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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

NANCY SUSSMAN, MICHAEL  
SUSSMAN ESTATE THEREOF BY  
AND THRU HIS SPECIAL  
ADMINISTER FOR THE ESTATE,  
  
Plaintiff,  
  
v.  
  
SAN DIEGO POLICE DEPARTMENT,  
et. al.,  
  
Defendants.

Case No.: 20cv1085-JO-MDD

**ORDER GRANTING DEFENDANTS'  
MOTIONS TO DISMISS**

Defendants Judge Kenneth So; Judge Gregory Pollack; District Attorney Summer  
Stephan; Assistant District Attorney Wendy Patrick; City Attorney Mara Elliot; former  
Deputy City Attorney Ryan Scott; the San Diego Police Department; individually named  
San Diego Police Department Officers; the California Department of Motor Vehicles; the  
Certified Board of Registered Nursing; Alfonso and Esperanza Martinez; Joel and Mary  
Johnson; California Highway Patrol Officer Erick Parra; Allstate Northbrook Indemnity  
Company; Prime Healthcare Paradise Valley, LLC dba Paradise Valley Hospital; and  
Dr. Prakash Bhatia filed motions to dismiss Plaintiff's Second Amended Complaint on

1 various grounds, including *res judicata*; judicial, prosecutorial, and state immunity;  
2 improper service of process; and failure to state a claim. Dkts. 73, 76, 78, 80–81, 83–86,  
3 89–90. For the reasons stated below, the Court grants Defendants’ motions to dismiss.

#### 4 **I. BACKGROUND**

5 Plaintiff Nancy Sussman’s son, Michael Sussman, was convicted in San Diego  
6 Superior Court for a variety of misdemeanors related to a domestic violence incident and  
7 was given a one-year sentence. Shortly after being released from jail, Mr. Sussman died  
8 of a drug overdose. In the instant action, the second of two lawsuits she has filed in the  
9 Southern District of California, Plaintiff brings fourteen claims based in part on a  
10 conspiracy between Judges, attorneys, government organizations, and private parties to  
11 harm her and her son and violate their civil rights during the prosecution and conviction of  
12 Mr. Sussman. *See* Dkt. 70 (the “SAC”). Plaintiff also brings claims based on a series of  
13 apparently unrelated grievances, including allegedly unlawful arrests, confinement to a  
14 psychiatric unit, and revocation of her driver’s license and nursing license.

#### 15 **A. Plaintiff’s Prior Federal Court Action**

16 On June 6, 2019, Plaintiff sued in the United States District Court for the Southern  
17 District of California, alleging a conspiracy to falsely prosecute and convict Mr. Sussman.  
18 *Nancy Sussman, et al. v. San Diego Police Dept., et al.*, Case No. 19cv1063-DMS-JLB (the  
19 “Prior Action”). In the Prior Action, the purported conspirators included Judge Kenneth  
20 So, the San Diego Police Department (the “SDPD”), the San Diego City Attorney’s Office  
21 (the “City Attorney’s Office”), City Attorney Mara Elliot, former Deputy City Attorney  
22 Ryan Scott, Lieutenant Jeff Jordon, and Alfonso Martinez, among other defendants. *See*  
23 Prior Action Dkt. 9. On November 4, 2019, the District Court dismissed Plaintiff’s Second  
24 Amended Complaint with prejudice. *See* Prior Action Dkt. 110. On September 15, 2020,  
25 the Ninth Circuit affirmed. *See* Prior Action Dkt. 128.

#### 26 **B. The Instant Action**

27 After the dismissal of her Prior Action, Plaintiff filed the instant action on June 15,  
28 2020. The Defendants described below have moved to dismiss the claims against them.

1       *i. Judicial Defendants*

2           In the SAC, Plaintiff claims that Defendants Judge Kenneth So and Judge Gregory  
3 Pollack (together, the “Judicial Defendants”) illegally acted to harm Plaintiff and  
4 Mr. Sussman in violation of their civil rights. Plaintiff contends, as she did in the Prior  
5 Action, that Judge So unfairly presided over the criminal trial of Mr. Sussman, which  
6 resulted in Mr. Sussman’s “fake conviction” and death. SAC at 11–13, 17–18. Unrelated  
7 to the criminal prosecution of her son, Plaintiff claims Judge Pollack presided over a civil  
8 harassment matter during which he wrongfully issued a “forged” restraining order against  
9 Plaintiff and in favor of Plaintiff’s neighbors. *See Alfonso Martinez v. Nancy Sussman*,  
10 Superior Court of California, County of San Diego, Case No. 37-2016-00045136-CU-  
11 HRCTL; SAC at 6, 9, 16–17. Based on the above, Plaintiff alleges the following claims  
12 against the Judicial Defendants: (1) violations of unspecified rights under § 1983 (Count  
13 I); (2) abuse of process (Count II); (3) RICO (Count V); (4) interference with a federal  
14 lawsuit (Count VIII); and (5) interference with prospective economic advantages (Count  
15 XIV).<sup>1</sup>

16       *ii. The Prosecutorial Defendants*

17           Plaintiff also names District Attorney Summer Stephan (“DA Stephan”), Assistant  
18 District Attorney Wendy Patrick (“ADA Patrick”), City Attorney Mara Elliot, and former  
19 Deputy City Attorney Ryan Scott (together, the “Prosecutorial Defendants”). Plaintiff’s  
20 allegations against the Prosecutorial Defendants appear to center around the prosecution of  
21 Mr. Sussman. Plaintiff alleges that DA Stephan subjected her and her son to unidentified  
22 “fake trials” and concealed the SDPD’s and DA’s conspiracy of regularly conducting fake  
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25           <sup>1</sup> Because Plaintiff has not assigned a unique number to each Count in her SAC, for  
26 the purpose of this opinion, the Counts are referred to sequentially in the order they appear.  
27 Additionally, Plaintiff names certain Defendants in the Count headings but alleges no facts  
28 with respect to them. For the purposes of its analysis, the Court has only considered  
Defendants against whom some facts are alleged within each Count as Defendants to that  
Count.

1 trials. SAC at 4. Plaintiff does not further clarify the contours of this alleged conspiracy.  
2 Plaintiff also claims that DA Stephan refused to investigate her son's death in 2018. *Id.* at  
3 23. According to Plaintiff, ADA Patrick participated in these events, although her role is  
4 not specified. *Id.* 4, 12–13, 23. As to City Attorney Elliot and former Deputy City Attorney  
5 Scott, Plaintiff claims that they improperly prosecuted Mr. Sussman by “condoning perjury  
6 and false evidence” but does not allege further facts in support. *Id.* at 12.

7 Plaintiff also identifies a handful of separate events on which she bases her claims  
8 against the Prosecutorial Defendants, each of which appear to have occurred a year or more  
9 after the prosecution of Mr. Sussman. Plaintiff alleges DA Stephan arrested Plaintiff in  
10 2019, on the false charge of criminally threatening Defendant Alfonso Martinez to  
11 improperly influence the outcome of the Prior Action. *Id.* at 14–15. Plaintiff further  
12 appears to claim that ADA Patrick participated in this wrong by falsely representing to the  
13 state court in the same criminal action that Plaintiff had threatened Alfonso Martinez. *Id.*  
14 at 15–16. Other than claiming that she was in fact innocent of having threatened Defendant  
15 Martinez, Plaintiff does not plead further detail. In connection with the same matter, ADA  
16 Patrick also allegedly “got on Television to discredit Sussman publically as a witness when  
17 she was also the prosecutor.” *Id.* at 15. Plaintiff does not identify the statements that ADA  
18 Patrick made to the press.

19 Plaintiff further claims that Defendant City Attorney Elliot committed abuse of  
20 process by “filing a felony restraining order against Sussman using false document  
21 provided to her by the District Attorney.” *Id.* at 15. Plaintiff does not state any further  
22 context or facts in support of this allegation. Plaintiff also alleges that former Deputy City  
23 Attorney Scott granted immunity to her neighbor, Defendant Alfonso Martinez “for his  
24 perjured statements and a false letter and false pictures.” *Id.* at 7. Plaintiff does not provide  
25 any additional detail, although this allegation appears to be unrelated to Mr. Sussman's  
26 prosecution. Former Deputy City Attorney Scott also allegedly sent defamatory letters to  
27 the Certified Board of Registered Nursing, along with Defendants Alfonso and Esperanza  
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1 Martinez and Joel and Mary Johnson, reporting “Sussman as ‘crazy’ mentally Ill’ under  
2 arrest, in jail etc. Criminal etc, in essence defaming Sussman.” *Id.* at 31.

3 Based on the foregoing, Plaintiff alleges violations of unspecified rights under  
4 § 1983 and RICO against the Prosecutorial Defendants (Counts I and V); conspiracy to  
5 obstruct justice and interference with a federal lawsuit against DA Stephan and ADA  
6 Patrick (Count VII–VIII); abuse of process against DA Stephan, ADA Patrick, and City  
7 Attorney Elliot (Count II); and defamation and interference with prospective economic  
8 advantage against former Deputy City Attorney Scott (Counts XIII–XIV).

9 *iii. The State Agency Defendants*

10 Plaintiff brings claims against two state agencies, the California Department of  
11 Motor Vehicles (the “DMV”) and the California Board of Registered Nursing (the  
12 “CBRN”) based on discrete events unrelated to the prosecution of Mr. Sussman. With  
13 respect to the DMV, Plaintiff appears to allege that it wrongfully suspended her license on  
14 an unidentified date and again in 2020. SAC at 9, 28–29. After the first suspension,  
15 Plaintiff “demanded of the DMV the suspension be removed it was not.” *Id.* at 28. Then,  
16 in 2020, she contends that the DMV knowingly suspended her license based on false police  
17 reports, despite her “excellent driving skills.” *Id.* at 9, 28–29. Based on the above, Plaintiff  
18 brings a claim fashioned as “discrimination . . . excessive fines and wrongful suspensions  
19 of Sussman license to drive” (Count XI).<sup>2</sup>

20 Unrelatedly, Plaintiff claims that the CBRN violated its fiduciary duty to her and  
21 deprived her of due process when it revoked her nursing license in 2019. *Id.* at 30–33.  
22 According to Plaintiff, the CBRN wrongfully inactivated her nursing license even though  
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25 <sup>2</sup> The Court liberally construes this *pro se* claim as arising under § 1983, because  
26 Plaintiff appears to allege that her license was suspended wrongfully and without due  
27 process of law. In addition, although the DMV is named in Plaintiff’s RICO claim alleging  
28 a conspiracy related to the prosecution of Mr. Sussman, Plaintiff does not specifically  
allege what role the DMV played in any conspiracy.

1 Plaintiff had satisfied the applicable licensing requirements, and the CBRN failed to inform  
2 her of same. *Id.* The CBRN also allegedly wrongfully relied on defamatory complaints  
3 about Plaintiff in revoking Plaintiff’s license. *Id.* Plaintiff further claims that the CBRN  
4 failed to disclose the complaints to Plaintiff or give her a chance to rebut them, and that  
5 her nursing license was ultimately revoked “behind [her] back” and without giving Plaintiff  
6 an opportunity to contest. *Id.* at 31–32. Based on the foregoing, Plaintiff brings an  
7 unspecified claim against the CBRN, which the Court liberally construes as a claim brought  
8 under § 1983 (Count XIII).<sup>3</sup>

9 *iv. The SDPD Defendants*

10 Plaintiff brings claims against the SDPD and certain individually named SDPD  
11 Officers (the “SDPD Defendants”) as members of an alleged conspiracy to prosecute  
12 Mr. Sussman. Plaintiff states that Mr. Sussman’s prosecution was “was being done for the  
13 police dept.” SAC at 12. Plaintiff does not further elaborate on the SDPD Defendants’  
14 role in any conspiracy.

15 Plaintiff also brings claims against the SDPD Defendants based on three arrests  
16 unrelated to Mr. Sussman’s prosecution. *Id.* at 14–15, 18–19. During Plaintiff’s first arrest  
17 on August 17, 2019, the SDPD and individually named Officer Tharp allegedly “performed  
18 an illegal search of Sussman glove compartment and during that search placed a knife in  
19 the glove compartment.” *Id.* at 19. During Plaintiff’s second arrest on October 28, 2019,  
20 the SDPD allegedly used “brutal force” and “used unlawful search and seizure to obtain  
21 warrant on Sussman.” *Id.* at 14. With respect to Plaintiff’s third arrest on December 30,  
22 2019, Plaintiff claims that the SDPD “took Sussman on a wild and reckless police chase in  
23 her vehicle based upon a false warrant.” *Id.* at 18. During this arrest, Plaintiff states that  
24 individually named SDPD Officers Highhorse and Mondello jumped on her and “put  
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27 <sup>3</sup> Plaintiff appears to claim that her nursing license was revoked wrongfully and  
28 without due process of law. Like the DMV, although the CBRN is named in Plaintiff’s  
RICO claim, Plaintiff does not specify the CBRN’s alleged role in any conspiracy.

1 Sussman handcuffs on so tight Sussman suffered heart pains,” respectively. *Id.* at 18–19.  
2 Based on the above, Plaintiff brings the following claims against the SDPD  
3 Defendants: (1) violations of unspecified rights under § 1983 (Count I); (2) abuse of  
4 process (Count II); (3) unlawful search and seizure, excessive force, and unlawful arrest  
5 under § 1983 (Counts III–IV); and (4) RICO (Count V).

6 *v. The Neighbor Defendants*

7 Plaintiff names four of her neighbors as Defendants: Alfonso and Esperanza  
8 Martinez and Joel and Mary Johnson. As in the Prior Action, Plaintiff names Defendant  
9 Alfonso Martinez as a member of a conspiracy to wrongfully prosecute and convict  
10 Mr. Sussman. SAC at 18. Unrelated to those claims concerning her son, Plaintiff also  
11 alleges that Defendant Alfonso Martinez submitted a false police report in 2019 that  
12 Plaintiff threatened him. *Id.* at 7–8, 14–16. In yet another incident, unspecified persons  
13 purportedly “hired” Defendant Alfonso Martinez “to spy on the Sussman with 24/7  
14 cameras from his roof and report all activities to them for entrapment purposes . . . and  
15 instructed him to video tape the Sussman’s and easesdrop on them 24/7 and report activities  
16 to the SDPD so he could testify against the Sussman’s with immunity.” *Id.* at 6. As to  
17 Defendant Esperanza Martinez, the spouse of Defendant Alfonso Martinez, Plaintiff states  
18 that she “fabricated evidence in a police report and submitted false testimony at a court  
19 hearing.” *Id.* at 8. Plaintiff does not specify, however, what evidence was fabricated, what  
20 testimony was false, nor the court hearing at which testimony took place.

21 Plaintiff also alleges that the Martinez couple and two other neighbors, Joel and  
22 Mary Johnson, sent defamatory complaints to the CBRN that “Sussman as ‘crazy’ mentally  
23 Ill’ under arrest, in jail etc. Criminal etc, in essence defaming Sussman,” which caused  
24 Plaintiff to lose her nursing license. *Id.* at 30–36.

25 Based on the above, Plaintiff brings the following claims against Defendants  
26 Alfonso and Esperanza Martinez and Joel and Mary Johnson: RICO (Count V); an  
27 unspecified claim that the Court construes as defamation (Count XIII); and interference  
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1 with prospective economic advantages (Count XIV). Plaintiff also brings an abuse of  
2 process claim against Defendant Alfonso Martinez (Count II).

3 *vi. Defendant CHP Officer Parra*

4 Plaintiff alleges that Defendant California Highway Patrol (“CHP”) Officer Erick  
5 Parra falsely arrested Plaintiff in January 2020, failed to mirandize her, and wrongfully  
6 reported her to the DMV. SAC at 28–30. Although Plaintiff appears to claim that CHP  
7 Officer Parra’s report resulted in the DMV’s suspension of her license in 2020, Plaintiff’s  
8 claim against CHP Officer Parra is otherwise unrelated to her remaining claims. Based on  
9 these contentions, Plaintiff brings an unspecified claim for false arrest against CHP Officer  
10 Parra (Count XII).<sup>4</sup> Plaintiff also names CHP Officer Parra in her RICO claim, although  
11 she alleges no further facts with respect to him and does not identify his role in any  
12 conspiracy.

13 *vii. Defendant Allstate*

14 Plaintiff brings a claim against Defendant Allstate Northbrook Indemnity Company  
15 (“Allstate”) based on an insurance dispute that is unrelated to the rest of her claims.  
16 Plaintiff states that she was in a car accident on August 17, 2019, that resulted from the  
17 other driver’s negligence. SAC at 25. Plaintiff alleges that Allstate promised to do an  
18 independent investigation into the accident but ultimately failed to do so. *Id.* at 25–27.  
19 Plaintiff concludes that Allstate violated the implied covenant of good faith and fair dealing  
20 by failing to perform an adequate investigation, settling with the other driver, filing a SR  
21 22 form indicating Plaintiff was at fault, and lying to Plaintiff regarding the fact of the SR  
22 22 form and the settlement. *Id.* Based on this, Plaintiff brings a claim for violation of the

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26 <sup>4</sup> The Court construes Plaintiff’s claim against Officer Parra as arising under state  
27 law because Plaintiff explicitly pleads counts under federal law on each of her allegedly  
28 unlawful arrests but does not cite to federal law in the claim against Officer Parra. *See*  
SAC at 28–30.

1 implied covenant of good faith and fair dealing (Count X). Plaintiff also names Allstate in  
2 her RICO claim but does not allege Allstate’s involvement in any conspiracy.

3 *viii. Defendants Paradise and Dr. Bhatia*

4 Plaintiff brings claims against Prime Healthcare Paradise Valley, LLC dba Paradise  
5 Valley Hospital (“Paradise”) and Dr. Prakash Bhatia based on her involuntary psychiatric  
6 confinement, unrelated to the rest of her claims. SAC at 24–25. Plaintiff does not specify  
7 the dates or circumstances of her confinement but appears to suggest that she was  
8 wrongfully confined to the psychiatric unit without her consent. Plaintiff claims that  
9 Paradise and Dr. Bhatia accepted transfer of Plaintiff to Paradise’s psychiatric unit without  
10 Plaintiff’s consent and that Defendant Dr. Bhatia knew that Plaintiff did not have a mental  
11 health condition but refused to release her. *Id.* at 24. Plaintiff purportedly was only  
12 allowed to leave the psychiatric hospital after Dr. Bhatia fraudulently “orchestrated a  
13 pretend hearing.” *Id.* at 24–25. Based on this, Plaintiff brings state law claims of false  
14 imprisonment, fraud, and deceit against Paradise and Dr. Bhatia (Count IX).

15 **II. STANDARD OF REVIEW**

16 A Rule 12(b)(6) motion to dismiss tests the sufficiency of the complaint. *See*  
17 *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). Rule 12 (b)(6) is read in conjunction with  
18 Rule 8(a), which requires only “a short and plain statement of the claim showing that the  
19 pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2). While Rule 8 does not require detailed  
20 factual allegations, at a minimum, a complaint must allege enough facts to provide “fair  
21 notice” of both the particular claims being asserted and “the grounds upon which [those  
22 claims] rest[.]” *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 & n.3 (2007) (citations  
23 omitted).

24 In deciding a motion to dismiss, all material factual allegations of the complaint are  
25 accepted as true, as well as all reasonable inferences to be drawn from them. *Cahill v.*  
26 *Liberty Mut. Ins. Co.*, 80 F.3d 336, 338 (9th Cir. 1996). A court, however, need not accept  
27 all conclusory allegations as true. Rather it must “examine whether conclusory allegations  
28 follow from the description of facts as alleged by the plaintiff.” *Holden v. Hagopian*, 978

1 F.2d 115, 1121 (9th Cir. 1992). A motion to dismiss should be granted if a plaintiff's  
2 complaint fails to contain "enough facts to state a claim to relief that is plausible on its  
3 face." *Twombly*, 550 U.S. at 570. "A claim has facial plausibility when the plaintiff pleads  
4 factual content that allows the court to draw the reasonable inference that the defendant is  
5 liable for the misconduct alleged." *Iqbal*, 556 U.S. at 678 (citing *Twombly*, 550 U.S. at  
6 556).

7 *Pro se* complaints are "held to less stringent standards than formal pleadings drafted  
8 by lawyers." *Hebbe v. Pliler*, 627 F.3d 338, 342 (9th Cir. 2010) (citation omitted). A *pro se*  
9 plaintiff's complaint must be construed liberally to determine whether a claim has been  
10 stated. See *Zichko v. Idaho*, 247 F.3d 1015, 1020 (9th Cir. 2001). However, a *pro se*  
11 litigant's pleadings still must meet some minimum threshold in providing the defendants  
12 with notice of what it is that they allegedly did wrong. See *Brazil v. U.S. Dep't of Navy*,  
13 66 F.3d 193, 199 (9th Cir. 1995).

### 14 III. DISCUSSION

#### 15 A. Judges, Prosecutors, and State Agencies are Immune from Suit

16 The Judicial Defendants, the Prosecutorial Defendants, the DMV, and the CBRN  
17 each seek to dismiss Plaintiff's claims against them on grounds of judicial immunity,  
18 prosecutorial immunity, and state immunity, respectively. For the reasons set forth below,  
19 the Court finds that the Judicial Defendants, the Prosecutorial Defendants, the DMV and  
20 the CBRN are immune from suit, and the claims against them are dismissed.

##### 21 i. Judicial Defendants

22 Plaintiff's claims for violations of unspecified rights under § 1983, abuse of process,  
23 RICO, interference with a federal lawsuit, and interference with prospective economic  
24 advantages against Judge So and Judge Pollack are barred by judicial and Eleventh  
25 Amendment immunity. Judges are "immune from damage actions for judicial acts taken  
26 within the jurisdiction of their courts." *Ashelman v. Pope*, 793 F.2d 1072, 1075 (9th Cir.  
27 1986). Judicial immunity "applies 'however erroneous the act may have been, and  
28 however injurious in its consequences it may have proved to plaintiff.'" *Id.* (quoting

1 *Cleavinger v. Saxner*, 474 U.S. 193, 199 (1985)); *Butler v. Gammick*, 173 F.3d 859 (9th  
2 Cir. 1999) (noting judicial immunity bars claims that judge conspired with others to render  
3 an adverse ruling). “The factors relevant in determining whether an act is judicial relate to  
4 the nature of the act itself, i.e., whether it is a function normally performed by a judge, and  
5 to the expectations of the parties, i.e., whether they dealt with the judge in his judicial  
6 capacity.” *Ashelman*, 793 F.2d at 1075–76 (citation and internal quotation marks omitted).  
7 State judges are further insulated from suit by the Eleventh Amendment. *Lund v. Cowan*,  
8 5 F.4th 964, 969 (9th Cir. 2021), *cert. denied*, 142 S. Ct. 900 (2022).

9       Accordingly, the Court examines whether the Judicial Defendants performed the  
10 acts stated in the SAC in their judicial capacity to determine whether Plaintiff’s claims are  
11 barred by judicial and Eleventh Amendment immunity. Here, the SAC alleges acts that  
12 are judicial in nature because each—presiding over Mr. Sussman’s trial, issuing a  
13 restraining order, and issuing court documents—are functions typically performed by a  
14 judge and, according to Plaintiff, were done in connection with criminal and civil  
15 proceedings over which the Judicial Defendants had jurisdiction. SAC at 6, 9, 11–13, 16–  
16 18. Plaintiff, who used to be an attorney, also appears to contend that Judge Pollack  
17 retaliated against her when he reported her conduct to the State Bar of California. This act  
18 is also judicial in nature because reporting unethical attorney conduct is well within the  
19 typical acts of a judge. *Id.* at 23; California Code of Judicial Ethics, Canon 3(D)(2).  
20 Because all the Judicial Defendants’ acts are judicial in nature, Plaintiff’s claims against  
21 the Judicial Defendants are barred by both judicial immunity and Eleventh Amendment  
22 immunity.<sup>5</sup>

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27 <sup>5</sup> The Court rejects Plaintiff’s conclusory statement in the SAC that Judge Pollack is  
28 sued in his individual capacity because the Court finds that the alleged conduct falls  
squarely within Judge Pollack’s judicial role. *See* SAC at 6.

1 *ii. Prosecutorial Defendants*

2 Plaintiff's claims against Defendants DA Stephan, ADA Patrick, City Attorney  
3 Elliot, and former Deputy City Attorney Scott are barred by the doctrine of prosecutorial  
4 immunity. Prosecutorial immunity shields prosecutors from civil damages suits premised  
5 upon acts committed within the scope of their official duties which are "intimately  
6 associated with the judicial phase of the criminal process." *Imbler v. Pachtman*, 424 U.S.  
7 409, 430 (1976); *see also Buckley v. Fitzsimmons*, 509 U.S. 259, 272–73 (1993); *Burns v.*  
8 *Reed*, 500 U.S. 478, 487–93 (1991). A prosecutor is immune even when the prosecutor's  
9 malicious or dishonest action deprived defendant of his or her liberty. *Ashelman*, 793 F.2d  
10 at 1075. Prosecutorial immunity applies wherever a prosecutor "acts as an advocate in  
11 initiating a prosecution and in presenting the state's case." *Id.* at 1076 (citation and  
12 quotations omitted).

13 Nearly all of Plaintiff's allegations concerning the Prosecutorial Defendants involve  
14 prosecutorial acts closely tied to the initiation and presentation of state prosecutions. With  
15 respect to DA Stephan, Plaintiff claims she failed to investigate Mr. Sussman's death,  
16 initiated criminal proceedings for an improper purpose, conducted "fake" trials, and  
17 participated in the District Attorney's illegal policies. SAC at 4, 12–15, 23. ADA Patrick  
18 likewise allegedly initiated criminal proceedings for an improper purpose, and  
19 misrepresented facts to the court. *Id.* at 12–16. As to City Attorney Elliot, she allegedly  
20 filed a felony restraining order against Plaintiff. *Id.* at 15. Finally, with respect to former  
21 Deputy City Attorney Scott, Plaintiff primarily contends that he granted a witness  
22 immunity, and that the witness ultimately committed perjury. *Id.* at 7. Each of these acts  
23 involves Defendants DA Stephan, ADA Patrick, Elliot, and Scott initiating prosecutions  
24 and presenting the state's case in court. Therefore, these acts cannot form a basis for  
25 liability.

26 Plaintiff's only allegations against the Prosecutorial Defendants not covered by  
27 prosecutorial immunity is that ADA Patrick made statements to the press. In *Buckley v.*  
28 *Fitzsimmons*, the Supreme Court held that a prosecutor's statements to the press are not

1 protected by prosecutorial immunity because prosecutors do not make press statements as  
2 advocates for the state. 509 U.S. at 277–78. Here, while it is unclear whether Plaintiff is  
3 seeking relief under § 1983 or state tort law, under either, Plaintiff does not plead sufficient  
4 facts with the requisite plausibility to survive a motion to dismiss. To the extent Plaintiff’s  
5 allegations are brought under § 1983, no constitutional violation has been alleged. *West v.*  
6 *Atkins*, 487 U.S. 42, 48 (1988) (“To state a claim under § 1983, a plaintiff must allege the  
7 violation of a right secured by the Constitution”).<sup>6</sup> To the extent Plaintiff’s claim arises  
8 under state tort law, Plaintiff has not pleaded compliance with the California Tort Claims  
9 Act. Cal. Gov. Code §§ 911.2, 945.4; *Mangold v. California Pub. Utilities Comm’n*, 67  
10 F.3d 1470, 1477 (9th Cir. 1995) (noting that the CTCA requires “timely presentation of a  
11 written claim and [] rejection” and a “plaintiff must allege compliance or circumstances  
12 excusing compliance”). Plaintiff further fails to identify what ADA Patrick said to the  
13 press or how her statements harmed Plaintiff. Accordingly, Plaintiff’s claim against ADA  
14 Patrick based on her statements to the press is dismissed.

15 *iii. State Agency Defendants*

16 Because the CBRN and the DMV are California state agencies, Plaintiff’s § 1983  
17 claims in Counts XI and XIII are barred by the Eleventh Amendment. *Dittman v.*  
18 *California*, 191 F.3d 1020, 1025–26 (9th Cir. 1999); *Sabatini v. California Bd. of*  
19 *Registered Nursing*, 2019 WL 1082445, at \*2 (S.D. Cal. Mar. 7, 2019); Cal. Bus. & Prof.  
20 Code § 2701; Cal. Vehicle Code § 1500. The Eleventh Amendment prohibits suits by  
21 private parties against a state or state agency unless one of three exceptions applies: (1) the  
22 state has expressly waived its right not to be sued, (2) Congress has specifically passed a  
23 law allowing suit, or (3) a party seeks prospective injunctive relief for an ongoing violation  
24 of federal law under the *Ex Parte Young* doctrine. *In re Lazar*, 237 F.3d 967, 976 (9th Cir.

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27 <sup>6</sup> Plaintiff suggests that ADA Patrick’s actions deprived Plaintiff of her right to  
28 appeal the Prior Action, but Plaintiff successfully filed an appeal. See Prior Action Dkt.  
128.

1 2001) (recognizing consent and abrogation as exceptions to Eleventh Amendment  
2 immunity); *Yakama Indian Nation v. State of Wash. Dep't of Revenue*, 176 F.3d 1241, 1245  
3 (9th Cir. 1999) (state's consent must be unequivocal and express); *Doe v. Regents of the*  
4 *Univ. of California*, 891 F.3d 1147, 1153 (9th Cir. 2018) (holding the *Ex Parte Young*  
5 doctrine allows for prospective injunctive relief against state officials named in their  
6 official capacity). As to the third exception, the *Ex Parte Young* doctrine only applies when  
7 a private party seeks injunctive relief against a state official in her official capacity for an  
8 ongoing violation of federal law. *Doe v. Lawrence Livermore Nat. Lab'y*, 131 F.3d 836,  
9 839 (9th Cir. 1997). Claims brought under state law, for non-injunctive relief, or for  
10 retrospective relief are not permitted. *See id.*

11 None of the exceptions to Eleventh Amendment immunity saves Plaintiff's claims  
12 against the CBRN and the DMV; the claims therefore must be dismissed. Here, Plaintiff  
13 does not allege either the CBRN or the DMV has consented to suit. In fact, both agencies  
14 have specifically denied consenting to suit in moving to dismiss the SAC. Dkt. 73 at 9–10  
15 (denying consent); Dkt. 76 at 9 (same). Moreover, Congress has not specifically allowed  
16 suits against states or their agencies under § 1983. *Dittman*, 91 F.3d at 1025–26. Finally,  
17 the *Ex Parte Young* doctrine does not apply because Plaintiff's claim against the CBRN,  
18 requesting her reinstatement, is alleged against the agency, not individuals in their official  
19 capacity. Moreover, her claim against the DMV does not seek prospective injunctive relief.  
20 Accordingly, Plaintiff's Counts XI and XIII against the CBRN and the DMV are dismissed.

21 **B. Plaintiff's Claims Arising Out of the Trial, Conviction, and Death of Michael**  
22 **Sussman are Barred by Res Judicata**

23 Plaintiff's Counts I and V appear to allege that Defendants conspired to and did in  
24 fact harm Plaintiff and Mr. Sussman by prosecuting and convicting Mr. Sussman, and  
25 ultimately causing his death. Because these allegations were litigated in the Prior Action,  
26 Counts I and V are barred by *res judicata*.

27 *Res judicata*, also known as claim preclusion, precludes parties from relitigating  
28 issues that were or could have been raised in a prior action, and can serve as the basis for

1 granting a motion to dismiss. *See Federated Dep't Stores, Inc. v. Moitie*, 452 U.S. 394,  
2 398 (1981); *see also Stewart v. U.S. Bancorp*, 297 F.3d 953, 956 (9th Cir. 2002). *Res*  
3 *judicata* is applicable whenever there is (1) an identity of claims, (2) a final judgment on  
4 the merits, and (3) identity of the parties. *Tahoe-Sierra Pres. Council, Inc. v. Tahoe Reg'l*  
5 *Planning Agency*, 322 F.3d 1064, 1077 (9th Cir. 2003).

6 *i. There is an Identity of Claims*

7 In determining whether *res judicata* bars Plaintiff's current claims regarding her  
8 son's trial and death, the Court first examines whether they are essentially the same as those  
9 in the Prior Action. Identity of claims exists "when two suits arise from 'the same  
10 transactional nucleus of facts.'" *Tahoe-Sierra*, 322 F.3d at 1078 (citation omitted). Even  
11 "[n]ewly articulated claims based on the same nucleus of facts may still be subject to a *res*  
12 *judicata* finding if the claims could have been brought in the earlier action." *Id.* Although  
13 the specifics of Plaintiff's allegations in both actions are difficult to discern, it is clear that  
14 Plaintiff's Prior Action arose out of the trial, conviction, and death of Mr. Sussman. Prior  
15 Action Dkt. 110 at 2. There, Plaintiff alleged a conspiracy to wrongfully convict  
16 Mr. Sussman, and ultimately cause his death. *See id.* Here, Plaintiff's claims likewise  
17 appear to arise out of the same transactional nucleus of facts, *i.e.*, the trial, conviction, and  
18 death of Mr. Sussman. For instance, in both actions, Plaintiff challenged Judge So's and  
19 Defendant Scott's conduct at Mr. Sussman's trial and alleged that Defendant Elliot and the  
20 SDPD helped ensure that Mr. Sussman was convicted. As such, the Court finds an identity  
21 of claims between the two actions, and the first element is met.

22 *ii. There is a Final Judgment on the Merits*

23 The second element of *res judicata* is met because Plaintiff's Prior Action was  
24 resolved on the merits. A dismissal with prejudice constitutes a "final judgment on the  
25 merits" for *res judicata* purposes. *Leon v. IDX Systems Corp.*, 464 F.3d 951, 962 (9th Cir.  
26 2006); *see also Beard v. Sheet Metal Workers Union, Local 150*, 908 F.2d 474, 477 n.3  
27 (9th Cir. 1990) ("Federal law dictates that a dismissal with prejudice bars a later suit under  
28 *res judicata*."). Plaintiff's Prior Action seeking redress for the death of her son was

1 dismissed with prejudice and affirmed on appeal, satisfying the second element. *See* Prior  
2 Action Dkts. 110, 128.

3 *iii. The Relevant Parties Are Identical*

4 Finally, the third element of *res judicata* is met with regard to Defendants the SDPD,  
5 City Attorney Elliot, former Deputy City Attorney Scott, Alfonso Martinez, and Judge So,  
6 because they were also defendants to the conspiracy claims surrounding Plaintiff's son in  
7 the Prior Action. In both actions, Nancy Sussman is the Plaintiff and the SDPD, the San  
8 Diego City Attorney's Office, Mara Elliot, Ryan Scott, Alfonso Martinez, and Judge So  
9 are Defendants. Thus, the third element of *res judicata* is clearly met as to Counts I and V  
10 against these Defendants. (In the instant action, Plaintiff names additional Defendants to  
11 these conspiracy counts. This order dismisses those Defendants on other grounds set forth  
12 in sections II.A and II.C–D.)

13 Because all the elements for *res judicata* are met, Plaintiff's Count I and Count V  
14 are dismissed as to the aforementioned Defendants.

15 **C. Plaintiff's RICO Claim Does Not State a Claim for Relief**

16 Plaintiff's Count V is a RICO claim against all Defendants for causing the death of  
17 Mr. Sussman. In addition to being barred by *res judicata* as discussed above, Plaintiff's  
18 RICO claim fails under Rules 8 and 12(b)(6). To state a claim for a RICO violation, a  
19 plaintiff must allege: "(1) conduct (2) of an enterprise (3) through a pattern (4) of  
20 racketeering activity." *Sedima, S.P.R.L. v. Imrex Co., Inc.*, 473 U.S. 479, 496 (1985). An  
21 "enterprise" includes "any individual, partnership, corporation, association, or other legal  
22 entity, and any union or group of individuals associated in fact although not a legal entity."  
23 18 U.S.C. § 1961(4). "Racketeering activity" is any act indictable under the several  
24 provisions of Title 18 of the United States Code. *Id.* § 1961(1). A "pattern of racketeering  
25 activity" requires at least two predicate acts. *Clark v. Time Warner Cable*, 523 F.3d 1110,  
26 1116 (9th Cir. 2008). To establish a RICO injury, the plaintiff must show "harm to a  
27 specific business or property interest and if the alleged business or property interest is  
28

1 cognizable under state law.” *Newcal Indus., Inc. v. Ikon Office Solution*, 513 F.3d 1038,  
2 1055 (9th Cir. 2008) (citation omitted).

3 Plaintiff’s civil RICO claim against all Defendants does not appear to plead any of  
4 the required elements. Plaintiff claims that Defendants committed multiple illegal acts  
5 over the past ten years, ranging from “Satanic Jury trials” to “causing the death of Michael  
6 Sussman.” The following is the entirety of Plaintiff’s RICO allegations:

7 All the defendants named herein engaged in multiple acts of corruption,  
8 Obstruction of Justice, murders, mail fraud, obstruction of justice, violation  
9 of 18 USC Sec 4. Aggressive, Public Corruption, and repeated brutality by  
10 the Police Dept. Fake and Satanic Jury trials, Conspiracy to take property  
11 rights away from Nancy Sussman and causing the death of Michael  
12 Sussman . . . Defendants have engaged in said criminal conduct for at least  
13 the last ten years Nancy Sussman asked for prosecution for murder of  
14 Michael . . . All defendants named took part in deprivation of constitutional  
15 rights and fraud and all are responsible for Rico violations named and for the  
16 covert murder of Michael Sussman age 24 and conspiracy to obstruction of  
17 justice, theft as described herein, false imprisonment, tampering with  
18 evidence, mail fraud. Public corruption which resulted in death. The actions  
19 of the named defendants are equivalent to the actions of the  
20 Mafia . . . Tampering with evidence also. Plaintiff seeks damages according  
21 to proof, per civil Rico statute and hopefully a criminal indictment as  
22 well . . . Defendants So and Pollack retaliated against a witness to deny their  
23 civil rights. SAC at 20.

24 As seen above, Plaintiff does not properly allege the existence of an enterprise or  
25 predicate acts and does not identify cognizable relief. For one, Plaintiff does not plead the  
26 existence of an enterprise, the nature of the alleged enterprise, or Defendants’ purported  
27 roles in the enterprise. *Eclectic Properties E., LLC v. Marcus & Millichap Co.*, 751 F.3d  
28 990, 997 (9th Cir. 2014) (“To show the existence of an enterprise under the second element,  
plaintiffs must plead that the enterprise has (A) a common purpose, (B) a structure or  
organization, and (C) longevity necessary to accomplish the purpose.”).

Nor does Plaintiff identify any predicate acts, let alone a pattern of racketeering  
activity. *Yagman v. Garcetti*, 852 F.3d 859, 867 (9th Cir. 2017) (holding that unspecified  
civil rights violations and conclusory references to mail fraud do not constitute predicate

1 acts). Finally, as was the case in the Prior Action, deprivation of constitutional rights and  
2 false imprisonment are not cognizable injuries under RICO. *Diaz v. Gates*, 420 F.3d 897,  
3 899–900 (9th Cir. 2005) (holding that plaintiff cannot recover under RICO based upon  
4 allegations of false imprisonment); *Lauter v. Anoufrieva*, 642 F. Supp. 1060, 1085–86  
5 (C.D. Cal. 2009) (holding that deprivation of constitutional rights is not compensable under  
6 RICO). For these reasons, Plaintiff’s RICO claim is dismissed.

7 **D. Plaintiff’s Remaining Federal Claims Based On Her Arrests Are Dismissed**

8 The SDPD Defendants seek dismissal of Plaintiff’s claims for violations of civil  
9 rights under § 1983, abuse of process, and RICO under Counts I–V on the grounds that the  
10 SDPD is not a proper Defendant, and the individually named SDPD Officers have not been  
11 properly served. For the reasons stated below, Plaintiff’s claims against the SDPD  
12 Defendants are dismissed.

13 First, Plaintiff may not sue the SDPD under § 1983 absent allegations of a policy or  
14 custom because the SDPD is a municipality, not a “person” as required by the statute. 42  
15 U.S.C. § 1983; *United States v. Kama*, 394 F.3d 1236, 1239–40 (9th Cir. 2005) (Ferguson,  
16 J., concurring) (“[M]unicipal police departments and bureaus are generally not considered  
17 ‘persons’ within the meaning of section 1983”); *Rodriguez v. Cnty. of Contra Costa*, 2013  
18 WL 5946112 at \*3 (N.D. Cal. Nov. 5, 2013) (noting that outside of the *Monell* exception,  
19 “sub-departments or bureaus of municipalities, such as the police departments, are not  
20 generally considered ‘persons’ within the meaning of § 1983.”). Plaintiff does not argue,  
21 nor can she, that the SDPD is not a municipality. Nor can Plaintiff argue that the SDPD is  
22 a proper Defendant based on Plaintiff’s factual allegations concerning discrete arrests and  
23 the SDPD’s alleged involvement in her son’s conviction and trial. Therefore, Plaintiff  
24 cannot pursue her § 1983 claims against the SDPD and her claims against it are dismissed.

25 Second, Plaintiff’s claims against various SDPD Officers fail for insufficient service  
26 of process. “A federal court is without personal jurisdiction over a defendant unless the  
27 defendant has been served in accordance with Fed. R. Civ. P. 4.” *Lawrence v. Krahne*, 698  
28 F. App’x 504, 504 (9th Cir. 2017) (citation omitted). To properly serve the Defendants,

1 Plaintiff needed to comply with Fed. R. Civ. P. 4(e) and a file a separate proof of service  
2 as to each Defendant to demonstrate compliance. Fed. R. Civ. P. 4(e) (provides that service  
3 can be effected by (1) personal delivery, (2) delivery at dwelling to someone of suitable  
4 age and discretion residing there, (3) delivery to authorized agent, or (4) by compliance  
5 with applicable state laws. California state law specifies that a summons can be served by  
6 personal delivery, substitute service following reasonable diligence, service by mail with  
7 notice and acknowledgement of receipt, or by publication. Cal. Code Civ. Proc.  
8 §§ 415.10–50. “Once service is challenged, plaintiff[] bear[s] the burden of establishing  
9 that service was valid under Rule 4.” *Brockmeyer v. May*, 383 F.3d 798, 801 (9th Cir.  
10 2004).

11 The Court agrees with Defendants that Plaintiff “did not properly serve the  
12 individually named Defendants under California law or Federal law.” Dkt. 86-1 at 16.  
13 Plaintiff apparently served the SDPD Officers—including City Attorney Jeff Jordon,  
14 erroneously sued as Officer Jordan of the SDPD—by leaving copies at the SDPD with an  
15 Officer “McAndrew.” *See* Dkts. 8, 12–18, 21–22. This method of substitute service does  
16 not comply with Rule 4 because there is no evidence that Plaintiff made prior reasonable  
17 efforts to personally serve the Defendants, generally defined as two to three attempts,  
18 pursuant to Cal. Code Civ. Proc. § 415.20. *Jes Solar Co. Ltd. v. Tong Soo Chung*, 725 F.  
19 App’x 467, 469–70 (9th Cir.), *amended on denial of reh’g*, 716 F. App’x 635 (9th Cir.  
20 2018) (finding insufficient service where plaintiff did not argue prior attempts were made  
21 and there was no evidence in the record of same); *Avalos v. MMDEOL Inc.*, 2021 WL  
22 540380, at \*4 (E.D. Cal. Jan. 12, 2021) (collecting cases). Plaintiff does not argue on  
23 opposition that she made reasonable attempts to serve the SDPD Officers, and there are no  
24 proofs of service or other evidence in the record that suggest that attempts were made.  
25 Thus, the Court does not have personal jurisdiction over the SDPD Officers, and the claims  
26 against them are dismissed.

27 //

28 //

1 **E. The Court Declines To Exercise Supplemental Jurisdiction Over Plaintiff's**  
2 **Remaining State Law Claims**

3 With the dismissals set forth above, the only remaining claims are state law claims  
4 for suspected murder (Count VI); false imprisonment (Count IX); violation of the implied  
5 covenant of good faith and fair dealing (Count X); false arrest (Count XI); defamation  
6 (Count XIII); and interference with prospective economic advantages (Count XIV).  
7 Plaintiff's remaining state law claims are dismissed for lack of supplemental jurisdiction.  
8 The Court has "supplemental jurisdiction over all other claims that are so related to claims  
9 in the action within such original jurisdiction that they form part of the same case or  
10 controversy." 28 U.S.C. § 1367(a). In determining whether to exercise supplemental  
11 jurisdiction, the Court examines whether the federal and state law claims "derive from a  
12 common nucleus of operative fact[s] . . . such that [a plaintiff] would ordinarily be  
13 expected to try them all in one judicial proceeding." *United Mine Workers of Am. v. Gibbs*,  
14 383 U.S. 715, 725 (1966). Even where supplemental jurisdiction exists, the Court may  
15 decline to exercise supplemental jurisdiction if "(1) the claim raises a novel or complex  
16 issue of state law; (2) the claim substantially predominates over the claim or claims over  
17 which the district court has original jurisdiction; (3) the district court has dismissed all  
18 claims over which it has original jurisdiction; or (4) in exceptional circumstances, there are  
19 other compelling reasons for declining jurisdiction." 28 U.S.C. § 1367(c); *Mendoza v.*  
20 *Zirkle Fruit Co.*, 301 F.3d 1163, 1174 (9th Cir. 2002). In deciding whether to exercise  
21 supplemental jurisdiction, the court should consider the interests of judicial economy,  
22 convenience, fairness, and comity. *City of Chicago v. Int'l College of Surgeons*, 522 U.S.  
23 156, 172–73 (1997); *Smith v. Lenches*, 263 F.3d 972, 977 (9th Cir. 2001).

24 The Court finds it doubtful that supplemental jurisdiction ever existed over  
25 Plaintiff's state law claims for false imprisonment, violation of the implied covenant of  
26 good faith and fair dealing, false arrest, defamation, and interference with prospective  
27 economic advantages against Defendants Paradise, Dr. Bhatia, Allstate, CHP Officer Parra,  
28

1 Joel and Mary Johnson, and Alfonso and Esperanza Martinez.<sup>7</sup> Plaintiff’s only federal  
2 claim against all of these Defendants is her RICO claim. The basis of Plaintiff’s RICO  
3 claim is that Defendants “caus[ed] the death of Michael Sussman,” perpetrated “the covert  
4 murder of Michael Sussman,” and committed “[p]ublic corruption which resulted in  
5 death.” SAC at 20; *see also* Section III.B *supra*. In contrast, Plaintiff’s state law claims  
6 are based on an array of discrete events, including (1) Allstate’s alleged bad faith settlement  
7 of a car accident, (2) Paradise’s and Dr. Bhatia’s alleged confinement of Plaintiff to a  
8 psychiatric ward, (3) Joel and Mary Johnson’s and Alfonso and Esperanza Martinez’s  
9 alleged interference with Plaintiff’s nursing license, and (4) CHP Officer Parra’s false  
10 arrest of Plaintiff. These events are wholly unrelated to the facts underlying the RICO  
11 claim, and thus, even reading Plaintiff’s SAC liberally, there is no common nucleus of  
12 operative facts permitting supplemental jurisdiction.

13 Even if the Court were to find that supplemental jurisdiction over the remaining state  
14 law claims once existed under 28 U.S.C. § 1367(a), the Court would decline to exercise  
15 supplemental jurisdiction under 28 U.S.C. § 1367(c). Because the Court has dismissed all  
16 of Plaintiff’s federal claims—the claims that conferred original jurisdiction—the Court  
17 need not exercise supplemental jurisdiction over the remaining unrelated state law claims.  
18 *See* Section III.A–B *supra*; 28 U.S.C. § 1367(c); *Sanford v. MemberWorks, Inc.*, 625 F.3d  
19 550, 561 (9th Cir. 2010) (“[I]n the usual case in which all federal-law claims are eliminated  
20 before trial, the balance of factors to be considered under the pendent jurisdiction  
21 doctrine—judicial economy, convenience, fairness, and comity—will point toward  
22 declining to exercise jurisdiction over the remaining state-law claims.”) (quoting  
23 *Carnegie–Mellon Univ. v. Cohill*, 484 U.S. 343, 350 n.7 (1988), *superseded on other*  
24

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25  
26  
27 <sup>7</sup> Plaintiff also brings a claim against Anders Holthaus for “suspected murder,”  
28 (Count VI), which is dismissed for lack of supplemental jurisdiction along with the other  
state law claims.

1 grounds by statute as recognized in *Fent v. Okla. Water Res. Bd.*, 235 F.3d 553, 557 (10th  
2 Cir. 2000)). Thus, Plaintiff's remaining claims are dismissed.

### 3 **F. Dismissal With Prejudice**

4 The Court finds that certain of Plaintiff's claims must be dismissed with prejudice.  
5 Dismissal with prejudice is warranted where amendment would be futile because flaws in  
6 the claims cannot be cured. *Chaset v. Fleer/Skybox Int'l, LP*, 300 F.3d 1083, 1088 (9th  
7 Cir. 2002) (finding leave to amend futile where "plaintiffs cannot cure the basic flaw in  
8 their pleading"); *Lipton v. Pathogenesis Corp.*, 284 F.3d 1027, 1039 (9th Cir. 2002) (same;  
9 noting that where flaws cannot be cured, there is "no need to prolong the litigation by  
10 permitting further amendment"). When claims are barred by immunity or by *res judicata*,  
11 amendment is plainly futile. *Riggs v. Jud. Conf. of U.S.*, 137 F. App'x 72 (9th Cir. 2005)  
12 (affirming dismissal with prejudice on *res judicata* grounds); *Strand v. Gov't of U.S.*, 846  
13 F.2d 1383, at \*2 (9th Cir. 1988) (affirming dismissal with prejudice on immunity grounds);  
14 *see also Golden v. Hubbell Inc.*, 343 F. App'x 226, 227–28 (9th Cir. 2009) (affirming  
15 dismissal with prejudice of improperly named defendant).

16 Plaintiff's claims against the Judicial Defendants, the Prosecutorial Defendants, and  
17 the SDPD must be dismissed with prejudice because amendment would be futile. First,  
18 Plaintiff's claims against the Judicial Defendants are absolutely barred by judicial  
19 immunity, and thus Plaintiff cannot cure her claims as to them. Similarly, except for  
20 Plaintiff's claim against ADA Patrick based on her statements to the press, Plaintiff cannot  
21 cure her claims against the Prosecutorial Defendants because they are absolutely barred by  
22 prosecutorial immunity. Lastly, the SDPD is an improperly named Defendant and  
23 Plaintiff's § 1983 claims against it cannot be cured by any restatement of the facts.  
24 Therefore, except for Plaintiff's foregoing claim against ADA Patrick, the Judicial  
25 Defendants, the Prosecutorial Defendants, and the SDPD are dismissed with prejudice.

26 Moreover, as discussed above, Plaintiff's Count I and V based on the conspiracy  
27 against her son are barred by *res judicata*, making amendment futile, and thus Counts I and  
28 V are dismissed with prejudice. Any attempt by Plaintiff to replead these claims based on

1 the same transactional nucleus of facts—the prosecution, conviction, and death of Mr.  
2 Sussman—would necessarily require dismissal on the same *res judicata* grounds.  
3 Amendment would therefore be futile and only prolong the litigation. Accordingly, Counts  
4 I and V are dismissed with prejudice.

5 Plaintiff's remaining claims are dismissed without prejudice because amendment  
6 would not be clearly futile at this juncture. Nevertheless, Plaintiff is on notice that the SAC  
7 does not provide a short and plain statement of claims or state a claim as required by Rules  
8 8 and 12(b)(6). Plaintiff has 45 days from the date of this order to file an amended  
9 complaint on the claims dismissed without prejudice.

#### 10 **IV. CONCLUSION AND ORDER**

11 For the reasons set out above, the Court grants Defendants' motions to dismiss [Dkts.  
12 73, 76, 78, 80–81, 83–86, 89–90].

13  
14 **IT IS SO ORDERED.**

15  
16 Dated: 3/29/22

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19 Hon. Jinsook Ohta  
20 United States District Judge  
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