
21 others, and failing to take remedial or disciplinary action with reference to said unlawful conduct.

22 22. All individual defendants are guilty of fraud, oppression, and/or malice that would
23 justify the imposition of punitive and exemplary damages.

24 V. FACTUAL ALLEGATIONS

25 A. Police investigation and civil settlement negotiations in 2007.

26 23. Plaintiffs repeat and re-allege each and every allegation in paragraphs 1 through 22 of
27 this Complaint with the same force and effect as if fully set forth herein.

28 24. On November 9, 2007, Socorro Gonzalez ("Gonzalez") and two of her daughters,
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1 Socorro Acevedo ("Socorro") and Laura Acevedo ("Laura"), met with Marysville Police
2 Detective Randall Elliott. Socorro, a minor less than eighteen years old who was employed as a
3 dispatcher at a local towing business known as Mitchell's Towing, told Detective Elliott that she
4 had been sexually assaulted and physically abused by her employer, Joseph Griesa ("Griesa").
5 Socorro said Griesa touched her breasts and buttocks and put his hands down her pants, with
6 force and without consent.

7 25. At the meeting, Socorro provided Detective Elliott with her cell phone, which
8 contained an array of sexually inappropriate text messages from Griesa to Socorro as well as a
9 recording of a telephone conversation between Griesa and Socorro which substantiated Socorro's
10 allegations. Socorro also showed Detective Elliott bruises on her forearm and shin, which she said
11 Griesa had caused. Detective Elliott photographed the bruising and had a female officer
12 photograph additional bruises on Socorro's torso.

13 26. Detective Elliott informed Socorro that it would be difficult to prosecute any criminal
14 charges against Griesa because the case would come down to "he said/she said," and hence it was
15 unlikely that criminal charges would be filed against Griesa. Detective Elliott recommended to
16 Socorro that she pursue a civil claim against Griesa, citing as an example the unsuccessful
17 homicide prosecution of O.J. Simpson, followed by successful civil litigation against him for
18 wrongful death.

19 27. After her interview with Detective Elliott, Socorro, accompanied by her mother and
20 sister, consulted with Plaintiff SANTANA to explore the possibility of pursuing a civil claim
21 against Griesa as Detective Elliott had suggested. Socorro explained that she did not want to
22 testify in open court against Griesa and thereby have the whole embarrassing story become public
23 knowledge. She particularly feared what might happen if her father and brother found out what
24 Griesa had done to her. She felt that her father, who was in poor health, could suffer a stroke if he
25 found out, and that her brother, who was hot-tempered and overprotective, might try to physically
26 attack Griesa. In addition, she wanted to put the whole matter behind her as soon as possible, in
27 that she planned to leave the area to attend college.

1 28. SANTANA confirmed what Detective Elliott had told them, namely that Socorro
2 could file a civil lawsuit seeking money damages from Griesa. SANTANA explained that such
3 lawsuits are often settled without a trial and sometimes even settled before the lawsuits are filed.
4 He pointed out that while a judge would have to approve any settlement since Socorro was still a
5 minor, she would not have to give detailed testimony about what Griesa had done to her as would
6 happen at trial, and that seeking such judicial approval would typically give rise to little, if any,
7 publicity. SANTANA also told them that Socorro, as a sexual assault victim, had a right not to
8 testify in open court if she chose not to do so, but it was ultimately up to the judge to decide
9 whether Socorro was in contempt for not testifying.

10 29. SANTANA offered to represent Socorro, together with her mother as guardian ad
11 litem, on a pro bono basis, and Socorro and her mother agreed to the arrangement.

12 30. On November 16, 2007, Detective Elliott phoned Griesa to inform him of the abuse
13 allegations that Socorro had made against Griesa and advised Griesa to contact a lawyer before
14 providing any statement on the matter. Griesa agreed. Later that day, Griesa met with
15 VASQUEZ, and VASQUEZ then phoned Detective Elliott, who explained Socorro's abuse
16 allegations and the criminal charges he was considering. VASQUEZ advised Detective Elliott
17 that he was about to leave on a ten day vacation and asked Detective Elliott to postpone sending
18 any investigation report to the District Attorney until VASQUEZ had an opportunity following
19 his return to discuss the matter further with Griesa. Detective Elliott agreed to the request

20 31. On or about November 19, 2007, a sister of Socorro phoned Detective Elliott to
21 request that he obtain a search warrant for Griesa's office because she learned that Griesa was
22 removing his computer, video camera equipment, and other items from his office at Mitchell's
23 Towing, and she believed said items contained evidence that would corroborate Socorro's
24 allegations. Detective Elliott declined to do so, explaining that a search warrant would not be
25 worth the effort and that the case ultimately boiled down to a "he said-she said" matter.

26 32. In the latter part of November, 2007, Griesa met again with VASQUEZ to explore
27 negotiating an early civil settlement with Socorro. VASQUEZ told Griesa that, while the District
28 Attorney would decide whether to file criminal charges, the District Attorney might be less likely

1 to do so if Griesa and Socorro promptly reached a civil settlement. Griesa deposited \$50,000.00
2 into VASQUEZ' trust account so VASQUEZ could open settlement negotiations with a good
3 faith settlement offer in that amount.

4 33. On or about November 28, Detective Elliott continued his investigation into the sex
5 abuse allegations by speaking with two employees of Mitchell's Towing who reported having
6 seen a bruise on Socorro's face which reportedly resulted from Griesa striking her during an
7 incident in which he exposed himself to her.

8 34. During the latter part of November and early part of December, 2007, SANTANA
9 and VASQUEZ engaged in numerous settlement negotiations which resulted in a tentative
10 settlement of Socorro's civil claims against Griesa for \$100,000.00, and began preparation of a
11 written release to be approved and signed by their respective clients. They agreed that once the
12 release was thus approved and signed, judicial approval would be required for the settlement to
13 become final in that Socorro was a minor. As to the language of the release, they agreed to refer
14 to Socorro's wishes regarding her wanting to settle her civil claims against Griesa, her wanting no
15 criminal charges filed so that there would not be any publicity of her ordeal at the hands of
16 Griesa, and her wanting to exercise any privilege she may have pursuant to law not to testify in
17 any proceeding. In its final version, the release stated the following:

18
19 "In consideration of the sum of one hundred thousand dollars
20 (\$100,000.00), Socorro Acevedo will request that criminal
21 charges not be filed against Joe Griesa, and will exercise any
22 privilege she may have pursuant to law, not to testify in any
23 proceedings, and she will not file any civil action, arising out
24 of the underlying facts, against Joe Griesa. Joe Griesa will
25 pay \$50,000.00 now and the remaining \$50,000.00 within
26 60 days. In exchange, Socorro Acevedo forever releases and
27 discharges Joe Griesa from all claims, demands,
28 actions, and causes of action of every kind and nature in any way
related to Joe Griesa's interactions with Socorro Acevedo."

35. While preparation of the release was underway during December, VASQUEZ told

Detective Elliott of the possible civil settlement, and Detective Elliott responded that this would

1 be a good resolution of the matter. VASQUEZ also told BENDORF of the proposed settlement
2 and asked if finalization of the settlement would have any effect on whether the District
3 Attorney's office would file any criminal charges against his client. Also, SANTANA phoned
4 Detective Elliott to inform him of his client's wishes that she wanted to settle her civil claims
5 against Griesa, that she wanted to move to the Bay Area to attend college, that a possible civil
6 settlement between Socorro and Griesa was being worked on, that she no longer desired a
7 criminal prosecution of Griesa for his sexual abuse of her, she did not want to testify against
8 Griesa and that SANTANA would have to be present if Detective Elliott wanted to interview her.
9 In addition, Griesa told Detective Elliott of the proposed settlement for \$100,000.00. Detective
10 Elliott's response was that Griesa should see another attorney for a second opinion and
11 recommended ATTORNEY EVANS as the attorney whom Griesa should see.

12 36. On December 14, Detective Elliott submitted to the District Attorney's office his
13 report on his investigation into Socorro's sex abuse allegations. In the report, Detective Elliott
14 made no recommendation on whether criminal charges should be filed against Griesa. He also
15 noted his belief that VASQUEZ and SANTANA had reached a settlement for their clients in
16 which Griesa would pay money to Socorro, and Detective Elliott recommended that consideration
17 consequently be given to bribery charges against SANTANA and VASQUEZ. Plaintiffs are
18 informed and believe that Detective Elliott was encouraged or pressured by one or more of the
19 YUBA COUNTY DEFENDANTS to insert into his report (i) the false allegation that SANTANA
20 had told him in the December 11 phone call that SANTANA had flatly instructed Socorro not to
21 talk further with Detective Elliott; and (ii) the recommendation that the DISTRICT
22 ATTORNEY'S OFFICE investigate VASQUEZ and SANTANA for bribery (despite Detective
23 Elliott's knowledge from his law enforcement experience that victims of sexual assaults are often
24 afraid to come forward and don't want to face their accusers or testify in court, and hence that
25 Socorro's reported reluctance to testify against Griesa may well have been the consequence solely
26 of Socorro's experience as a sexual assault victim, and not of any effort by SANTANA or
27 VASQUEZ to bribe her into refusing to respond to any subpoena to appear in any court
28 proceeding against Griesa). Upon receiving Detective Elliott's report, the District Attorney's

1 office refrained from filing any criminal charges against Griesa and immediately began
2 investigating the possible bribery charges against SANTANA and VASQUEZ.

3 37. On or about December 13, Socorro and her mother both signed the release. However,
4 Griesa did not promptly sign the release because there was no guarantee he would not be
5 criminally prosecuted. On December 21, Socorro notified SANTANA that her father had learned
6 about the sex abuse by Griesa and wanted him criminally prosecuted, and that she therefore
7 changed her mind about the settlement and wanted to proceed instead with the criminal
8 prosecution. SANTANA recommended that she retain another attorney, Michael Trezza, to
9 represent her. Socorro did so. SANTANA then immediately informed both VASQUEZ and
10 Detective Elliott of this turn of events. SANTANA also offered Detective Elliott the name and
11 number of Socorro's new attorney so he could interview her. Detective Elliott declined the
12 information and said he was not interested. VASQUEZ returned to Griesa the \$50,000.00 that the
13 latter had deposited into VASQUEZ' trust account for settlement purposes.

14 **B. Derailment of SANTANA's judgeship application and unwarranted**
15 **prosecution of both SANTANA and VASQUEZ.**

16 38. During 2007, before undertaking representation of Socorro, SANTANA had
17 submitted his application to the Governor's Office for a judicial appointment to the vacant seat on
18 the Sutter County Superior Court. SANTANA was a prominent Hispanic attorney whose law
19 practice primarily entailed representation of criminal defendants. His application for judicial
20 appointment was strongly supported by the local Hispanic community, including another
21 prominent Hispanic attorney, VASQUEZ. The other application for the judicial appointment was
22 by former Sutter County Deputy District Attorney Susan Green ("Green"), who is Caucasian.
23 Green is a friend of the Defendants and member of the Defendants' inner circle.

24 39. Sutter County and YUBA COUNTY are neighboring, and their respective Superior
25 Courts are less than two miles apart. Although Hispanics make up approximately twenty-five
26 percent of the population in each of said Counties, no Hispanic has ever been a judge in either of
27 said Superior Courts. As Hispanics, both VASQUEZ and SANTANA are members of a

28 protected class.

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1 40. Defendants have adhered to a custom and practice of favoring and encouraging the
2 judicial appointments of Caucasians, and resisting or preventing any judicial appointments of
3 Hispanics or other persons from ethnic minorities, in the Superior Courts of said two counties.
4 This custom and practice by the Defendants would keep the local judiciary racially homogenous -
5 all Caucasian.

6 41. Pursuant to said custom and practice, Defendants actively supported Green's
7 application for appointment to fill the above-referenced judicial vacancy, and opposed
8 SANTANA's application for said judicial appointment. Defendants feared the Governor's office
9 was making strong efforts to diversify the local judiciary.

10 42. On or around early December 2007, Green and Defendants MCGRATH, BENDORF,
11 and ATTORNEY EVANS attended a secret lunch meeting in which MCGRATH proposed to
12 further said custom and practice by implementing a plan to derail SANTANA's application for
13 said judicial appointment ("Derailment Plan"), and the other meeting participants agreed to the
14 Derailment Plan. Soon after said meeting, MCGRATH and the other meeting participants
15 enlisted the remaining Defendants to join in the Derailment Plan.

16 43. The core of the Derailment Plan was to institute an aggressive criminal investigation
17 of SANTANA for bribery and related criminal charges purportedly arising from SANTANA's
18 above-described representation of Socorro in connection with her allegations of sexual
19 misconduct by Griesa. Defendants knew that once SANTANA became aware that he was the
20 object of a criminal investigation, he would be obligated immediately to disclose same to the state
21 commission ("State Commission") responsible for screening judicial applicants, and that the State
22 Commission would automatically disqualify SANTANA upon learning that he was the object of a
23 criminal investigation. Defendants were also aware that the Governor could select a candidate to
24 fill said judicial vacancy as early as June 2008.

25 44. For the criminal investigation of SANTANA to appear bona fide, the Derailment
26 Plan included also making VASQUEZ an object of the criminal investigation, as well as
27 eventually proceeding with criminal prosecutions of both SANTANA and VASQUEZ. Pivotal to
28 Defendants' decision to also include VASQUEZ was that, like SANTANA, VASQUEZ is

1 Hispanic, in that Defendants believed that their contention that SANTANA illegally interacted
2 with another attorney would appear plausible only if both attorneys were Hispanic. As to how the
3 criminal investigation and prosecutions would be conducted, the Derailment Plan was to
4 disregard established and lawful procedural constraints on the gathering of evidence in criminal
5 investigations, as well as to disregard any evidence or applicable law that would demonstrate or
6 tend to demonstrate that neither SANTANA nor VASQUEZ had committed the crimes with
7 which Defendants planned to charge them. Defendants agreed to pursue the Derailment Plan by
8 falsely characterizing the settlement efforts of SANTANA and VASQUEZ as seeking to conclude
9 a "secret" settlement between Socorro, whereunder Socorro was induced by the payment of
10 money from Griesa to refuse to communicate further with Detective Elliott concerning his
11 criminal investigation of Griesa, and, if subpoenaed, to refuse to appear at any hearing concerning
12 Griesa. Defendants so agreed despite their knowledge that (i) the proposed settlement provided
13 for Griesa to pay money to Socorro in settlement of her civil claim against him for her damages
14 from his sexual misconduct, and added only that Socorro would request that the criminal
15 investigation against Griesa not proceed further (not to refuse to cooperate in any ongoing
16 investigation), and would exercise any available privilege under the law not to testify in court
17 against Griesa (not to refuse to appear in court if subpoenaed); (ii) SANTANA informed
18 Detective Elliott not that SANTANA had instructed Socorro not to talk further with Detective
19 Elliott, but rather that SANTANA would have to be present if Detective Elliott wished to talk
20 further with Socorro; and (iii) the proposed settlement was not "secret," but rather disclosed by
21 VASQUEZ as a possible alternative to criminal prosecution of Griesa (with Defendants then
22 responding positively to that possibility) and disclosed by SANTANA in support of his client
23 Socorro's wishes; and (iv) the handling of the proposed settlement by SANTANA and
24 VASQUEZ was consistent with accepted practice among police, prosecutors, and private
25 attorneys dealing with conduct by a perpetrator that may be the subject of civil claims and
26 criminal prosecution, when in accord with the victim's wishes.

27 45. In their ensuing criminal investigation of SANTANA and VASQUEZ pursuant to
28 their Derailment Plan, Defendants gave legal advice to the police and investigators, engaged in

1 their unconstitutional and illegal investigatory and administrative functions, fabricated evidence
2 during the investigation, held defamatory press conferences, and acted illegally and improperly,
3 including but not limited to the following respects:

4 (a) ATTORNEY EVANS agreed to represent Griesa, and thereby received from Griesa a
5 copy of the client file that VASQUEZ turned over to Griesa when replaced by ATTORNEY
6 EVANS. ATTORNEY EVANS then violated the attorney-client privilege that protected the
7 client file by presenting the file and its entire contents to the YUBA COUNTY DEFENDANTS
8 for examination without informing Griesa that he was doing so, much less seeking a waiver by
9 Griesa of said attorney-client privilege.

10 (b) On May 5, 2008, assisted by other Defendants, BARR prepared and filed an
11 application for a search warrant authorizing the search of the Law Offices of SANTANA,
12 VASQUEZ, and Trezza. In the application, BARR falsely represented that the proposed
13 settlement between Socorro and Griesa amounted to bribery in violation of Penal Code §138,
14 subdivision (a), namely the proposed payment of money to Socorro in exchange for her refusal to
15 attend a criminal trial of Griesa if subpoenaed thereto as a witness. Instead the proposed
16 settlement contemplated Socorro exercising any privilege available under the law to decline to
17 testify if she were thus subpoenaed, and it was already Socorro's intention, independent of any
18 settlement agreement with Griesa, to avail herself of any such privilege if subpoenaed to attend
19 Griesa's trial. In addition, BARR's application withheld the fact that Socorro believed Griesa had
20 sodomized her while she was not fully conscious, in addition to subjecting her to lesser forms of
21 sex abuse. Inclusion of that fact would have materially impaired the probable cause showing that
22 BARR sought to make in her application, in that the sodomy allegation entitled Socorro to decline
23 to testify in court about Griesa's sex abuse, pursuant to Code of Civil Procedure §1219,
24 subdivision (b), whereas BARR contended in her application that Socorro was not so entitled, and
25 hence that the discussion in the proposed settlement about Socorro not testifying was an
26 egregious departure from the law. Pursuant to their Derailment Plan, the Defendants had Barr
27 certify "under the penalty of perjury" that the facts, assertions and innuendos underlying the
28 application for the search warrant were true.

1 (c) During June 2008, ATTORNEY EVANS had Griesa continue to cooperate with
2 Defendants in their investigation of VASQUEZ and SANTANA by (i) formally waiving, in open
3 court, his attorney-client privilege in connection with documents generated by VASQUEZ during
4 his representation of Griesa, and (ii) agreeing to undergo a lengthy interrogation by Defendants
5 that dealt only with the attempt by VASQUEZ and SANTANA to negotiate a civil settlement
6 between Griesa and Socorro, to the exclusion of any inquiry into Griesa's sexual misconduct with
7 Socorro. Pursuant to the Derailment Plan, Defendants then and thereafter encouraged and
8 accepted Griesa's cooperation and assistance in prosecuting SANTANA and VASQUEZ, and at
9 least tacitly agreed not to investigate or prosecute Griesa on any serious felony charges despite
10 Defendants' knowledge of an incident in which Griesa had induced Socorro to drink a chemical-
11 laced beverage that impaired her consciousness and then digitally penetrated and/or sodomized
12 her, and hence that, if fully investigated and prosecuted, Griesa could face lengthy incarceration
13 and potentially life imprisonment. In thus encouraging and accepting Griesa's said cooperation,
14 Defendants in bad faith abused and exceeded the bounds of their prosecutorial discretion.

15 (d) On July 15 and 17, 2008, Defendants BENDORF, VACEK and STOBBER interrogated
16 Socorro, who was a minor, for a total of six hours. In that the focus of the interrogation was
17 bribery, Socorro faced the risk of prosecution for offering to receive a bribe. Nonetheless, said
18 Defendants refused her request for her attorney, Michael Trezza, to be present during the
19 interrogation. During her interrogation, Socorro stated that, when the proposed settlement with
20 Griesa was being discussed, it was already her intention, independent of any such settlement, not
21 to testify against him, and neither SANTANA nor VASQUEZ made any attempt to influence her
22 not to testify. From her perspective, the only purpose of the proposed settlement with Griesa was
23 for him to compensate her for the personal injuries he had inflicted on her, in lieu of Socorro
24 civilly pursuing her personal injury claim against him in court. Although Socorro's said
25 statements to the interrogating Defendants constituted material exonerating evidence for
26 SANTANA and VASQUEZ, said Defendants suppressed or ignored the exonerating evidence.
27 During the interrogation Socorro disclosed in detail that GRIESA had given her a grape drink
28 with a chemical that caused her to lose consciousness and he raped and sodomized her. The

1 incident occurred in late 2007, near Township Road, in Sutter County. BENDORF, VACEK and
2 STOBER were personally present when this disclosure was made and covered that case up in
3 order for GRIESA to cooperate with them. As an investigator, STOBER had a mandatory duty to
4 report the incident to law enforcement, which he failed to do. Griesa was never charged with the
5 rape and sodomy of Socorro.

6 (e) Defendants suppressed the material exonerating evidence that (i) when Socorro first
7 reported to Detective Elliott that Griesa had sexually abused her, Detective Elliott discouraged
8 her from seeking criminal prosecution of Griesa and encouraged her instead to pursue a civil
9 claim against Griesa; (ii) Detective Elliott thereafter expressed approval to VASQUEZ of the
10 proposed settlement then being negotiated between Socorro and Griesa; and (iii) that VASQUEZ
11 indicated to Deputy District Attorney BENDORF that Griesa would not conclude the proposed
12 civil settlement with Socorro if criminal charges were filed against Griesa.

13 46. On or about May 14, 2008, one week after his judicial interview with the Governor's
14 office, SANTANA became aware of the foregoing criminal investigation when his law office was
15 searched pursuant to the search warrant issued upon BARR's above-referenced application. As he
16 was required to do, SANTANA immediately notified the State Commission that he had become
17 the subject of a criminal investigation, and the State Commission consequently disqualified him
18 as a judicial candidate. Governor Schwarzenegger subsequently appointed Susan Green, the only
19 remaining candidate, to the judgeship for which she and SANTANA had been vying.

20 47. In October 2008, the YUBA COUNTY DEFENDANTS conducted a grand jury
21 against SANTANA and VASQUEZ. In November, 2008, the grand jury returned an indictment
22 against SANTANA and VASQUEZ on the felonies of bribery, dissuading a witness, and
23 obstruction of justice. SANTANA and VASQUEZ were booked, arraigned, ordered to make all
24 future court appearances. During this process, as well as their ensuing court appearances, they
25 missed work. They feared that, if convicted, they would face incarceration as well as become
26 disbarred as attorneys, and lose their reputation and their livelihood.

27 48. On May 16, 2012, the Court of Appeal voided the indictment against SANTANA in
28 its entirety because the presiding judge was biased against SANTANA and therefore the court

1 lacked fundamental jurisdiction to convene the grand jury for SANTANA. The indictment
2 against VASQUEZ was dismissed after SANTANA'S indictment was voided.

3 49. The California State Attorney General's Office ("Attorney General") then replaced
4 Defendants in the further prosecution of SANTANA and VASQUEZ. The Attorney General filed
5 a criminal complaint against SANTANA and VASQUEZ for obstructing justice and dissuading a
6 witness, while refraining from again charging them with bribery. In a jury trial conducted in
7 March and April 2014, a jury acquitted SANTANA and VASQUEZ of all charges after
8 deliberating for less than an hour. Following the jury verdict, MCGRATH was quoted in the
9 local newspaper stating, "Our investigation was solid and we stand by our prosecution of Mr.
10 Santana and Mr. Vasquez."

11 **FIRST CLAIM**

12 **Fourteenth Amendment - Malicious Prosecution**
13 **(Equal Protection)**
14 **(42 U.S.C. §1983)**
15 **(Against All Individual Defendants)**

16 50. Plaintiffs herein re-allege Paragraphs 1 through 49 hereinabove, and each and every
17 allegation thereof, as though fully set forth herein.

18 51. By conducting an illegal and improper criminal investigation of SANTANA and
19 VASQUEZ in bad faith, Defendants caused and induced them to be prosecuted without probable
20 cause on felony charges of bribery, dissuading a witness, and obstruction of justice.

21 52. In thus prosecuting SANTANA and VASQUEZ, Defendants expressly discriminated
22 against them on the basis of their Hispanic ancestry, thereby violating their rights to equal
23 protection as protected by the Fourteenth Amendment.

24 53. Said prosecution terminated in the favor of SANTANA and VASQUEZ in that a jury
25 subsequently returned verdicts of not guilty on the remaining charges of dissuading a witness and
26 obstruction of justice.

27 54. As the proximate result of said unconstitutional conduct by Defendants, Plaintiffs
28 were forced to undergo lengthy criminal prosecution, and have suffered loss of liberty, costs of
defense, loss of reputation, loss of earnings, and consternation, worry, anxiety, and other

1 emotional distress.

2 55. Defendants acted as hereinabove alleged intentionally, maliciously, oppressively and
3 in reckless disregard for Plaintiffs' constitutional rights, thereby entitling Plaintiffs to awards of
4 punitive damages against each Defendant.

5 56. Upon prevailing herein, Plaintiffs are entitled to their reasonable attorney's fees
6 pursuant to 42 U.S.C. §1988.

7 **SECOND CLAIM**
8 **Monell Claim - Action by Policymaker**
9 **(42 U.S.C. §1983)**
10 **(As against Defendant Yuba County)**

11 57. Plaintiffs herein re-allege Paragraphs 1 through 56, hereinabove, and each and every
12 allegation thereof, as though fully set forth herein.

13 58. Defendant YUBA COUNTY is liable for the above alleged conduct of the individual
14 Defendants because District Attorney MCGRATH, acting as a final policymaker of YUBA
15 COUNTY, intentionally and in bad faith formulated and carried out the above-alleged Derailment
16 Plan whereby SANTANA's judicial candidacy would be derailed by subjecting SANTANA and
17 VASQUEZ to malicious prosecution in violation of their rights to equal protection.

18 59. Defendant MCGRATH and Does 1-20, inclusive, furthermore facilitated and
19 advanced his Derailment Plan, both before and after putting it into place, by establishing and
20 carrying out a policy of failing and refusing to adequately or properly train, supervise, discipline,
21 or control all of the other individually named YUBA COUNTY DEFENDANTS, in the exercise
22 of their duties as prosecutors and investigators, including by failing and refusing to take
23 reasonable and necessary steps to assure that their conduct was constrained by the strictures of the
24 U.S. Constitution.

25 60. As the proximate result of said unconstitutional conduct by and on behalf of YUBA
26 COUNTY, Plaintiffs have been substantially damaged in that they were forced to undergo
27 lengthy criminal prosecution, and have suffered loss of liberty, costs of defense, loss of
28 reputation, loss of earnings, consternation, worry, humiliation, anxiety, and emotional distress.

1 61. Upon prevailing herein, Plaintiffs are entitled to their reasonable attorney's fees
2 pursuant to 42 U.S.C. §1988.

3 **THIRD CLAIM**
4 **Monell Claim — Custom, Policy and Practice**
5 **(42 U.S.C. §1983)**
6 **(Against Defendant Yuba County)**

7 ~~62. Plaintiffs herein re-allege Paragraphs 1 through 61 hereinabove, and each and every
8 allegation thereof, as though fully set forth herein.~~

9 ~~63. Defendant YUBA COUNTY is liable for the above alleged conduct of the individual
10 YUBA COUNTY DEFENDANTS because said Defendants acted pursuant to a custom and
11 practice prevailing among YUBA COUNTY officials of favoring and encouraging the
12 appointments of Caucasians as judges of the Superior Courts of Yuba County and neighboring
13 Sutter County, and resisting or preventing any judicial appointments of Hispanics or other
14 persons from ethnic minorities, in the Superior Courts of said two counties.~~

15 ~~64. Defendant YUBA COUNTY caused and facilitated said discriminatory custom and
16 practice through its custom and practice of failing to adequately train, supervise, discipline, or in
17 any other way properly control all of the individually named YUBA COUNTY DEFENDANTS,
18 in the exercise of their duties as employees of the Yuba County District Attorney's Office,
19 including by failing and refusing to take reasonable and necessary steps to assure that their
20 conduct is constrained by the strictures of the U.S. Constitution.~~

21 ~~65. Defendant YUBA COUNTY, through their custom and practice of encouraging,
22 condoning, tolerating and ratifying constitutional violations by their employees, including YUBA
23 COUNTY DEFENDANTS MCGRATH, BENDORF, VACEK, STOBBER and BARR and Does
24 1-20, were deliberately indifferent to the constitutional violations being committed against the
25 Plaintiffs.~~

26 ~~66. As the proximate result of said unconstitutional conduct by Defendant YUBA
27 COUNTY, Plaintiffs were substantially damaged in that they were forced to undergo lengthy
28 eriminal prosecution, and have suffered loss of liberty, costs of defense, loss of reputation, loss of
29 earnings, consternation, worry, humiliation, anxiety, and emotional distress.~~

1 ~~67. Upon prevailing herein, Plaintiffs are entitled to their reasonable attorney's fees~~
2 ~~pursuant to 42 U.S.C. §1988.~~

3 **FOURTH CLAIM**
4 **Substantive Due Process - Stigma Plus**
5 **(42 U.S.C. §1983)**
6 **(All individual Defendants)**

7 68. Plaintiffs herein re-allege Paragraphs 1 through 67 hereinabove, and each and every
8 allegation thereof, as though fully set forth herein.

9 69. Following the acquittal of Plaintiffs on or about April 25, 2014, at the conclusion of
10 the above-alleged criminal investigation and prosecution of Plaintiffs in violation of their
11 constitutional rights to equals protection, MCGRATH, aided and abetted by the other individual
12 Defendants, conducted a press conference and/or issued a press release on or about May 4, 2014,
13 in connection with said unconstitutional investigation and prosecution, in which he defamed
14 Plaintiffs by stating that “at every stage of this proceeding, evidence was found that wrongdoing
15 had occurred by Santana and Vasquez,” that MCGRATH was “as comfortable with [his] job in
16 investigating this case as any [he has] investigated in 30 years,” that the actions of Santana and
17 Vasquez that MCGRATH had investigated were “absolutely irregular,” and that the acquittal of
18 Santana and Vasquez was merely the result of many adverse rulings by the trial judge that
19 “prevented [the prosecutor] from presenting” a full and effective case.

20 70. Said statements by MCGRATH expressly and by innuendo portrayed Santana and
21 Vasquez as dishonorable and unethical attorneys, and thereby substantially further injured their
22 reputations, both personal and professional, and caused significant damage to their law practices.

23 71. Defendants acted as hereinabove alleged intentionally, maliciously, oppressively and
24 in reckless disregard for Plaintiffs' constitutional rights, thereby entitling Plaintiffs to awards of
25 punitive damages against each Defendant.

26 72. Upon prevailing herein, Plaintiffs are entitled to their reasonable attorney's fees
27 pursuant to 42 U.S.C. §1988.

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1 **FIFTH CLAIM**
2 **(Conspiracy)**
3 **(42 U.S.C. §1983 and §1985)**
4 **(Against All Individual Defendants)**

5 73. Plaintiffs herein re-allege Paragraphs 1 through 72 hereinabove, and each and every
6 allegation thereof, as though fully set forth herein.

7 74. All individual Defendants entered into a conspiracy for the purpose of derailing
8 SANTANA's candidacy for judicial appointment, and their overt acts pursuant to the conspiracy
9 included formulating and implementing the Derailment Plan, including by conducting in bad faith
10 an illegal and improper criminal investigation of SANTANA and VASQUEZ, and formulating
11 and conducting the above-alleged press conference or press release challenging the jury acquittals
12 of SANTANA and VASQUEZ. Plaintiffs are informed, believe and allege that in doing the
13 things alleged, Defendants, and each of them, assisted, cooperated, coordinated and acted in
14 concert with each of the other Defendants.

15 75. As the proximate result of said unconstitutional conduct by Defendants, Plaintiffs
16 were substantially damaged in that they were forced to undergo lengthy criminal prosecution, and
17 have suffered loss of liberty, costs of defense, loss of reputation, loss of earnings, consternation,
18 worry, humiliation, anxiety, and emotional distress.

19 76. Defendants acted as hereinabove alleged intentionally, maliciously, oppressively and
20 in reckless disregard for Plaintiffs' constitutional rights, thereby entitling Plaintiffs to awards of
21 punitive damages against each Defendant.

22 77. Upon prevailing herein, Plaintiffs are entitled to their reasonable attorney's fees
23 pursuant to 42 U.S.C. §1988.

24 **SIXTH CLAIM**
25 **Malicious Prosecution (State Law)**
26 **(Defendant ATTORNEY EVANS only)**

27 78. Plaintiffs herein reallege Paragraphs 1 through 77 hereinabove, and each and every
28 allegation thereof, as though fully set forth herein.

1 79. Acting in bad faith, and despite the absence of probable cause to support his doing so,
2 ATTORNEY EVANS aided, abetted, and caused the above-alleged illegal and improper criminal
3 investigation and prosecution of SANTANA and VASQUEZ on felony charges of bribery,
4 dissuading a witness, and obstruction of justice.

5 80. Said prosecution terminated in the favor of SANTANA and VASQUEZ in certain of
6 said charges were set aside by court order as legally unfounded, and, on April 25, 2014, a jury
7 returned verdicts of not guilty on the remaining charges of dissuading a witness and obstruction
8 of justice.

9 81. As the proximate result of said unconstitutional conduct by Defendants, Plaintiffs
10 were substantially damaged, in that they were forced to undergo lengthy criminal prosecution,
11 and they have suffered loss of liberty, costs of defense, loss of reputation, loss of earnings, and
12 consternation, worry, anxiety, and other emotional distress.

13 82. In acting as hereinabove alleged, ATTORNEY EVANS acted intentionally,
14 maliciously, oppressively, and despicably, thereby entitling Plaintiffs to awards of punitive
15 damages against him.

16 **SEVENTH CLAIM**
17 **Conspiracy (State Law)**
18 **(Defendant ATTORNEY EVANS only)**

19 83. Plaintiffs herein reallege Paragraphs 1 through 82 hereinabove, and each and every
20 allegation thereof, as though fully set forth herein.

21 84. Defendant Attorney Evans entered into a conspiracy with the other individual
22 Defendants for the purpose of derailing SANTANA's candidacy for judicial appointment, and
23 their overt acts pursuant to the conspiracy included conducting in bad faith an illegal and
24 improper criminal investigation of SANTANA and VASQUEZ, thereby causing the prosecution
25 without probable cause of SANTANA and VASQUEZ on felony charges of bribery, dissuading a
26 witness, and obstruction of justice, and formulating and conducting the above-alleged press
27 conference or press release challenging the jury acquittals of SANTANA and VASQUEZ.

1 84. As the proximate result of the above alleged conduct of ATTORNEY EVANS,
2 Plaintiffs were forced to undergo lengthy criminal prosecution, and have suffered loss of liberty,
3 costs of defense, loss of reputation, loss of earnings, consternation, worry, humiliation, anxiety,
4 and other emotional distress, all to their damage in sums to be established according to proof.

5 85. In acting as hereinabove alleged, ATTORNEY EVANS acted intentionally,
6 maliciously, oppressively, and despicably, thereby entitling Plaintiffs to awards of punitive
7 damages against him.

8 **VI. PRAYER FOR RELIEF**

9 WHEREFORE, Plaintiffs pray for judgment against Defendants, and each of them, as
10 follows:

11 A. For compensatory damages against all defendants, jointly and severally, in an amount
12 to be proven at trial;

13 B. For special damages against all defendants, jointly and severally, in an amount to be
14 proven at trial:

15 C. For punitive and exemplary damages against the individual defendants, jointly and
16 severally, in an amount to be proven at trial;

17 D. For attorneys fees under 42 U.S.C. §1988;

18 E. For costs of suit; and

19 F. For any further relief, including injunctive relief, as may be just and proper.

20 **VII. JURY DEMANDED**

21 Plaintiffs hereby demand a trial by jury on any and all issues triable by a jury.

22
23 DATED: ~~September 9, 2016~~ March 02, 2018

LAW OFFICES OF MORALES &

24 LEAÑOS

25 By: /s/ Jaime A. Leños
26 JAIME A. LEAÑOS
27 ATTORNEY FOR PLAINTIFFS
28 JESSE SANTANA
DAVID VASQUEZ