

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

United States District Court
Northern District of California

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

MAURICE CALDWELL,
Plaintiff,
v.
CITY OF SAN FRANCISCO, et al.,
Defendants.

Case No. [12-cv-01892-DMR](#)

**ORDER ON MOTION TO DISMISS
SECOND AMENDED COMPLAINT**

Re: Dkt. No. 422

Plaintiff Maurice Caldwell spent nearly 20 years in prison following his 1991 conviction for second degree murder. He was released from prison in 2010 after a state court granted his petition for a writ of habeas corpus on the basis of ineffective assistance of counsel. Following his release, Caldwell filed this lawsuit alleging that officers in the San Francisco Police Department (“SFPD”) fabricated evidence against him during the murder investigation. Defendants Kitt Crenshaw, a former SFPD officer, and the City and County of San Francisco (“San Francisco”) now move pursuant to Federal Rule of Civil Procedure 12(b)(6) to dismiss Caldwell’s second amended complaint (“SAC”). [Docket No. 422.] This motion is appropriate for determination without oral argument. Civil L.R. 7-1(b). For the following reasons, the motion is denied.

I. BACKGROUND

A. Factual Background

Caldwell’s factual allegations were previously described in detail in the Honorable Elizabeth D. Laporte’s March 2, 2016 Order Granting Defendants’ Motion for Summary Judgment (Docket No. 373) and the decision by the United States Court of Appeals for the Ninth Circuit on appeal. *Caldwell v. City & Cnty. of San Francisco*, 889 F.3d 1105 (9th Cir. 2018). The court summarizes the relevant allegations made by Caldwell.

On June 30, 1990, four men drove to the Alemany Projects in San Francisco to buy drugs.

1 A fight broke out between the buyers and sellers. Caldwell alleges that one of the sellers, Marritte
2 Funches, shot and killed Judy Acosta, one of the buyers. [Docket No. 189 (SAC) ¶¶ 20-22.]
3 Another man, Henry Martin, fired at the buyers as they attempted to flee in their car. Id. at ¶ 24.

4 SFPD inspectors Arthur Gerrans and James Crowley were assigned to investigate the
5 homicide. Gerrans went to the Alemany Projects to canvass the neighborhood and brought
6 Crenshaw, who was familiar with the area. Id. at ¶¶ 32, 34, 35. During his canvass, Gerrans
7 entered the home of witness Mary Cobbs. Cobbs lived next door to Caldwell, an African
8 American man who went by the nickname “Twone” or “Little Twone.” Id. at ¶¶ 33, 39-41. While
9 Gerrans was interviewing Cobbs, Crenshaw encountered Caldwell. Caldwell and Crenshaw had a
10 history. In January 1990, Caldwell had filed a citizen complaint against Crenshaw with San
11 Francisco’s Office of Citizen Complaints (“OCC”) alleging that Crenshaw had assaulted him and
12 threatened to kill him. The OCC complaint was pending at the time of the homicide investigation.
13 Id. at ¶¶ 38, 42.

14 According to Caldwell, on the day of Gerrans’s interview of Cobbs, Crenshaw “grabbed
15 Mr. Caldwell, pushed him up against the wall, handcuffed him, and dragged him up to Mary
16 Cobbs’ front door.” When Cobbs answered the door, Crenshaw asked to speak with Gerrans.
17 While Cobbs was within earshot, Crenshaw told Gerrans, “This is Maurice Caldwell, Twone, the
18 guy I’ve been telling you about. I need the keys to put him in the patrol car.” After “displaying”
19 Caldwell to Cobbs, Gerrans “ensured Ms. Cobbs understood that Defendant Crenshaw was
20 arresting Mr. Caldwell [for Acosta’s murder] by telling her that the officer at the door was
21 working with him.” Id. at ¶¶ 43, 44. Crenshaw then placed Caldwell in a police car and
22 questioned him. Caldwell told Crenshaw that he was not involved in Acosta’s murder. After
23 releasing Caldwell, Crenshaw fabricated a police report falsely representing that Caldwell had
24 admitted to being at the murder scene. Id. at ¶ 45.

25 During her interview with Gerrans, Cobbs never indicated that the man at the door with
26 Crenshaw (Caldwell) was the shooter. She also did not tell Gerrans that the man who lived next
27 door to her was involved in the shooting. Instead, she told Gerrans that the shooters “were not
28 from the area” and that she did not know their names or nicknames. Id. at ¶¶ 47-49. Despite

1 Cobbs’s statements, Gerrans, Crowley, and Crenshaw continued to focus their investigation on
2 Caldwell and never questioned any other suspects. Id. at ¶¶ 51, 56.

3 Two weeks after the “show-up” of Caldwell at Cobbs’s home, Gerrans and Crowley
4 performed a photo lineup with Cobbs, who apparently picked Caldwell out of the photo lineup as
5 one of the shooters. Id. at ¶¶ 57, 59-60. She also stated that she knew Caldwell by his nickname,
6 “Twone,” even though she had previously told Gerrans that she did not know the shooters’ names
7 or nicknames and had not told him that the shooter lived next door to her. Id. at ¶ 60.

8 Caldwell was arrested for Acosta’s murder on September 21, 1990. Cobbs was the sole
9 witness to identify Caldwell as a shooter at the preliminary hearing and trial. Caldwell alleges that
10 her testimony was “completely unreliable” and “internally inconsistent and inconsistent with the
11 physical evidence, undisputed facts, and testimony from the surviving victims.” Id. at ¶¶ 66, 75.
12 He further alleges that based on Cobbs’s “false eyewitness testimony,” which was “tainted by the
13 actions of . . . Gerrans, Crowley, and Crenshaw,” he was “wrongfully tried and convicted” of the
14 crime. Id. at ¶ 80.

15 In December 2016, the San Francisco County Superior Court granted Caldwell’s petition
16 for a writ of habeas corpus. It concluded that Caldwell’s counsel was ineffective for failing to
17 investigate evidence of his innocence and that he had not received a fair trial. The court did not
18 reach Caldwell’s claims of false testimony and actual innocence. Caldwell was not re-tried and
19 the charges against him were dismissed. Accordingly, he alleges, “he is an innocent man as a
20 matter of law.” Id. at ¶¶ 103-104.

21 Caldwell was released from custody on March 28, 2010 after spending nearly 20 years
22 behind bars. Id. at ¶ 105. He filed this action on April 16, 2012.

23 **B. Procedural History**

24 Caldwell asserted the following claims in the SAC, which is the operative complaint: 1) a
25 42 U.S.C. § 1983 claim for violation of Caldwell’s Fifth and Fourteenth Amendment due process
26 rights based on fabrication of evidence and using an impermissibly and unnecessarily suggestive
27 identification procedure, against Crenshaw, Gerrans, and Crowley; 2) a section 1983 claim for
28 conspiracy to interfere with Caldwell’s civil rights, against Crenshaw, Gerrans, and Crowley; 3) a

1 claim for municipal liability under *Monell v. Department of Social Services of City of New York*,
2 436 U.S. 658 (1978), against San Francisco; and 4) a section 1983 claim for failure to intervene
3 against Crenshaw, Gerrans, and Crowley. Defendants filed an answer to the SAC on October 1,
4 2015. [Docket No. 206.]

5 On March 2, 2016, Judge Laporte granted Defendants' motion for summary judgment.
6 [Docket No. 373 (Order on Summ. J.).] As to Gerrans and Crowley, the court held that Caldwell
7 had failed to raise a triable issue as to whether either or both of them had deliberately fabricated
8 evidence. *Id.* at 18-25. The court also found that Caldwell raised a triable issue as to whether
9 Crenshaw manufactured the show-up at Cobbs's front door in order to manipulate her into
10 identifying Caldwell, and deliberately fabricated a statement by Caldwell that placed him at the
11 scene of the shooting. However, the court determined that Crenshaw was not liable because the
12 prosecutor's decision to charge Caldwell was subject to a presumption of independence, and
13 therefore broke the chain of causation between Crenshaw's alleged actions and Caldwell's harm.
14 *Id.* at 14-17, 25-33. As the court granted summary judgment as to the individual defendants, it did
15 not reach Defendants' motion as to the *Monell* claim. *Id.* at 34.

16 Caldwell appealed. On May 11, 2018, the Ninth Circuit affirmed as to Gerrans and
17 Crowley, but reversed as to Crenshaw. The court found that the district court correctly held that
18 there were disputes of fact as to whether Crenshaw fabricated evidence by manufacturing a show-
19 up at Cobbs's front door with Caldwell, and whether Crenshaw brought Caldwell to Cobbs's door
20 for the purpose of fabricating evidence against Caldwell. *Caldwell*, 889 F.3d at 1113-14. It also
21 held that Caldwell had raised a dispute of fact regarding whether Crenshaw deliberately fabricated
22 a statement from Caldwell and memorialized it in falsified notes. *Id.* at 1114-15.

23 As to the issue of causation, the Ninth Circuit noted that "[t]o establish causation, Caldwell
24 must raise a triable issue that the fabricated evidence was the cause in fact and proximate cause of
25 his injury." *Id.* at 1115 (citing *Spencer v. Peters*, 857 F.3d 789, 798 (9th Cir. 2017)). It further
26 noted that in constitutional tort cases, "the '[f]iling of a criminal complaint immunizes
27 investigating officers . . . because it is presumed that the prosecutor filing the complaint exercised
28 independent judgment in determining that probable cause for an accused's arrest exists at that

1 time.” *Id.* (quoting *Smiddy v. Varney*, 665 F.2d 261, 266 (9th Cir. 1981)) (alteration and ellipses
2 in original). The court concluded that “[a]ssuming without deciding that the presumption applies
3 to [fabrication of evidence] claims . . . Caldwell sufficiently rebutted any presumption and has
4 established a triable issue as to causation.” *Id.* at 1116. Specifically, the court found that Caldwell
5 had raised a dispute of fact as to whether San Francisco’s prosecutor, Assistant District Attorney
6 Alfred Giannini, relied on “the falsehood” of Cobbs’s identification of Caldwell and Crenshaw’s
7 notes in making the decision to charge Caldwell. *Id.* at 1116-18. The Ninth Circuit also remanded
8 with instructions to address Caldwell’s Monell claim on remand. *Id.* at 1108 n.2. Therefore, the
9 remaining claims are the due process claim against Crenshaw for fabrication of evidence and the
10 Monell claim against San Francisco.

11 The Ninth Circuit’s judgment took effect on March 19, 2019. Caldwell filed the Circuit
12 Clerk’s mandate on November 25, 2019. [Docket No. 404.] In light of Judge Laporte’s
13 retirement, the matter was reassigned to the undersigned. [Docket Nos. 405, 406.]

14 The court conducted a case management conference on April 29, 2020, at which
15 Defendants Crenshaw and San Francisco requested permission to file a motion to dismiss
16 Caldwell’s remaining due process claim against Crenshaw. Without deciding the propriety of
17 entertaining such a motion at this late stage, the court set filing deadlines for the proposed motion
18 to dismiss as well as Defendants’ motion for summary judgment as to the Monell claim. [See
19 Docket Nos. 414, 415.] Defendants timely filed the instant motion.

20 **II. LEGAL STANDARD**

21 A motion to dismiss under Rule 12(b)(6) tests the legal sufficiency of the claims alleged in
22 the complaint. See *Parks Sch. of Bus., Inc. v. Symington*, 51 F.3d 1480, 1484 (9th Cir. 1995).
23 When reviewing a motion to dismiss for failure to state a claim, the court must “accept as true all
24 of the factual allegations contained in the complaint,” *Erickson*, 551 U.S. at 94 (2007) (citation
25 omitted), and may dismiss a claim “only where there is no cognizable legal theory” or there is an
26 absence of “sufficient factual matter to state a facially plausible claim to relief.” *Shroyer v. New*
27 *Cingular Wireless Servs., Inc.*, 622 F.3d 1035, 1041 (9th Cir. 2010) (citing *Ashcroft v. Iqbal*, 556
28 U.S. 662, 677-78 (2009); *Navarro v. Block*, 250 F.3d 729, 732 (9th Cir. 2001)) (quotation marks

1 omitted). A claim has facial plausibility when a plaintiff “pleads factual content that allows the
2 court to draw the reasonable inference that the defendant is liable for the misconduct alleged.”
3 *Iqbal*, 556 U.S. at 678 (citation omitted). In other words, the facts alleged must demonstrate
4 “more than labels and conclusions, and a formulaic recitation of the elements of a cause of action
5 will not do.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 554, 555 (2007) (citing *Papasan v. Allain*, 478
6 U.S. 265, 286 (1986)); see *Lee v. City of L.A.*, 250 F.3d 668, 679 (9th Cir. 2001), overruled on
7 other grounds by *Galbraith v. Cty. of Santa Clara*, 307 F.3d 1119 (9th Cir. 2002).

8 **III. DISCUSSION**

9 **A. The Parties’ Arguments**

10 Defendants requested permission to move to dismiss Caldwell’s remaining due process
11 claim against Crenshaw on the basis of what they described as an intervening change in the law,
12 starting with the Supreme Court’s decision in *Manuel v. City of Joliet, Ill.*, 137 S. Ct. 911 (2017).
13 In *Manuel*, the Court held that a claim challenging the constitutionality of a pretrial detention,
14 including a detention based on fabricated evidence, arises under the Fourth Amendment’s
15 prohibition on unreasonable seizures. 137 S. Ct. at 917-19. Defendants argue that under *Manuel*
16 and *McDonough v. Smith*, 139 S. Ct. 2149 (2019), Caldwell’s claim against Crenshaw no longer
17 arises under the Fourteenth Amendment’s due process clause and instead is “properly understood
18 as a Fourth Amendment pretrial detention claim.” Mot. 1. According to Defendants, Caldwell’s
19 Fourth Amendment claim is time-barred because it accrued at the time of his arrest and charging.

20 In the alternative, Defendants argue that even if Caldwell brings a Fourteenth Amendment
21 due process claim, he cannot state the claim because he has not alleged that the criminal
22 proceedings terminated in his favor, which Defendants assert is now required under *McDonough*.
23 Mot. 8-11.

24 In his opposition, Caldwell clarifies that he does not bring a Fourth Amendment claim
25 based on his pretrial detention. Instead, his claim is that Crenshaw fabricated evidence against
26 him which “caused him to be wrongfully tried, convicted and to serve over twenty years in prison
27 in violation of his Fourteenth Amendment due process right not to be prosecuted based on
28 evidence fabricated by the government and his due process right to a fair trial.” Opp’n 6-8. He

1 disputes that he must allege that the criminal proceedings terminated in his favor in order to state a
2 Fourteenth Amendment due process claim.

3 On reply, Defendants acknowledge Caldwell’s clarification that he does not bring a claim
4 based on his pretrial detention. Accordingly, they withdraw their argument that Caldwell’s claim
5 against Crenshaw is time-barred. Reply 1, 6.

6 Therefore, the sole issue before the court is whether Caldwell is required to allege that the
7 criminal proceedings terminated in his favor in order to state his Fourteenth Amendment due
8 process claim. See Reply 3-6.¹

9 **B. Analysis**

10 “[T]here is a clearly established constitutional due process right not to be subject to
11 criminal charges on the basis of false evidence that was deliberately fabricated by the
12 government.” *Devereaux v. Abbey*, 263 F.3d 1070, 1074-75 (9th Cir. 2018). To prevail on a
13 fabrication of evidence claim, “a plaintiff must prove that (1) the defendant official deliberately
14 fabricated evidence and (2) the deliberate fabrication caused the plaintiff’s deprivation of liberty.”
15 *Spencer*, 857 F.3d at 798 (citation omitted).

16 Defendants argue that under *McDonough*, a plaintiff must establish the favorable
17 termination of the underlying criminal case in order to bring a fabricated evidence claim.
18 Defendants’ assertion contorts *McDonough* and is meritless, particularly in light of the Ninth
19 Circuit’s subsequent decision in *Roberts v. City of Fairbanks*, 947 F.3d 1191, 1201 n.11 (9th Cir.
20 2020).

21 To start, *McDonough* did not address whether a plaintiff must show favorable termination
22 of a criminal case in order to prevail on a constitutional claim challenging the use of fabricated
23 evidence in that case. Instead, *McDonough* considered the question of when the statute of
24

25 ¹ Defendants had to seek permission to file this motion because the deadline for a Rule 12(b)
26 motion has long since passed. The court notes that this remaining argument goes beyond the
27 scope of what defense counsel sought leave to file. Counsel asked for the opportunity to brief the
28 Manuel issue discussed above. Counsel did not ask the court for permission to raise the argument
that Caldwell fails to state a Fourteenth Amendment claim based on the favorable termination rule.
The court will consider the argument in the interest of justice but admonishes counsel to refrain
from taking liberties when making representations to the court.

1 limitations begins to run on a section 1983 fabricated evidence claim. The plaintiff in
2 McDonough brought a fabricated evidence claim almost three years after his acquittal on forgery
3 charges. 139 S. Ct. at 2154. The district court dismissed the claim as untimely under the
4 applicable three-year statute of limitations. The Second Circuit affirmed, finding that the claim
5 did not accrue upon acquittal, but rather had accrued earlier when plaintiff could show “that the
6 defendant’s knowing use of the fabricated evidence caused him some deprivation of liberty.” Id.

7 The Supreme Court reversed. In deciding the accrual question, the Court analogized
8 fabricated evidence claims to malicious prosecution claims, finding that “[a]t bottom, both claims
9 challenge the integrity of criminal prosecutions undertaken ‘pursuant to legal process.’” Id. at
10 2156 (citing Heck v. Humphrey, 512 U.S. 477, 484 (1994)). The Court recognized that malicious
11 prosecution claims “accrue[] only once the underlying criminal proceedings have resolved in the
12 plaintiff’s favor.” Id. Relying on its decision in Heck, and noting that it was “follow[ing] the
13 analogy [to malicious prosecution claims] where it leads,” the Court concluded that the plaintiff
14 “could not bring his fabricated-evidence claim under § 1983 prior to favorable termination of his
15 prosecution.” Id. McDonough discussed Heck at length. It explained that in Heck, the Court held
16 that “in order to recover damages for allegedly unconstitutional conviction or imprisonment, or for
17 other harm caused by actions whose unlawfulness would render a conviction or sentence invalid,”
18 a section 1983 plaintiff must prove that his or her conviction had been invalidated. Id. at 2157
19 (quoting Heck, 512 U.S. at 486-87). A plaintiff may do so by showing that the conviction “has
20 been [1] reversed on direct appeal, [2] expunged by executive order, [3] declared invalid by a state
21 tribunal authorized to make such determination, or [4] called into question by a federal court’s
22 issuance of a writ of habeas corpus.” Heck, 512 U.S. at 486-87.²

23 McDonough reasoned that “malicious prosecution’s favorable-termination requirement is
24 rooted in pragmatic concerns with avoiding parallel criminal and civil litigation over the same
25 subject matter and the related possibility of conflicting civil judgments” and “avoids allowing
26 collateral attacks on criminal judgment through civil litigation.” McDonough, 139 S. Ct. at 2157
27

28 ² In this case, Defendants expressly concede that Caldwell satisfies Heck’s third prong. Reply 3.

1 (citations omitted). The Court then concluded that “[b]ecause a civil claim such as McDonough’s,
2 asserting that fabricated evidence was used to pursue a criminal judgment, implicates the same
3 concerns, it makes sense to adopt the same rule.” *Id.* Therefore, a statute of limitations on a
4 fabricated evidence claim begins to run “once the criminal proceeding has ended in the
5 defendant’s favor, or a resulting conviction has been invalidated within the meaning of Heck[.]”
6 *Id.* at 2158 (citing *Heck*, 512 U.S. at 486-87).

7 Here, Defendants distort McDonough by asserting that it imposed a “favorable
8 termination” requirement for fabricated evidence claims that is identical to the requirement for
9 malicious prosecution claims. See Mot. 10 (citing *Mills v. City of Covina*, 921 F.3d 1161, 1170-71
10 (9th Cir. 2019) (malicious prosecution claim requires a termination reflecting plaintiff’s
11 innocence)). According to Defendants, Caldwell cannot allege that the criminal proceedings
12 terminated in his favor as he was never acquitted or declared innocent of the charges. Defendants
13 are wrong. McDonough made no such ruling. Instead, it decided the question of when a claim for
14 fabricated evidence accrues; it noted that it was not deciding the “contours” of such a claim, and it
15 did not hold that such a claim is identical to a malicious prosecution claim. 139 S. Ct. at 2155 n.2.

16 In fact, Defendants’ interpretation of McDonough contradicts the express ruling in
17 McDonough that a fabricated evidence claim does not accrue until “the criminal proceeding has
18 ended in the defendant’s favor, or a resulting conviction has been invalidated within the meaning
19 of Heck[.]” 139 S. Ct. at 2158 (citing *Heck*, 512 U.S. at 486-87) (emphasis added). In a recent
20 opinion, the Ninth Circuit examined this exact language and held that “[b]y posing the favorable-
21 termination rule and invalidation under Heck disjunctively,” “McDonough firmly undermines the .
22 . . . insinuation that they are coterminous.” *Roberts*, 947 F.3d at 1201 n.11. Here, it is undisputed
23 that Caldwell’s conviction was “invalidated within the meaning of *Heck*” because it was “declared
24 invalid by a state tribunal authorized to make such determination. See *Heck*, 512 U.S. at 486-87;
25 *Opp’n* 14; *Reply* 3.

26 *Roberts* is directly on point here. It held that the favorable termination rule applicable to
27 malicious prosecution claims is distinct from the “four means of favorable termination” articulated
28 in *Heck*. In *Roberts*, the Ninth Circuit addressed the question of “whether § 1983 plaintiffs may

1 recover damages if the convictions underlying their claims were vacated pursuant to a settlement
2 agreement.” 947 F.3d at 1193. The settlement agreement provided that the parties would ask a
3 court to vacate the plaintiffs’ convictions, and specifically recognized that “[t]he parties have not
4 reached agreement as to [the plaintiffs’] actual guilt or innocence.” Id. (first alteration in original).
5 After a state court vacated the plaintiffs’ convictions and they were released from prison, the
6 plaintiffs filed a section 1983 action alleging deprivation of liberty, malicious prosecution, and
7 several other claims. Id. at 1196. The district court dismissed their claims as barred by Heck,
8 holding that the “vacatur of convictions pursuant to a settlement agreement was insufficient to
9 render the convictions invalid[.]” Id.

10 The Ninth Circuit reversed, holding that the Heck bar was inapplicable because the
11 plaintiffs’ convictions were vacated and the underlying indictments had been dismissed. The court
12 ruled that in the absence of a criminal judgment or charges pending against the plaintiffs, Heck did
13 not apply as a bar to the subsequent civil rights action. Id. at 1198. The defendants argued that
14 even though the convictions were vacated, they had not been “declared invalid” as required by
15 Heck because the settlement did not establish the plaintiffs’ innocence and thus did not meet the
16 “favorable-termination” rule for a malicious prosecution claim. Id. at 1198, 1201. The Ninth
17 Circuit rejected this argument as improperly conflating “the favorable-termination rule in the tort
18 of malicious prosecution with Heck’s four distinct means of favorable termination.” Id. at 1201.
19 It expressly found that “Heck’s favorable-termination requirement is distinct from the favorable-
20 termination element of a malicious-prosecution claim.” Id. According to Roberts, the argument
21 forwarded by the defense (which is the same argument asserted by Defendants in this case)
22 “contravenes the plain language of Heck” because convictions can be invalidated on the grounds
23 set forth in Heck without “indicat[ing] the innocence of the accused,” as is required for a malicious
24 prosecution claim. Id. at 1201-02. It noted that “[c]onvictions ‘called into question by a federal
25 court’s issuance of a writ of habeas corpus’ routinely terminate in a manner that could not sustain
26 a malicious-prosecution action.” Id. at 1202.³

27 _____
28 ³ Defendants acknowledge that in Roberts, the Ninth Circuit clearly stated that the favorable
termination element of a malicious prosecution claims should not be conflated with the favorable

1 In sum, Roberts considered and rejected the exact position taken by Defendants here. See
2 id. at 1202-03 (“the law of our circuit is not that Heck bars a § 1983 suit unless the plaintiff could
3 succeed in a malicious-prosecution action . . .” (emphasis in original)). Accordingly, Caldwell
4 does not have to plead that the underlying criminal proceedings terminated in his favor in order to
5 proceed with his section 1983 due process claim against Crenshaw.

6 **IV. CONCLUSION**

7 For the foregoing reasons, Defendants’ motion to dismiss Caldwell’s section 1983 due
8 process claim against Crenshaw is denied.

9
10 **IT IS SO ORDERED.**

11 Dated: October 26, 2020



12
13
14
15
16
17
18
19
20
21
22
23
24 termination requirement of Heck, and that Heck does not bar a 1983 suit unless the plaintiff could
25 succeed in a malicious prosecution action. But Defendants go on from there to pronounce that
26 “[t]he converse . . . is also true—a plaintiff cannot succeed in a malicious prosecution or
27 fabrication of evidence action merely by overcoming the Heck bar.” Reply 4. Defendants cite
28 two cases which purportedly support their pronouncement, but neither do. *Mills v. City of Covina*,
921 F.3d 1161, 1170-71 (9th Cir. 2019) discusses the elements of a malicious prosecution claim,
including the favorable termination element, but says nothing about fabrication of evidence
claims. In *Bradford v. Scherschligt*, 803 F.3d 382, 386-89 (9th Cir. 2015), the court held that a
Devereaux claim for fabrication of evidence accrues when the conviction or sentence is
invalidated, but in the retrial context, it accrues on the date the plaintiff is acquitted in a retrial.
Bradford does not hold that a fabrication of evidence claim requires a favorable termination.