California Coalition for Families and Children PBC
4891 Pacific Hwy., Ste. 102
San Diego, CA 92110
Cole.Stuart@Lexevia.com
D: 858.504.0171

October 28, 2013

JAMES B. GILPIN
MATTHEW L. GREEN
BEST BEST & KRIEGER LLP
655 W. Broadway, 15th Floor
San Diego, CA 92101

Re: *California Coalition for Families and Children et al. v. San Diego County Bar Association et al*., United States District Court, Southern District of California Case No. 13CV1944

Mssrs. Gilpin, Green:

I write to request that we meet and confer pursuant to Local Rule 26.1 (a) and F.R.C.P. Rule 26(f) to address a number of issues posed by your Motion to Dismiss Complaint ("MTD") and to offer informal solutions to a number of issues posed by the MTD. This communication is also intended as conduct and statements about a claim made during negotiations pursuant to Federal Rule of Evidence 408.

The scope of the MTD is broad. Having digested the document I believe that several arguments you advance might be quickly resolved without further pleading or need for formal disposition. I am hopeful we may confer to discuss the possibility of doing so by voluntary resolution or stipulation than requiring unnecessary judicial intervention. I also have some ideas regarding proactive case management stipulations to assist all parties in efficiently handling the present motion and likely follow-on events as we move through the early stages of the matter. I would therefor request your earliest reply to my invitation after you have reviewed the observations, suggestions, and offers in compromise herein.

I. Mutual Briefing Page Limit Extension:

Your motion poses a broad attack on each of the 34 causes of action in the Complaint and requests dismissal with prejudice. Given the breadth and aggressive posture of the MTD, my burden in opposition is significant. I would expect your reply, and burden, will be similarly significant. While we will hopefully be successful in distilling the number and breadth of issues truly in dispute, it seems inevitable that parties will reasonably use additional briefing space beyond the constraints of Rule 7. By relieving ourselves at this stage we can hopefully "do it

right the first time" and avoid burdening parties, court, and counsel with unnecessary successive amendments and repetitive motion practice.

I therefore respectfully request that your clients consider a stipulation to extend page limits for the opposition and reply by ten pages. As my opposition is due November 8, 2013, your reply on this issue alone by no later than **Friday October 31, 2013** would be appreciated. In the event you are unable to reply by that date, this will serve as notice that I intend to seek relief from the Court by ex parte motion for such relief on **Friday October 31, 2013**.

II. Request to Withdraw Particular Pleadings and Exhibits

I believe that a number of pleading and arguments in support of the MTD are without merit, and respectfully request that they be withdrawn. I also offer to voluntarily amend to cure a number of issues you raise in the even that you intend to press those issues at the Rule 12 stage. I address each in kind as follows.

A. Request for Judicial Notice:

Your Request for Judicial Notice ("RJN") (1) seeks to introduce evidence not appropriately noticeable, (2) is not appropriate for consideration at this stage, and (3) contains material which is irrelevant, scurrilous, and inadmissible at any stage. I therefore request that it be withdrawn in its entirety.

Facts subject to judicial notice are those which are either "(1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned." Fed.R.Evid. 201(b). A court may not take judicial notice of a matter that is in dispute. *Lee v. City of Los Angeles*, 250 F.3d 668, 690 (9th Cir.2001); *In re Mora* (9th Cir. 1999) 199 F3d 1024, 1026, fn. 3; *Lustgraaf v. Behrens* (8th Cir. 2010) 619 F3d 867, 886. The party requesting judicial notice bears the burden of persuading the court that the particular fact is not reasonably subject to dispute and is capable of immediate and accurate determination by resort to a source "whose accuracy cannot reasonably be questioned." *In re Tyrone F. Conner Corp., Inc.*, 140 B.R. 771, 781 (E.D.Cal.1992); *Rodriguez v. Unknown-Named disciplinary Hearings Agent*, 209CV02195FCDKJNPS, 2010 WL 1407772 (E.D. Cal. Mar. 9, 2010) report and recommendation adopted sub nom. *Rodriguez v. Unknown-Named Disciplinary Hearings*, CIVS092195FCDKJNPS, 2010 WL 1407789 (E.D. Cal. Apr. 7, 2010).

Exhibits "A" through "I" do not meet this test at this stage. *Rauch v. Day and Night Mfg. Corp*., 576 F.2d 697 (6th Cir. 1978) ("Rule 12(b)(6) permits the court to consider a motion to dismiss accompanied by affidavits as a motion for summary judgment. If the motion is treated as one for summary judgment, all parties shall be permitted to present all material pertinent to the motion."). *Jablon v. Dean Witter & Co*., 614 F.2d 677, 682 (9th Cir. 1980).

1. Exhibits "A"-"Declaration of Emily Garson in Support of Arrest Warrant," ("Garson Declaration") and "B"-"Ex Parte Minutes" ("Superior Court Minutes") (SDSC Form CRM-177). A sworn probable cause declaration by a witness in an unrelated state court criminal

investigation and a record of Ex Parte Minutes in what appears to be the same state court matter are out of court statements apparently presently offered for the truth of the matters therein asserted—that I was arrested "pursuant to warrant" (MTD 1:25, 3:22, 4:3, 23:28). This allegation and the relevance, foundations, and veracity of the documents themselves are controversial.

In addition, the Garson Declaration itself incorporates inadmissible hearsay and evidence given "on information and belief" about the contents of an unidentified and inadmissible file of an unidentified San Diego City Police Department officer. The document is fraught with infirmities. As such the Garson Declaration and Superior Court Minutes are multiples of inadmissible hearsay.

Both exhibits are further inadmissible by judicial notice as they irrelevant to any issue raised in the Complaint, are scurrilous, without foundation, and in fact reflect apparent illegal activity on behalf of Ms. Garson. Defendants apparently assert that the exhibits establish that a witness to a criminal investigation, Ms. Emily Garson, executed and filed what I contend is a perjurous declaration on or about April 5, 2010, and that the San Diego Superior Court criminal division filed form Ex Parte Minutes referencing an arrest warrant and bail set for an unidentified individual (I presume you will at some point assert that individual is me) in a state superior court criminal matter unrelated to the Complaint. The Superior Court Minutes do not identify the subject of the warrant, to whom the warrant was issued, establish that any warrant actually issued, or reflect any other facts relating to the affirmative defense of qualified immunity you apparently assert it is related to, and provides no facts or foundation (and cannot do so in a request for judicial notice) to support admission.

Further, your representations that "Contrary to his allegations, at the time of the seminar, there was an outstanding warrant for Stuart's arrest in connection with a criminal action" (MTD 3:22), and that "Stuart was arrested pursuant to the outstanding warrant" (MTD 4:3) are false, and to the extent your clients intend to assert such a claim it will be contested.

Should your clients assert the affirmative defense of qualified immunity for the STUART ASSAULT based upon a perjurous witness declaration and evidence from an unrelated criminal proceeding, I intend to conduct discovery to examine the witnesses and evidence, including police and witness records, chain of custody, and related policies and practices with respect to the same. This will necessitate at least one set of Rule 35 document production and related depositions of records custodians, percipient witnesses, as well as each STUART ASSAULT COORDINATOR witness and other witnesses likely to possess knowledge relevant thereto.

Further, as the defense of qualified immunity relating to the warrant is an affirmative defense which will be contested, the existence of the warrant is neither properly the subject of judicial notice nor resolvable on a Rule 12(b)(6) motion. The evidence is therefore irrelevant to the MTD. See discussion below.

2. Exhibit "C" – "H" Internet Printouts Of State Bar Status in Three States: These exhibits suffer the same defects—they are inadmissible hearsay references to state bar proceedings—"online" status printouts offered for the truth of the matters asserted therein. They

are hearsay, foundationless, an irrelevant to any assertion in the Complaint. Because they are based upon the same illegal conduct of the declaration that is Exhibit "A", the facts are controverted, and if injected into this action by proper procedure, will be contested. To the extent that the exhibits reflect my status with the State Bar of California or Nevada, they are also non-probative of any issue at issue in the Complaint. I do not appear here as counsel for any party.

3. Exhibit "I" An Internet Printout from the California Secretary of State of LEXEVIA's Tax Status: LEXEVIA's tax status is not an issue in the Complaint, but I do not contest the issue should it be properly raised. As discussed below, I am in process of curing the capacity defect you raise, eliminating any capacity issues. As this stage however, the exhibit is irrelevant inadmissible foundationless hearsay.

I request that you withdraw the entire RJN and exhibits thereto. If we are unable to reach agreement, I will move to strike the same pursuant to FRCP 12(f) providing that a court "may order stricken from any pleading ... any redundant, immaterial, impertinent or scandalous matter." Fed.R.Civ.P. 12(f). "'[I]mmaterial' matter is that which has no essential or important relationship to the claim for relief or the defenses being pleaded." *Fantasy, Inc. v. Fogerty,* 984 F.2d 1524, 1527 (9th Cir.1993) (citing 5 Charles A. Wright & Arthur R. Miller, *Federal Practice and Procedure* § 1382, at 706-07 (1990)), *rev'd on other grounds,* 510 U.S. 517, 114 S.Ct. 1023, 127 L.Ed.2d 455 (1994). 'Impertinent' matter consists of statements that do not pertain, and are not necessary, to the issues in question." *Id.* A motion to strike may be used to strike any part of the prayer for relief when the relief sought is not recoverable as a matter of law. *Bureerong v. Uvawas,* 922 F.Supp. 1450, 1478 (C.D.Cal.1996). *Lovesy v. Armed Forces Benefit Ass'n,* C 07-2745 SBA, 2008 WL 4856144 (N.D. Cal. Nov. 7, 2008).

B. Nesthus Declaration: For many of the same reasons I request that you withdraw the Nesthus Declaration. The Declaration is testimony of irrelevant events relating to Ms. Nesthus' activities pursuant to becoming aware of the Complaint. None of Ms. Nethus' activities—calling around to parties and counsel to request that they withdraw the Complaint "available for public viewing on PACER and multiple websites on the Internet", "demands" to parties and counsel to "remove" from the Complaint and PACER certain information, and "removal of the address information from the internet", the hearsay allegations regarding Ms. Nesthus' conversations with Mr. Webb about his representation of plaintiffs—are irrelevant to the MTD or Complaint.

The entire declaration is further inadmissible hearsay, without foundation, and not properly admissible matter to support a Rule 12 motion. To the extent you intend to assert the facts in the Declaration in a proper manner, they are and will be contested. I therefore respectfully request that the Nesthus Declaration be withdrawn.

III. Motion To Dismiss

The MTD is sweeping. I will address my comments to general issues that pervade the MTD and include specific references where possible.

A. Confusion of Rule 12 Grounds for Relief

You've brought the MTD under only Rules 12(b)(6) and Rule 12(b)(1), yet you cite authority and make arguments toward relief under different rules and procedural context. For example, you cite the *Cafasso* and *Lockheed-Martin* cases and their disposition under Rules 8 and 9 pleading standards. As detailed below, these cases are inapposite for several reasons, most notably that they analyze Rules 8 and 9 in the face of significantly different procedural contexts—*Cafasso* was a motion to amend a third amended complaint while plaintiff faced a Rule 12(c) motion for judgment on the pleadings. *Lockheed-Marin* was a Rule 15 motion to amend a second amended complaint. The string cites from the *Lockheed-Martin* case are brought variously under Rule 12(e) motions for a more definite statement and other rules not relevant to a Rule 12(b)(6) analysis. While your citation to Rule 8 is relevant for evaluating the claims of the Complaint, Rule 8 is not a ground for relief, but instead a standard for pleading. The impact of this confusion will be discussed below, but before proceeding it will be helpful to set forth the standard you are required to meet to succeed on a Rule 12(b)(6) motion to dismiss.

1. Rule 12(b)(6) Standard Within This Circuit

Rule 12(b)(6) provides:

> (b) How to Present Defenses. Every defense to a claim for relief in any pleading must be asserted in the responsive pleading if one is required. But a party may assert the following defenses by motion: . .
>
> (6) failure to state a claim upon which relief can be granted . . . .

Under this Circuit's authority, a defendant may obtain dismissal of a Complaint for either: "(1) lack of a cognizable legal theory or (2) insufficient facts under a cognizable legal claim." *SmileCare Dental Group v. Delta Dental Plan of California, Inc.*, 88 F.3d 780, 783 (9th Cir.1996); *Navarro v. Block*, 250 F.3d 729, 732 (9th Cir. 2001); *Jonas v. Lake Cnty. Leader*, CV 13-30-M-DLC-JCL, 2013 WL 3088795 (D. Mont. June 12, 2013). The MTD does not distinguish which of these two grounds the motion is based upon, and in places conflates or appears not to recognize the distinction between these grounds. I therefore offer a discussion of relevant law describing each ground, and thereafter analyze your claims accordingly.

a. *"Cognizable Legal Theory"*

The first ground for dismissal under Rule 12(b)(6) is an assertion that the complaint does not state a "cognizable" legal theory. *SmileCare*, supra; *Corr. USA v. Dawe*, 504 F. Supp. 2d 924 (E.D. Cal. 2007). The term "cognizable" is used in many legal contexts other than Rule 12(b)(6), but for an attack under Rule 12(b)(6), the moving party must establish that, assuming all allegations in the complaint to be true, the *complaint as a whole* does not articulate any legally-recognized "theory" within the jurisdiction. *Corr. USA v. Dawe* at 934.; *United States v. Howell*, 318 F.2d 162, 166 (9th Cir.1963). It is not directed to "claims" or claim "elements" *Id.*; *Thompson v. Paul* (D AZ 2009) 657 F.Supp.2d 1113, 1129.

Further, the standard has not been applied to impose stringent pleading requirements. A "complaint is not to be dismissed because the plaintiff's lawyer has misconceived the proper legal theory of the claim, but is sufficient if it shows that the plaintiff is entitled to any relief which the court can grant, regardless of whether it asks for the proper relief." *Corr. USA v. Dawe*, 504 F. Supp. 2d 924, 934 (E.D. Cal. 2007); *United States v. Howell*, 318 F.2d 162, 166 (9th Cir.1963). Even where a complaint imperfectly tracks the elements of a claim, but nevertheless references generally to facts that form a cause of action that is recognized within the jurisdiction ("cognizable"), the complaint has stated a "cognizable" claim. *Id.*

Dismissals for failure to state a cognizable theory are rare. They arise, for example, where a civil plaintiff accurately pleads facts satisfying a statute, but the statute only permits a state attorney general to seek civil recovery. *Id*. Even in such cases, however, where the plaintiff's claims may sound under other—*even unpled*—causes of actions recognized in the jurisdiction, the complaint states a "cognizable theory." *Id*. ("Plaintiffs do not dispute that California Corporations Code § 8816 does not provide for a private right of action. That said, a claim should only be dismissed if there is no cognizable legal theory upon which relief could be granted. Here, plaintiffs have set forth sufficient facts which could establish a cause of action for invasion of privacy, trademark infringement, or breach of the implied covenant of good faith and fair dealing, among other conceivable tort and/or contacts claims.").

b. *"Insufficient Facts Under a Cognizable Legal Claim"*

The second ground is more familiar, requiring a moving party to identify specific cause of action elements "absent" from the as-pled "cognizable legal claim." Ordinarily this is a motion brought under rule 9(b), requiring a plaintiff to plead fraud and deceit with particularity. In *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 548-49, 127 S. Ct. 1955, 1961, 167 L. Ed. 2d 929 (2007) the Court imposed a similarly heightened pleading standard on pleading under Rule 8, requiring the antitrust class action plaintiffs to plead enough "factual context" to make the allegation of an "agreement" "plausible." *Id*. at 548. "The question in this putative class action is whether a § 1 complaint can survive a motion to dismiss when it alleges that major telecommunications providers engaged in certain parallel conduct unfavorable to competition, *absent some factual context suggesting agreement*, as distinct from identical, independent action." Id. (emphasis added). In *Twombly* the "absence" of "factual context" was established by evaluating the facts pled by plaintiff pointing to an "agreement" in restraint of trade. Because the facts identified, when evaluated in the context of antitrust law, did not establish that the behavior of defendants was anything other than permissible "conscious parallel conduct", the court affirmed dismissal of the complaint. *Id*.

Thus, to take advantage of *Twombly's* heightened pleading standard under Rule 8 on a Rule 12(b)(6) motion, a defendant must show that a required element of a claim is pled, but "missing" "some factual context suggesting" that the as-pled is "plausible."

c. *Other Rule 12 Standards Not Relevant to the MTD*

I will provide additional analysis of these cases below, but before doing so, it may be helpful to distinguish the portions of your motion that present arguments and authority which are *not* germane to your Rule 12(b)(6) motion.

i. You *did not* bring a motion for a more definite statement under Rule 12(e):

Rule 12(e) provides:

> (e) Motion for a More Definite Statement. A party may move for a more definite statement of a pleading to which a responsive pleading is allowed but which is so vague or ambiguous that the party cannot reasonably prepare a response.

Many of the arguments you make under rule 12(b)(6), while couched as arguments under "cognizable legal theory" or "facts under a cognizable claim" are relevant only to a motion for a more definite statement. For example, your motion makes a general attack on the Complaint as a "bucket of mud", focusing on its length and complexity. (MTD 5:12-6:14, 9:7-10:9) The complaint is certainly complex, but length, complexity, or even unnecessary prolixity are not grounds for a Rule 12(b)(6). *See, e.g., Hearns v. San Bernardino Police Dep't*, 530 F.3d 1124, 1131 (9th Cir. 2008). Where a complaint exceeds reasonable inclusion of "supplemental particular", the proper disposition of such matter is to simply ignore it. *U.S. v. Lockheed-Martin Corp*., 328 F.3d 374, 378 (7th Cir. 2003) ("Some complaints are windy but understandable. Surplusage can and should be ignored."); *Wynder v. McMahon*, 360 F.3d 73, 80 (2d Cir.2004) (holding that district court erred in dismissing on Rule 8 grounds when the complaint, though long, was not "so confused, ambiguous, vague or otherwise unintelligible that its true substance, if any, is well disguised" *Id*. (internal quotation omitted).

In escalating that attack to an insult of the Complaint as a "bucket of mud", the MTD cites authority and arguments which do not apply Rule 8 in a Rule 12(b)(6) motion. An analysis of the authority you cite makes the distinction clear.

Citations

> Cafasso: In *Cafasso, U.S. ex rel. v. Gen. Dynamics C4 Sys., Inc.*, 637 F.3d 1047, 1052 (9th Cir. 2011), the District Court granted defendants' Rule 12(c) motion for judgment on the pleadings in an unusual scenario. Plaintiff, a whistleblower claiming retaliatory termination under the False Claims Act, 31 U.S.C. § 3729 et seq., was denied leave to file a second amended complaint attempting to resurrect an abandoned claim. *Id*. at 1052. Plaintiff's initial complaint asserted that her termination was in retaliation for disclosing her former employer's fraud on the United States, but it apparently failed to allege even a single "false claim"; the centerpiece of a False Claims Act lawsuit. After amending her complaint once and a two year "period of acrimonious discovery" during which plaintiff manipulated two related state and federal court proceedings and discovery to the displeasure of the district court judge, defendants sought discovery on what the

plaintiff's alleged "false claim" was. In response, plaintiff expressly stated that her amended complaint did not assert, and *need not* assert, even a single "false claim." *Id*.

Defendants immediately moved for judgment on the pleadings based upon plaintiff's disavowal of this essential element of her action. Rule 12(c) provides: "Motion for Judgment on the Pleadings. After the pleadings are closed—but early enough not to delay trial—a party may move for judgment on the pleadings." Plaintiff, recognizing that her discovery response had given away her claim, attempted to recover by requesting leave to amend her complaint under Rule 15 to assert a "false claim." She proffered a proposed amended complaint totaling 773 pages of "unsavory" allegations of questionable behavior, yet which according to the District Court, still failed to allege even a single "false claim*." Id.* The District Court denied leave, granted the Rule 12(c) motion on the original complaint, and entered judgment for defendants.

On appeal the Court of Appeals acknowledged that "verbosity or length is not by itself a basis for dismissing a complaint," citing *Hearns v. San Bernardino Police Dep't*, 530 F.3d 1124, 1131 (9th Cir.2008), yet found that the plaintiff's express disavowal of the need to plead a "false claim", several prior failed attempts to identify a "false claim," significant track record of bad faith litigation conduct, inconsistent discovery responses, and apparent attempt to circumvent the District Court's discovery orders to state the "false claim" with particularity warranted the unusual remedy of denial of leave to amend. *Id*. at 1059. The court expressly acknowledged the holding of *Hearns* that dismissal without leave is inappropriate where a complaint that, while "excessive [in] detail," was written with sufficient clarity and organization such that the defendants would "have no difficulty in responding to the claims." *Id.* at 1132. Under the unusual circumstances, denial of leave to amend again, and granting the Rule 12(c) motion for judgment on the pleadings, was appropriate. *Id.*

Lockheed-Martin: The *U.S. v. Lockheed-Martin Corp*., 328 F.3d 374 (7th Cir. 2003) case you cite is similarly inapposite. The case also involved False Claims Act fraud complaint required to be pled under a Rule 9(b) standard. The District Court denied leave to amend a third amended complaint after the court had directed, but plaintiff failed, three times to allege facts establishing a prima facia case of fraud under Rule 9. The District Court observed that though plaintiff's successive amended pleadings grew lengthier, plaintiff "had not given any specific example of a fraudulent claim." *Id.* at 378.

The Court of Appeals agreed, focused not on the length of the third amended complaint, but that "despite the bloat it lacks details outlining fraud." The Court of Appeals acknowledged that complaints alleging fraud often are permissibly accompanied by detailed and even "prolix" "supplemental particulars" but that the core *claim* must nevertheless be concise to satisfy Rule 8's "short plain statement" standard. "[I]t is possible to write a short statement narrating the claim—which is to say, the basic grievance—even if Rule 9(b) requires supplemental particulars." *Id.* at 376. Given specific instructions from the court about what required elements were missing, plaintiff filed a third amended complaint. The Court of Appeals, analyzing the third amended

complaint agreed with the District Court that the hefty complaint still did not contain a "short plain statement" describing fraud. "You'd think that all this paper and ink would be enough to narrate at least one false claim. Yet [plaintiff's] appellate brief does not extract from the pleadings a single instance of a false statement made to obtain payment." *Id*. at 376-77. The Court of Appeals affirmed the dismissal under Rule 9 for failure to state a fraud claim with particularity. *Id*.

As the authority you cite applies different rules under motions and context other than the motion you've brought, it is irrelevant.

I am not unsympathetic to your client's perception that the Complaint is "exhausting and confusing." (MTD 18). Many jurists have noted the statutes in the Complaint are unusually complicated, and the structure and content of any pleading asserting relief under them is unavoidably so. The civil rights conspiracy statutes, 42 U.S.C. 1985(1), (2), and (3) consists of *a single sentence* of 590 words in six paragraphs with three headings. It has been generously assailed by Justice John Paul Stevens as "somewhat difficult to parse." *Kush v. Rutledge*, 460 U.S. 719, 724, 103 S. Ct. 1483, 1486, 75 L. Ed. 2d 413 (1983).

RICO too has been bewailed as "arcane," "tormented," "complicated," "agonizingly difficult" and "fraught with arcane mysteries." *Bryant v. Yellow Freight Sys*., 989 F. Supp. 966, 968 (N.D. Ill. 1997); *Macy's E., Inc. v. Emergency Envtl. Servs., Inc*., 925 F. Supp. 191, 193 (S.D.N.Y. 1996) ("arcane eccentricities of RICO jurisprudence"); *Combs v. Bakker*, 886 F.2d 673, 677 (4th Cir. 1989) (characterizing RICO as a "tormented statute"); *Sadighi v. Daghighfekr*, 36 F. Supp. 2d 267 (D.S.C. 1999) (noting statute's "torment" was evident in courts' interpretations of section 1965); *Tafflin v. Levitt*, 493 U.S. 455, 465 (1990); *Cent. Distribs. of Beer [,] Inc. v. Conn.*, 5 F.3d 181, 184 (6th Cir. 1993) (stating that RICO is "one of the most complex statutes ever enacted by Congress"); *Jennings v. Emry*, 910 F.2d 1434, 1435 (7th Cir. 1990) (noting RICO is a complex statute); *Murray v. Midwest Real Estate Inv. Co*., No. 98C1569, 1998 WL 919694, at *2 (N.D. Ill. Dec. 30, 1998) (calling RICO "exceedingly complicated"); *Brooks v. Bank of Boulder*, 891 F. Supp. 1469, 1477 (D. Colo. 1995) ("complicated").

Worse, the caselaw interpreting these statutes is *rapidly* developing, making concise pleading to settled formulas impossible. Clearly this is not a garden variety state court slip and fall case.

I would therefore request to take you through the relevant law and evaluate the Complaint as pled to assist your understanding and hopefully precipitate a refinement of our skirmish lines to direct efficient proceeding toward true controversy.

"Bucket of Mud" Cases

The remaining analysis in the "bucket of mud" attack consist of general characterizations without specific identification of any "absent" elements or facts in the Complaint. The attacks include delightfully colorful insults to the Complaint as "incomprehensible rambling" (MTD 1, 10:2), "of the magnitude of War and Peace" (MTD 2), "a gold coin in a bucket of mud"

"sprawling" and "incomprehensible", "confusing, distracting, ambiguous, and unintelligible" (MTD 9), "confusing and conclusory" (MTD 10), and that one must "try to fish a gold coin from a bucket of mud[,]" (MTD 10). However the cases indirectly cited in your lengthy quotation from *Cafasso* providing these colorful descriptions deal with motions to dismiss under Rule 12(e) or other motions which you have not brought. Further, such motions are ordinarily resolved with a court granting leave to amend to state more particulars, which you have not offered or requested.

ii. You *did not* bring a Rule 12(f) motion to strike.

A motion to strike can penetrate claims to strike particular words, enabling an attack on "conclusory" allegations or inappropriate material. A Rule 12(f) motion permits the movant to "hunt and peck" within claims to strike inappropriate words, phrases, or other subject matter without need to reference the legal sufficiency of the claim. You chose, however, to bring this attack under Rule 12(b)(6)'s "failure to plead facts to a cognizable legal claim" standard. A Rule 12(b)(6) motion is not appropriate to isolate *specific allegations* within a claim without accompaniment of the *Twombly* "factual context" analysis.

d. *The MTD's Conflations are Fatal to the Motion*

Your conflation of standards for granting relief under Rule 12(c), (d), (e), and (f) standards with your Rule 12(b) motion is relevant to the disposition of the MTD as you seek dismissal *with prejudice* based on an analysis that cannot achieve such relief—particularly when brought against an original complaint. MTD 11:8. A court may rarely dismiss any complaint on Rule 12(e) grounds, as leave to amend for a "more definite statement" is virtually mandatory. "The class of pleadings that are appropriate subjects for a motion under Rule 12(e) is quite small." *Kennedy v. Full Tilt Poker*, 2010 WL 1710006, at *2–3 (C.D.Cal. Apr.26, 2010). "A motion for more definite statement is used to provide a remedy for an unintelligible pleading rather than a correction for lack of detail." *N. Cnty. Commc'ns Corp. v. Sprint Commc'ns Co., L.P.*, 2010 WL 1499289, at *1 (S.D.Cal. Apr.12, 2010). A motion for a more definite statement may be denied where the detail sought is obtainable through discovery. *C.B. v. Sonora Sch. Dist.*, 691 F.Supp.2d 1170, 1190–91 (E.D.Cal.2010). Rule 12(e) provides a remedy for unintelligible pleadings; it does not provide correction for lack of detail or a substitute for discovery. *N. Cnty. Commc'ns*, 2010 WL 1499289, at *1. *See also Jardin v. Datalegro*, 2011 WL 137511 at *2 (S.D. Ca)." *Id.*

Moreover, motions to dismiss on grounds similar to your "bucket of mud" attack at this, the pleading stage, have been specifically rejected by this circuit's Court of Appeals. In *Kiel v. Coronado* the Court of Appeals stated: "Whether *Keil* states a claim for purposes of Rule 12(b)(6) should not have been analyzed under the framework of *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 93 S.Ct. 1817, 36 L.Ed.2d 668 (1973), which sets forth an evidentiary standard relevant at the summary judgment stage. Rather, consistent with *Swierkiewicz v. Sorema N.A.*, 534 U.S. 506, 122 S.Ct. 992, 152 L.Ed.2d 1 (2002), and *Gilligan v. Jamco Dev. Corp.*, 108 F.3d 246, 249 (9th Cir.1997), at the pleading stage the inquiry is simply whether the facts pled show that the plaintiff is entitled to relief. Fed.R.Civ.P. 8(a)(2). As the district court applied *McDonnell Douglas*, we must reverse. . . . Even if defendants' claim that the Complaint

is not a "model of clarity" was true, that would not be grounds for dismissal under Rule 12(b)(6)." *Keil v. Coronado*, 52 F. App'x 995, 996 (9th Cir. 2002).

As the authority you cite conducts analysis under standards different from the analysis relevant to a Rule 12(b)(6) motion on Rule 8 grounds, the MTD applies incorrect pleading standards, conflating the resulting analysis. For that ground alone the MTD is infirm.

e. *The Relevant Rule 12(b)(6) standards*

i. "cognizable legal theory":

The MTD recites a lack of "cognizable legal theory" as the foundation of several sections. Yet this does not appear to be your intent. Applying the correct test of this prong, the Complaint states numerous "cognizable legal theories" under relevant authority. *Corr. USA v. Dawe*, 504 F. Supp. 2d 924 (9th Cir. 2007). The Complaint cites 34 claims on at least as many statutory and constitutional grounds, broken down by elements, and alleges facts tracking the elements of each theory. The BACKGROUND and COMMON ALLEGATIONS sections plead abundant "factual context" elaborating on the facts and theories, which are incorporated into each claim by reference. Compl. ¶ 141. If anything, the Complaint pleads an abundance of "cognizable legal theories;" you've declared it "exhausting." MTD 18:22.

It appears instead that your attack is focused on the *structure* of the Complaint as *combining* a number of legal theories under single counts. The observation is accurate, though irrelevant. Some counts are permissibly plead to include several legal theories based on a single recitation of facts common to more than one claim.

For example, Count 1 asserts "deprivation of constitutional rights" under 42 U.S.C. § 1983, generally identifying the 1st, 4th, 5th, 6th, 7th, 8th, and 14th amendments to the United States Constitution, describes the legal claims asserted to violate the constitutional provisions as "Illegal Search, Seizure, Assault, Battery, Arrest, and Imprisonment", and asserts generally "supplemental state law claims" which track those constitutional deprivations. California law clearly recognizes civil claims for "assault," "battery," "kidnapping," "trespass," and the like. The Count details facts which support each of these related legal theories. Compl. ¶¶ 142-148. Such pleading has long been and still remains permissible, even encouraged, at common law and in U.S. federal courts. *See, e.g., Corr. USA v. Dawe*, 504 F. Supp. 2d at 935; *G. Hirsch & Co., Inc. v. Amerisource Bergen Corp.*, C 06-00608 CW, 2006 WL 1348568 (N.D. Cal. May 17, 2006).

Count 1 could be pled as at least seven independent claims, and perhaps as many as forty-two or more including state claims. I offer that doing so would unnecessarily voluminous and repetitive pleading. Several "clusters" of core facts—the STUART ASSAULT, DOYNE FRAUD AND ABUSE, and RACKETEERING—would be virtually identical in numerous claims. The facts relating to each violation of, for example, false arrest, false imprisonment, deprivation of due process, assault, retaliatory arrest, deprivation and retaliation of freedom of speech, deprivation unreasonable search and seizure, etc. are so similar that pleading them as separate claims would be punitive for pleader and reader alike; particularly so where we write to provide notice to an audience of uncommon legal experience.

Where condensing claims did not achieve efficiency or caused confusion of theories, I set them out separately in detail, as with the fraud, breach of contract, and CHILL-oriented claims. I maintain that the counts as drafted strike a reasonable balance between notice and efficiency, and state numerous "cognizable legal theories" providing adequate notice under Rule 8(a).

ii. "insufficient facts on a cognizable legal claim":

The MTD also asserts that the Complaint pleads "insufficient facts on a cognizable legal claim." Asserting this type of Rule 12(b)(6) defense, a defendant may target one or more elements of a claim, asserting that the claim element as plead, though cognizable, is not sufficient to state a claim because "additional facts" are necessary to satisfy the pleading burden of stating a "cognizable legal claim." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 548-49, 127 S. Ct. 1955, 1961, 167 L. Ed. 2d 929 (2007); F.R.C.P. Rule 9(b).

Twombly raised the bar for certain types of claims, making plaintiff's burden of pleading "facts under a cognizable legal claim" under Rule 8 more demanding. In *Twombly*, plaintiffs pled a "cognizable" claim under the Sherman Antitrust Act, 15 U.S.C. § 1. To prevail, plaintiffs were required to prove that defendants entered into a "contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade" (an "agreement"). 15 U.S.C. § 1; *Twombly* at 553-54. Plaintiffs plead what they asserted was, prior to *Twombly* sufficient "factual context," including the existence of an "agreement." Plaintiffs' facts relating to the "agreement" element consisted of what in antitrust law is described as "parallel conduct"—behavior among potential competitors which is consistent with a "behind the scenes" illegal "agreement." Plaintiffs did not plead specific facts relating to any actual agreement, such as an actual written or oral contract.

Defendants moved to dismiss under Rule 12(b)(6), alleging that plaintiffs' general averment of an "agreement" based on facts showing parallel conduct alone was impermissibly conclusory, and that the plaintiffs were required to prove *and plead* more specifics as to an actual "agreement" to make the conclusory pleading of an element "plausible", and therefore entitled to the presumption of truth under Rule 12(b)(6). Defendants relied on caselaw requiring the plaintiffs to *prove* facts specifying an agreement. Within the Second Circuit, courts could grant summary judgment where, after discovery, a plaintiff failed to unearth facts which *proved* some "agreement" beyond mere parallel conduct. *Twombly, et al., v. Bell Atlantic Corp*., et al. 2004 WL 3588188 (C.A.2) *1.

Plaintiffs, consumers of telephone services sold by defendants, conceded that they were unable to plead specific facts showing an "agreement" because they couldn't yet *prove* an agreement by reference to specific evidence. They asserted that they could, however, *plead and prove* parallel conduct, which was behavior consistent with the existence of an actual agreement. They asserted that the "parallel conduct" facts they did plead and could prove were sufficient to satisfy the "agreement" element of the Sherman Act. Offered leave to amend by the District Court to plead additional facts toward an actual agreement, plaintiffs, recognizing they could not amend to improve their complaint on the issue, declined, asserting their as-pled complaint satisfied the "agreement" element as a matter of law. *Id*. at *8-9.

The District Court granted defendants motion to dismiss, ruling that plaintiffs inability to plead more than parallel conduct was fatal to their claim. "Thus, the District Court understood that allegations of parallel business conduct, taken alone, do not state a claim under § 1; plaintiffs must allege additional facts that "ten[d] to exclude independent self-interested conduct as an explanation for defendants' parallel behavior." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 552, 127 S. Ct. 1955, 1963, 167 L. Ed. 2d 929 (2007). The Court of Appeals for the Second Circuit reversed. The U.S. Supreme Court in turn reversed the Court of Appeals, reinstating the District Court's dismissal.

The Supreme Court reasoned:

> Because § 1 of the Sherman Act "does not prohibit [all] unreasonable restraints of trade ... but only restraints effected by a contract, combination, or conspiracy," "[t]he crucial question" is whether the challenged anticompetitive conduct "stem[s] from independent decision or from an agreement, tacit or express," While a showing of parallel "business behavior is admissible circumstantial evidence from which the fact finder may infer agreement," it falls short of "conclusively establish[ing] agreement or ... itself constitut[ing] a Sherman Act offense." Even "conscious parallelism," a common reaction of "firms in a concentrated market [that] recogniz[e] their shared economic interests and their interdependence with respect to price and output decisions" is "not in itself unlawful.
>
> The inadequacy of showing parallel conduct or interdependence, without more, mirrors the ambiguity of the behavior: consistent with conspiracy, but just as much in line with a wide swath of rational and competitive business strategy unilaterally prompted by common perceptions of the market. Accordingly, we have previously hedged against false inferences from identical behavior at a number of points in the trial sequence. An antitrust conspiracy plaintiff with evidence showing nothing beyond parallel conduct is not entitled to a directed verdict, conspiracy must include evidence tending to exclude the possibility of independent action; and at the summary judgment stage a § 1 plaintiff's offer of conspiracy evidence must tend to rule out the possibility that the defendants were acting independently.
>
> This case presents the antecedent question of what a plaintiff must plead in order to state a claim under § 1 of the Sherman Act. Federal Rule of Civil Procedure 8(a)(2) requires only "a short and plain statement of the claim showing that the pleader is entitled to relief," in order to "give the defendant fair notice of what the ... claim is and the grounds upon which it rests," While a complaint attacked by a Rule 12(b)(6) motion to dismiss does not need detailed factual allegations, a plaintiff's obligation to provide the "grounds" of his "entitle[ment] to relief" requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do, Factual allegations must be enough to raise a right to relief above the speculative level, on the assumption that all the allegations in the complaint are true (even if doubtful in fact).
>
> In applying these general standards to a § 1 claim, we hold that stating such a claim requires a complaint with enough factual matter (taken as true) to suggest that an

> agreement was made. Asking for plausible grounds to infer an agreement does not impose a probability requirement at the pleading stage; it simply calls for enough fact to raise a reasonable expectation that discovery will reveal evidence of illegal agreement. And, of course, a well-pleaded complaint may proceed even if it strikes a savvy judge that actual proof of those facts is improbable, and "that a recovery is very remote and unlikely." In identifying facts that are suggestive enough to render a § 1 conspiracy plausible, we have the benefit of the prior rulings and considered views of leading commentators, already quoted, that lawful parallel conduct fails to bespeak unlawful agreement. It makes sense to say, therefore, that an allegation of parallel conduct and a bare assertion of conspiracy will not suffice. Without more, parallel conduct does not suggest conspiracy, and a conclusory allegation of agreement at some unidentified point does not supply facts adequate to show illegality. Hence, when allegations of parallel conduct are set out in order to make a § 1 claim, they must be placed in a context that raises a suggestion of a preceding agreement, not merely parallel conduct that could just as well be independent action.

Bell Atl. Corp. v. Twombly, 550 U.S. 544, 553-57, 127 S. Ct. 1955, 1964-66, 167 L. Ed. 2d 929 (2007) (internal citations omitted)

In the antitrust context, it's now clear that a complaint must plead facts showing something near a legally-binding "agreement" among defendants. Industry defendants were able to submit a history of antitrust caselaw showing that mere parallel conduct was not a reliable indicator of an "agreement." That studied "understanding" of the history of antitrust cases allowed the Court to conclude that a case relying only on parallel conduct could not survive summary judgment, and therefore proceeding to expensive discovery would inevitably be fruitless for plaintiffs, and unnecessarily expensive for defendants. To avert the possibility of plaintiffs abusing the tool of discovery to extract a nuisance settlement or windfall discovery in what was otherwise a meritless case, the Court advanced what it regarded as an inevitable dispositive conclusion of dismissal on summary judgment to the rule 12 pleading stage. *Id*. at 545.

This "history" of caselaw available in the antitrust context is distinctly unavailable in the civil rights and RICO contexts, particularly within this Circuit. Subsequent cases refusing to apply *Twombly* in this Circuit on claims identical to the Complaint's claims in this matter are discussed throughout this letter.

f. *This Circuit's Treatment of Twombly/Iqbal in Civil Rights Cases*

In civil rights matters this Circuit's Court of Appeals has refused to apply *Twombly* an *Iqbal* to impose any new Rule 8 pleading requirements beyond those traditionally recognized in this Circuit. In *Starr v. Baca* the Court of Appeals noted:

> The Court in *Dura* and *Twombly* appeared concerned that in some complex commercial cases the usual lenient pleading standard under Rule 8(a) gave too much settlement leverage to plaintiffs. That is, if a non-specific complaint was enough to survive a motion to dismiss, plaintiffs would be able to extract undeservedly high settlements from deep-

pocket companies. In *Iqbal*, by contrast, the Court was concerned that the usual lenient standard under Rule 8(a) would provide too little protection for high-level executive branch officials who allegedly engaged in misconduct in the aftermath of September 11, 2001. To the extent that we perceive a difference in the application of Rule 8(a) in the two groups of cases, it is difficult to know in cases that come before us whether we should apply the more lenient or the more demanding standard." *Starr v. Baca*, 652 F.3d 1202, 1215-16 (9th Cir. 2011) *cert. denied,* 132 S. Ct. 2101, 182 L. Ed. 2d 882 (U.S. 2012).

If there are two alternative explanations, one advanced by defendant and the other advanced by plaintiff, both of which are plausible, plaintiff's complaint survives a motion to dismiss under Rule 12(b)(6)."

Id. See also, *Pinnacle Armor, Inc. v. United States*, 648 F.3d 708, 721 (9th Cir.2011); *Daniels–Hall v. Nat'l Educ. Ass'n*, 629 F.3d 992, 998 (9th Cir.2010). See further analysis of *Starr* below.

B. The MTD Ignores Defendants' Burden of Proof on Immunities

MTD sections C, D, and E raise the substantive affirmative defenses of absolute and/or qualified immunities. Immunity, both absolute and qualified, is an affirmative defense for which Defendants bear the burden of proof. *Butler v. Elle*, 281 F.3d 1014, 1021 (9th Cir. 2002) ("Government officials sued in their individual capacities under § 1983 may raise the affirmative defenses of qualified or absolute immunity." *Gomez v. Toledo*, 446 U.S. 635, 640, 100 S. Ct. 1920, 1924, 64 L. Ed. 2d 572 (1980) ("this Court has never indicated that qualified immunity is relevant to the existence of the plaintiff's cause of action; instead we have described it as a defense available to the official in question."); *Procunier v. Navarette*, 434 U.S. 555 at 562, 98 S.Ct., at 859; *Pierson v. Ray*, supra, 386 U.S., at 556, 557, 87 S.Ct., at 1219; *Butz v. Economou*, 438 U.S. 478, 508, 98 S.Ct. 2894, 2911, 57 L.Ed.2d 895 (1978); *Siegert v. Gilley*, 500 U.S. 226, 235-36, 111 S. Ct. 1789, 1795, 114 L. Ed. 2d 277 (1991); *Leatherman v. Tarrant Cnty. Narcotics Intelligence & Coordination Unit*, 507 U.S. 163, 167, 113 S. Ct. 1160, 1163, 122 L. Ed. 2d 517 (1993).

Since immunity is an affirmative defense, the burden of pleading and proving it rests with the defendant. Fed.Rule Civ.Proc. 8(c) (defendant must plead any "matter constituting an avoidance or affirmative defense"); 5 C. Wright & A. Miller, *Federal Practice and Procedure* § 1271 (1969). "It is for the official to claim that his conduct was justified by an objectively reasonable belief that it was lawful. We see no basis for imposing on the plaintiff an obligation to anticipate such a defense by stating in his complaint that the defendant acted in bad faith." *Gomez*, supra. The same is true for the defense of "reasonableness." *Harlow v. Fitzgerald*, 457 U.S. 800, 807, 102 S.Ct. 2727, 2732, 73 L.Ed.2d 396 (1982); *Butz v. Economou*, 438 U.S. 478, 506-07, 98 S.Ct. 2894, 2910-11, 57 L.Ed.2d 895 (1978).

Affirmative defenses generally may not be raised in a Rule 12(b)(6) motion unless based on some non-controversial preclusive legal defense. *Scott v. Kuhlmann*, 746 F.2d 1377, 1378

(9th Cir. 1984) *Xechem, Inc. v. Bristol–Myers Squibb Co*. (7th Cir. 2004) 372 F3d 899, 901; *Brownmark Films, LLC v. Comedy Partners* (7th Cir. 2012) 682 F3d 687, 690. A defendant may bring a Rule 12(b)(6) motion based upon an affirmative defense in unusual circumstances: where the face of the Complaint "admits" a defense. *Jablon v. Dean Witter & Co*., 614 F.2d 677, 682 (9th Cir. 1980)) ("If the running of the statute is apparent on the face of the complaint, the defense may be raised by a motion to dismiss." *Graham v. Taubman*, 610 F.2d 821 (9th Cir. 1979); *Bethel v. Jendeco Constr. Co*., 570 F.2d 1168, 1174 (3rd Cir. 1978*); Fuls v. Shastina Properties, Inc*., 448 F.Supp. 983, 986 (N.D.Cal.1978); 2A *Moore's Federal Practice* P 12.10 (2d ed. 1979).). A Rule 12(b)(6) motion asserting that the complaint "admits" a defense must those the defense is (i) "definitively ascertainable from the complaint and other allowable sources of information," and (ii) "suffice to establish the affirmative defense with certitude." *Gray v. Evercore Restructuring L.L.C*., 544 F3d 320, 324 (1st Cir. 2008).

1. The Complaint admits no affirmative defenses

The instant Complaint admits no immunity defenses and no facts disclosed in the complaint establish any affirmative defense "with certitude." In fact it specifically denies any such facts and defenses. ¶ 147, 159. The issues relevant to determining your clients' ability to assert immunity are dependent on facts which are not, and will not be pled. As alleged in the Complaint and explained in detail below, your clients are not entitled to any type of immunity—absolute, qualified, or otherwise—for their private, commercial, and criminal behavior relevant to this action. Should they nevertheless attempt to do so, the elements of their burden of proof and pleading is significant:

(1) Existence: Only "true persons" may assert personal immunities. Entities other than "true persons" such as corporations, governments, associations, etc. are not entitled to personal immunities, though may be entitled to assert any 11th Amendment immunities available to State of California institutions (see below).

(2) Capacity: If a "true person" is the person sued in an individual or official capacity, she may assert personal and any immunity of the represented entity for her official acts. *Hafer v. Melo*, 502 U.S. 21, 25, 112 S. Ct. 358, 361, 116 L. Ed. 2d 301 (1991); *Flint v. Dennison*, 488 F.3d 816, 825 (9th Cir. 2007).

(3) State, State Departments, Agencies: If the entity is a state, territory, or other sovereign entity, the entity may be protected by 11th Amendment sovereign immunity. The Complaint identifies no State of California entity. Though State departments and agencies operated by the State of California my claim 11th Amendment immunities for state functions, no State entities are named in the Complaint.

(4) Arms of State: Ordinarily, entities "beneath state level" are not entitled to assert 11th Amendment Immunity. See *Bd. of Cnty. Comm'rs of Bryan Cnty., Okl. v. Brown, 520 U.S. 397, 416, 117 S. Ct. 1382, 1394, 137 L. Ed. 2d 626 (1997); Monell v. Dep't of Soc. Servs. of City of New York, 436 U.S. 658, 98 S. Ct. 2018, 56 L. Ed. 2d 611 (1978).* However, in certain instances where a "beneath state level" entity is performing "State level" functions controlled by the State,

and the State is liable and bound for the entity's actions, the entity may assert sovereign immunity. *Id*.

However, this defense is ordinarily fact dependent, and given your sweeping assertion of it, in this case it appears it will be particularly so. Courts "must look behind the pleadings to determine whether a decree in the case would operate in fact against the sovereign. If the judgment would actually run against the state treasury, the action is barred." *Id.* at 101-02, 104 S.Ct. at 908-09; *Shaw*, 788 F.2d at 604. *Greater Los Angeles Council on Deafness, Inc. v. Zolin*, 812 F.2d 1103, 1110 (9th Cir. 1987). A functional approach governs the eleventh amendment's application to actions for money damages against state officials. Such actions are considered to be suits against the state, and thus barred, if "the state is the real, substantial party in interest." *Pennhurst State School & Hospital v. Halderman*, 465 U.S. 89, 101, 104 S.Ct. 900, 908, 79 L.Ed.2d 67 (1984) (quoting *Ford Motor Co. v. Indiana Dep't of Treasury*, 323 U.S. 459, 464, 65 S.Ct. 347, 350, 89 L.Ed. 389 (1945)).

This analysis is necessary for both government entities and individuals claims to be operating as "arms of the state": "When the suit is brought only against state officials, a question arises as to whether that suit is a suit against the State itself. Although prior decisions of this Court have not been entirely consistent on this issue, certain principles are well established. The Eleventh Amendment bars a suit against state officials when the state is the real, substantial party in interest." *Ford Motor Co. v. Department of Treasury,* 323 U.S. 459, 464, 65 S.Ct. 347, 350, 89 L.Ed. 389 (1945); *See, also, In re Ayers,* 123 U.S. 443, 487-492, 8 S.Ct. 164, 173-176, 31 L.Ed. 216 (1887); *Louisiana v. Jumel,* 107 U.S. 711, 720-723, 727-728, 2 S.Ct. 128, 135-137, 141-142, 27 L.Ed. 448 (1882). Thus, "[t]he general rule is that relief sought nominally against an officer is in fact against the sovereign if the decree would operate against the latter." *Hawaii v. Gordon,* 373 U.S. 57, 58, 83 S.Ct. 1052, 1053, 10 L.Ed.2d 191 (1963) (*per curiam*). And, as when the State itself is named as the defendant, a suit against state officials that is in fact a suit against a State is barred regardless of whether it seeks damages or injunctive relief. See *Cory v. White,* 457 U.S. 85, 91, 102 S.Ct. 2325, 2329, 72 L.Ed.2d 694 (1982)." *Pennhurst State Sch. & Hosp. v. Halderman*, 465 U.S. 89, 101-02, 104 S. Ct. 900, 908-09, 79 L. Ed. 2d 67 (1984)(internal citations omitted)

To prove your broad assertion of Eleventh Amendment immunity for each of your clients, you burden is significant. Issues on which discovery will be necessary include:

(a) State Financial Liability: "The general rule is that a suit is against the sovereign if 'the judgment sought would expend itself on the public treasury or domain, or interfere with the public administration,' or if the effect of the judgment would be 'to restrain the Government from acting, or to compel it to act.' " *Dugan v. Rank*, 372 U.S. 609, 620, 83 S.Ct. 999, 1006, 10 L.Ed.2d 15 (1963)" *Pennhurst State Sch. & Hosp. v. Halderman*, 465 U.S. 89, 102, 104 S. Ct. 900, 909, 79 L. Ed. 2d 67 (1984). This would include an analysis of whether the State of California employs, pays, administers, and governs the entity or individual in whole or in part;

(b) State Authority: The legal authority or jurisdiction, if any, the entity or individual asserting immunity is acting under, both generally and with respect to the specific acts accused.

The scope of the authority and nature of the acts and other facts relating to the alleged malfeasance has also been an issue often in contention;

(c) State is Bound: Whether any equitable relief on the individual would effectively bind the State of California must be established, by whatever means you may attempt to do so. I will of course have the right to cross-examine any witnesses or other evidence you seek to introduce;

(d) Other indicia of State versus "below-state level" existence, operation, and control.

No Defendant has attempted such a record, and on the presumptively true assertions in the Complaint (paras 9, 11, 12, 22, 23, 25, 26, 27, 28, 29, 147, 159 inter alia), no admission of this defense has occurred.

I see no likelihood that such an assertion could succeed at trial. The STUART ASSAULT, HARRASSMENT AND ABUSE, EQUAL PROTECTION VIOLATIONS, DOYNE'S TERRORISM AND FRAUD, and the RAKETEERING ACTIVTY are not the type of activities ordinarily conducted by any government entity. As such they are unauthorized, illegal, and ultra vires in their entirety. While your clients are certainly entitled to assert affirmative immunity defenses in an answer, on the facts I am aware of, the assertion appears futile.

Citations

The cases you cite for the proposition that "[t]he Ninth Circuit has consistently held California superior courts are considered arms of the state and therefore enjoy Eleventh Amendment immunity" are inapposite on the present facts.

> *Simmons*: In *Simmons v. Sacramento County Superior Court*, 318 F.3d 1156, 1161 (9th Cir. 2003) the plaintiff, a prisoner serving a sentence of "175 years to life" in Sacramento County jail, was also a plaintiff in a civil lawsuit in Sacramento County Superior Court seeking recovery for personal injuries he received in an unrelated auto accident occurring before he was incarcerated. As a prisoner, he requested from the Superior Court to be present at his civil trial. The presiding superior court judge denied permission, and the matter proceeded to trial. At trial the prisoner/plaintiff was absent—incarcerated and without permission to be present. The Superior Court granted civil defendant's request for entry of default judgment.
>
> The prisoner/plaintiff filed a civil rights lawsuit in District Court against several entities including the Sacramento County Superior Court, the superior court judge entering the civil default, and the superior court employees responsible for docketing and records, alleging each defendant conspired to deprive prisoner/plaintiff of the sixth amendment right to access courts. The District Court found that the Superior Court judge entering default was performing a judicial act and entitled to absolute judicial immunity, and that the court's docketing employees performing ordinary docketing and filing duties were "arms of the state for Eleventh Amendment purposes." *Id*. at 1161.

Zolin: In *Greater Los Angeles Council on Deafness, Inc. v. Zolin*, 812 F.2d 1103, 1106 (9th Cir. 1987), the plaintiff, a public interest organization for the deaf, sued the court's Jury Commissioner and Director of Jury Services individually and in their official capacities as employees of the "Superior Court of the State of California for the County of Los Angeles", and the County of Los Angeles in District Court for money damages and prospective relief. Plaintiff alleged injury caused by the defendants' refusal to provide sign-language interpreters to enable deaf citizens to serve as jurors, violating federal statutory civil rights protecting the disabled. *Id.* at 1106.

The District Court tried the case ((*Greater Los Angeles Council of Deafness, Inc. v. Zolin*, 607 F. Supp. 175, 179 (C.D. Cal. 1984)), finding in favor of defendants on immunity grounds, almost all of which were reversed by the Court of Appeals as follows:

(1) Quasi-Judicial Immunity: The District Court found that all defendants were protected by quasi-judicial immunity. The defendants successfully argued that the jury selection process was a "judicial act", and that therefore the jury commissioner and his staff were, like court reporters or docketing clerks, "engaged in the jury selection process when the complained-of acts occurred." Id. at 1108. Based on this rationale, the District Court found the defendants were protected as if they were "engaged in" activity which was "an integral part of the judicial process" (jury selection at trial), and thus immune. *Id.*

The Court of Appeals reversed, finding "[t]he individual defendants' actions in issue here are simply not the sort of actions that 'have been the primary wellsprings of absolute immunities . . . .' *Id.* (quoting *Pomerantz v. County of Los Angeles*, 674 F.2d 1288, 1291 (9th Cir.1982)). Thus, the Court of Appeals looked to the "challenged activity" to test whether it is "an integral part of the judicial process." Because the "challenge" was to the superior court's failure to abide by federal civil rights law unquestionably requiring the superior court defendants to accommodate deaf jurors, the superior court defendants' failure to abide by that law was not protected activity. *Zolin* at 1106.

Defendant Michael Roddy: I pause to address the unique relevance of this holding to your assertion that RODDY is entitled to quasi-judicial immunity by virtue of his employment with the San Diego County Superior Court. Whatever Mr. Roddy's general responsibilities may be, the Complaint alleges his responsibility for his supervision, oversight, and direction of an *independent, private, for-profit commercial forensic psychology enterprise* and involvement in the predicate crimes, none of which are "tasks [which] are an essential part of the operation of the courts and the judicial process." (MTD 12:9). Further, to the extent that such acts are within his job description and authority, they are at best "administrative" or "ministerial" functions potentially eligible for qualified immunity. In any case, discovery will be necessary to probe these issues. He is not a judge, and the allegations of the Complaint to not allege any acts which require him to perform duties requiring judicial discretion, application of facts to law, or acts intimately involved with the judicial process.

(2) Legislative Immunity: The District Court alternatively held that the superior court defendants' decision to deny interpreters "was a legislative one" because the jury commissioner's decisions were "establishing policy on behalf of the Los Angeles County Superior Court." *Id.*

The Court of Appeals again reversed, finding that "this was not a case where the officials involved were empowered by a legislative body to promulgate regulations to implement the legislative will. The record does not indicate that any formal rulemaking occurred or that defendants used any particular procedure in arriving at their decision not to provide interpreters. The decision-making process here in no way resembled a legislative act in the traditional sense. Instead, faced with statutes declaring deaf persons generally qualified to serve as jurors, Zolin and Arce acted to execute those legislative mandates. Theirs was an executive decision. Legislative immunity does not shield it." *Id.* at 1108-1109. The Court of Appeals concluded that "defendants do not point to anything that even arguably requires us to recognize an absolute immunity for them in the factual context presented here." *Id.* at 1109.

(3) Qualified Immunity: The District Court correctly determined that the individual defendants could be entitled to qualified immunity "insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." Id. (citing *Harlow v. Fitzgerald*, 457 U.S. at 818, 102 S.Ct. at 2738 (1982). However, the individual defendants could not establish good faith based on prior claims against the county which put them on notice defendants were therefore aware of section 504's general requirements when they decided not to provide interpreters." *Id*. at 1109, fn.7.

(4) Involvement in the Accused Activity: The District Court also erred in its analysis of whether the defendants were involved in the activity plaintiffs accused of causing injury. The District Court accepted defendants arguments that because court staff and the county are not "involved in jury selection process", they may not be held liable for injuries arising therefrom. The Court of Appeals reversed again, noting that the plaintiffs were not claiming injury from the "jury selection process", but from the county courts' policies and practices failing to adhere to federal law requiring disability accommodation. *Id*. at 1109. Because the District Court analyzed acts that the Complaint did not accuse, it reached the incorrect decision in finding that the Superior Court was uninvolved in the accused activity.

(5) Eleventh Amendment Immunity: The District Court found that the facts did not support a finding that the defendants were entitled to Eleventh Amendment immunity. After discovery revealing details of the Superior Court's budget and that it was paid by the County and not the State, the District Court found that "the County, and not the State, was primarily responsible for funding, housing and operation of the Superior Court." *Id*. at 1109, 1110.

In analyzing the District Court's decision on each defendant, the Court of Appeals reasoned:

The County: The Court of Appeals found that "the eleventh amendment does not bar actions against cities and counties. It therefore does not preclude the suit against the County." *Id*. at 1101 (citing *Mt. Healthy City School Dist. Board of Educ. v. Doyle*, 429 U.S. 274, 280, 97 S.Ct. 568, 572, 50 L.Ed.2d 471 (1977)).

The Superior Court Individual Employees: The Court of Appeals found that the superior court employees sued in their individual capacities are not entitled to eleventh amendment immunity. "A functional approach governs the eleventh amendment's application to actions for money damages against state officials. Such actions are considered to be suits against the state, and thus barred, if 'the state is the real, substantial party in interest." *Pennhurst State School & Hospital v. Halderman*, 465 U.S. 89, 101, 104 S.Ct. 900, 908, 79 L.Ed.2d 67 (1984) (quoting *Ford Motor Co. v. Indiana Dep't of Treasury*, 323 U.S. 459, 464, 65 S.Ct. 347, 350, 89 L.Ed. 389 (1945)). We must look behind the pleadings to determine whether a decree in the case would operate in fact against the sovereign. If the judgment would actually run against the state treasury, the action is barred. *Id*. at 101-02, 104 S.Ct. at 908-09; *Shaw*, 788 F.2d at 604." *Zolin* at 1110.

The Court of Appeals relied on the District Court's findings of fact after trial that "the County, and not the State, would be responsible for any judgment that might be rendered. Our independent examination of the record shows this finding to be clearly correct. Because the state treasury is not in jeopardy, the action against the individual defendants for damages is not barred by the eleventh amendment."

The Superior Court: The Court of Appeals found that, despite the fact that the that the Superior Court's bills are paid by the County and not the State, "state case law and constitutional provisions make clear that the Court is a State agency." *Id*. Relying heavily on the factual record established at trial that "The Court's official title is Superior Court of the State of California", the Court of Appeals concluded that the only entity entitled to any immunity was the "Superior Court of the State of California." *Id.*

<u>*Duerst*</u>: In *Duerst v. California*, 2:13-CV-0302 GEB KJN, 2013 WL 665560 (E.D. Cal. Feb. 22, 2013), a plaintiff named only the "State of California (Judicial Branch)" as defendant, yet drew claims alleging that unnamed Judge Mark Curry of the Placer County Superior Court made various orders in a Family Law matter that violated state law, causing him to lose his home, personal property, and suffer mental distress. *Id*. Plaintiff's complaint did not name any judge or the Placer County Superior Court as defendants. The complaint included no distinct causes of action, did not articulate federal statutes, specified no claims, detailed no facts causing injury other than the illegal orders, and claimed only monetary (not prospective) relief.

The District Court dismissed the allegations against the "State of California (Judicial Branch)" as "clearly barred by 11th Amendment." In dicta, the court went on to analyze claims not pled against the unnamed judge and Superior Court: "To the extent that plaintiff's complaint can be construed to assert a claim against the Placer County

Superior Court, such a claim is likewise barred by the Eleventh Amendment." *Id*., relying on *Zolin*, supra. The court found that all of plaintiff's claims were "rooted in" the trial court judge's orders in the family court case, and therefore "judicial acts" also subject to judicial immunity. *Id.*

Lewin: In *Los Angeles County Ass 'n of Envtl. Health Specialists v. Lewin, 215 F.Supp.2d 1071 (C.D. Cal. 2002)*, the plaintiff, a Los Angeles County environmental health inspectors association, sued the County of Los Angeles asserting the County failed to keep funds for health inspections separated from the county's general fund. The Superior Court judge presiding over the case, Kurt Lewin, found substantially in favor of the plaintiff Association, ordering the County to comply with the separation of funds. The Association proceeded to seek attorney's fees and costs, which Judge Lewin denied, asserting, inter alia, that the Association's motive was self-interest, and an award of fees was not in the public interest. The denial of the fee award was affirmed on appeal. *Id*. at 1087.

The Association thereafter sued Lewin, the Superior Court of Los Angeles County, the California Court of Appeals, and the County of Los Angeles under 42 U.S.C. § 1983, claiming that the denial of a fee award deprived the Association of its First and Fourteenth Amendment rights, due process, equal protection, and rights to access to courts. The complaint alleged that the County made illegal payments to all county superior court judges, including Lewin, motivating the denial, resulting in the deprivations of federal rights alleged.

On a motion by Judge Lewin, the Superior Court and the State's Court of Appeal, the District Court dismissed the section 1983 claim on several grounds, finding that the acts complained of—denials of motions in the ordinary course of litigation—were "judicial acts" subject to judicial immunity. The District Court further, and as an "an alternative and additional ground," reasoned that "[o]n the basis of *Zolin*, . . [t]he official name of the court is the Superior Court of the State of California; its geographical location within any particular county cannot change the fact that the court derives its power from the State and is ultimately regulated by the State. Judges are appointed by California's governor, and their salaries are established and paid by the State."

2. The Complaint Alleges Non-Immune Acts

The instant case is distinguishable from the cited authority. First, the acts complained of—the STUART ASSAULT, the HARASSMENT AND ABUSE, DOYNE INC'S TERORRISM AND FRAUD, and RACKETEERING are not "judicial acts". Unlike *Zolin*, *Duerst*, and *Lewin*, the instant Complaint references no order, ruling, decision, or any other assertion of discretionary judicial authority. Compl. ¶ 147 *et passim*. Further, the "Superior Court for the County of San Diego" is the alleged and proper name for your clients in this case—notwithstanding your pleading and protestation to the contrary. The Complaint alleges the defendants have jurisdiction only in San Diego County, are elected only by San Diego County voters. The Complaint therefore "admits" only "beneath state level" existence of the county court, and defendants have not, and at this stage may not, introduce evidence of whether they are

alter egos of the State of California. Compl. ¶¶ 9, 10, 11, 12, 22, 23, 25, 26, 27, 28, and 29. Some may, and defendants insist for obvious reasons do, insist on calling the court "Superior Court of California", but a defendant's preference to be called by an (inaccurate) designation is of no consequence to the legal status, which is a factual matter subject to discovery. To the extent that *Zolin* and dicta recited in its progeny are inapposite, they may be disregarded.

Further, *Zolin's* "arm of the state" analysis is no longer controlling in this Circuit. In *Del Campo v. Kennedy*, 517 F.3d 1070, 1077 (9th Cir. 2008) the Court of Appeals explained the current status of the "arm of the state" test: "The factors we apply in the state sovereign immunity inquiry, drawn from *Mitchell v. Los Angeles Community College Dist.*, 861 F.2d 198, 201 (9th Cir.1988), are thus designed to discriminate between governmental bodies, not to determine whether private entities are arms of the state. "To determine whether a governmental agency is an arm of the state, the following factors must be examined.... (1) whether a money judgment would be satisfied out of state funds; (2) whether the entity performs central governmental functions; (3) whether the entity may sue or be sued; (4) whether the entity has the power to take property in its own name or only in the name of the state; and (5) the corporate status of the entity." *Mitchell* at 201 (citing *Jackson v. Hayakawa*, 682 F.2d 1344, 1350 (9th Cir.1982)).

The Complaint admits nothing close to such a complex analysis, and at paragraph 147 expressly avers that "[n]o act alleged against any defendant in the STUART ASSAULT is a judicial act, an act intimately associated with the criminal judicial process, or, with the potential exception of DDISO DOES, pursuant to any authority, charter, constitution, regulation, or law.", your client cannot prevail at this stage of the matter. See also Compl. ¶ 159.

(5) Individual Immunities: While your individual clients may assert private immunities by virtue of their public functions, the analysis is complex, and is by no means admitted by the Complaint. For example, your individual clients must prove:

(a) Official Act: Only "official acts" pursuant to legal authority are protected. Ultra vires acts are not. *Hafer*, supra; *Butz v. Economou*, 438 U.S. 478, 510-11 (1978); *Geiler v. Commission on Judicial Qualifications*, 10 Cal. 3d 270, 277-79 n.6, 515 P.2d 1, 5-6 n.6, 110 Cal. Rptr. 201, 205-06 n.6 (1973), cert. den., 417 U.S. 932 (1974)). Ultra vires acts, crime, and conspiracy re: same are outside of the scope of any authority, and entitled no immunity—qualified, judicial, witness, prosecutorial, sovereign, or otherwise. *Vierria v. California Highway Patrol*, 644 F. Supp. 2d 1219, 1240 (E.D. Cal. 2009)

(b) Public Purpose: An employee of a private entity performing a governmental function may be entitled to immunity only in limited circumstances (*Richardson v. McKnight*, 521 U.S. 399, 117 S. Ct. 2100, 138 L. Ed. 2d 540 (1997) (no qualified immunity for private company operating state prison); *Filarsky v. Delia*, 132 S. Ct. 1657, 182 L. Ed. 2d 662 (2012) reh'g denied, 132 S. Ct. 2764, 183 L. Ed. 2d 631 (U.S. 2012) (qualified immunity available for outside attorney performing worker's compensation investigation under control of municipal entity), an an employee of a public entity performing a *private* function is ultra vires.

In this case the actions of your clients are entirely outside of the scope of their statutory authorization to act. Plaintiffs' claims are founded on a series of ultra vires acts, none of which

are official acts, judicial acts, or otherwise authorized under relevant statutes, constitutions, or charters. None of the April 15, 2010 STUART ASSAULT (Counts 1, 2, 3, 4, 5, 6, 7); Wrongful Inducement to Breach the STAURT-SDCBA Contract (Count 9); Retaliation/Chilling based upon the STUART ASSAULT and related acts relating thereto (Count 10); Obstruction of Justice/Equal Protection (42 U.S.C. 1985(1), (2) (Counts 11, 12); Conspiracy to Deprive Rights and Privileges (Equal Protection) (42 U.S.C. 1985(3) (Counts 13, 14, 15; Failure to Prevent or Aid in Preventing Deprivation of Civil Rights (42 U.S.C. 1986) (based upon UNREASONABLE and CULPABLE supervision of the acts detailed in Counts 13, 14, 15, above) (Count 16); The July, 2007-March, 2011 Frauds and Swindles of property and honest services by Defendants DOYNE INC, BASIE AND FRITZ, BIERER, BLANCHET, and VIVIANO's use of interstate wires, banks, and mails; Culpable (Tortious) Breach of Contract, Fraud, Bad Faith, Extreme and Outrageous Conduct (Culpable Breach of Duty) based upon the DOYNE Fraud, Abuse or Process, Terrorism (Count 17) (SUPERIOR COURT DEFENDANTS's liability is secondary); Supervisory liability for the DOYNE Fraud, Abuse of Process, Terrorism (culpable breach of duties of oversight, supervision, retention, in an administrative/supervisory role); Inducement/Agency liability for the DOYNE Fraud, Abuse of Process, Terrorism, False Advertising (Operation of the FLF Offices within SUPERIOR COURT DEFENDANTS; Ex. 1, Table A), RICO Predicate Crimes (no defendant is immune) are official, judicial, or otherwise authorized by statute, ordinance, constitution, charter, or law.

(c) Type of Immunity: If the real person is not acting ultra vires, she may be entitled to a qualified immunity. To assert greater "absolute" immunity requires additional showing, and acts in its absence have more serious liability consequences. "When deciding whether a public official is immune from liability for acts performed in his official capacity, qualified immunity is the general rule and absolute immunity the exceptional case. *See, e.g., Harlow v. Fitzgerald*, 457 U.S. 800, 807, 102 S.Ct. 2727, 2732, 73 L.Ed.2d 396 (1982); *Butz v. Economou*, 438 U.S. 478, 506-07, 98 S.Ct. 2894, 2910-11, 57 L.Ed.2d 895 (1978). The burden is on the official claiming the immunity to demonstrate that public policy requires recognition of an absolute immunity in his case. *Harlow*, 457 U.S. at 808, 102 S.Ct. at 2733; *Butz*, 438 U.S. at 506-07, 98 S.Ct. at 2910-11. It is well-settled that the immunity to which a public official is entitled depends not on the official's title or agency, but on the nature of the function that the person was performing when taking the actions that provoked the lawsuit. *E.g., Mitchell,* 105 S.Ct. at 2813; *Imbler,* 424 U.S. at 430, 96 S.Ct. at 994-95; *Bothke v. Fluor Engineers & Constructors, Inc.,* 713 F.2d 1405, 1412 (9th Cir.1983), *vacated on other grounds,* 468 U.S. 1201, 104 S.Ct. 3566, 82 L.Ed.2d 867 (1984)."

i. Qualified Immunity: Administrative, executive, ministerial, or other day-to-day operational job responsibilities and decisions by a judge are the not entitled to judicial immunity, but may qualify for qualified immunity. *Richardson v. Koshiba*, 693 F.2d 911, 914 (9th Cir. 1982) (evaluation and appointment of judicial officers is an executive function). Judges perform a wide variety of ministerial functions. *See, e.g., Scott v. Dixon*, 720 F.2d 1542, 1546 (11th Cir. 1983), cert. denied, 105 S. Ct. 122 (1984) (Because judicial immunity ensures fearless exercise of judicial discretion, '[t]he question which must be answered with regard to the extension of absolute judicial immunity . . . is whether the act . . . is discretionary or ministerial in nature.'), cert. denied, 105 S. Ct. 122 (1984); *Perkins v. United States Fidelity & Guar. Co*., 433 F.2d 1303, 1305 (5th Cir. 1970) (per curiam);); *Cronovich v. Dunn*, 573 F. Supp. 1330, 1336 (E.D.

Mich. 1983) ('There is no immunity when a judge acts in a ministerial phase.'); *Lewis v. Blackburn*, 555 F. Supp. 713, 723 (W.D.N.C. 1983) ('There is no judicial immunity in the performance of ministerial duties.'), aff'd, 734 F.2d 1000 (4th Cir. 1984); 11 Ind. L. Rev. 489, 499 (1978) ('Since the ministerial/judicial distinction attempts to separate acts that involve the exercise of judgment from those that allow the judge no discretion, it serves to bring the scope of protection into closer harmony with its purpose.'); *Lewis v. Blackburn*, 555 F. Supp. 713, 723 (W.D.N.C. 1983) (appointing magistrates constitutes ministeral as opposed to judicial act), aff'd, 734 F.2d 1000 (4th Cir. 1984). The pronouncement or rendition of a judgment, for example, is a judicial act, while the entry thereof is merely ministerial. See *Peoples Elec. Co-op. v. Broughton*, 191 Okla. 229, 232, 127 P.2d 850, 853 (1942); *Abernathy v. Huston, Co*., 166 Okla. 184, 188, 26 P.2d 939, 944 (1933); *Coleman v. Zapp*, 105 Tex. 491, 494, 151 S.W. 1040, 1041 (1912).

If qualified immunity is asserted, the defendant must prove (1)-(4), above, *and*: (a) the act was not a violation of a clearly established right at the time of the alleged violation, and (b) that no official could reasonably believe that their acts did not violate such a right. *Harlow v. Fitzgerald*, 457 U.S. 800, 102 S. Ct. 2727, 73 L. Ed. 2d 396 (1982); *Anderson v. Creighton*, 483 U.S. 635, 107 S. Ct. 3034, 97 L. Ed. 2d 523 (1987); *Pearson v. Callahan*, 555 U.S. 223, 129 S. Ct. 808, 172 L. Ed. 2d 565 (2009); *Messerschmidt v. Millender*, 132 S. Ct. 1235, 1246, 182 L. Ed. 2d 47 (2012). The process for this analysis is set forth in *Saucier v. Katz*, 533 U.S. 194, 121 S. Ct. 2151, 150 L. Ed. 2d 272 (2001), *Lee v. Gregory*, 363 F.3d 931, 932 (9th Cir.2004) and *Henderson v. County of Los Angeles*, 293 Fed.Appx. 542 (2008).

First, the court asks whether the facts alleged, taken in the light most favorable to the party asserting the injury, show that the official's conduct violated a constitutional right. *Inouye v. Kemna*, 504 F.3d 705, 712 (9th Cir.2007). Second, if there is a constitutional violation, the court asks whether the right was clearly established at the time the official acted. *Id*. "To reject a defense of qualified immunity, we must find that 'the contours of the right [are] sufficiently clear that a reasonable official would understand that what he is doing violates the right.' " *Id.* If the right was not clearly established at the time of the violation, the official is entitled to qualified immunity." *CarePartners, LLC v. Lashway*, 545 F.3d 867, 876 (9th Cir. 2008).

A right is "clearly established" for purposes of qualified immunity only where the contours of the right are "sufficiently clear that a reasonable official would understand that what he is doing violates that right." *Dunn v. Castro*, 621 F.3d 1196, 1200 (9th Cir.2010); *Moss v. U.S. Secret Serv*., 675 F.3d 1213, 1222 (9th Cir. 2012) amended, 711 F.3d 941 (9th Cir. 2013).

The test for determining qualified immunity is whether the person performing the act alleged to be unconstitutional should have understood that what they were doing was unconstitutional. The test requires analysis of the defendant's job status to determine the relevant reasonable person in defendant's position (i.e., "reasonable Superior Court Judge" or "reasonable Court Executive Officer"). Such determinations often turn on issues of fact and as such are inappropriate to address at the pleading stage.

ii. Absolute Immunity: Functions qualifying for absolute immunity require a higher showing. Judicial immunity is available for government actors acting within the scope of their authority performing a "judicial function." This analysis requires the party asserting to establish

that the act was a "judicial act" requiring "exercise of discretion in the independent decision-making adjudication of controversies." *Ashelman v. Pope*, 793 F.2d 1072, 1076 (9th Cir. 1986); *Supreme Court of Va. v. Consumers Union*, 446 U.S. 719, 731 (1980) (judicial functions arise out of the adjudication of controversies); *Richardson v. Koshiba*, 693 F.2d 911, 914 (9th Cir. 1982) ('These [executive] functions bear little resemblance to the characteristic of the judicial process that gave rise to the recognition of absolute immunity for judicial officers: the adjudication of controversies between adversaries.'); *Perkins v. United States Fidelity & Guar. Co.*, 433 F.2d 1303, 1304-05 (5th Cir. 1970) (per curiam) (discretionary acts taken in the adjudication of a commitment hearing are judicial acts); *Cronovich v. Dunn*, 573 F. Supp. 1330, 1335-36 (E.D. Mich. 1983) (judicial act requires both the exercise of discretion and the normal elements of a judicial proceeding). "Other relevant factors include: (i) the adversary nature of the process, (ii) the correctability of error on appeal, (iii) the importance of precedent, and (iv) the presence of safeguards that reduce the need for private damage actions as a means of controlling unconstitutional conduct. *Cleavinger*, 474 U.S. at 202, 106 S.Ct. 496." *Arena v. Dep't of Soc. Servs. of Nassau Cnty.*, 216 F. Supp. 2d 146, 153-54 (E.D.N.Y. 2002).

In the case that the defendant asserting judicial immunity is an actual judge, the mere fact that the person performing the act is a judge is not sufficient. Judges must distinguish judicial acts from other "discretionary" and "decisive" acts such as, for example, making professional referrals to a private for-profit commercial forensic psychology enterprise, lawyer, law firm, service provider. Judicial discretion requires (a) the application of law (b) to actual cases or controversies. This requires proving that the act was a "function normally performed by judge" and that the "action the judge was taking was the 'type of action' judges normally perform. *Ashelman v. Pope*, 793 F.2d 1072, 1076 (9th Cir. 1986); *Stump v. Sparkman*, 435 U.S. 349, 362, 98 S. Ct. 1099, 1108, 55 L. Ed. 2d 331 (1978). It is not sufficient to argue that the parties "came to the judge" because he or she is a judge. If the above criteria are not met a sitting judge asked to perform an act not meeting these criteria is not entitled to judicial immunity (though qualified or other immunities may apply). Indeed, using a judge's office to conduct personal or professional business, including making of referrals, is a violation of Judicial Canon 3 "judge shall not misuse the prestige of judicial office to advance the personal interests of the judge or others, or allow others to do so." (Compl. ¶ 152).

Important for your clients in this case, actions by a judge or quasi judge under color of law in the absence of authority in the absence thereof—as in operation, referral, support, or supervision of a criminal and/or private commercial forensic psychology or legal representation enterprise—are void as "*coram non judice*", and a defendant causing injuries while in *coram non judice* is entitled to no immunity whatsoever, but is *strictly liable* as a trespasser. *Manning v. Ketcham*, 58 F.2d 948 (6th Cir. 1932); Restatement (Second) of Torts § 162 (1965). Your clients' actions in perpetrating the acts alleged in the complaint while under color of law but outside of their jurisdiction are *all coram non judice*. Compl. ¶¶ 147, 159.

iii. Sovereign Immunity: As above, an individual may asset sovereign/11th Amendment Immunity if the entity (or its true person representative) is the United States or its equivalent, the entity may assert sovereign immunity. *Zolin, supra*; *Will v. Michigan Dep't of State Police*, 491 U.S. 58, 109 S. Ct. 2304, 105 L. Ed. 2d 45 (1989); *Nurse v. United States*, 226 F.3d 996 (9th Cir. 2000). States or their equivalents (or their true person representatives) are entitled to 11th

Amendment immunity. Municipalities "governments beneath the state level ("municipal," for short)" *Bd. of Cnty. Comm'rs of Bryan Cnty., Okl. v. Brown*, 520 U.S. 397, 416, 117 S. Ct. 1382, 1394, 137 L. Ed. 2d 626 (1997) (Souter, J., concurring). Entities such as a county, city, and departments or divisions thereof), corporations, unincorporated associations, conspiracies, and enterprises may not assert any immunity. *Monell v. New York City Dept. of Social Servs.,* 436 U.S. 658, 98 S.Ct. 2018, 56 L.Ed.2d 611 (1978).

Individuals sued in an official capacity may claim sovereign immunity only if they can establish that the State is the "real party in interest. "When the suit is brought only against state officials, a question arises as to whether that suit is a suit against the State itself. Although prior decisions of this Court have not been entirely consistent on this issue, certain principles are well established. The Eleventh Amendment bars a suit against state officials when "the state is the real, substantial party in interest." *Ford Motor Co. v. Department of Treasury,* 323 U.S. 459, 464, 65 S.Ct. 347, 350, 89 L.Ed. 389 (1945). See, *e.g., In re Ayers,* 123 U.S. 443, 487-492, 8 S.Ct. 164, 173-176, 31 L.Ed. 216 (1887); *Louisiana v. Jumel,* 107 U.S. 711, 720-723, 727-728, 2 S.Ct. 128, 135-137, 141-142, 27 L.Ed. 448 (1882)." *Pennhurst State Sch. & Hosp. v. Halderman*, 465 U.S. 89, 101, 104 S. Ct. 900, 908, 79 L. Ed. 2d 67 (1984). Thus, "[t]he general rule is that relief sought nominally against an officer is in fact against the sovereign if the decree would operate against the latter." *Hawaii v. Gordon*, 373 U.S. 57, 58, 83 S.Ct. 1052, 1053, 10 L.Ed.2d 191 (1963) (per curiam).11 And, as when the State itself is named as the *102 defendant, a suit against state officials that is in fact a suit against a State is barred regardless of whether it seeks damages or injunctive relief. See *Cory v. White*, 457 U.S. 85, 91, 102 S.Ct. 2325, 2329, 72 L.Ed.2d 694 (1982)."

In cases of direct employees of the state, their functions are most likely to be state functions. However, for individuals employed by entities "beneath state level", the functions performed by an entity or individual become attenuated from State functions; some functions may be purely "municipal" functions, others purely "state" functions, others a combination, and others—as in this case—purely private or criminal actions.

Thus when an individual is employed by a "below state level" governmental entity, it is necessary to understand the authority under which the individual was acting—if derived from the state, 11th amendment immunity may apply. If derived from local public charters, constitutions, or other enabling documents, or from private articles of incorporation, charters, or contracts, 11th Amendment immunity is inapplicable.

(6) Relief Sought: Personal immunities are defenses only to suits for money damages. Suits seeking prospective relief (injunctions, disgorgement, rescission, unjust enrichment, etc.) are not defeated by any personal or sovereign immunity. Similarly, the Eleventh Amendment does not bar prospective relief against any "below state level" entity.

The analysis necessary to determine these immunities is significant and based largely on questions of fact, the burden of proving which rests with your clients. "The existence of a subjective belief will frequently turn on factors which a plaintiff cannot reasonably be expected to know." *Swierkiewicz v. Sorema N. A.*, 534 U.S. 506, 512, 122 S. Ct. 992, 997-98, 152 L. Ed.

2d 1 (2002) ("Before discovery has unearthed relevant facts and evidence, it may be difficult to define the precise formulation of the required prima facie case in a particular case. Given that the prima facie case operates as a flexible evidentiary standard, it should not be transposed into a rigid pleading standard for discrimination cases.").

To assist your clients in understanding this analysis for each particular defendant, I provide the table attached as Exhibit 1 hereto, pertaining to defendant WOHLFEIL. It will perhaps be instructive in understanding the relevant allegations of the Complaint for other defendants as well.

3. Affirmative Defense Pleading

Further, to the extent that your clients intend to assert such affirmative defenses of immunity in an answer to the Complaint, I respectfully suggest they consider that this circuit has applied the *Twonbly/Iqbal* heightened pleading standard of Rule 8 to affirmative defenses. See, e.g., *Anticancer Inc. v. Xenogen Corp.*, 248 F.R.D. 278 (S.D.Cal.2007) (Brewster, J.) ("The Court finds that, in this patent infringement action, parties must allege a plausible entitlement to relief in all pleadings, including ... separate affirmative defenses"); *CTF Dev. Inc. v. Penta Hospitality, LLC*, No. C 09–02429, 2009 WL 3517617, 2009 U.S. Dist. LEXIS 99538 (N.D.Cal. Oct. 26, 2009) (Alsup, J.) ("Under the Iqbal standard, the burden is on the defendant to proffer sufficient facts and law to support an affirmative defense"); *Barnes v. AT & T Pension Benefit Plan–Nonbargained Program*, 718 F.Supp.2d 1167, 1172 (N.D.Cal.2010) (Patel, J.) ("The court can see no reason why the same principles applied to pleading claims [in *Twombly* and *Iqbal*] should not apply to the pleading of affirmative defenses which are also governed by Rule 8"); *Barnes & Noble, Inc. v. LSI Corp*., 849 F.Supp.2d 925 (N.D.Cal. Feb.2, 2012) (Chen, J.) ("*Twombly's* rationale of giving fair notice to the opposing party would seem to apply as well to affirmative defenses given the purpose of Rule 8(b)'s requirements for defenses"); *Dion v. Fulton Friedman & Gullace LLP*, No. 11–2727 SC, 2012 WL 160221, 2012 U.S. Dist. LEXIS 5116 (N.D.Cal. Jan. 17, 2012) (Conti, J.) ("Just as a plaintiff's complaint must allege enough supporting facts to nudge a legal claim across the line separating plausibility from mere possibility ... a defendant's pleading of affirmative defenses must put a plaintiff on notice *600 of the underlying factual bases of the defense"); *Powertech Tech., Inc. v. Tessera, Inc*., No. C 10–945 CW, 2012 WL 1746848, 2012 U.S. Dist. LEXIS 68711 (N.D.Cal. May 16, 2012) (Wilken, J.) ("*Twombly* and *Iqbal* changed the legal foundation underlying the Ninth Circuit's *Wyshak* decision, and the reasoning in those decisions also applies in the context of affirmative defenses"); *Dodson v. Strategic Restaurants Acquisition Co. II*, LLC, 289 F.R.D. 595, 599-600 (E.D. Cal. 2013); *Vogel v. Huntington Oaks Delaware Partners*, LLC, 85 Fed. R. Serv. 3d 1659 (C.D. Cal. 2013) ("The majority of district courts in this Circuit, including the entire Northern District and this Court, has consistently applied *Twombly* and *Iqbal* to both claims and affirmative defenses."); *Powertech Tech., Inc. v. Tessera, Inc*., No. C 10–945 CW, 2012 WL 1746848, at *4, 2012 U.S. Dist. LEXIS 68711, at *11 (N.D.Cal. May 16, 2012) (collecting cases and noting uniformity in Northern District dispositions); *Gonzalez v. Heritage Pac. Fin*., LLC, No. 2:12–cv–01816–ODW (JCGx), 2012 WL 3263749, at *1, 2012 U.S. Dist. LEXIS 112195, at *4 (C.D.Cal. Aug. 08, 2012); *Barnes v. AT & T Pension Benefit Plan–Nonbargained Program*, 718 F.Supp.2d 1167, 1172 (N.D.Cal.2010) ("As courts have observed, there are significant parallels between Rule 8's requirement for pleading claims in a complaint and affirmative

defenses in an answer."). Given that your clients have chosen the extraordinary posture of requesting Rule 11 sanctions on a first motion to dismiss with prejudice, caution in asserting specious affirmative defenses in the environment such a request engenders would seem to be wise.

As the Complaint does not admit any immunity defenses, sections of the MTD seeking disposition at this stage are inappropriate. ¶ 147, 159. While I would consider entering a case management order pursuant to Rule 16 which sets reasonable boundaries on discovery to permit resolution of any affirmative defenses which may survive a motion to strike their assertion as an affirmative defense, assertion of the defenses at this stage is inappropriate. I therefore respectfully request that you withdraw from the MTD all attacks based upon immunity.

C. Cognizable Civil Rights Claims

A fair reading of the Complaint as a whole provides adequate notice under Rule 8 of numerous cognizable claims and facts in support. I suggest that your inability to recognize cognizable claims results from an unnaturally restrictive reading of the Complaint—isolating certain "conclusory" words or passages, and thereupon asserting that an otherwise cognizable claim is not cognizable.

For example, the MTD asserts that the Complaint "fails to allege a cognizable claim" or "lacks a cognizable claim" (a Rule 12, "first ground," attack), then proceeds to attacks the Complaint in "hunt and peck" fashion (a Rule 12(f) tactic), identifying numerous *specific terms* as "conclusory". Yet in artificially isolating "conclusory" terms, the MTD ignores other related passages in the Complaint which provide the "additional facts" establishing the plausibility of the "cognizable claims" in which the "conclusory" terms appear. The claims in context are at least plausible and coordinate references to defined terminology or incorporate other portions of the complaint and exhibits by reference which provide abundant factual support for the targeted "conclusory" terms.

At MTD Section II. B. "BACKGROUND FACTS" at pp. 3-5, 9 you identify the following passages:

- "Attendees at the seminar included family court judges, atton1eys, and other forensic professionals. (Compl. ¶¶ 115, 125.)"

- "Judges Goldsmith, McAdam, McKenzie, and Wohlfeil and Commissioner Lowe were "organizers and panel members" in connection with the seminar. (Compl. ¶¶ 25-29.)"

- "Judge Alksne, the former Family Law Supervising Judge, attended the seminar and made some opening remarks. (Compl. ¶¶ 115, 130.)"

- "Stuart attended the seminar to obtain information to help advance his goal of improving perceived deficiencies in the "family law system." (Compl. ¶ 127; see also Compl. ¶¶ 71.)"

- “Stuart was a member of the Bar Association at the time and purportedly was a "regular attendee" at Bar Association events. (Compl. ¶ 127.)”

- “Judge Alksne took a break during her remarks to speak to some Sheriff's deputies, security guards, and other individuals in the back of the conference room regarding Stuart. (Compl. ¶¶ 130-132.)”

- “Following this conference, the Complaint avers that Sheriff's deputies and private security officers asked Stuart multiple times to accompany them in leaving the seminar. (Compl. ¶ 33.)”

- “Stuart refused to leave and was ultimately handcuffed and arrested at the seminar pursuant to the outstanding warrant. (Compl. ¶¶ 133-135; RJN, Ex. B.)”

- “Stuart seeks to end these purported trespasses and redress the grievances of those offended. (Compl. ¶¶ 77-78.)"

- "the present family law system increasingly ignores the supremacy of the Constitution and the laws of the United States in depriving U.S. Citizens within California the rights, privileges, and immunities under U.S. law." (Compl. ¶ 72.)”

- “The Complaint alleges that the defendants ;have acted aggressively and illegally against Plaintiffs to commit criminal and civil violations of Plaintiffs' state and [federal] civil rights, obstruct justice, abuse process, interfere with existing and prospective business relations, and commit civil and criminal violations [ofl federal law prohibiting Racketeering Activity .... ‘ (Compl. ¶ 12.).”

- “The Complaint alleges that "it has been Plaintiffs' collective experience within the state of California [that] [federal family rights] are frequently ignored in the hands of those exercising jurisdiction over parents and families[.]" (Compl. 77.)”

- “Superior Court has "systematically fail[ed] to observe the laws requiring Child Custody Evaluators to be properly licensed, educated, trained, and overseen by the Superior Courts[.]" (Compl. ¶ 78.8.)”

- “in April 2008, Judge Wohlfeil recommended that Dr. Stephen M. Doyne mediate custody in Stuart's dissolution proceeding, and Stuart hired Dr. Doyne as the mediator pursuant to the recommendation of Judge Wohlfeil and Stuart's counsel at the time. (Compl. ¶¶ 237-239.)”

- “Judge Wohlfeil, and later Judge Schall, "culpably and unreasonably permitted Doyne to commit [] fraud, abuse of process, extortion, and terror against Stuart." (Compl. ¶¶ 243-245.)”

At various locations the MTD asserts these and other allegations are "not cognizable", apparently intending to assert that the passages contain "conclusory" language that requires further factual support.

Simply identifying the existence of a conclusion in a complaint is not sufficient to invoke a Rule 12(b)(6) remedy. The relevant inquiry is whether a *claim* consists of "*nothing more than"* bare conclusions. *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 574, 127 S. Ct. 1955, 1976, 167 L. Ed. 2d 929 (2007)*;* see also *Starr v. Baca*, 652 F.3d 1202, 1221 (9th Cir. 2011) cert. denied, 132 S. Ct. 2101, 182 L. Ed. 2d 882 (U.S. 2012); *Karim-Panahi v. Los Angeles Police Dep't*, 839 F.2d 621, 626 (9th Cir. 1988). The *existence* of conclusions in virtually any pleading is inevitable, frequent, and in most cases useful context. "[I]t is virtually impossible logically to distinguish among 'ultimate facts,' 'evidence,' and 'conclusions.' Essentially any allegation in a pleading must be an assertion that certain occurrences took place. The pleading spectrum, passing from evidence through ultimate facts to conclusions, is largely a continuum varying only in the degree of particularity with which the occurrences are described." *Id.*; Weinstein & Distler, *Comments on Procedural Reform: Drafting Pleading Rules*, 57 Colum. L.Rev. 518, 520–521 (1957).

Those portions of the MTD which identify isolated passages containing conclusions fail to establish that the Complaint or any count therein is "nothing more than" a conclusory statement.

The last two sections you attack, (¶¶ 237-239, and 245) are pled within Count 18 "Supervisory Liability" against your clients as "Supervising Defendants" of Defendant DOYNE INC. These averments plead necessary detail as part of the fraud claims against WOHLFEIL, BLANCHET, and DOYNE, INC. as principals in the first degree, and your remaining clients as second-degree principals. The counts plead detail allegations of fraudulent misrepresentations by WOHLFEIL, BLANCHET, and DOYNE, INC., and your remaining clients' culpable actions and relationships thereto. As fraud claims are required to meet the heightened pleading standard of Rule 9(b), the paragraphs set forth the claims with necessary particularity. Because the averments establishing your clients' relationship to the DOYNE INC FRAUD AND ABUSE are germane only to those fraud counts, details of their relationships to the principal fraud are likewise set forth primarily in these Counts. Like the "BACKGROUDN" AND "COMMON ALLEGATIONS" averments above, they are pled both as an integral part of the "short, plain statement" of the fraud claims under Rule 8(a), and also to supply necessary and useful context under Rule 9(b), including background and support for the claim asserting your clients' liability for the fraud committed by the first degree principals. Whether they are properly characterized as integral to the claim, "supplemental particulars" to a necessarily detailed fraud claim, or mere "surplusage", they are functional, appropriate, and under no circumstances constitute grounds for dismissal of the Complaint. *Lockheed-Martin*, at 378; *Hearns at* 1131; *Wynder* at 80.

But for the last two sections in which you "hunt and peck" above, the allegations are asserted in the preliminary sections "III. BACKGROUND" "IV. COMMON ALLEGATIONS." As "background" and "common allegations" these sections are not the appropriate starting point for an analysis of a "claim" under Rule 8(a).

1. The Civil Rights Claims Allege Sufficient "Facts Under a Cognizable Legal Claim:"

The MTD identifies only two elements alleged to be absent from the civil rights claims: (1) "the Constitutional Right violated," and (2) "facts establishing that any conduct by the Superior Court Defendants caused the purported Constitutional violations." MTD 13:13-18. I believe you have misunderstood the relevant legal theories under which your clients may be liable for their acts and omissions. I will attempt to explain the cognizable theories of the Complaint.

a. Constitutional Rights Violated (MTD 13:13-15)

The MTD acknowledges that relevant Counts 1-6, 9-15, 17-19 identify specific constitutional amendments and include language describing the rights violated, and that these Counts further identify the statutory basis for each Count under 42 U.S.C. 1983, 1985(1), (2), and (3), including specification of each subdivision of section 1985, and 1986. Yet you assert this is insufficient to identify an agreement. MTD 13:9-14:9.

I suggest that the Counts as pled do provide adequate notice of the constitutional rights violated under Rule 8(a); particularly given your clients' facility with the United States Constitution and caselaw thereunder. It would seem odd to conclude that a Complaint asserting violation of a statute which identifies the statute, cites the relevant provisions allegedly violated, and states facts which are alleged to constitution the violation would fail to give notice do a defendant of the claim sufficient to permit a defense. Moreover, such an attack does not sound as an attack that the constitutional claims are "absent" some "factual context"—but instead more of a motion for a more definite statement, which your clients have not sought. Your assertion that a Complaint must detail specifics of the "constitutional rights violated" has been rejected by *Leatherman v. Tarrant Cnty. Narcotics Intelligence & Coordination Unit*, 507 U.S. 163, 168. To the extent your clients require further clarification on the specific constitutional language, I offer Complaint Exhibit 39:P2364-65.

b. *"facts establishing that any conduct by the Superior Court Defendants caused the purported Constitutional violations." (MTD 13:16-18)*

i. <u>Causation</u>

The MTD references "cause" as a missing element, though you appear not to be concerned with cause, but instead the *acts* forming the foundation of the injury. MTD 12:16-18. In case I am incorrect, I briefly respond regarding "cause."

Causation in civil rights cases is properly averred generally. *Swierkiewicz v. Sorema N.A.*, 534 U.S. 506, 122 S.Ct. 992, 152 L.Ed.2d 1 (2002). Outside of the securities litigation context in which "loss causation" is often attenuated by a complex string of market events and influencing factors, "but for" tort causation is a *de reguiere* fact issue for a jury, and as such need not be pled with particularity. *Lombardo v. Huysentruyt*, 91 Cal.App.4th 656, 666, 110 Cal.Rptr.2d 691 (2001). Averments as to cause are not subject to heightened pleading standards imposed by Rule 9(b) or under *Twombly/Iqbal*, and thus are satisfactory as judged under

"traditional" pleading standards of Rule 8(a) under *Conley v. Gibson*, 355 U.S. 41, 78 S. Ct. 99, 2 L. Ed. 2d 80 (1957) and *Swierkiewicz, supra.* As such, the claims as stated provide your clients adequate notice to plead and defend. The Complaint alleges causation generally for each Count as permitted.

ii. "Acts"

If I am correct in interpreting the MTD as directed to an attack on "acts", I nevertheless suggest that the Complaint alleges specific culpable acts by your clients. Direct acts, indirect acts, conspiratorial acts, aiding and abetting acts, acts of enterprise affiliation, and *failures* to act in breach of duties and responsibilities requiring action may all form the foundation for liability for harm resulting therefrom. The Complaint alleges numerous such facts. A number of cases from the Court of Appeals appear instructive.

To establish liability against a California public employee, a plaintiff may rely on common law principles of personal participation and secondary or supervisory participation but may also rely on the public official's acts in violation of a duty "setting in motion" events leading to injury. *Johnson v. Duffy*, 588 F.2d 740, 743-44 (9th Cir. 1978). "California law expressly imposes liability on a public employee for his own act or omission. (Cal.Gov't.Code § 820 (a public employee is "liable for injury caused by his act or omission to the same extent as a private person," except as otherwise provided by statute).). *Johnson v. Duffy*, 588 F.2d 740, 744 (9th Cir. 1978). Further, an "omission to act, in violation of the duties imposed upon him by statute and by regulations, thus may subject him to liability under section 1983." *Id.*

> Section 1983 provides, in pertinent part, that "(e)very person who, under color of any statute of any state . . ., subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured . . . ." (42 U.S.C. s 1983.) A person "subjects" another to the deprivation of a constitutional right, within the meaning of section 1983, if he does an affirmative act, participates in another's affirmative acts, or omits to perform an act which he is legally required to do that causes the deprivation of which complaint is made. (*Sims v. Adams* (5th Cir. 1976) 537 F.2d 829.) Moreover, personal participation is not the only predicate for section 1983 liability. Anyone who "causes" any citizen to be subjected to a constitutional deprivation is also liable. The requisite causal connection can be established not only by some kind of direct personal participation in the deprivation, but also by setting in motion a series of acts by others which the actor knows or reasonably should know would cause others to inflict the constitutional injury. (*Cf. Beverly v. Morris* (5th Cir. 1972) 470 F.2d 1356.) If state law imposes liability upon a public official for the acts of his subordinates, vicarious liability can also be imposed upon him under section 1983. (*Hesselgesser v. Reilly* (9th Cir. 1971) 440 F.2d 901.)

Johnson v. Duffy, 588 F.2d 740, 743-44 (9th Cir. 1978).

The *Twombly* and *Iqbal* cases cited in the MTD have not significantly altered these traditional principles of civil rights liability in this Circuit.

a) *OSU v. Ray:* In *OSU Student Alliance v. Ray*, 699 F.3d 1053, 1058 (9th Cir. 2012) the Court of Appeals found that a plaintiff's 42 U.S.C. § 1983 complaint alleging that Oregon State University's acts in "rounding up" and disposing of a student newspaper's on-campus distribution "newsbins" adequately pled counts against university officials. The complaint alleged the "roundup" was pursuant to an "unwritten and previously unenforced policy" and named individual university officials overseeing university facilities operations and as authors and/or maintainers of the policy, and as supervisors of the (unnamed) university employees actually performing the "roundup." The complaint alleged only that: (1) named university supervisory officials were aware of the accused university policy, (2) the policy was within the supervisory officials' power and duty to create, implement, control, and (3) the injury sustained (destruction of student newspapers in the targeted bins) was consistent with the policy's allegedly unconstitutional application. Defendants objected that the complaint failed to specifically allege "action by defendants and causation." Plaintiff students asserted they could not plead such details as the missing detail was solely within the defendants' possession, custody, and control.

The District Court granted the university's motion to dismiss. The Court of Appeals reversed. "We have little trouble finding constitutional violations. The real issue is whether the complaint properly ties the violations to the four individual defendants, who are senior University officials. Plaintiffs confront a familiar problem: they do not know the identities of the employees who threw the newsbins into the trash heap, and they do not know which University official devised the unwritten policy or which official gave the order to confiscate the bins. Plaintiffs do know, however, that three of the four defendants participated in the decision to deny them permission to place bins outside of the designated areas after the confiscation. We conclude that the complaint states claims against those three defendants based on this post-confiscation decision. We also hold that the complaint states a claim against one defendant—the Director of Facilities Services—based on the confiscation itself." To state a claim under § 1983 plaintiff need only plead that officials, "acting under color of state law, caused the deprivation of a federal right." *Suever v. Connell*, 579 F.3d 1047, 1060(9th Cir.2009) (quoting *Hafer v. Melo*, 502 U.S. 21, 25, 112 S.Ct. 358, 116 L.Ed.2d 301 (1991)).

b) *Moss v. Secret Service:* In *Moss v. U.S. Secret Serv*., 675 F.3d 1213, 1225 (9th Cir. 2012) amended, 711 F.3d 941 (9th Cir. 2013) the Court of Appeals considered a Rule 12 motion to dismiss a 42 U.S.C. § 1983 complaint brought by protesters of President Bush alleging First Amendment viewpoint discrimination. In the complaint the protesters alleged merely that "at the direction of the Secret Service agents, they were moved to a location where they had less opportunity than the pro-Bush demonstrators to communicate their message to the President and those around him, both while the President was dining at the Inn and while he was en route to the Honeymoon Cottage." Leaving open the question of whether defendants may be able to assert the defense at trial, post-trial, or on summary judgment, the Court of Appeals, considering *Twombly* and *Iqbal*, concluded: "These allegations support a plausible claim of viewpoint discrimination." *Id.*

c) *Starr*: In *Starr v. Baca*, an inmate sued Los Angeles County Sheriff Baca and numerous jailhouse deputies, their supervisors, and Sheriff Baca himself under 42 U.S.C. § 1983 for failure to prevent a group of inmates from stabbing the plaintiff 23 times. After three amendments, the complaint continued to plead no specific facts regarding Sheriff Baca and his supervisory deputies' knowledge of the risks, policy, and likelihood of injury. The complaint alleged that the Sheriff and his deputies oversaw a jailhouse operation and conditions therein which subjected inmates to regular risks of attack by other inmates. The third amended complaint referenced a history of jailhouse inmate violence known to the general public, including eight separate stabbing deaths over three prior years, and five ongoing public investigations regarding jailhouse safety. The prior jailhouse attacks involved distinct attackers and victims, modes of attack, motivations for attack, witnesses, deputies, locations, time frames, and theories of liability, none of which were in common with each other, or common to plaintiff's attack, dating back over ten years. The theory of the third amended complaint was that, based on the existence of the prior attacks and general jail conditions alone, Baca and his deputies ignored a general history of injury, failed to act, and effectively created a dangerous condition to exist within the jail, precipitating plaintiff's attack and injury. *Starr v. Baca*, 652 F.3d 1202, 1204 (9th Cir. 2011) *cert. denied*, 132 S. Ct. 2101, 182 L. Ed. 2d 882 (U.S. 2012).

Defendants sought dismissal asserting the third amended complaint "does not allege that Baca himself directly participated in any way in the January 27, 2006 incident or that he was involved in any review or investigation of it." The District Court found that Starr failed to allege any specific policy implemented by Sheriff Baca that caused the violation, and granted the defendants' motion to dismiss with prejudice. The Court of Appeals reversed, stating:

> We have long permitted plaintiffs to hold supervisors individually liable in § 1983 suits when culpable action, or inaction, is directly attributed to them. We have never required a plaintiff to allege that a supervisor was physically present when the injury occurred. In *Larez v. City of Los Angeles*, 946 F.2d 630 (9th Cir.1991), we explained that to be held liable, the supervisor need not be "directly and personally involved in the same way as are the individual officers who are on the scene inflicting constitutional injury." Id. at 645. Rather, the supervisor's participation could include his "own culpable action or inaction in the training, supervision, or control of his subordinates," "his acquiescence in the constitutional deprivations of which the complaint is made," or "conduct that showed a reckless or callous indifference to the rights of others." Id. at 646 (internal citations, quotation marks, and alterations omitted). *Id*. 1205-1206.
>
> A defendant may be held liable as a supervisor under § 1983 "if there exists either (1) his or her personal involvement in the constitutional deprivation, or (2) a sufficient causal connection between the supervisor's wrongful conduct and the constitutional violation." *Hansen v. Black*, 885 F.2d 642, 646 (9th Cir.1989). "[A] plaintiff must show the supervisor breached a duty to plaintiff which was the proximate cause of the injury. The law clearly allows actions against supervisors under section 1983 as long as a sufficient causal connection is present and the plaintiff was deprived under color of law of a federally secured right." *Redman*, 942 F.2d at 1447 (internal quotation marks omitted). "The requisite causal connection can be established ... by setting in motion a

> series of acts by others," *id*. (alteration in original; internal quotation marks omitted), or by "knowingly refus[ing] to terminate a series of acts by others, which [the supervisor] knew or reasonably should have known would cause others to inflict a constitutional injury," *Dubner v. City & Cnty. of San Francisco*, 266 F.3d 959, 968 (9th Cir.2001). "A supervisor can be liable in his individual capacity for his own culpable action or inaction in the training, supervision, or control of his subordinates; for his acquiescence in the constitutional deprivation; or for conduct that showed a reckless or callous indifference to the rights of others." *Watkins v. City of Oakland*, 145 F.3d 1087, 1093 (9th Cir.1998) (internal alteration and quotation marks omitted)." *Starr v. Baca*, 652 F.3d 1202, 1207-08 (9th Cir. 2011) *cert. denied*, 132 S. Ct. 2101, 182 L. Ed. 2d 882 (U.S. 2012). See also *Erickson v. Pardus*, 551 U.S. 89, 127 S.Ct. 2197, 2200, 167 L.Ed.2d 1081 (2007) ("Specific facts are not necessary; the statement need only give the defendant[s] fair notice of what ... the claim is and the grounds upon which it rests.") (internal quotation marks omitted); *Johnson v. Riverside Healthcare System, LP*, 534 F.3d 1116, 1122 (9th Cir.2008); *Lazy Y Ranch Ltd. v. Behrens*, 546 F.3d 580, 588 (9th Cir.2008).) ("In general, the inquiry is limited to the allegations in the complaint, which are accepted as true and construed in the light most favorable to the plaintiff.")

Starr v. Baca, 652 F.3d 1202, 1204-1205. The Court of Appeals distinguished Iqbal's application of the Fifth Amendment through a *Bivens* action from Starr's assertion of the Due Process Clause of the Fourteenth Amendment, reasoning that a supervisor may be held liable for a Fourteenth Amendment violation for his or her own deliberate indifference in maintenance of policy, habit, customs, or conditions that cause the Plaintiff's constitutional deprivation. "Thus, when a supervisor is found liable based on deliberate indifference, the supervisor is being held liable for his or her own culpable action or inaction, not held vicariously liable for the culpable action or inaction of his or her subordinates." *Id.* at 1207.

> The court concluded: "A defendant may be held liable as a supervisor under § 1983 "if there exists either (1) his or her personal involvement in the constitutional deprivation, or (2) a sufficient causal connection between the supervisor's wrongful conduct and the constitutional violation. "[A] plaintiff must show the supervisor breached a duty to plaintiff which was the proximate cause of the injury. The law clearly allows actions against supervisors under section 1983 as long as a sufficient causal connection is present and the plaintiff was deprived under color of law of a federally secured right." *Redman*, 942 F.2d at 1447 (internal quotation marks omitted).
>
> The requisite causal connection can be established ... by setting in motion a series of acts by others," *id.* (alteration in original; internal quotation marks omitted), or by "knowingly refus[ing] to terminate a series of acts by others, which [the supervisor] knew or reasonably should have known would cause others to inflict a constitutional injury," *Dubner v. City & Cnty. of San Francisco*, 266 F.3d 959, 968 (9th Cir.2001). "A supervisor can be liable in his individual capacity for his own culpable action or inaction in the training, supervision, or control of his subordinates; for his acquiescence in the constitutional deprivation; or for conduct that showed a reckless or callous indifference to the rights of others." *Watkins v. City of Oakland*, 145 F.3d 1087, 1093 (9th Cir.1998) (internal alteration and quotation marks omitted).

Starr v. Baca at 1207-1208.

iii. *Twombly* in Civil Rights Cases

The Court of Appeals has refused to apply *Twombly* in cases alleging civil rights deprivations by "supervisor co-conspirators" for good reason: Free market corporate competitors do not operate under civil servant duties, laws and regulations, constitutional restrictions, voter accountability and transparency, and yet exercise invasive police powers of coercion, making collusive illegal behavior vastly more pernicious.

Here, unlike free market competitors, which owe few or no duties toward potential plaintiffs, Domestic Dispute Industry entities owe numerous independent duties to abide oaths, professional duties and responsibility, ethical standards, laws, rules and regulations for the specific benefit of the general public. What would be, for example, presumably innocent "parallel conduct" between two free market competitors with no public duties to the contrary, would not be entitled to a presumption of innocence should it occur, for example, between a judge and an attorney. Indeed "parallel conduct" between private/public adversaries is, if anything, *presumptively illegal*. *See, e.g., Swierkiewicz v. Sorema N.A.*, 534 U.S. 506, 122 S.Ct. 992, 152 L.Ed.2d 1 (2002).

These grounds for distinguishing *Twombly* are present in the instant case. The Complaint alleges numerous PROFESSIONAL DUTIES, which provide a dramatically different starting point for analysis of observable coincidence, relationships, collaboration, and indicia of conspiratorial agreement. See *OSU Student Alliance v. Ray*, 699 F.3d 1053, 1080 (9th Cir. 2012) (a supervisor may be liable for actions of his subordinates where (1) "a statute expressly imposes the duty" and (2) when the courts have recognized a legal duty arising "by virtue of a 'special relationship' between state officials and a particular member of the public."); *Starr v. Baca*, 652 F.3d 1202, 1208 (9th Cir.2011), *Redman v. Cnty. of San Diego*, 942 F.2d 1435, 1446 (9th Cir.1991)), *Ting v. United States*, 927 F.2d 1504, 1511 (9th Cir.1991), *Preschooler II v. Clark Cnty. Sch. Bd. of Trustees*, 479 F.3d 1175, 1183 (9th Cir.2007), *Starr v. Baca*, supra at 1218 ("Under direct liability, plaintiff must show the supervisor breached a duty to plaintiff which was the proximate cause of the injury. The law clearly allows actions against supervisors under section 1983 as long as a sufficient causal connection is present and the plaintiff was deprived under color of law of a federally secured right."); *Lacey v. Maricopa Cnty.*, 693 F.3d 896, 933 (9th Cir. 2012) (a prosecutor has a legal "duty to avoid a conflict of interest ... because his paramount duty is to the principle of 'fairness.' " If the County Attorney has a conflict of interest in a case, the entire office may "have to divorce itself from the prosecution in [that] case, because even the appearance of unfairness cannot be permitted." At that point, it is "necessary that the County Attorney secure the appointment of a special prosecutor if he wishes to continue the prosecution of [that] case.") (internal citations omitted); In California, as pled at ¶¶ 138, 152, 153, 164, 239, 245, and 395 of the complaint, duties of public employees to abide by statutory or other duties are extensive, and liability for their contravention by action or inaction extends to all foreseeably injured parties, including plaintiffs herein.

It seems clear that the Court of Appeals will continue to analyze Section 1983 matters under a *Swierkiewicz* standard reading *Twombly* and *Iqbal* narrowly, relenting to a heightened

pleading standard in securities fraud and antitrust complaints asserting a "penthouse conspiracy" without plausible "ground-floor" facts or statutory duties in support. As the instant Complaint alleges both (1) personal involvement by each of your clients and (2) that as supervisors or superior each of your clients "breached a duty to plaintiff which was the proximate cause of the injury," I suggest that the instant Complaint pleads sufficiently under both standards to give your clients required notice to plead in opposition or otherwise defend. As such I have little concern that the Complaint is currently and may be even more concretely pled to eliminate any plausible inference of "innocent coincidence" by the unusual collaboration between your clients, the fraudulent for-profit psychological, legal, and social worker enterprises they facilitate, promote, oversee, encourage, protect, profit from, congregate with, operate, affiliate with, aid and abet in criminal conspiracy. See also *Nat'l Org. for Women, Inc. v. Scheidler*, 510 U.S. 249, 255, 114 S. Ct. 798, 802, 127 L. Ed. 2d 99 (1994). (RICO conspiracy).

iv. Pre-*OSU/Moss/Starr* Civil Rights Cases from the MTD

Your reliance on the two pre-*Iqbal/Starr/OSU/Moss* cases and a September, 2013 ruling from another District Court Judge within this District does not advance the analysis beyond that of *OSU*, *Moss*, and *Starr*—the most recent civil rights conspiracy cases in this Circuit.

In *Margolis v. Ryan*, 140 F.3d 850, 853 (9th Cir. 1998) the Court of Appeals affirmed the District Court's grant of summary judgment after plaintiff failed to prove facts showing that an agreement between alleged co-conspirators. *Id.* 852-52. This case is entirely irrelevant to the instant procedural setting and current law.

In *Woodrum v. Woodward County*, 866 F.2d 1121, 1126 (9th Cir. 1989), the Court of Appeals considered dismissal of a civil rights complaint on several grounds, including a claim that the complaint "failed to allege any cognizable damage to a constitutionally protected liberty interest in the care and custody of his children sufficient to state a claim under 42 U.S.C. § 1983." *Id.* at 1123. In *Woodrum*, plaintiff was the target of a series of child abuse investigations in three states, all of which were closed without any charges filed. Plaintiff subsequently sued for various state and federal claims relating to the investigations, including a section 1983 claim. *Id*. at 1123-24. After granting leave to amend the complaint twice, "[t]he district court dismissed the second amended complaint because Woodrum failed to show any damage resulting from the investigations. The court held that neither Woodrum nor his parents had been deprived of any constitutionally protected liberty interest in his children because Larry Woodrum retained custody." Id. at 1124. The Court of Appeals, relying on 1980's era conspiracy caselaw, reasoned that the plaintiff's three successive complaints essentially constituted an admission that Woodrums could allege no specific facts to show any agreement between Rosson and any of the named defendants." *Id*. On those grounds and several others, it affirmed the District Court's dismissal with prejudice.

Your pre-*Twombly*/*Iqbal* caselaw analysis also fails to include the most relevant caselaw even from that era. To establish liability for a conspiracy in a § 1983 case, a plaintiff must "demonstrate the existence of an agreement or meeting of the minds" to violate constitutional rights. *Mendocino Envtl. Ctr. v. Mendocino County*, 192 F.3d 1283, 1301 (9th Cir.1999) (internal quotation marks omitted). "Such an agreement need not be overt, and may be inferred on the

basis of circumstantial evidence such as the actions of the defendants." *Id*. "To be liable, each participant in the conspiracy need not know the exact details of the plan, but each participant must at least share the common objective of the conspiracy." *United Steelworkers of Am. v. Phelps Dodge Corp.*, 865 F.2d 1539, 1541 (9th Cir.1989) (en banc).

The pre-*Twombly/Iqbal* cases from the MTD are consistent with the more current analysis. That "allegations of conspiracy must be supported by material facts, not merely conclusory statements" *Aldabe v. Aldabe*, 616 F.2d 1089 (9th Cir.1980); *Lockary v. Kayfetz*, 587 F.Supp. 631 (D.Cal.1984) is not novel, and to the extent that the MTD asserts that the Complaint is "nothing more than" conclusory statements, it is demonstrably incorrect.

2. Framework for Analysis of the Complaint

On that background, the Complaint has been drafted to assert liability against defendants for several categories of involvement, roughly characterized as follows:

a. Direct acts of commission:

Acts immediately causing injury. For example, in the STUART ASSAULT, this would include the acts described at Compl. ¶¶ 130-136; confronting, intimidating, threatening, physically grabbing, searching, handcuffing, forcing, ejecting me from the SDCBA SEMINAR. The resulting injury in legal terms is described as illegal assault, battery, search, seizure, arrest, imprisonment, etc., and any planning and response specific to the assault would be included. The actions of ODO would fall into this category, and possibly many others ascertainable through discovery.

These would include acts leading directly to the primary acts above, including the interactions between those who physically assaulted me and others who observed, directed, and coordinated such activity, but did not actually perform it. These would include, for example, ALKSNE, SDCBA DOES, SDSD DOES, ODO DOES and perhaps others in the discussions and planning during the primary acts of commission described above (Compl. ¶¶ 128-129, 137-140).

c. *Indirect Acts/Failure to Act/"Immediate Zone" Deliberate Indifference:*

Failure to act in preventing or aiding in preventing the commission of illegal acts is also a basis for liability. Liability may be imposed for acts of deliberate indifference to conditions (Baca), policy and/or supervision (OSU), or by action "setting in motion" direct injury by others (Johnson). For example, failure to take actions required by duty is a breach of duty. If causing injury, liability arises therefrom. Such liability may be pled as independent action "setting in motion" acts causing injury, or in conspiracy with others in the chain of causation.

Acts such as supervision of the STUART ASSAULT, including direct instructions and failure to prevent harm in violation of duty fall into this category. The activities of GOLDSMITH, SDCBA, ALKSNE, SDSD, and likely many others fall into this category. The category is broadened to include pre- and post- assault acts of supervision. Deliberate indifference and other failures to act in breach of duty by those outside of the immediate presence of the assault would

fall into this category.

d. *Indirect Failure to Act/Deliberate Indifference:*

Duties to act, combined with knowledge and awareness of the likelihood of constitutional injury, general and specific conditions of the enterprises, policies, procedures, habits, customs, and actions of others for which they are directly and indirectly responsible, constitutes deliberate indifference, enterprise affiliation, aiding and abetting, accessory and other bases of liability which support liability and causation. See, e.g., analysis set forth in *Starr v. Baca*, 652 F.3d 1202, 1221 (9th Cir. 2011) cert. denied, 132 S. Ct. 2101, 182 L. Ed. 2d 882 (2012); *Johnson*, *Monell*, *Canton*, etc.

Such liability would be relevant for policymaking and implementation, creating or permitting unsafe conditions by policy, habit, custom, training, hiring, and retention. Several of your clients including TRENTACOSTA, SAN DIEGO COUNTY SUPERIOR COURT, RODDY, and likely others involved in such activities including numerous DDIJO DOES would fall into his category.

e. *Acts of Affiliation, Aiding and Abetting, Accessories:*

> Federal common law and statutory principles of primary commission also establish grounds for liability for acts of aiding and abetting, affiliation, 18 U.S.C. §§ 2, 3, 371. See aiding and abetting analysis, below.

f. *Conspiracy:* (see below)

3. The Civil Rights Counts

On this understanding, the Complaint alleges numerous direct and indirect acts and omissions of your clients in breach of law, PROFESSIONAL DUTIES and other responsibilities.

a. Direct Acts

The direct acts and omissions should be apparent. See STUART ASSAULT, DOYNE INC FRAUD and TERRORISM, HARRASMENT and ABUSE. Such acts also include certain direct acts in planning and ratification. Compl. ¶ 136-140.

b. *Failures to Act*

The duties and responsibilities to act are also identified. See, e.g., Compl. ¶¶ 11, 22, 23, 25, 26, 27, 28, 29, 39-41, 58, 69, 151-171. The exhibits to the Complaint also allege numerous duties and responsibilities of your clients. Ex. 39, P2273-2328, 2352-2379, Ex. 40, P2381-2509. In connection with your clients' employment under the County of San Diego and San Diego County Superior Court I am informed and believe that additional agreements, laws, regulations, policies, habits, and customs related to their duties and actions/failure to act exist and expect that the same will be disclosed through discovery.

Such liability by acting and/or failing to act in breach of duty would describe the basis for liability of several COLD SAC defendants. COLD each have sworn numerous oaths and are bound by various PROFESSIONAL DUTIES to act, including those duties imposed by creation of danger and special relationship. See *L.W. v. Grubbs*, 974 F.2d 119, 121 (9th Cir. 1992) *Ketchum v. Alameda Cnty.*, 811 F.2d 1243, 1247 (9th Cir. 1987). These duties imposed one or more obligations to, upon learning of the actual or planned commission of the STUART ASSAULT, to prevent or aid in preventing the same.

- Paragraphs 11, 12, 22, 23, 26, 27, 28, 29 aver each respective DDIJO defendant's job, authority, jurisdiction, specific involvement in creating, implementing, and overseeing relevant policy, custom, and habit, giving rise to one or more PROFESSIONAL DUTEIS as averred in paragraphs 151, 152, 155, 156, 163, 191, 212, 219, 261, 292, 293, 304, 328-335, the breach of which are connected to each count via the STUART ASSAULT, DOYNE INC FRAUD AND ABUSE, etc., and further liability based thereon (e.g., Obstruction of Justice, RACKETEERING, etc.). For SAC defendants, these averments also establish their specific involvement with the SDCBA SEMINAR, including planning content, promotion, conduct, attendance, and security, as well as their involvement, knowledge awareness and opportunity to act and/or failure to act regarding the STUART ASSAULT.

- Paragraphs 8, 9, 11, 69, 109, 152, 167, 168, 173, 174, 248, and 249 aver the policy-related authority of each DDIJO defendant, including policy, regulation, custom, habit ("policy") making, implementation, maintenance, and enforcement, of each defendant, and how such polices caused or contributed to the STUART ASSAULT, CHILLING, DOYNE FRAUD AND ABUSE, RACKETEERING ACTIVITY, and related allegations *et passim*.

- Paragraph 57 avers each DDIJO's membership, knowledge, participation, collaboration, joint effort, in the STUART ASSAULT COORDINATOR group, and therefore liability based on direct and indirect actions and omissions of each member of such group. Allegations regarding the SAC contained in later paragraphs are averred toward the group and will not be broken out per defendant herein, though such an analysis is available to each defendant.

- Paragraph 60 avers each DDIJO's operation and collaboration "full or part time as part of a broader "Family Law Community" of professionals, institutions, entities, practices, methods, products and services and its ancillary arms."

- Paragraphs 78-79 *et passim* aver general and specific knowledge of each DDIJO of Plaintiffs' FFRRESA, and for certain Defendants the DUE ADMINISTRATION OF JUSTICE, including the violations of statutes, laws, and ordinances by other defendants, and the allegations, message, information, advocacy, and specific allegations of harm caused by such breaches.

- Paragraphs 83, 86, 87, 89, 91, 92, Exs. 21, 22 aver specific knowledge of certain DDIJO defendants of the violations of state and federal law by other defendants within certain defendants ability to influence or control, and with which each defendant had duties to prevent or aid in preventing, including policymaking, supervision, discipline, and enforcement relating to one or more PROFESSIONAL DUTIES.

- Paragraph 112 avers generally that DDIJO defendants are "owners, associates, participants, collaborators, affiliates, benefactors, associates of entities providing "traditional" professional, legal, social, and government services as part of the DDI. They have acted aggressively and illegally against PLAINTIFFS to commit criminal and civil violations of PLAINTIFFS' state and FFR civil rights, obstruct justice, abuse process, interfere with existing and prospective business relations, and commit civil and criminal violations federal law prohibiting RACKETEERING ACTIVITY" establishing rights and duties regarding control and awareness over each other defendant, the acts alleged to cause the HARM alleged in the Complaint, and each DDIJO's responsibility therefore.

- Paragraphs 113-136 set forth specific allegations with respect to certain DDIJO, identifying the first and second degree principals of the STUART ASSAULT as ODO, SDSO, ALKSNE, SDCBA, WOHLFEIL, GOLDSMITH, DOYNE INC. each SAC member. To the extent each DDIJO was directly involved in the SDCBA SEMINAR planning, security, content, message, conduct, these paragraphs also establish the foundation for liability for CHILLING, HARRASSMENT AND ABUSE, and thereafter the Counts based thereon.

- Paragraphs 137-140 set forth averments of direct and indirect personal acts, involvement, and omissions to act of all SAC defendants in the preparation, planning, collaboration, execution and attempts relating to the STUART ASSAULT and CHILLING, as well as the distinct and supplemental allegations relating to conspiracy, collaboration, joint enterprise, and other secondary/second degree principal allegations of liability.

- The CHARGING ALLEGATIONS incorporate the specific allegations in paragraphs 1-140 (Compl. ¶ 141) and will not be set forth in explanation here.

- Paragraphs 162-176 aver generally and specifically DDIJO relationships as policymakers, implementers, supervisors and subordinates, agents, and collaborators of one another regarding the actions, policies, customs, habits, knowledge, awareness, powers, duties and breaches regarding the same, including those to "oversee, supervise, train, discipline" other defendants. The paragraph also avers each DDIJO's specific awareness of the DDIJO COMPLAINTS, the DOYNE COMPLAINTS, the FEDERAL ENGAGEMENT, the RACKETEERING ACTIVITY, and the STUART ASSAULT, and the duties to "investigate, oversee, re-train, discipline, and/or terminate those over whom they had the power to influence or control" as well as their failure to do so.

This analysis begins with an understanding of each defendant's PROFESSIONAL DUTIES job responsibilities, jurisdiction, organizational rules, policy, habit, and custom as those relate to each defendants relationships to any other named entity, and duties arising from special relationship and creation of danger. *L.W. v. Grubbs*, 974 F.2d 119, 121 (9th Cir. 1992) *Ketchum v. Alameda Cnty.*, 811 F.2d 1243, 1247 (9th Cir. 1987). To the extent that these duties restrain an official's discretion, the official's failure to observe them is a constitutional violation. "The public has the right to expect its officers . . . to make adjudications on the basis of merit. The first step toward insuring that these expectations are realized is to require adherence to the standards

of due process; absolute and uncontrolled discretion invites abuse." *Bd. of Regents of State Colleges v. Roth*, 408 U.S. 564, 590, 92 S. Ct. 2701, 2715, 33 L. Ed. 2d 548 (1972)

For example, TRENTACOSTA has numerous duties arising out of his supervisory, administrative, and control powers and responsibility for the San Diego County Superior Court operations, including several of his do-defendants, the family law facilitators operations, and the ENTERPRSE elements therein. Those duties may impose some obligation on him with respect to the *independent, private, for-profit, commercial forensic psychology enterprise*, and other private entities. He oversees, creates, implements, and maintains Superior Court and at least SD-DDICE ENTERPRISE policy, custom, habit, practice, and operation. He exercises jurisdiction over parties and attorneys and staff. He takes advice and guidance from "a policy committee." These among several of his duties and authority create an ability to control, aid, prevent, or aid in preventing acts of a wide variety of persons, entities, events, documents, and things. Compl. ¶¶ 11, 12, 23, 236-251 *et passim*. To the extent that he failed to perform those duties as required, he has "set in motion" a series of events which, if causing injury, is a constitutional violation. *Roth*, supra.

These paragraphs cannot detail the vast scope of that authority, and as such it is averred both generally and specifically, as is permissible under Rule 8. See, e.g., *Starr v. Baca*. The additional facts and analysis fleshing out the various duties, discovering awareness and intent, additional specific actions or failures to act, and "connecting" each breach of duty to constitutional harm is the proper purpose of discovery. *Id*.; *Swierkiewicz v. Sorema N.A.*, 534 U.S. 506, 122 S.Ct. 992, 152 L.Ed.2d 1 (2002).

- Paragraphs 216-257 aver DOYNE INC.'S FRAUD AND ABUSE and the liability of certain DDIJO defendants therefore, specifically including WOHLFEL and SCHALL for making the referral, recommendation, endorsement, support, and oversight, of DOYNE INC, providing notice of the allegation of your clients' liability for direct and indirect acts and omissions, second degree principals, supervisors, collaborators, co-conspirators, affiliates, and respondeat superior.

Example: C. GOLDSMITH

For this category, by way of example the Complaint alleges:

- Goldsmith is a COLD SAC. Compl. ¶¶ 57, 58 and member of the Family Law Community and Domestic Dispute Industry. Compl. ¶¶ 112.

- She was a planner and speaker for the SDCBA SEMINAR Compl. ¶115 attending on invitation to speak, advise, discuss, promote, and support and control the "expert services" of her co-defendants DOYNE INC and other DDIPS and DDI-FICE/DDIA members; "Do Professional Services Really Work?" Compl. ¶ 116, Ex. 26.

- She was aware of the SDCBA ENGAGEMENT, press release, PUBLIC BENEFIT ACTIVITIES, PLAINTIFFS' "JUDGES BEHAVING BADLY" MESSAGE, and PLAINTIFFS' ongoing FFRRESA. Compl. ¶ 100, 124, 184-85. She knew or had reason

to know of each of the facts alleged at Compl. ¶149.

- As a family court judge, she regularly recommends, refers to, receives, coordinates, and supervises DDIPS such as her co-defendants, co-conspirators, and co-panel speakers DOYNE INC, LOVE, SIMON, and many others. Compl. ¶¶ 25, 162, 166-167.

- She knew or had reason to know of the laws pertaining to the DVILS, DVILS ORDERS, and related forms, processes, policies, habits and customs, and their illegality, and PLAINTIFFS' FFRRESA and DUE ADMINISTRATION OF JUSTICE related thereto. Compl. ¶ 162. She had the ability to prevent or aid in preventing that illegality and the injury resulting therefrom, but failed to do so. ¶ 165-166.

- She implemented or assisted others in implementing illegal policies relating to the DVILS ORDERS, facilitating one or more SAD. ¶ 168-170. She refused or failed to prevent or aid in preventing the unconstitutional injury described. ¶ 170.

- In addition to her duties and responsibilities under law, she also regularly acts in a private capacity as a supervisor, employer, agent, or other private commercial relationship with defendants under her supervisor and control. Compl. ¶ 176.

- She was a witness to the ENGAGEMENT and JUDGES BEHAVIGN BADLY MESSAGE, CCFC's presence and signage, conducting FFRRESA and BUSINESS DEVELOPMENT ACTIVITIES. Compl. ¶ 123, 125. She was aware of and likely received a JUDGES BEHAVING BADLY brochure. Compl. ¶ 120. As the JUDGES BEHAVING BADLY message was expressly directed to family court judges, she undoubtedly was familiar with the practices and criticism of the accused entities, practices, and procedures, recognized CCFC's message, and was familiar with CCFC's and others' criticisms of her and her colleagues' job performance, effectiveness, integrity, and obedience to law.

- As a planner, coordinator, and panel member, she had before during, and after the SDCBA SEMINAR ample motive and opportunity to communicate, plan, respond or not respond to, and advise each of her COLD and SAC co-conspirators of these and other facts. She is the wife of un-named entity Jan Goldsmith. Compl. ¶ 383.

- At the seminar, as a panel member she sat in the front of the room with other SAC co-defendants facing the audience, including me, SDSD, ODO, and my professional colleagues. She was a witness each of the events alleged under the STUART ASSAULT. Compl. ¶¶ 124-136. Despite her PROFESSIONAL DUTIES (¶ 152), she did nothing to prevent or aid in preventing the STUART ASSAULT.

- She knew or had reason to know of the statutes, regulations, charters, constitutions, or other laws empowering her and her colleagues to act, and restraining them from acting, including the limits of her jurisdiction, power, and authority to act in any official capacity. Compl. ¶ 158.

- She was aware of the STUART-SDCBA CONTRACT prior to the STUART ASSAULT. Comp. ¶¶ 137, 139, 181.

- Each of her acts in CIVIL CONSPIRACY are also alleged to be violations of one or more criminal laws, including 18 U.S.C. §§ 241, 242, and 371. Compl. ¶¶ 376-384. That this District's United States Attorney illegally observes a policy refusing to prosecute such crimes does not absolve any defendant from such lawlessness. *Imbler v. Pachtman*, 424 U.S. 409, 428, 96 S. Ct. 984, 994, 47 L. Ed. 2d 128 (1976).

- Though not pled under the civil rights counts, the RICO allegations restate and supplement these allegations under similar legal theories and as such should be read together.

Example: ALKSNE (MTD 14:3-9)

The MTD alleges that "None of the foregoing allegations meet the causation requirement for Section 1983 liability." MTD 14:3. You single out ALKSNE and I respond here in kind.

- Count 1 alleges injury in the form of "Illegal Search, Seizure, Assault, Battery, Arrest, and Imprisonment" by virtue of the STUART ASSAULT. Defendant ALKSNE is alleged to have been a STUART ASSAULT COORDINATOR (¶ 51). As such she directly or indirectly received CCFC's press releases announcing the ENGAGEMENT ahead of the Seminar (¶ 124). She directly or indirectly had reason to know of the CCFC FFRRESA by virtue of CCFC's past ENGAGEMENT, and FFRRESA, and the "spike" in activity reflects that members of the superior court specifically accessed the press release from at least fifteen different computers. (¶ 124). As a STUART ASSAULT COORDINATOR, ALKSNE directly or indirectly was or became aware of the STUART-SDCBA CONTRACT, the planned ENGAGEMENT, STUART'S planned attendance at the SEMINAR and ENGAGEMENT, his affiliation with PLAINTIFFS, and PLAINTIFFS' PUBLIC BENEFIT ACTIVITIES prior to the STUART ASSAULT. (¶ 137). ALKSNE considered PLAINTIFFS PUBLIC BENEFIT ACTIVITIES to be a threat to traditional FLC persons, institutions, businesses, and enterprises, including those identified in the ENTERPRISE ALLEGATIONS below. (¶ 137). Upon learning of the Engagement, ALKSNE affiliated, came to a meeting of the minds, and agreed to support the STUART ASSAULT in retaliation, abuse of process, and obstruction of justice as described herein. In doing so, ALKSNE directly or indirectly CULPABLY altered her planned behavior for the seminar to respond to PLAINTIFFS' presence and the ENGAGEMENT, including failing to exercise their duty to prevent or aid in preventing the acts of other DEFENDANTS as alleged herein, to support, permit, facilitate, encourage, affiliate with, coordinate, collaborate, with other defendants in joint purpose, efforts, enterprise and conspiracy, to CUPLAPLY retaliate for, obstruct, deter, hinder delay, oppress, obstruct, unfairly compete with, and deprive PLAINTIFFS PUBLICL BENEFIT ACTIVITIES by directly or indirectly committing the STUART ASSAULT in defiance of the rule of law. (¶ 138).

- ALKSNE'S direct and indirect acts in furtherance of conspiracy included alerting all other DEFENDANTS of PLAINTIFFS' PUBLIC BENEFIT ACTIVITIES, and the

ENGAGEMENT, the STUART-SDCBA CONTRACT, STUART's planned attendance at the SDCBA SEMINAR, and the activities of others, including other DEFENDANTS in the CONSPIRACY TO ASSAULT STUART. (¶ 139).

- ALKSNE directly or indirectly communicated with DDISO DOES, and GORE, to coordinate an increased presence of DDISO Defendants at the seminar, hired, altered, communicated with, or coordinated with ODO Defendants, communicated with SDCBA, SDSD DOES 16-20, GORE, COUNTY OF SAN DIEGO, TRENTACOSTSA, RODDY, CJC, DOYNE, INC., DDIJO DOES 1-10 regarding of the ENGAGEMENT, researched PLAINTIFFS and their PUBLIC BENEFIT ACTIVITIES, DUE ADMINISTRATION OF JUSTICE, the DDICE and other CRIMINAL and civil CONSPIRACIES, facilitating ENTERPRISE affiliation, coordination, and cohesion, in defiance of the rule of law.

- As ALKSNE arrived, she could easily see CCFC members peacefully carrying signs, walking on the sidewalks in front of the SDCBA building and through the crosswalks intersecting 7th and B. Streets. ¶ 125. The seminar began with introductory remarks by ALKSNE. However, after only about two minutes of speaking, ALKSNE announced an abrupt break, apologizing that she needed a break "so we can straighten something out." One or more of the SDCBA Defendants had signaled or otherwise drew the attention of Defendant ALKSNE to alert her of STUART's presence and that the plan to eject STUART (described below) was underway. (¶ 130). ALKSNE left the podium, walked to the back of the conference room, and began speaking in a huddle of several other defendants, including several Sheriff's Deputies, two security guards, and two or three other persons who appeared to be SDCBA agents or seminar attendees. (¶ 131). ALKSNE conferred with the group for several minutes, looking in STUARTS' direction and referencing his presence with nods, glances, and gestures. It was apparent that the group, including ALKSNE, was discussing STUART. (¶ 132). After consulting with ALKSNE and others, two employees of defendant ODO and two Sheriff's Deputies approached STUART where he was seated. In ALKSNE'S presence, the men asked STUART if he was "Colbern Stuart." STUART acknowledged his identity. The men then asked STUART to accompany them to leave the seminar. STUART declined and inquired why he was being asked to leave. The men reiterated that the SDCBA wanted him to leave. STUART again refused, stating that he had purchased a ticket and was intent on attending the entire seminar. STUART asked if he was breaking any laws or interfering with the seminar in any way. The men replied "no." STUART politely again expressed his desire and intent to remain attending the entire seminar. (¶ 133).

- In addition to the allegations regarding each Defendant above, ALKSNE is engaged in activities which constitute a RICO Enterprise. (¶ 268). By virtue of their affiliations, conspiracy, associations, and collaboration as alleged herein, ALKSNE and RICO DEFENDANTS function collectively as alter ego vehicles of one another facilitate and further the commercial purposes of the ENTERPRISES alleged herein. (¶ 269). Specifically, in addition to the conspiracy allegations detailed above, ALKSNE is liable as a principal pursuant to 18 U.S.C. § 2(a)-(b), and liable as a co-conspirator pursuant to 18 U.S.C. § 371. (¶ 270). ALKSNE, while affiliated with one or more ENTERPRISES, has operated, affiliated with, and participated directly and indirectly in the conduct of ENTERPRISE

affairs through a pattern of racketeering activity, in violation of 18 U.S.C. § 1964 (b), (c), and (d) (¶ 271).

- ALKSNE is a member, operator, and affiliate of the DDICE (¶ 272), SD-DDICE (¶ 275), and as such, is liable for each and every act attributed to each such ENTERPRISE and ENTERPRISE operator or affiliate, including those alleged in ¶¶ 273-385. As a member of the SAC, ALKSNE is liable for the acts of each other SAC member, affiliate, co-conspirator, and ENTERPRISE as a principal in the second degree, aider and abettor, and accessory after the fact. (336.Z)

- ALKSNE'S acts and omissions stated herein have foreseeably harmed STUART. (¶ 153)

- As an actual and proximate result, STUART has been HARMED. (et passim)

c. *Acts and Failures to Act In Breach of Duties of Supervisors (MTD 14:22-26)*

Paragraph 152 of the Complaint alleges SCSDC defendants owe PROFESSIONAL DUTIES to act and avoid acting in such a way as to "set in motion" events causing constitutional injury. While the allegations are condensed to provide the "short, plain statement" notice required under Rule 8, a fair reading of the Complaint allows that each SCSDC owed each of the above duties to Plaintiff, either directly (DUTIES A, B, E, F, I, J) or by virtue of her supervision of other defendants (A, B, C, D, E, F, G, I, J). Defendant RODDY owes perhaps fewer duties, but includes at least DUTIES A, B, C, G, I).

The Complaint further alleges that Plaintiffs were in the class of entities to which said duties were owed (Compl. ¶ 151), and that the breach of one or more of these duties caused foreseeable injury (Compl. ¶¶ 148, 150, 157, 161, 171, 175, 179, 183, 190, 192, 204, 206, 208, 215, 231, 235, 252, 257, 259, 339, 340, 341, 342, 344, 347, 349, 352, 354, 356, 358, 360, 366, 368, 370, 372, 374, 385. Each Count identifies which Defendant is alleged to have breached each duty, and details facts relating to the relevant breach.

> "[K]nowledge of the unconstitutional conditions in the jail, including his knowledge of the culpable actions of his subordinates, coupled with his inaction, amounted to acquiescence in the unconstitutional conduct of his subordinates. As we noted in Redman, under California law, "[t]he sheriff is required by statute to take charge of and keep the county jail and the prisoners in it, and is answerable for the prisoner's safekeeping." Id. at 1446 (citing Cal. Gov.Code §§ 26605, 26610; Cal.Penal Code § 4006). We have held that "acquiescence or culpable indifference" may suffice to show that a supervisor "personally played a role in the alleged constitutional violations." Menotti v. City of Seattle, 409 F.3d 1113, 1149 (9th Cir.2005); see Redman, 942 F.2d at 1446." Starr v. Baca, 652 F.3d 1202, 1208 (9th Cir. 2011) cert. denied, 132 S. Ct. 2101, 182 L. Ed. 2d 882 (U.S. 2012).

The instant Complaint alleges "knowledge of the unconstitutional conditions" pervasive in the DDICE and its private commercial forensic psychology and legal enterprises, and a long history of Plaintiffs' alerting Defendants as well as state and national authorities to the unconstitutional conditions. (Compl. ¶¶ 71-99, 113-123). The Complaint alleges "acquiescence or culpable indifference" in spite notice of such conditions, and indeed alleges that Defendants have acted illegally in protecting the DDICE's insidious operations. Compl. ¶¶ 124-140 et passim.

d. *Conspiracy:*

Conspiracy is a distinct ground for liability based on the mere existence of an agreement to commit one or more of the primary liability acts in 1-5 above. Conspiracy is often alleged in the place of one or more of the above grounds, but may be analyzed as a separate ground.

A conspiracy an agreement to break the law. *Mendocino Envtl. Ctr. v. Mendocino Cnty.*, 192 F.3d 1283, 1301-02 (9th Cir. 1999). "To establish the defendants' liability for a conspiracy, a plaintiff must demonstrate the existence of " 'an agreement or 'meeting of the minds' to violate constitutional rights.'" *United Steelworkers of America v. Phelps Dodge Corp.*, 865 F.2d 1539, 1540–41 (9th Cir.1989) (en banc) (quoting *Fonda v. Gray*, 707 F.2d 435, 438 (9th Cir.1983)). The defendants must have, "by some concerted action, intend[ed] to accomplish some unlawful objective for the purpose of harming another which results in damage." *Gilbrook v. City of Westminster*, 177 F.3d 839, 856 (9th Cir.1999) (quoting *Vieux v. East Bay Reg'l Park Dist.*, 906 F.2d 1330, 1343 (9th Cir.1990)). Such an agreement need not be overt, and may be inferred on the basis of circumstantial evidence such as the actions of the defendants. See id. at 856. For example, a showing that the alleged conspirators have committed acts that "are unlikely to have been undertaken without an agreement" may allow a jury to infer the existence of a conspiracy. *Kunik v. Racine County*, 946 F.2d 1574, 1580 (7th Cir.1991). Whether defendants were involved in an unlawful conspiracy is generally a factual issue and should be resolved by the jury, "so long as there is a possibility that the jury can 'infer from the circumstances (that the alleged conspirators) had a 'meeting of the minds' and thus reached an understanding' to achieve the conspiracy's objectives." *Hampton v. Hanrahan*, 600 F.2d 600, 621 (7th Cir.1979), reversed in part on other grounds, 446 U.S. 754, 100 S.Ct. 1987, 64 L.Ed.2d 670 (1980)) (quoting *Adickes v. Kress & Co.*, 398 U.S. 144, 158–59, 90 S.Ct. 1598, 26 L.Ed.2d 142 (1970)). "To be liable, each participant in the conspiracy need not know the exact details of the plan, but each participant must at least share the common objective of the conspiracy." *United Steelworkers of Am. v. Phelps Dodge Corp.*, 865 F.2d 1539, 1541 (9th Cir. 1989).

Meeting of the minds" may be proven by showing facts that "point to" and agreement or meeting of the minds. *Id.*; *Myers v. City of Hermosa Beach*, 299 F. App'x 744, 747 (9th Cir. 2008); See also *Nat'l Org. for Women, Inc. v. Scheidler*, 510 U.S. 249, 255, 114 S. Ct. 798, 802, 127 L. Ed. 2d 99 (1994). The Court of Appeals has distinguished conspiracy from merely coincidental behavior: "However, the evidence adduced must demonstrate more than the mere fact that two people did or said the same thing; the evidence must actually point to an agreement." yet acknowledged that No doubt, circumstantial evidence can establish that." *Myers*, supra.

The "agreement" reached need not be as specific as an agreement to commit directly the actual act accused. The scope of acts for which liability may accrue extends to acts which "indirectly" cause injury, such as direct and indirect acts in creating policies, affiliations with conspirators or enterprises, and failures to act in breach of duty. Should any of these acts cause, directly or indirectly, the constitutional deprivation, liability for the act—and agreements related thereto, are within the scope of relevant agreements.

e. *Civil Rights Conspiracy Allegations*

The MTD attacks: "Given the Complaint does not and cannot allege any details regarding a purported agreement to support the so-called "Stuart Assault," none of the Superior Court Defendants are proper defendants in any conspiracy claim." MTD 14:18-21. This attack ignores a substantial body of law describing a broad scope of facts relevant to the existence of a conspiracy, as well as substantial portions of the Complaint which allege such facts.

The present Complaint plainly alleges facts of both (1) an actual agreement and (2) a meeting of the minds.

i. Actual Agreement

The Complaint and Exhibits allege and evidence dozens of felonies by your clients acting in close networks, most under related agreements. The Complaint avers:

> 138. Upon learning of the Engagement, DEFENDANTS and each of them affiliated, came to a meeting of the minds, and agreed to support the STUART ASSAULT in retaliation, abuse of process, and obstruction of justice as described herein. In doing so, DEFENDANTS and each of them CULPABLY (to be defined as "unreasonably, unlawfully, willfully, intentionally, maliciously, without probable cause, recklessly, knowingly, unjustified, brutal, and offensive to human dignity, fraudulently, oppressively, wantonly, in premeditation, in deliberate indifference, with the intent to deprive rights, privileges and immunities of others including plaintiffs and retaliate for exercising same, criminally, wrongfully, in bad faith, in furtherance of on or more alleged criminal or civil CONSPIRACY, with deliberate indifference, in a manner that was extreme, outrageous, unjustified, and in reckless disregard for the possibility of causing harm, damage, loss and constitutional injury as elsewhere alleged") altered their planned behavior for the seminar to respond to PLAINTIFFS' presence and the ENGAGEMENT, including failing to exercise their duty to prevent or aid in preventing the acts of other DEFENDANTS as alleged herein, to support, permit, facilitate, encourage, affiliate with, coordinate, collaborate, with one another in joint purpose, efforts, enterprise and conspiracy, to CUPLAPLY retaliate for, obstruct, deter, hinder delay, oppress, obstruct, unfairly compete with, and deprive PLAINTIFFS PUBLICL BENEFIT ACTIVITIES by committing the STUART ASSAULT in defiance of the rule of law (the "CRIMINAL CONSPIRACY").
>
> …

203. In performing the acts alleged above, DEFENDANTS conspired:

A. to deter, PLAINTIFFS, by the STUART ASSAULT and HARRASSMENT AND ABUSE, from attending or testifying freely, fully, and truthfully as a party or witness in PLAINTIFFS' FFRRESA, or from testifying to any matter, freely, fully, and truthfully;

B. to injure PLAINTIFFS, by the STUART ASSAULT and HARRASSMENT AND ABUSE, in their person or property on account of having participated in FFRRESA or testified in conjunction with the FFRRESA and the DUE ADMINISTRATION OF JUSTICE;

C. to influence, by the STUART ASSAULT and HARRASSMENT AND ABUSE, the verdict, presentment, or indictment of any grand or petit juror in connection with PLAINTIFF'S FFRRESA and the DUE ADMINISTRATION OF JUSTICE;

D. committed the STUART ASSAULT and HARRASSMENT AND ABUSE for the purpose of impeding, hindering, obstructing, or defeating, the DUE ADMINISTRATION OF JUSTICE and PLAINTIFFS' FFRRESA with intent to deny to PLAINTIFFS as members and advocates for the EQUAL PROTECITON CLASSES the equal protection of the laws and to

E. by STUART ASSAULT and HARRASSMENT AND ABUSE, injure PLAINTIFFS in their property for lawfully enforcing, or attempting to enforce, the right of PLAINTIFFS and THE EQUAL PROTECTION CLASSES, to the equal protection of the laws.

204. Hereinafter collectedly referred to as the CIVIL CONSPIRACY.

…

266. With respect to each Defendant:

> A. In their activates described herein, DEFENDANTS operate CRIMINAL ENTERPRISES which defraud, abuse, oppress, and deprive PLAINTIFFS and the general public of their property and liberty.
>
> B. In their COMMERCIAL SPEECH promotion for such ENTERPRISES, including websites, literature, public appearances, statements and representations, DEFENDANTS misrepresent theirs and others' legal and professional services as legal, fair, honest, and beneficial, when in fact they are fraudulent, harmful, inefficient, oppressive, and illegal.
>
> C. Further, in their advertising and promotion DEFENDANTS fail to warn consumers of the illegality of their services, the constitutional deprivations they cause and form the basis of liability for, and the many disastrous pitfalls which occur regularly from use of such professional services. As such, DEFENDANTS

> mislead as to the nature, characteristics, qualities, of their and their ENTERPRISE affiliates' services, including the nature of the ENTERPRISE and purposes of the SAD,
>
> D. Defendants mislead consumers by misdirection from superior, legitimate, legal services by one ore more SAD, and by advising "that's how it is" in family court, and by failing to advise of the full options consumers have toward legal, healthy, and safe alternatives to avoid the abundant harm likely to befall those who engage in such activities.
>
> E. .DDICE DEFENDANTS operate SAD and "black hat" operations under the guise of "white hat" legality and professional responsibility, thereby deceiving consumers of legal services into engaging such services with the expectations that such is as safe, lawful, and healthy as "standard" legal and psychological services. They are not.

These are in addition to descriptions of the actual agreements contained in the ENTERPRISE averments, and the coordinated, intentional use of the DVILS ORDERS and each SAD, generally averred at Compl. ¶¶ 273-305, et seq.).

I suggest these passages allege "agreement or meeting of the minds" to commit each of the constitutional violations alleged against your clients in the Complaint.

ii. Facts Pointing to Agreement

The Complaint avers that each defendant was aware of the general (including illegal) purposes of the ENTERPRISES, DDI, and Family Law Community, was or became aware of plaintiff's FFRRESA and other PUBLIC BENEFIT ACTIVITIES and the DUE COURSE OF JUSTICE, and disfavored, desired to oppress, harm, and deter the same. The Complaint avers that in addition, each SAC was specifically aware of the SDCBA ENGAGEMENT, and generally aware and in support of the acts which culminated in the STUART ASSAULT. Though the Complaint only avers specific acts by ALKSNE (and other co-defendants you do not represent) directly causing the STUART ASSAULT, the Complaint avers against all SAC defendants sufficient awareness and intent by action or inaction in breach of duty, leading to the STUART ASSAULT as part of the CIVIL CONSPIRACY. These allegations are restated in similar terms under the RICO ENTERPRISE liability sections, and those allegations of agreement, affiliation, awareness, intent, action/inaction, and cause are also relevant to the civil rights claims.

- Participation in the Domestic Dispute Industry:

> 112. … DEFENDANTS are owners, associates, participants, collaborators, affiliates, benefactors, associates of entities providing "traditional" professional, legal, social, and government services as part of the DDI. They have acted aggressively and illegally against PLAINTIFFS to commit criminal and civil violations of PLAINTIFFS' state and FFR civil rights, obstruct justice, abuse process, interfere with existing and prospective business

relations, and commit civil and criminal violations federal law prohibiting RACKETEERING ACTIVITY under 18 U.S.C. § 1961 (b).

- Joint planning, attendance, and participation for the SDCBA SEMINAR as participation in the SDCBA Family Law Subsection and the "Family Law Community":

  114. The seminar was advertised to thousands of FLC professionals and was to feature a panel of speakers including:

  115. Family Court Division judicial officials ("DDIJO") ALKSNE, C. GOLDSMITH, WOHLFEIL, LOWE, McADAM, McKENZIE, FLC legal industry professionals ("DDIA") C. BALDWIN, L. BALDWIN, CHUCAS, FLC behavioral sciences professionals ("DDIPS") CORRIGAN, DOYNE, GRIFFIN, HARGRAEVES, LEVIN, LOVE, and STOCKS, as well as numerous other domestic dispute industry professionals, attorneys, and clients at a meeting hosted by Defendant SDCBA at the SDCBA building ("SDCBA SEMINAR").

- Preparation and distribution of promotional materials for the SDCBA SEMINAR:

  116. The advertising brochure announcing the seminar and soliciting attendees identified the seminar theme as "Litigants Behaving Badly—Do Professional Services Really Work?" is attached hereto as Ex. 26.

- Awareness of CCFC's presence, message, criticism, and competitive business model:

  125. CCFC members arrived early to the Engagement with signs and brochures. (Exs. 28-30) As attendees arrived, including family court judges, attorneys, industry professionals, and clients, they could easily see CCFC members peacefully carrying signs, walking on the sidewalks in front of the SDCBA building and through the crosswalks intersecting 7th and B. Streets.

  126. The ENGAGEMENT was peaceful. Pamphlets were distributed as attendees entered the building, establishing professional relationships valuable to CCFC and LEXEVIA's commercial interests. Numerous contacts were added to CCFC's network, ideas and business contact information exchanged. No conflict, disruption, obstruction, or breach of the peace occurred.

- Actions by SAC, SDCBA, ALKSNE, ODO, and SDSD in response to my presence; identifying me out of approximately 100 attorneys, interrupting the seminar, multiple conferences to discuss my assault, asking me to leave, and ultimately perpetrating the STUART ASSAULT.

  129. In attendance at the seminar were approximately 100 legal professionals, presumably members of the FLC, as well as approximately fifteen uniformed armed Sheriff's Deputies spread in a uniformly-spaced perimeter along the walls of the room. After STUART selected his seat, the Sheriff's Deputies changed their perimeter to positions nearer to STUART along the walls, effectively surrounding STUART. Each deputy was watching STUART closely.

130. The seminar began with introductory remarks by Family Law Division supervising judge ALKSNE. However, after only about two minutes of speaking, ALKSNE announced an abrupt break, apologizing that she needed a break "so we can straighten something out." One or more of the SDCBA Defendants had signaled or otherwise drew the attention of Defendant ALKSNE to alert her of STUART's presence and that the plan to eject STUART (described below) was underway.

131. ALKSNE left the podium, walked to the back of the conference room, and began speaking in a huddle of several other defendants, including several Sheriff's Deputies, two security guards, and two or three other persons who appeared to be SDCBA agents or seminar attendees.

132. The group conferred for several minutes, looking in STUARTS' direction and referencing his presence with nods, glances, and gestures. It was apparent that the group was discussing STUART. STUART remained seated quietly during the unscheduled break.

133. After consulting with ALKSNE and others, two employees of defendant ODO and two Sheriff's Deputies approached STUART where he was seated. The men asked STUART if he was "Colbern Stuart." STUART acknowledged his identity. The men then asked STUART to accompany them to leave the seminar. STUART declined and inquired why he was being asked to leave. The men reiterated that the SDCBA wanted him to leave. STUART again refused, stating that he had purchased a ticket and was intent on attending the entire seminar. STUART asked if he was breaking any laws or interfering with the seminar in any way. The men replied "no." STUART politely again expressed his desire and intent to remain attending the entire seminar.

- My highly coordinated false arrest, search, seizure, battery, assault, ejection and instruction not to return:

134. The men then informed STUART that if he did not leave voluntarily that they would forcibly eject him. STUART objected, again stating that he intended to remain. The men then returned to where the others were "huddled" several feet away. The group again conferred with similar references and gestures toward STUART.

135. Within moments, the same two security guards and two Sheriff's deputies approached STUART, who continued to sit quietly awaiting the resumption of the seminar. The men again asked STUART to leave. STUART again refused. The men then forced STUART to stand, grabbed his arms, forced his hands behind his back, and handcuffed him. They searched his person, emptied his pockets, and seized his property, consisting of a notebook, reading glasses, a mobile phone, pen, spare change, CCFC and LEXEVIA business cards, and a wallet. They forcibly led STUART out of the SEMINAR in front of dozens of STUART's professional colleagues including one of his law partners, fellow bar members, lawyers, judges, professional service providers, clients, employees, and law enforcement officers.

- The SAC's post-assault jokes, puns, insults, and scandalous defamation about me, CCFC and its affiliates, its desire to promote its PUBLIC BENEFIT PURPOSES, their common intent to "give me what I asked for", common perception of their own clients as a "bunch of borderlines," "crazy parents" and explanation that "that's why we have to do what we do."

  136. The officers released STUART outside of the SDCBA building and informed him he was not free to return. The seminar re-convened immediately after STUART'S removal. According PLAINTIFFS' witnesses present at the SEMINAR, several SDCBA panel speakers joked during the seminar "I guess he got what he asked for" and "let's see if that gets them any publicity." They made puns about CCFC as "THE Litigants Behaving Badly", calling CCFC a "bunch of borderlines" "crazy parents" and stating "that's why we have to do what we do."

- Pre-assault awareness and planning for the SDCBA ENGAGEMENT and STUART ASSAULT:

  137. Subsequent to the formation of the STUART-SDCBA CONTRACT and prior to the STUART ASSAULT, DEFENDANTS, and each of them, were or became aware of the STUART-SDCBA CONTRACT, the planned ENGAGEMENT, STUART'S planned attendance at the SEMINAR and ENGAGEMENT, his affiliation with PLAINTIFFS, and PLAINTIFFS' PUBLIC BENEFIT ACTIVITIES. DEFENDANTS considered PLAINTIFFS PUBLIC BENEFIT ACTIVITIES to be a threat to traditional FLC persons, institutions, businesses, and enterprises, including those identified in the ENTERPRISE ALLEGATIONS below.

  …

  139. DEFENDANTS' acts in furtherance of conspiracy included alerting all other DEFENDANTS of PLAINTIFFS' PUBLIC BENEFIT ACTIVITIES, and the ENGAGEMENT, the STUART-SDCBA CONTRACT, STUART's planned attendance at the SDCBA SEMINAR, and the activities of others, including other DEFENDANTS in the CONSPIRACY TO ASSAULT STUART.

  140. One or more of DEFENDANTS communicated with DDISO DOES, and GORE, to coordinate an increased presence of DDISO Defendants at the seminar, hired, altered, communicated with, or coordinated with ODO Defendants, communicated with SDCBA, SDSD DOES 16-20, GORE, COUNTY OF SAN DIEGO, TRENTACOSTSA, RODDY, CJC, ALKSNE, DOYNE, INC., DDIJO DOES 1-10 regarding of the ENGAGEMENT, researched PLAINTIFFS and their PUBLIC BENEFIT ACTIVITIES, DUE ADMINISTRATION OF JUSTICE, the DDICE and other CRIMINAL and civil CONSPIRACIES, facilitating ENTERPRISE affiliation, coordination, and cohesion, in defiance of the rule of law.

- Operation and participation in a private for-profit commercial forensic psychology enterprise:

  173. DEFENDANTS maintained rules, policies, customs, procedures, traditions, practices and permitted behaviors by policymakers themselves which perpetrated an intentional,

reckless, and deliberate indifference to the likelihood of constitutional injury of the type caused to PLAINTIFFS in the DDIJO, DOYNE, INC., COMPLAINTS, and STUART ASSAULT, including customs and policies in violation of FFR and CALIFORNIA FUNDAMENTAL RIGHTS, and permitting HARASSMENT AND ABUSE against those exercising FFRRESA.

- Coordination with SDCBA regarding the STUART ASSAULT and my attendance at the SDCBA SEMINAR:

  181. DEFENDANTS, and each of them, CULPABLY planned, coordinated, communicated, and cooperated with SDCBA to induce and affect the STUART ASSAULT knowing and intending the same to be a breach of the SDCBA CONTRACT and covenants thereto.

- Creation and implementation of the policies alleged in the Complaint to cause constitutional injury:

  248. In performing their supervising authorities, DOYNE SUPERVISING DEFENDANTS implemented customs, policies, or practices that created unreasonable risks that subordinates would perpetrate the constitutional injuries complained of by PLAINTIFF, including:

  A. Directing, rewarding, encouraging, or acting with deliberate indifference to the actions of subordinates which led to PLAINTIFF's constitutional injuries; and

  B. Failing to change customs and policies, or employ corrective practices for subordinates causing PLAINTIFFS' constitutional HARM.

  249. Each DOYNE SUPERVISING DEFENDANT played a role in forming and/or implementing the customs, policies, and/or practices causing PLAINTIFF's HARM.

- Coordinated advertising and promotion:

  260. DEFENDANTS, in connection with their businesses, professions, PROFESSIONAL DUTIES, CONSPIRACIES and ENTERPRISE OPERATIONS, use in their advertisements, promotions, sale and offer for sale of their legal services words, terms, names, symbols, and devices, and combinations thereof, (COMMERCIAL SPEECH) which are false and misleading.

  261. In their COMMERCIAL SPEECH DEFENANTS represent that their services abide by ordinary and professional standards of care, are legal, efficient, safe, and effective exercise of governmental powers and public licenses provided under law as follows per defendant:

- Coordinated COMMERCIAL SPEECH:

  266. With respect to each Defendant:

  A. In their activities described herein, DEFENDANTS operate CRIMINAL ENTERPRISES which defraud, abuse, oppress, and deprive PLAINTIFFS and the general public of their property and liberty.

B. In their COMMERCIAL SPEECH promotion for such ENTERPRISES, including websites, literature, public appearances, statements and representations, DEFENDANTS misrepresent theirs and others' legal and professional services as legal, fair, honest, and beneficial, when in fact they are fraudulent, harmful, inefficient, oppressive, and illegal.

C. Further, in their advertising and promotion DEFENDANTS fail to warn consumers of the illegality of their services, the constitutional deprivations they cause and form the basis of liability for, and the many disastrous pitfalls which occur regularly from use of such professional services. As such, DEFENDANTS mislead as to the nature, characteristics, and qualities of their and their ENTERPRISE affiliates' services, including the nature of the ENTERPRISE and purposes of the SAD,

D. Defendants mislead consumers by misdirection from superior, legitimate, legal services by one or more SAD, and by advising "that's how it is" in family court, and by failing to advise of the full options consumers have toward legal, healthy, and safe alternatives to avoid the abundant harm likely to befall those who engage in such activities.

E. .DDICE DEFENDANTS operate SAD and "black hat" operations under the guise of "white hat" legality and professional responsibility, thereby deceiving consumers of legal services into engaging such services with the expectations that such is as safe, lawful, and healthy as "standard" legal and psychological services. They are not.

- Operation of criminal RICO Enterprises:

268. In addition to the allegations regarding each Defendant above, certain defendants are each engaged in activities which constitute a RICO Enterprise . . . .

269. By virtue of their affiliations, conspiracy, associations, and collaboration as alleged herein, RICO DEFENDANTS function collectively as alter ego vehicles of one another facilitate and further the commercial purposes of the ENTERPRISES alleged herein.

270. Specifically, in addition to the conspiracy allegations detailed above, each defendant is liable as a principal pursuant to 18 U.S.C. § 2(a)-(b), and that each and every RICO person that is a RICO defendant is liable as a co-conspirator pursuant to 18 U.S.C. § 371.

271. DEFENDANTS, and each of them, while affiliated with one or more ENTERPRISES, have operated, affiliated with, and participated directly and indirectly in the conduct of ENTERPRISE affairs through a pattern of racketeering activity, in violation of 18 U.S.C. § 1964 (b), (c), and (d) as follows:

RICO ENTERPRISES

272. Each of the following configurations, for purposes of plaintiff RICO §1962(c) claims for relief, constitute an enterprise engaged in, or the activities of which affect, interstate or international commerce . . . .

- [Compl. ¶¶ 273-307; Detailed allegations of organization and operational details of each RICO Enterprise];

- [Compl. ¶¶ 318-335; Operation of SAD 1-6];

- Commission of one or more racketeering crimes: Compl. ¶¶ 337, 343, 346, 348, 350, 351, 353, 355, 357, 359, 361, 367, 369, 371, 373;

- Commission of FICRO Counts 1-34 "in furtherance of conspiracy" (Compl. ¶ 377);

- Commission of violations of 18 U.S.C. § 1514 (Prospective Relief Count 1) in "a course of conduct to harass, interfere with, intimidate, harm, and retaliate for PLAINTIFFS protected activities, and continue to do so." (Compl. ¶¶ 386-389);

iii. Exhibits Identifying Agreements to Break the Law

The Exhibits to the Complaint incorporated by reference in the Complaint evidence and describe various acts in collaboration and conspiracy between your clients and other relevant co-defendants. Specifically:

- Intense coordination between San Diego and national domestic violence and family courts, prosecutors, police, and welfare agencies in violation of the equal protection rights of the DOMESTIC RELATIONS and GENDER classes, common funding, coordinated judicial policymaking (Ex. P4-8, 10-18, 47-26, 74-90, 21, 165, 173, 190, 292-306, 307-267, 268-369, 373-379, 384-388, 389-390, 431-440, 441-447, 448-456, 464-466, 484-489, 522-527, 619-622). See also Casey Gwinn et. al., *The Family Justice Center Collaborative Model*, 27 St. Louis U. Pub. L. Rev. 79, 80 (2007);

- Coordinated policymaking and control of San Diego DDIJO over DDI-FICE/DDIPS affiliates, preparation/amendments to forms for use by DDIPS/DDIJO/DDIA in vetting, monitoring, qualifying DDIPS and DDI-FICE forensic psychology enterprise (P1600-1624, 1625-1635, 1636-1652, 1653-1656, 1657-1708, 1709-1712;

- Illegal interactions between the courts, SDCBA with the "Family Law Community" and the Court's oversight, vetting, training, discipline and control of the DDI-FICE (P590-607, 625-646, 663-667, 693-700, 702-724, 727-728, 763-764, 766-771, 862-881, 977-996,);

- Witnesses to illegal collaboration between San Diego County Superior Court and the DDI-FICE (P780-792);

- Description of "cash flow" and fraud between DDI-FICE operators and affiliates (P803-804) and witnesses thereto (P805-833, 851-857, 911-916, 997-1004);

- San Diego County Superior Court's "cover up" of DDI-FICE illegal "Dark Appointment" and other SAD, media manipulation to favor DDI-FICE; witnesses/victims accounts (P836-837, 842-847, 1010-1024, 1926-1027, 1132-1135,);

- Defendant ALKSNE'S description of San Diego Superior Court oversight of DDI-FICE ENTERPRISE operatives and use of Forms FL325-326 (P934-940);

- The use of fraudulent credentials by DDI-FICE operatives (P952-961);

- Continued use of DOYNE INC after patients' murders of child/suicide, abuse, fraud (P1036-1038);

- Judicial coordination with private DDIPS for domestic violence services (P1123-1127);

- Courts coordination with SDSD for illegal use of public resources (P1147-1151, 1169-1173);

- Coordination between CJP and DDIJO to prevent prosecution of DDIJO for felony crimes (P1157-1158);

- Cash flow/bribery between DDIA and DDIJO (P1186-1190);

- DDI-FICE/DDIJO/DDIPA SAD re: Evaluations (1191-1201);

- Collaboration between DDIJO and DDISW (P1252-1254);

- Collaboration between Family and Domestic Violence DDIJO/Gender Discrimination against males (P1308-1309);

- ENTERPRISE DDI-FICE fraud between DDIA BLANCHET, DDIPS DOYNE INC pursuant to recommendation/referral by DDIJO WOHLFEIL and oversight by WOHLFEIL/SCHALL (P1354-1363);

- Coordination by San Diego County Superior Courts and SDSD in response to press release of SDCBA ENGAGEMENT press release (P1714-1717, 1749-1751);

- Illegal DVILS ORDER forms prepared, implemented, issued, enforced by DDICE (P1874-1884);

- Desorption of conspiracy between DDIJO, DDISW, DDIPS in DDI-FICE SAD (P1887-2199);

- Dr. Stephen Baskerville, *Taken Into Custody, The War Against Fathers, Marriage, and the Family*, Cleveland House Publishing, Inc., 2007 (Exhibit 11).

iv. Example: DDI-IACE Enterprise

Each ENTERPRISE also describes a conspiracy. Allegations as to each ENTERPRISE, including exhibits thereto, are therefore relevant to and at places incorporated by reference (See, e.g. Baskerville reference describing DDI family and criminal court enterprise/conspiracy referenced and incorporated at Compl. ¶ 119; Baldwin reference describing STUART AHCE enterprise/conspiracy referenced at Compl. ¶ 287, Hagen reference describing DDI-FICE enterprise/conspiracy at Compl. ¶ 322). Due to length and complexity, these references are not set forth in the Complaint in full, but should be considered referential and/or partially incorporated matter for purposes of conspiracy/enterprise analysis.

Not referenced in the Complaint but relevant to the DDI-IACE/DDISW enterprise/conspiracy is a description of the history and development of the DDI-IACE integration with the San Diego and other state court justice system and development of the DDI-IACE involving your clients, from the ALLIANCE itself. Casey Gwinn et. al., *The Family Justice Center Collaborative Model*, 27 St. Louis U. Pub. L. Rev. 79, 80 (2007):

> For nearly thirty years the domestic violence shelter movement in the United States has been developing and implementing a vision for co-located, multi-disciplinary services for victims of domestic violence and their children. The concept first focused on providing emergency housing but it soon expanded to include food, clothing, job training and placement, credit repair, medical services, and access to a host of other services. By the early 1980s, leaders of the national domestic violence movement sought support and assistance from the criminal and civil justice systems to protect victims and holding abusers accountable.[2] Once recruited into this powerful feminist social movement to stop violence against women, the criminal and civil justice systems began to engage and mobilize through legislative initiatives and mandates, policy and protocol changes, participation in coordinated community response efforts, and a variety of other initiatives advocated by domestic violence movement leaders.
>
> The movement's decision to engage the criminal and civil justice systems in the social change effort to stop violence against women laid the foundation for today's Family Justice Center movement. By the late 1980s, a proliferation of new programs had emerged to help victims and children. With the passage of the Violence Against Women Act in 1994, federal funding became available for many new programs, and it quickly became apparent that as public awareness and funding increased, so did agencies and programs serving victims and children. Rather than having only one or two shelter-based locations for services, large communities developed many agencies and, therefore, several locations offering services and support.
>
> The added criminal and civil justice system involvement dramatically increased the number of places victims and children had to go to obtain all necessary services. In the midst of trauma and danger, navigating so many agencies and systems was overwhelming for most victims. In the mid-1990s, domestic violence professionals called for the development of a "coordinated community response." Coordinated community responses ("CCRs") created task forces and coordinating councils to get all community agencies working together to

avoid duplication and inconsistency. CCRs took the form of coordinating councils, criminal justice center system reform and/or community intervention projects. One of the most well-known CCRs, the Duluth Domestic Violence Intervention Project (DAIP), serves as a model for many CCRs. Such efforts, however, did not slow the production of more specialized domestic violence programs or units in prosecutor's offices, police and probation departments, criminal and civil courts, hospitals, mental health programs, advocacy agencies, and drug and alcohol treatment organizations.

In San Diego, in 1989, Casey Gwinn, Gael Strack, and Ashley Walker of the YWCA of San Diego County saw the problem with disparate and inconsistent services emerging and called for a "Family Justice Center," a centralized location housing staff from each relevant agency. By providing a single location, victims of domestic violence could access the services of the criminal/civil justice systems and the social service community. Between 1989 and 1998, these visionaries and over eighty survivors and service professionals, organized through the San Diego Domestic Violence Council, began working toward this vision by bringing together the staffs of the multiple agencies within the San Diego City Attorney's Domestic Violence Unit.

The core philosophy supported by all key stakeholders of the Family Justice Center movement came directly from the vision for co-located services being pursued at the YWCA, which was the largest and domestic violence shelter-based service agency in San Diego at the time. By 1998, more than forty agencies in the public and private sectors endorsed the vision for the Family Justice Center. Between 1998 and 2002, a comprehensive strategic planning process led and facilitated by Judith Adams helped evaluate and address the myriad of complex issues prior to formal creation of the Center.

Thus, as we describe the now evolving national Family Justice Center movement, it must be emphasized that Family Justice Centers are not and should not be viewed as rejecting the community-based domestic violence movement, but rather as a product of it. While other co-located service centers evolved in communities all across America during the 1990s, after four years of aggressive planning efforts San Diego created the largest and most comprehensive center with the opening of the Center in 2002.

...

The President's Initiative was founded on a number of fundamental elements distinguishing it from other co-located services:

- Co-located Services: one site for detectives, prosecutors, advocates, civil legal, medical, spiritual support, and community based social service professionals;
- Pro-Arrest/Mandatory Arrest Policies: law enforcement and prosecution services emphasizing the importance of arrest, prosecution and long-term accountability for offenders;
- Policies Incidental to Arrest/Enforcement: policies to eliminate dual and/or mutual arrest;

- Victim Safety/Advocacy: on-site staff to assess and provide victim safety, which includes security for staff and clients at the center;
- Victim Confidentiality: confidentiality policies and procedures in place as required by law;
- Victim-Centered Facility where Offenders are Prohibited: services oriented toward victims and their children and not towards assistance for violent criminal defendants;
- History of Domestic Violence Specialization: specialized training is a priority for each discipline, i.e. law enforcement, advocates, prosecutors, judges, court support personnel, and medical professionals;
- Strong Support from Local Leaders: policy makers, elected officials and tribal leaders provide strong local support to the center;
- Strategic Planning is Critical to Short-Term and Long-Term Success: each center works with a strategic planner to ensure sustainability, development of the program, and local funding options for future operations.

VI. The National Family Justice Center Alliance

With Congress recognizing the importance of the Family Justice Center model and the increasing demand for technical assistance for existing and pending centers across the world, the San Diego Family Justice Center Foundation launched the National/International Family Justice Center Alliance ("Alliance") in 2006. The Alliance provides an annual international conference, technical assistance for interested communities, interactive relationships and shared learning opportunities for centers in compliance with the fundamental elements of a Family Justice Center (pursuant to the guidelines developed during the PFJCI). The Alliance also serves as a Technical Assistance Provider for OVW to provide technical assistance and support to all federally funded Family Justice Centers.

The Alliance is currently developing an institute, a national and international Board of Directors, an Advisory Board, and an Honorary Board. The national/international board of directors will provide leadership, guidance, and oversight to the entire initiative. The Alliance will also include staff exchange programs, an annual learning exchange conference, international internships, web-based and e-learning education programs, and other technical and educational support, and training to Family Justice Centers across the United States and around the world.

…

VII. Conclusion

The Family Justice Center collaborative model described and illustrated in this Article is not without its critics. Some consider this rapidly growing movement to be a threat and others fear that when government takes a leadership role in helping battered women negative consequences will follow. Some fear that battered immigrant women will not seek help at a Family Justice Center because of the strong presence of on-site government professionals. Still others fear that if certain agencies are involved, they may not understand the dynamics of domestic violence and children may improperly be taken away from battered women. Fears also exist that on-site agencies may improperly share a

victim's personal and confidential information with others and compromise her safety. Some fear that battered women who are also defendants may be arrested, turned away and/or not served at Family Justice Centers. And, there is also the fear that Family Justice Centers will cost too much or compete for funding with other battered women's programs and shelters ultimately taking very limited and precious resources away from their programs.

These are all valid concerns which have been carefully discussed and should continue to be addressed by all centers. The criminal justice system will never solve the complex social problem of family violence, but it can be an important partner in holding criminal domestic violence offenders accountable for their conduct. The Family Justice Center vision does not make law enforcement the central focus of intervention and prevention efforts, but because of the criminal nature of most violence and abuse, intervention efforts must continue to see the importance of police officers and prosecutors in the overall approach to these centers.

Far from being a threat, Family Justice Centers offer the opportunity for the domestic violence advocacy community to have another ally in the social change effort still needed to transform community responses to family violence. The newly developing centers, whether led by prosecutors, law enforcement, or community-based agencies, have a role to play in the diverse, complex social change process begun by the domestic violence movement. The FJC service delivery model also offers an excellent approach for building bridges with child advocacy, sexual assault, and elder abuse professionals.

The Family Justice Center movement is a phenomenon whose time has come. There is no doubt that the Family Justice Center collaborative model is the product of nearly twenty years of local and national work to end family violence and has been informed by the work of child advocacy centers, domestic violence response teams, coordinated community responses, community oriented policy, domestic violence courts, specialized units, community-based programs, and domestic violence shelters. Since the beginning of the shelter movement, specialized advocacy and support services for victims of family violence have been central to meeting their needs. As coordinated community response efforts have advanced and new programs for victims have emerged, the need and the benefits of co-location have become clear: victims should not have to go from place to place and tell their stories over and over again; victims should not be re-traumatized by the agencies that were created to help them; victims should not be referred from agency to agency and system to system.

Fortunately, many communities across America have now identified the benefits of bringing a multi-disciplinary team of professionals together to work together in serving domestic violence victims and their children under one roof. By talking to survivors, they have also found that many victims long to have their services delivered in a co-located service model. Many communities have also realized that launching a center is relatively inexpensive. It is not about creating another bureaucracy, but rather it is about efficiently bringing together those who already work in the field of family violence prevention and intervention. To that end, collaborative efforts have developed and succeeded in communities such as Colorado Springs,182 Indianapolis,183 Phoenix184 and Mesa, Arizona,185 Irving, Texas,186 and San *120 Jose, California.187 Court-based approaches have evolved such as the Barbara Hart Justice Center in Scranton,

> Pennsylvania188 and the Hennepin County Domestic Abuse Center in Minnesota.189 Different models have begun to develop, including shelter-based centers which include child advocacy and domestic violence services. While every community is unique and different models have developed, each approach seeks to make existing services more accessible, efficient, and effective for victims. The goal is to create networked, linked, living organisms that grow and change over time. But, no center will ever succeed by creating itself and then simply maintaining the status quo. The biggest challenge will be to fight the tendency toward inertia, complacency, and bureaucratic procedures that tend to set in and exert daily influence even in good organizations. The antidote is a daily recommitment to change, growth, adaptation, and accountability to survivors/clients.
>
> Over the last five years, a vision statement has emerged from the movement that can and should be a starting point for discussion for any community considering development or expansion of a Family Justice Center: "A future where all the needs of victims are met; where children are protected; where violence fades; where batterers are held accountable; where economic justice increases; where families heal and thrive; where hope is realized and where we all work together."190 This powerful vision is grand and will not be accomplished in a day, a week, a month, or a year. It also is not the "end all" or "be all" of solutions to family violence. But the Family Justice Center approach has now become one other option for communities seeking to provide comprehensive services to victims and their children. Every community owes it to those being abused to ask them how they would like their services delivered and then seek to provide them while staying accountable on a daily basis to the very women, children, and families that we are dedicated to serving.

Casey Gwinn et. al., *The Family Justice Center Collaborative Model*, 27 St. Louis U. Pub. L. Rev. 79, 80 (2007).

Your clients actively participate in, promote, and support of the "Family Justice Center Movement" both directly (see below) and by virtue of interaction with the Family Justice Center's "Legal Network" and "Domestic Violence Restraining Order Clinic (Ex. P93-103) in issuance of illegal restraining orders, invidious discrimination, facilitation of the illegal practice of law by private social workers, and their ongoing perjury, fabricated "expert" testimony, obstruction of justice, and fraud. See Ex. 1, P2-18, 47-66, 69-71.

4. *42 U.S.C. 1985(1) "any office, trust or place of confidence under the United States" (MTD 15:2-9)*

I respectfully disagree with your characterization of the meaning of the terms "any office, trust or place of confidence under the United States" in 42 U.S.C. 1985(1) 1985(1) as limited to only federal law enforcement officers. Your citation to *Canalis v. San Joaquin Sheriff's Posse Comitatus* is inapposite as it addressed the question of whether color of *state* law officers could claim protection under section 1985(1) as *federal* officers because they were injured while in the process of enforcing the 14th Amendment. There was no claim that the state law officers maintained any "office, trust or place of confidence under the United States "other than their status of state law enforcement officials.

The Complaint does not assert that I am a member of a "*posse comitatus"* or a state law enforcement officer. It alleges that, for purposes of this action, plaintiffs fall within the category of persons maintaining "any office, trust or place of confidence under the United States." Compl. ¶¶ 191-192. The class of "any office, trust or place of confidence under the United States" protected by section 1985(1) is significantly broader than federal law enforcement officers. "The United States Supreme Court has stated that § 1985 is to be accorded "a sweep as broad as its language." *Griffin v. Breckenridge*, 403 U.S. 88, 97, 91 S.Ct. 1790, 1796, 29 L.Ed.2d 338 (1971). Likewise, the courts of appeal have recognized that § 1985(1) is a "statute cast in general language of broad applicability and unlimited duration." *Stern v. United States Gypsum, Inc*., 547 F.2d 1329, 1335 (7th Cir.), cert. denied, 434 U.S. 975, 98 S.Ct. 533, 54 L.Ed.2d 467 (1977). *See also Windsor v. The Tennessean*,3 719 F.2d 155, 161 (6th Cir.1983) (interpreting § 1985(1) broadly), cert. denied, 469 U.S. 826, 105 S.Ct. 105, 83 L.Ed.2d 50 (1984).

Under the controlling authority of *Griffin*, courts have applied the statute to protect "federal employees in day-to-day duties," (*Mollnow v. Carlton*, 716 F.2d 627, 630 (9th Cir. 1983)), a state court judge (*Lewis v. News-Press & Gazette Co*., 782 F. Supp. 1338, 1341 (W.D. Mo. 1992). See also Stern v. United States Gypsum, Inc., 547 F.2d 1329 (7th Cir.), cert. denied, 434 U.S. 975, 98 S.Ct. 533, 54 L.Ed.2d 467 (1977) (tax collector); *McCord v. Bailey*, 636 F.2d 606, 614-17 (D.C.Cir.1980); cert. denied, 451 U.S. 983, 101 S.Ct. 2314, 68 L.Ed.2d 839 (1981).

This section extending protection to formal and informal delegates performing their duties "under the United States" to protect and enforce federal laws and interests within the various states was *precisely* the intent of the Act of 1871, enacted in the wake of a massive rebellion against the sovereign authority of the Union. *See Griffon v. Congress of Racial Equality*, E.D.La.1963, 221 F.Supp. 899; *Brewer v. Hoxie* School Dist. No. 46 of Lawrence County, Ark., C.A.8 (Ark.) 1956, 238 F.2d 91. That the law adopts the open definitions of "office, trust, or place of confidence" reflects a specific intent to protect anyone recognized in virtually any way while "performing duties" "under the United States." Your assertion that the terms should be limited to federal law enforcement officers contradicts the express language of the statute as well as its intent when drafted.

The allegations relating to any "position under the United States" are set forth at Complaint paragraphs 102-104. Allegations detailing my enforcement of Constitutional Rights under the 14th Amendment for purposes of this case are set forth throughout the Complaint and described generally as FFRRESA. The injury caused in the STUART ASSAULT was in direct response and in the course of plaintiffs' FFRRESA. Compl. ¶¶ 191-208. The proper construction and application of law remains one to be determined and involves questions both of law and fact inappropriate for resolution at this stage in the proceedings. U.S. Const., Amend VII, XIV; *Baltimore & Carolina Line v. Redman*, 295 U.S. 654, 656, 55 S. Ct. 890, 891, 79 L. Ed. 1636 (1935); *Markman v. Westview Instruments, Inc*., 517 U.S. 370, 371, 116 S. Ct. 1384, 1387, 134 L. Ed. 2d 577 (1996); ("As the former patent practitioner, Justice Curtis, explained, the first issue in a patent case, construing the patent, is a question of law, to be determined by the court. The second issue, whether infringement occurred, is a question of fact for a jury." *Winans v. Denmead*, 15 How. 330, 338, 14 L.Ed. 717. Further, to the extent that the statutory terms such as "office" "trust" and "place of confidence" are capable of interpretation by a jury, no question of law exists. See generally *Markman*, supra*; Beacon Theatres, Inc. v. Westover,* 359 U.S. 500, 79 S. Ct. 948, 2 Fed. R. Serv. 2d 650 (1959); *Dairy Queen, Inc. v. Wood*, 369 U.S. 469, 82 S. Ct. 894, 133 U.S.P.Q. (BNA) 294, 5 Fed. R. Serv. 2d 632 (1962); Stephen A. Weiner, *The Civil Jury Trial and the Law-Fact Distinction*, 54 Cal. L. Rev. 1867 (1966).

5. *The Complaint Avers Sufficient Facts Establishing Conspiracy to Deprive Civil Rights Under 42 U.S.C. 1985(2) and (3)*

At MTD 15:10-22 you assert "the Complaint alleges nothing more than the defendants "conspired" together in committing the so-called "Stuart Assault," (Comp I. 11 203, 205, 207, 209), and fails to set forth any facts establishing racial or class-based discrimination…." This is incorrect.

The Complaint at ¶¶ 193-202 alleges and incorporates abundant facts detailing relevant invidious discrimination against four EQUAL PROTECTION CLASSES:

1. *Parent-Child Class*: Compl. ¶ 194, FFR allegations ¶¶ 76-79, and Exs. cited therein)

2. *Domestic Relations Class*: Compl. ¶¶ 100-101, 195-19198, Exs. 1, 2. See *Griffin v. Breckenridge*, 403 U.S. 88 (1971*), Sever v. Alaska Pulp Corp.*, 978 F.2d 1529 (9th Cir. 1992);

3. *Gender Class*: This is a recognized equal protection class. Discrimination against males within that class is detailed at Compl. ¶¶ 199 and Exs. 1, 13. See *Larson v. School Bd. of Pinellas County, Fla.*, 820 F.Supp. 596 (M.D.Fla.1993) (males as gender equal protection class);

4. *Class of One*: Compl. ¶ 200. See *Vill. of Willowbrook v. Olech*, 528 U.S. 562, 564, 120 S. Ct. 1073, 1074-75, 145 L. Ed. 2d 1060 (2000) ("[t]he purpose of the equal protection clause of the Fourteenth Amendment is to secure every person within the State's jurisdiction against intentional and arbitrary discrimination, whether occasioned by express terms of a statute or by its improper execution through duly constituted agents." *Sioux City Bridge Co., supra*, at 445, 43 S.Ct. 190 (quoting *Sunday Lake Iron Co. v. Township of Wakefield*, 247 U.S. 350, 352, 38 S.Ct. 495, 62 L.Ed. 1154 (1918)); *Lazy Y Ranch Ltd. v. Behrens*, 546 F.3d 580, 592 (9th Cir. 2008).

6. Section 1986 Claims (MTD 15:23-28)

As above, the Complaint properly avers numerous violations of Section 1985 as well as Defendants as persons empowered to "prevent or aid in preventing" such violations. Compl. ¶¶ 211-214. The Section 1986 claims remain valid.

D. <u>Statute of Limitations Will Not Bar the Civil Right Allegations (MTD 16:3)</u>

Statutes of limitations longer than the two year period you assert for claims relevant to your clients are as follows:

- Actions based upon breach of written contract: Four years (C.C.P. § 337);
- Actions based upon fraud, duress, mistake: Three years (Civ. Proc. Code, § 338, subd. (d));
- Actions based upon "a liability created by statute: Three years (C.C.P. 338).

Of the Counts you attack (Counts 1, 2, 4, 5, 6, 9, 10, 11, 12, 13, 14, 15, and 16) as subject to a two year personal injury statute, Counts 9 (inducement to breach contract, covenant of good faith and fair dealing, wrongful interference), 11, and 12 (property damage) are not subject to the two, but the three year limitation period.

1. Equitable Estoppel

Further, "equitable estoppel precludes a defendant from pleading the bar of the statute of limitations where the plaintiff was induced to refrain from bringing a timely action by the defendant's duress, fraud, misrepresentation, or deception.

> The doctrine of equitable estoppel is based on the theory that a party who by his declarations or conduct misleads another to his prejudice should be estopped from obtaining the benefits of his misconduct. Under appropriate circumstances equitable estoppel will preclude a defendant from pleading the bar of the statute of limitations where the plaintiff was induced to refrain from bringing a timely action by the fraud, misrepresentation or deceptions of defendant. A defendant should not be permitted to lull his adversary into a false sense of security, cause the bar of the statute of limitations to occur and then plead in defense the delay occasioned by his own conduct. "
>
> …
>
> The doctrine of equitable estoppel is based on the theory that a party who by his declarations or conduct misleads another to his prejudice should be estopped to prevent him from obtaining the benefits of his misconduct. (*Morgan v. International Aviation Underwriters, Inc.* (1967) 250 Cal.App.2d 176, 180, 58 Cal.Rptr. 164.) Under appropriate circumstances equitable estoppel will lie to bar a defendant from pleading the bar of the statute of limitations where the plaintiff was induced to refrain from bringing a timely action by the fraud, misrepresentation or deceptions of defendant. (*Ginns v. Savage* (1964) 61 Cal.2d 520, 524–525, 39 Cal.Rptr. 377, 393 P.2d 689; *Mills v. Mills* (1956) 147 Cal.App.2d 107, 119, 305 P.2d 61.) A defendant should not be permitted to lull his adversary into a false sense of security and cause the bar of the statute of limitations to occur and then plead in defense the delay occasioned by his own conduct. (*Carruth v. Fritch* (1950) 36 Cal.2d 426, 433, 224 P.2d 702; *Holland v. Nelson* (1970) 5 Cal.App.3d 308, 313, 85 Cal.Rptr. 117.).
>
> The elements of estoppel to plead the statute of limitations when a public entity is involved are as follows: " '(1) the party to be estopped must be apprised of the facts; (2) he must intend that his conduct shall be acted upon, or must so act that the party asserting the estoppel had a right to believe it was so intended; (3) the other party must be ignorant of the true state of facts; and (4) he must rely upon the conduct to his injury.' " (*Denham v. County of Los Angeles* (1968) 259 Cal.App.2d 860, 866, 66 Cal.Rptr. 922, citing *Driscoll v. City of Los Angeles* (1967) 67 Cal.2d 297, 305, 61 Cal.Rptr. 661, 431 P.2d 245.)

Kleinecke v. Montecito Water Dist., 147 Cal. App. 3d 240, 245-46, 195 Cal. Rptr. 58, 61 (Cal. Ct. App. 1983)

The doctrine of equitable estoppel has been applied to toll the running of the statute of limitations in several situations, including fraud and duress. Such an estoppel arises, for example, when the defendant fraudulently conceals a cause of action or a fact on which the

existence of a cause of action depends or accrues. If, by fraudulent acts or misrepresentations, the defendant induces the plaintiff to delay bringing suit on a known cause of action until after expiration of the limitation period, the defendant is estopped to plead that the action is barred." CCP 43 Cal. Jur. 3d Limitation of Actions § 205; *Sofranek v. Merced County*, 146 Cal. App. 4th 1238, 53 Cal. Rptr. 3d 426 (5th Dist. 2007). "The statute of limitations in an action for relief on the ground of fraud or mistake begins to run from the time the facts constituting the fraud or mistake are discovered." 11A Cal. Jur. 3d Cancellation and Reformation § 30; Code Civ. Proc., § 338, subd. (d). Illegal threats of force or violence, also toll the running of the statute. *Ateeq v. Najor*, 15 Cal. App. 4th 1351, 19 Cal. Rptr. 2d 320, 324 (4th Dist. 1993), as modified, (May 18, 1993). Equitable tolling will also pause the running of the statute of limitations for any period during which a plaintiff was incapacitated by the tort which forms the basis of the action. *Id.*

Though not alleged in the Complaint, from April 15, 2010 until May 15, 2013, I have been illegally threatened, prosecuted, confined and imprisoned by SAC defendants, including your clients, in the action entitled *People of the State of California v. Colbern Stuart*, San Diego County Superior Court Case No. M104094DV. The illegal threats and incarceration constitute duress, tolling the statute of limitations for that entire 37 month period of time.

2. Incapacity

Further, state law tolls any relevant statute of limitations during the entirety of the 27 month period between February 28, 2011 and May 15, 2013. California's statute of limitations includes common law and statutory provisions for equitable and legal tolling while a plaintiff is incarcerated. Cal Code Civ. Pro. § 328.5 (property damage) (". . . the time . . . during which imprisonment continues is not deemed any portion of the time in this chapter limited for the commencement of the action, or the making of the entry or defense, but the action may be commenced, or entry or defense made, within the period of five years after the imprisonment ceases."), and § 352.1 (personal injury) ("If a person entitled to bring an action, mentioned in Chapter 3 (commencing with Section 335 [reciting "actions other than for the recovery of real property]), is, at the time the cause of action accrued, imprisoned on a criminal charge, or in execution under the sentence of a criminal court for a term less than for life, the time of that disability is not a part of the time limited for the commencement of the action, not to exceed two years.").

3. Statutory Tolling

Further, Cal. Gov't Code 945.3 prohibits any person charged with a crime from bringing a civil action relating to the charges "while the charges against the accused are pending before a superior court." Because the right to bring an action is foreclosed by statute, the time for bringing such an action is concurrently tolled. Cal. Gov't Code 945.3. the conviction, the statute was tolled for the entirety of the 41 month period between February 28, 2011 and May 15, 2013.

Tolling by duress, fraud, incapacitation, and lawful or unlawful imprisonment are questions of fact. Given leave I will amend to allege fraud, incapacity by illegal seizure, arrest, imprisonment, and duress from April 10, 2010 until May 15, 2013. I suggest that given my intent and ability to plead these defenses, disposition at this stage is not possible. Though you

retain the ability to assert these issues at any stage of the action, if your preference is to do so at the Rule 12 stage, I suggest that we stipulate for leave to amend the Complaint to allege them and withdrawal of these grounds in the MTD.

E. *Rooker-Feldman* Cannot Bar Any Count (MTD Sec. H)

The *Rooker-Feldman* doctrine has been eviscerated in a string of decisions in the Supreme Court and throughout the Circuit Courts of Appeal District Courts. "The *Rooker–Feldman* doctrine, we hold today, is confined to cases of the kind from which the doctrine acquired its name: cases brought by state-court losers complaining of injuries caused by state-court judgments rendered before the district court proceedings commenced and inviting district court review and rejection of those judgments. *Rooker–Feldman* does not otherwise override or supplant preclusion doctrine or augment the circumscribed doctrines that allow federal courts to stay or dismiss proceedings in deference to state-court actions." *Exxon Mobil Corp. v. Saudi Basic Indus. Corp*., 544 U.S. 280, 284, 125 S. Ct. 1517, 1521-22, 161 L. Ed. 2d 454 (2005). Granting a motion to dismiss based upon *Rooker Feldman* is exceedingly rare. "Since *Feldman*, this Court has never applied *Rooker–Feldman* to dismiss an action for want of jurisdiction. The few decisions that have mentioned *Rooker* and *Feldman* have done so only in passing or to explain why those cases did not dictate dismissal." *Exxon Mobil Corp. v. Saudi Basic Indus. Corp*., 544 U.S. 280, 287, 125 S. Ct. 1517, 1523, 161 L. Ed. 2d 454 (2005) (collecting cases refusing dismissal).

The most recent relevant caselaw in this Circuit has constrained the reach of the doctrine as follows: "If a federal plaintiff asserts as a legal wrong an allegedly erroneous decision by a state court, and seeks relief from a state court judgment based on that decision, *Rooker–Feldman* bars subject matter jurisdiction in federal district court. If, on the other hand, a federal plaintiff asserts as a legal wrong an allegedly illegal act or omission by an adverse party, *Rooker–Feldman* does not bar jurisdiction." *Noel v. Hall*, 341 F.3d 1148, 1164 (9th Cir. 2003) (denying application); *Exxon Mobil Corp. v. Saudi Basic Industries Corp.*, 544 U.S. 280, 284, 125 S.Ct. 1517, 161 L.Ed.2d 454 (2005); *Lance v. Dennis*, 546 U.S. 459, 460, 126 S. Ct. 1198, 1199, 163 L. Ed. 2d 1059 (2006) (In concurring, Justice Stevens emphasized that, "in *Exxon Mobil*, the Court, finally interred the so-called *Rooker-Feldman* doctrine."); *Bianchi v. Rylaarsdam*, 334 F.3d 895, 896 (9th Cir. 2003) (reversing District Court dismissal); *Kougasian v. TMSL, Inc.*, 359 F.3d 1136, 1140 (9th Cir. 2004) ("we conclude that the *Rooker-Feldman* doctrine does not apply to this case); *Bell v. City of Boise*, 709 F.3d 890, 897 (9th Cir. 2013) ("The court erred by dismissing Plaintiffs' claims for retrospective relief under the *Rooker–Feldman* doctrine."); *Maldonado v. Harris*, 370 F.3d 945, 950 (9th Cir. 2004) ("the doctrine does not deprive the district court of jurisdiction over any of Maldonado's claims…"); *Palmer v. Riverside Cnty.*, 149 F. App'x 643, 644 (9th Cir. 2005) ("The district court incorrectly concluded that it lacked jurisdiction under *Rooker-Feldman*…); *Hafter v. Bare*, 2:10-CV-00553-PMP, 2013 WL 3964273 (D. Nev. Aug. 1, 2013) ("The narrow confines of the *Rooker–Feldman* doctrine therefore do not preclude this Court from exercising jurisdiction over this case.").

Rooker-Feldman bars only "appealable decisions of state court judges accused in subsequent federal court proceedings", *Noel v. Hall, infra*. A recommendation to hire and failure to oversee an independent commercial forensic psychology enterprise created and operating under the guidance and oversight of your clients plainly is not an appealable decision. Compl. ¶¶

238-239. "Under *Rooker–Feldman*, a federal district court does not have subject matter jurisdiction to hear a direct appeal from the final judgment of a state court. The United States Supreme Court is the only federal court with jurisdiction to hear such an appeal. . . . *Rooker-Feldman* prohibits a federal district court from entertaining a "de facto appeal of the local court's judicial decision." *Noel v. Hall*, 341 F.3d 1148, 1154-55 (9th Cir. 2003) (analyzing the development of the *Rooker-Feldman* doctrine).

1. The Cognizable Legal Theories Regarding WOHLFEIL and SCHALL

To assist your understanding it may be helpful to read the allegations against WOHLFEIL and SCHALL in light of the themes established in the entire Complaint, and incorporated by reference into these claims. The Complaint alleges that the San Diego Superior and its judicial and administrative staff, including but not limited to a number of the judicial officers present in this lawsuit, created, formed, operate, oversee, supervise, employ, vet, train, facilitate, coordinate with, affiliate with, endorse, recommend, refer to, and control the private, for-profit, commercial enterprises identified in the enterprise allegations (ENTERPREISES 1-5) in the conduct of a fraudulent, deceitful, harmful, crime ring. Your clients' involvement with and responsibility therefore includes a wide range of activity which form the basis for liability in the present lawsuit. Allegations include, for example, policymaking (including regulations, habits, customs, etc.), direct and indirect actions of vetting, training, oversight, discipline, endorsement, and control of each of the persons comprising these criminal enterprises including, but not limited to, the DDIPS defendants identified herein.

Each of your clients is alleged to have a culpable role in one or more of the many facets of these operation while bound by one or more PROFESSIONAL DUTIES and while at times under color of law. Each of your clients is alleged to have knowledge of the culpable nature of these enterprises. See *Starr v. Baca, OSU v. Ray, supra*. Each of your clients is alleged to have committed one or more culpable acts related to the operation of these enterprises, including culpability on common law grounds as well as the California statutory public servant liability for acts and omissions "setting in motion" and "deliberate indifference" to actual or likely constitutional injury. See *Id., Johnson v. Duffy, supra*. Such duties and awareness create rights of citizens foreseeably impacted by the acts and failures to act. See *Matthews v. Eldridge, Starr v. Baca*. The Complaint alleges that none of these acts are authorized by law and therefore ultra vires and/or *coram non judice*. See *Lacey v. Maricopa Cnty.*, 693 F.3d 896, 913 (9th Cir. 2012)

2. Rooker-Feldman: Facts Alleged In Support of Cognizable Legal Claims Regarding WOHLFEIL and SCHALL

The MTD artificially cabins the numerous averments against WOHLFEIL and SCHALL, then proceeds to mischaracterize those few it acknowledges as "nothing more than" judicial acts subject to a *Rooker-Feldman* bar: "While Count 17 names WOHLFEIL and SCHALL as defendants, this claim makes no allegations concerning either judge and clearly fails to state a cognizable count against these judges." (MTD 17:1-3). "[T]he crux of Counts 18 and 19 is that WOHLFEIL and SCHALL erred in the recommendation to use DOYNE INC. as the mediator in Stuart's dissolution proceeding. Such a challenge is nothing more than an attack on the decisions and the conduct of Judges WOHLFEIL and SCHALL during the dissolution proceeding. The

claims are therefore also subject to dismissal under the *Rooker-Feldman* doctrine." MTD at 18. These assertions are demonstrably inaccurate.

The allegations regarding WOHLFEIL and SCHALL are far more extensive than the MTD admits. The Complaint avers that the STUART-DOYNE CONTRACT was made pursuant to a referral and recommendation to the private commercial forensic psychology enterprise and direct oversight thereof by WOHLFEIL and SCHALL (Compl. ¶¶ 237, 239). The referral and recommendation knowingly contained or adopted numerous false representations and warranties by DOYNE INC. as an agent for WOHLFEIL, SCHALL and the private commercial psychological and legal services enterprises (Compl. ¶¶ 216-235) of which WOHLFEIL and SCHALL are supervisors, operators, and affiliates, conspirators, direct benefactors, and direct supervisors. (Compl. ¶¶ 152, 162, 169, 236-251, 274, 278, 284-289). Further, to the extent WOHLFEIL and SCHALL recommended, oversaw, and employed DOYNE INC in a private commercial for-profit forensic psychology enterprise, they are liable under respondeat superior (Compl. ¶ 176). They are further liable under RICO as co-conspirators, aiders and abettors, and accessories. 18 U.S.C. §§ 2, 3. See Section E.2, infra.

Your attack seems to be that allegations also relevant to Count 17 are contained only in Count 18. Notwithstanding the general incorporation paragraph stated at Compl. ¶ 141, and the recitation of the Complaint paragraphs in the preceding paragraph above, to the extent that you assert that, by placing Count 17 ahead of Counts 18 and 19, Count 17 does not formally incorporate the Count 18-19 allegations by reference, the three related Counts read together establish a "cognizable legal theory" and provide enough notice for your clients to understand the relevance between these Counts (as you clearly did), and as such provides your clients adequate notice to plead or defend under Rule 8.

The averments specific to Counts 17-19 against WOHLFEL and SCHALL include the following. Counts 18 and 19 are not limited to "a complaint regarding a recommendation" to use DOYNE. As detailed above, claims 17-19 allege "CULPABLE" failures to "oversee, supervise, train, discipline…" "prevent or aid in preventing" "DOYNE and DOYNE INC "as a Forensic Psychologist" and a "commercial psychology enterprise." Compl. ¶ 238. The Complaint further avers that the lack of supervision and oversight "CULPBLY and UNREASONABLY permitted DOYNE to commit the fraud, abuse of process, extortion, and terror. Compl. ¶ ¶ 221-231. Similarly, the Complaint alleges much more than "an attack on the decisions and the conduct of Judges WOHLFEIL and SCHALL during the dissolution proceeding." It alleges an ongoing operation a complex private, for-profit, commercial forensic psychology enterprise by each of your clients, one aspect of which was the extra-judicial referral by WOHLFEIL, but also included the ongoing oversight, training, supervision, and conduct and participation in of the enterprise, activities, including DOYNE INC'S TERRORISM and FRAUD. *Id.*

Further, even under whatever authority remains of the *Rooker-Feldman* doctrine, *Rooker Feldman* would not bar the acts alleged in the Complaint. The Complaint avers grounds for liability against your clients which neither (1) arises out of an "allegedly erroneous decision" by a state court" nor (2) "seeks relief from a state court judgment based on that decision." WOHLFEIL'S *referral* to and *endorsement of* DOYNE INC. was not an appealable "decision": I could not appeal or recite as error to a court of appeals the DOYNE INC. referral, DOYNE

INC's fraud and terrorism, or abuse of process. Nowhere does the Complaint seek relief from the state court dissolution proceeding, which involved only issues of child custody and spousal support. The Complaint nowhere asserts an error leading to a reversible judgment and does not seek to disturb any dissolution proceeding order.

To the extent that the Complaint seeks relief from WOHLFEIL, SCHALL, and other of your clients in their oversight of DOYNE which may be part of their job responsibilities, these functions are administrative, ministerial, or otherwise not a "judicial act", and similarly not appealable or citable on appeal. The Complaint does not reflect that WOHLFEIL or SCHALL were obligated or requested to take any action within the dissolution action—judicial or otherwise. The allegations regarding WOHLFEIL and SCHALL describe culpable referral, oversight, and participation in terrorism, fraud, and abuse with respect to operation of the commercial forensic psychology enterprise, perhaps somehow related to the Superior Court's administration of the Family Law Division, but as the relationship is unlike any I've ever seen or heard of in 18 years in practice, this issue is unclear, and as such alleged generally. Compl. ¶ 238. The Complaint alleges your clients' operation of that enterprise in private, commercial, and/or administrative function; policymaking, implementation, oversight, selection, vetting, qualifying, recommending, overseeing, supervising, training, disciplining, and retaining of various "approved" family court child custody evaluators, including Defendants LOVE, GRIFFIN, CORRIGAN, SIMON, DOYNE and DOYNE INC. Compl. ¶¶ 33, 41-46, 284-286, 290-296, 306, 320-331. None of these functions or actions taken pursuant thereto are appealable decisions.

The Complaint alleges against WOHLFEIL that, in such commercial, criminal, and/or administrative function, he made negligent and/or fraudulent misrepresentations regarding DOYNE and DOYNE INC's qualifications, character, eligibility, reputation, and fitness as a mediator. Compl. ¶ 239. WOHLFEIL further "recommended" and agreed to "oversee Defendant DOYNE to 'mediate' custody in the Stuart Dissolution." Compl. ¶ 238. DOYNE or DOYNE, INC. were at all times referenced commercial entities—not appointed, elected, or operating as public servants for public purposes by or on behalf of anyone. The Complaint alleges that Defendant CJP and the U.S. Attorney stated they had no jurisdiction over the commercial enterprises and could not issue judicial discipline. Compl. ¶¶ 85, 363. To the extent that WOHLFEIL, SCHALL, and other SUPERIOR COURT DEFENDANTS did have commercial and/or administrative supervisory authority over DOYNE INC, the Complaint alleges that they illegally abstained from exercising it. Compl. ¶¶ 162-176, 236-257, 332-335.

Further, at the time STUART hired DOYNE INC, DOYNE INC. did not have adequate training, qualifications, or certifications to operate as represented by WOHLFEIL. Compl. ¶¶ 324-327. The Complaint alleges that SCHALL "undertook WOHLFEIL'S responsibilities for supervision and oversight of DOYNE and DOYNE INC" and that "From the date the Stuart Dissolution was re-assigned from Defendant WOHFEIL to Defendant SCHALL, until on or about November, 2009, Defendant SCHALL acted, inter alia, in the same administrative capacity in supervising Defendants DOYNE and DOYNE INC." Compl. ¶ 240. The Complaint concludes that "WOHLFEIL and SCHALL had independent and/or joint and several Supervising Authority over Defendants DOYNE and DOYNE INC." and that they failed to properly exercise

such authority, thereby permitting the DOYNE FRAUD, HARASSMENT AND ABUSE, and TERRORISM. Compl. ¶¶ 241-242.

Even if the allegations were cabined as you cast them to "decisions" of each judge, they would not be appealable "judicial acts" as the functions of *referring, overseeing,* or *operation* of a commercial psychology enterprise have no pre-1871 common law historical antecedents, are not ordinarily performed by a judge, do not require any judicial authority, are not within any judge's statutory jurisdiction, are not subject to appeal or review, are guided by no precedent, involve no questions of law, do not involve resolution of any "case or controversy" posed by any party, and thus exhibit none of the ordinary hallmarks of a "judicial act." *Pierson v. Ray*, 386 U.S. 547, 559, 87 S. Ct. 1213, 1220, 18 L. Ed. 2d 288 (1967); *Pulliam v. Allen*, 466 U.S. 522, 104 S. Ct. 1970, 80 L. Ed. 2d 565 (1984); *Miller v. Gammie*, 335 F.3d 889, 897 (9th Cir. 2003). As their acts were not "judical acts", they could not be appealed, and thus in this action I do not seek to "overturn" any judicial decision of any state court judicial official.

To illustrate the point, DOYNE INC could have been hired by the parties separately from your clients' endorsement, referral, supervision, discipline, training, vetting, oversight, and control. Unlike true "judicial acts"—my hiring of DOYNE was a *commercial transaction*—it required and received no judicial action or process. The fact that certain of our county's employees and judicial officials have chosen to conduct or participate in a commercial psychological enterprise does not make those activities a governmental act, and under no circumstances a judicial one. Compl. ¶¶ 284, 290-296 ("The DDI-FICE consists of behavioral science "professional custody evaluators," mediators, and the organizations which certify, oversee, discipline, appoint, refer, conspire, associate, or affiliate with them" to "constitute a criminal enterprise, organized and maintained by and through a consensual hierarchy of, managers, directors, officers, supervisors, agents, deputies, and/or representatives that formulate and implement policies relative to providing the rendition of "forensic psychology" services to the public, including, but not restricted to, DDIL, their lawyers, judges, and others in the field of family law, child custody, and domestic relations."). These descriptions do not allege any *governmental* authorization, operation, or administration.

Further allegations regarding your clients as members, co-conspirators, and accomplices of the SAC in the STUART ASSAULT, CHILLING, and HARRASSMENT and ABUSE in retaliation for asserting claims, rights and privileges in FFRRESA including protection of the commercial markets, interference with competition, and obstruction of justice. These acts are not judicial acts—but predatory market behavior by independent individuals with significant involvement and interests in private commercial activity, none of which are protected as judicial, administrative, or even legitimate government functions under *Rooker-Feldman* or any other doctrine to protect legitimate government functions.

Participation by judges does not transform a commercial and/or administrative function into a judicial act. As the referral, conduct, supervision, operation, and control of a commercial and/or administrative functions in a private commercial enterprise can't be appealed by anyone to any court they are not "de facto appeals" "inextricably intertwined" with a state court proceeding, and are not subject to any *Rooker-Feldman* bar. *Noel* at 1154-55.

a. Rooker-Feldman does not bar Judicial Acts Resulting From Extrinsic Fraud

Moreover, as applied in the Ninth Circuit, the *Rooker-Feldman* does not bar actions seeking to overturn state court decisions which are based upon the commission of "extrinsic fraud" on the court, which cause a defective state court decision. *Kougasian v. TMSL, Inc*., 359 F.3d 1136 (9th Cir. 2004). "If a federal plaintiff asserts as a legal wrong an allegedly erroneous decision by a state court, and seeks relief from a state court judgment based on that decision, *Rooker-Feldman* bars subject matter jurisdiction in federal district court. If, on the other hand, a federal plaintiff asserts as a legal wrong an allegedly illegal act or omission by an adverse party, *Rooker-Feldman* does not bar jurisdiction." *Id*. at 1164.

In *Kougasian*, a federal court plaintiff was seeking damages in federal court for injuries caused by the federal court defendant, who was also the defendant in the state court action. The federal court plaintiff and defendant were similarly adverse in the earlier state court action. In federal court, the plaintiff alleged that the defendant in the state court action committed "extrinsic fraud on the state court" by submitting false declarations to the state court, thereby prejudicing the plaintiff in state court, allegedly permitting the state court defendant to prevail in state court. "But for *Rooker-Feldman* to apply, a plaintiff must seek not only to set aside a state court judgment; he or she must also allege a legal error by the state court as the basis for that relief. See *Noel*, 341 F.3d at 1164("If a federal plaintiff asserts as a legal wrong an allegedly erroneous decision by a state court, and seeks relief from a state court judgment based on that decision, *Rooker-Feldman* bars subject matter jurisdiction in federal court."). A plaintiff alleging extrinsic fraud on a state court is not alleging a legal error by the state court; rather, he or she is alleging a wrongful act by the adverse party. See *Id*. ("If, on the other hand, a federal plaintiff asserts as a legal wrong an allegedly illegal act or omission by an adverse party, *Rooker-Feldman* does not bar jurisdiction.")." *Kougasian* at 1140-41.

To the extent that the MTD asserts that the Complaint's allegations of fraud relate to the present action, such fraud is "extrinsic" to this action, and not barred under *Rooker-Feldman*. "Extrinsic fraud on a court is, by definition, not an error by that court. It is, rather, a wrongful act committed by the party or parties who engaged in the fraud. *Rooker-Feldman* therefore does not bar subject matter jurisdiction when a federal plaintiff alleges a cause of action for extrinsic fraud on a state court and seeks to set aside a state court judgment obtained by that fraud." *Kougasian* at 1141.

b. *Rooker-Feldman Cannot Bar Any Family Court Order While Jurisdiction Is Pending*

Finally, *Rooker-Feldman* applies only to "final" state court judgments. As these defendants in particular are well aware, a state domestic relations court retains "continuing jurisdiction" over the parties in a child custody decision until the child reaches the age of majority, or the custody jurisdiction is otherwise terminated. *In re Marriage of Fernandez-Abin*, 191 Cal. App. 4th 1015, 1042, 120 Cal. Rptr. 3d 227, 248 (2011), reh'g denied (Feb. 3, 2011). As such, a state court child custody decision may become "final" for purposes of Rooker Feldman only upon termination of California's assertion of "continuing jurisdiction" in such cases. *Exxon Mobil Corp. v. Saudi Basic Indus. Corp*., 544 U.S. 280, 286, 125 S. Ct. 1517, 1523, 161 L. Ed. 2d 454 (2005).

c. *ALKSNE, TRENTACOSTA and other Judicial Defendants: MTD Footnote 5 Is Untrue (MTD 19:22)*

MTD footnote 5 alleges that "because there are no facts establishing that either Judge Wohlfeil or Judge Schall violated Stuart's constitutional rights," Count 18 of the Complaint fails as against TRENTACOSTA, ALKSNE, and SUPERIOR COURT DEFENDANTS. This is also untrue.

The allegations regarding TRENTACOSTA and ALKSNE relate to their conduct and participation in and oversight and control of the private for-profit commercial forensic psychology enterprise including DOYNE INC and other named (and unnamed) DDIPS defendants. Count 18 alleges that TRENTACOSTA, ALKSNE, and SUPERIOR COURT DEFENDANTS "had the power to oversee, supervise, train, discipline DOYNE and DOYNE INC. so as to prevent or aid in preventing the commission of DOYNE and DOYNE INC.'s acts as alleged herein." Compl. at ¶ 236. While that supervisory power certainly included the "second tier" authority to oversee WOHLFEIL and SCHALL in their oversight of DOYNE INC., the allegations in the Complaint are not limited to "second tier oversight" of DOYNE INC vial WOHLFEIL and SCHALL, but include all of the allegations relating to the operation of the forensic psychology enterprise detailed extensively above. Further, the statement is untrue even considering only the "second tier" liability, as the Complaint does allege "facts establishing that either Judge Wohlfeil or Judge Schall violated Stuart's constitutional rights," as detailed above. As such, the attack in footnote 5 is untrue.

F. Lanham Act Claims (MTD Section "I", 19:2-20:1)

This section of the MTD appears not to attack the sufficiency of facts alleged, but the veracity of its allegations, which is inappropriate under a Rule 12(b)(6) motion. "Contrary to Stuart's assertion, the Superior Court Defendants do not engage in the advertisement or sale of goods or services and are not involved in interstate commerce", "do not compete commercially with anyone, let alone Stuart." Plainly this attack focusses on the state of affairs which your client hopes to prove at trial.

On the relevant inquiry, the presumed-true allegations of the Complaint aver facts sufficient to state a claim under a cognizable legal theory to provide notice required under Rule 8. 15 U.S.C. § 1125 provides:

(a) Civil action

(1) Any person who, on or in connection with any goods or services, or any container for goods, uses in commerce any word, term, name, symbol, or device, or any combination thereof, or any false designation of origin, false or misleading description of fact, or false or misleading representation of fact, which—

> (A) is likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection, or association of such person with another person, or as to the origin, sponsorship, or approval of his or her goods, services, or commercial activities by another person, or
>
> (B) in commercial advertising or promotion, misrepresents the nature, characteristics, qualities, or geographic origin of his or her or another person's goods, services, or commercial activities,

shall be liable in a civil action by any person who believes that he or she is or is likely to be damaged by such act.

> (2) As used in this subsection, the term "any person" includes any State, instrumentality of a State or employee of a State or instrumentality of a State acting in his or her official capacity. Any State, and any such instrumentality, officer, or employee, shall be subject to the provisions of this chapter in the same manner and to the same extent as any nongovernmental entity.

The Complaint recites this language in pertinent part, asserting that your clients "in connection with their businesses, professions, PROFESSIONAL DUTIES, CONSPIRACIES and ENTERPRISE OPERATIONS, use in their advertisements, promotions, sale and offer for sale of their legal services words, terms, names, symbols, and devices, and combinations thereof, (COMMERCIAL SPEECH) which are false and misleading." Compl. ¶ 260. The Complaint details facts in support of this cognizable legal theory as follows:

1. *Businesses and Professions*

Your clients' said "businesses, professions. . . CONSPIRACIES and ENTERPRISE OPERATIONS" includes the court's own operations (Compl. ¶¶ 9, 10, 11, 12), those of and in conjunction with its co-defendants including SAC, SDCBA and ALLIANCE (23, 25-56, 59, 60, 70, 112, 158, 162, 166, 167, 168, 173, 174, 181, 186, 212-213, 236-243, 247, 248, 249, 251, 253, 256, 279-296), the operation, conduct, and participation in its own local and private commercial forensic psychology enterprises (Compl. ¶¶ 272-296). Plaintiffs' businesses and operations are set forth at Comp. ¶¶3, 71-75, 77-101, et passim). Plaintiffs and defendants compete in the common DDI Marketplace. Compl. ¶¶ 279-290, 297-305.

2. *Joint Liability for Misrepresentations and Advertisements of Others*

The relevant acts; "uses in commerce any word, term, name, symbol, or device, or any combination thereof, or any false designation of origin, false or misleading description of fact, or false or misleading representation of fact," and "commercial advertising or promotion " include statements and advertisements of its own (Compl. Ex. 1, P22, 69-71) and its agents' and/or affiliates (Compl. ¶¶ 261-262). To the extent your clients knowingly participated in the creation, development and propagation of the ... false advertising campaign" they may be held jointly liable for all Lanham act violations of the co-tortfeasors. *TrafficSchool.com, Inc. v. Edriver, Inc.*,

633 F. Supp. 2d 1063, 1082 (C.D. Cal. 2008) aff'd in part, rev'd in part and remanded, 653 F.3d 820 (9th Cir. 2011); *In re Century 21–RE/MAX*, 882 F.Supp. 915, 925 (C.D.Cal.1994) (quoting *Gillette Co. v. Wilkinson Sword, Inc*., 795 F.Supp. 662, 664 (S.D.N.Y.1992)). Under the Lanham Act, "[a] corporate 'officer or director is, in general, personally liable for all torts which he authorizes or directs or in which he participates, notwithstanding that he acted as an agent of the corporation and not on his own behalf.' " *Murphy Tugboat Co. v. Shipowners & Merchants Towboat Co*., 467 F.Supp. 841, 852 (N.D.Cal.1979), aff'd sub nom., *Murphy Tugboat Co. v. Crowley*, 658 F.2d 1256 (9th Cir.1981)). The same is true for the supplemental state law claims under B&P Code sections 17200 et seq. *Wyatt v. Union Mortgage Co*., 24 Cal. 3d 773, 784, 598 P.2d 45, 51-52 (1979); *Unruh v. Truck Insurance Exchange* (1972) 7 Cal.3d 616, 631, 102 Cal.Rptr. 815, 498 P.2d 1063 ("The effect of charging . . . conspiratorial conduct is to implicate all . . . who agree to the plan to commit the wrong as well as those who actually carry it out. (Citations.)"; *Black v. Sullivan* (1975) 48 Cal.App.3d 557, 566, 122 Cal.Rptr. 119, 125.

3. False or Misleading Statements of Fact

The Complaint alleges your clients facilitate, encourage, and propagate COMMERCIAL SPEECH through its conspiracies and enterprises, including the COMMERCIAL SPEECH of DOYNE, DOYNE INC (Compl. ¶ 261 B), ACFEI (Compl. ¶ 261 C), ALLIANCE, CJC, AOC, FRITZ, BIERER, and BLANCHET. Compl. ¶ 261-262, 264, and Exs. 1, 43, 41, 42, 46-49.

The Complaint alleges that the "false or misleading description of fact, or false or misleading representation of fact" by your clients include "that their services abide by ordinary and professional standards of care, are legal, efficient, safe, and effective exercise of governmental powers and public licenses provided under law as follows . . . ." (Compl. ¶ 261); "Public and private services are legal, safe, efficient, obedient to PROFESSIONAL DUTIES and standards of care." *Id*. These allegations clearly do articulate abundant detail your clients "engage in the advertisement or sale of goods or services." These false or misleading descriptions and representations include:

> "DEFENANTS represent that their services abide by ordinary and professional standards of care, are legal, efficient, safe, and effective exercise of governmental powers and public licenses provided under law as follows per defendant: . . .
>
> public and private services are legal, safe, efficient, obedient to PROFESSIONAL DUTIES and standards of care. . . .
>
> CJC/AOC/SCSDC, ALLIANCE, ALLIANCE and Family Court Facilitator Officers are legal advisors authorized to provide legal representation and advice; DV Forms are legal; "abuse" is a crime; Judges can legally issue DVILS Orders; the FFR and CFR are not available to California Citizens; there is no right to jury trial in liberty or property deprivation hearings; the DVILS are valid and enforceable.; all Defendants exercise their authority according . . . .

> In their activities described herein, DEFENDANTS operate CRIMINAL ENTERPRISES which defraud, abuse, oppress, and deprive PLAINTIFFS and the general public of their property and liberty.
>
> In their COMMERCIAL SPEECH promotion for such ENTERPRISES, including websites, literature, public appearances, statements and representations, DEFENDANTS misrepresent theirs and others' legal and professional services as legal, fair, honest, and beneficial, when in fact they are fraudulent, harmful, inefficient, oppressive, and illegal.
>
> Further, in their advertising and promotion DEFENDANTS fail to warn consumers of the illegality of their services, the constitutional deprivations they cause and form the basis of liability for, and the many disastrous pitfalls which occur regularly from use of such professional services. As such, DEFENDANTS mislead as to the nature, characteristics, qualities, of their and their ENTERPRISE affiliates' services, including the nature of the ENTERPRISE and purposes of the SAD . . ,
>
> Defendants mislead consumers by misdirection from superior, legitimate, legal services by one or more SAD, and by advising "that's how it is" in family court, and by failing to advise of the full options consumers have toward legal, healthy, and safe alternatives to avoid the abundant harm likely to befall those who engage in such activities.
>
> DDICE DEFENDANTS operate SAD and "black hat" operations under the guise of "white hat" legality and professional responsibility, thereby deceiving consumers of legal services into engaging such services with the expectations that such is as safe, lawful, and healthy as "standard" legal and psychological services. They are not."

These allegations plead both direct and indirect action, deliberate indifference, policy and operation, conduct and participation in enterprise, conspiracy, and derivative action on behalf of your clients in their operation of the count court's in-house family law facilitator offices, private commercial forensic psychology and law enterprises, and specific statements about what court personnel "CAN" and "CANNOT" do. (Ex. 1, P22, P69-71). The Complaint alleges that to the extent that your clients operate or are affiliated with the criminal enterprises, the representations and advertisements of for example, DOYNE, INC., ALLIANCE, BIERER, BLANCHET, and FRITZ, are attributable to your clients in their administrative and/or private commercial operations.

4. Government as a Proper Defendant

Your attack seems to rest on an assumption that governments don't advertise. This is contradicted by the language of the statute defining "person" as including "any State, instrumentality of a State or employee of a State or instrumentality of a State acting in his or her official capacity. Any State, and any such instrumentality, officer, or employee, shall be subject to the provisions of this chapter in the same manner and to the same extent as any nongovernmental entity."

Governments regularly advertise and represent facts to consumers. For example, educate and inform consumers, voters, and citizens, attract industry (See Kevin T. Higgins, *True*

Marketing Absent in Economic-Development Efforts, Marketing News, Oct. 11, 1985, at 1, 1 (state economic development authorities have engaged in comparative advertising to attract industry), and for other purposes. See Charles J. Walsh & Marc S. Klein, *From Dog Food to Prescription Drug Advertising: Litigating False Scientific Establishment Claims Under the Lanham Act*, 22 Seton Hall L. Rev. 389, 392 (1992).

There are too many examples of state advertising to detail, but by way of example the FBI posts advertisements relating to intellectual property "theft" of data on peer-to-peer networks, "gray market" counterfeiting, off-label medication sales, protection of industry trade secrets. http://www.fbi.gov/losangeles/news-and-outreach/public-service-announcements/flea-market-psa. The Department of Homeland Security partners with the social media industry to promote "cybersecurity awareness". http://www.dhs.gov/sites/default/files/publications/Private%20Industry%20and%20Stop.Think_.Connect_0.pdf. The Department of Energy and State of Florida partner to promote energy efficiency by selling energy management software. http://energy.gov/articles/energy-department-launches-public-private-initiative-help-oil-and-natural-gas-industry. The FCC partners with television manufacturers to "educate" consumers about preferred Digital Television formats during the transition from analog to digital television. http://books.google.com/books?id=sMXVKjr9LFYC&pg=PA7&lpg=PA7&dq=public+service+announcement+with+private+industry&source=bl&ots=4E4i-kO_3q&sig=b8CYXC7K1bCeFUopn0fwxNsF7Mw&hl=en&sa=X&ei=ZmNoUsCqHoXO9gSV9oD4Cw&ved=0CGsQ6AEwCQ#v=onepage&q=public%20service%20announcement%20with%20private%20industry&f=false.

5. *Representations as to Scientific Facts*

The Lanham Act provides a private right of action for unfair competition based on false scientific establishment claims such as those of your client's collaborators and co-conspirators DOYNE INC., SDCBA, SIMON, LOVE, and ALLIANCE. Courts have recently addressed Lanham Act challenges to scientific establishment claims in advertising for products literally ranging from dog food to prescription drugs. Such advertisement are known to have profound impact on public awareness, safety, and health. Charles J. Walsh & Marc S. Klein, *From Dog Food to Prescription Drug Advertising: Litigating False Scientific Establishment Claims Under the Lanham Act*, 22 Seton Hall L. Rev. 389, 393 (1992).

In San Diego, this ordinary practice of government teaming with private industry to make false representations regarding the legality and efficacy of legal and psychological services apparently includes the intricate partnerships in promoting legal services including promotion and instruction relating to court services relating to use of the DVILS ORDERS, ALLIANCE (Exs. 1, 41) public/private social services, and each named co-defendant's COMMERCIAL SPEECH through the private commercial forensic psychology and law enterprises. Exs. 42-44-49. The referenced Complaint sections allege that these representations and statements of fact pertain to each defendants' or co-conspirator/enterprise services, are alleged to be false and misleading, they are actionable. As each of plaintiffs and defendants maintained respective COMMERCIAL PURPOSES (Compl. ¶¶ 109-111 (Plaintiffs), 269, 290-305 (Defendants), in developing the relevant DDIL MARKET, plaintiffs have standing to assert such injury.

G. RICO Allegations (MTD Section J)

1. The Complaint's RICO Allegations are Complex, Yet Fully Cognizable

Like the complex criminal enterprises RICO and the civil rights conspiracies the asserted statutes are intended to extinguish, the Complaint's allegations describing those multiple enterprises, diverse entities, schemes to defraud, predicate crimes and conspiracies are complex. The statement of findings that prefaces the Organized Crime Control Act of 1970 reveals that Congress enacted RICO to redress "a highly sophisticated, diversified, and widespread activity that annually drains billions of dollars from America's economy by unlawful conduct and the illegal use of force, fraud, and corruption" using "social exploitation" deriving "money and power . . . increasingly used to infiltrate and corrupt legitimate business . . . and to subvert and corrupt our democratic processes." The breadth of the "organized crime activities in the United States weaken the stability of the Nation's economic system, harm innocent investors and competing organizations, interfere with free competition, seriously burden interstate and foreign commerce, threaten the domestic security, and undermine the general welfare of the Nation and its citizens." Congress intended RICO to supplement state laws under which "organized crime continues to grow because of defects in the evidence-gathering process of the law inhibiting the development of the legally admissible evidence necessary to bring criminal and other sanctions or remedies to bear on the unlawful activities of those engaged in organized crime and because the sanctions and remedies available to the Government are unnecessarily limited in scope and impact. 84 Stat. 922–923." *U.S. v. Turkette*, 452 U.S. 576 (1981).

RICO's federal law mechanisms are by design directed to combat *only* complex organizations, and thus require by nature complex pleading and proof. As this suit involves diverse acts and enterprises harming plaintiffs in their efforts to combat criminal enterprises violating the civil rights of a wide class of U.S. citizens numbering in the millions, the Complaint's complexity is precisely as prescribed. The Complaint asserts 34 distinct civil causes of action and 34 related indictable federal crimes, two counts for prospective relief attacking an entire body of unconstitutional family and criminal law, a protective order preventing defendants from continuing a heinous pattern of HARASSEMENT AND ABUSE, and prays for a broad range of legal and equitable remedies against 49 distinct public and private individuals and organizations comprising a nationwide Domestic Dispute Industry. Even counsel experienced in this rapidly-evolving body of federal civil and criminal law would be understandably paused to comprehend this lawsuit's depth and complexity.

It is no fault of Defendants that, despite their relative sophistication in the law, they cannot readily grasp the weight and complexity of the statutes underpinning the lawsuit posed against them. Neither should it be accused as the fault of the Plaintiffs who properly assert it.

2. Sufficient Facts Alleging RICO "ongoing organization" and "pattern" (MTD 21:2-8).

The MTD alleges the Complaint fails to allege sufficient facts to establish (a) "ongoing organization", (b) "individual actions of any Superior Court Defendants", and (c) "allegations amounting to a pattern." MTD 21:2-8.

a. "Ongoing Organization":

To assist an understanding of the analysis, I set forth the relevant statutory reference and interpreting law.

18 U.S.C. 1964(c) provides:

> It shall be unlawful for any person employed by or associated with any enterprise engaged in, or the activities of which affect, interstate or foreign commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering activity or collection of unlawful debt.

The "missing element" you identify—"ongoing organization" is one of the requirements to prove the existence of an "enterprise." 18 U.S.C. § 1961(4) defines "enterprise" to include "any individual, partnership, corporation, association, or other legal entity, and any union or group of individuals associated in fact although not a legal entity." In *Turkette* the Supreme Court described an "enterprise in fact" as "a group of persons associated together for a common purpose of engaging in a course of conduct." 452 U.S., at 580, 583, 101 S.Ct. 2524. Such an enterprise, "is proved by evidence of an ongoing organization, formal or informal, and by evidence that the various associates function as a continuing unit." *Id.*, at 583, 101 S.Ct. 2524.

> "To establish the existence of such an enterprise, a plaintiff must provide both 'evidence of an ongoing organization, formal or informal,' and 'evidence that the various associates function as a continuing unit.'" To establish the "ongoing organization" prong of the test, a plaintiff must prove the existence of a "vehicle for the commission of two or more predicate crimes." *Odom v. Microsoft Corp.*, 486 F.3d 541, 552 (9th Cir. 2007). "Although not every member need be involved in each of the underlying acts of racketeering, the continuity requirement requires the associates' behavior to be ongoing rather than isolated activity. *Id.* An associated-in-fact enterprise under RICO does not require any particular organizational structure, separate or otherwise." *Odom* at 551.
>
> Thus, the "ongoing organization" element is "not very demanding" and satisfied by proof of virtually any "formal or informal" *coordination* between two or more entities leading to the commission of two or more predicate crimes. In *Odom* this included "mechanisms for transferring plaintiffs' personal and financial information" and a "cross-marketing contract".

Id.

Courts discussing "ongoing organization" find "ongoing organization" on virtually any evidence of coordination. The clearest cases of such structure were articulate by the dissent in

Boyle ("In cases involving a legal entity, the matter of proving the enterprise element is straightforward, as the entity's legal existence will always be something apart from the pattern of activity performed by the defendant or his associates." *Boyle v. United States*, 556 U.S. 938, 955, 129 S. Ct. 2237, 2249, 173 L. Ed. 2d 1265 (2009)). The majority opinion explained that though a formal "structure" such as a corporation is sufficient, it is not necessary. *Boyle* at 948. See also *United States v. Feldman*, 853 F.2d 648, 660 (9th Cir.1988) ("[C]orporate entities ha[ve] a legal existence separate from their participation in the racketeering, and the very existence of a corporation meets the requirement for a separate structure."

Virtually all district court cases within this circuit have found "ongoing organization" to exist. See *Mitsui O.S.K. Lines, Ltd. v. Seamaster Logistics, Inc*., 871 F. Supp. 2d 933, 941 (N.D. Cal. 2012) (finding ongoing organization on allegations that defendants were "part of a group of companies" "spun off" from a common parent, had a single executive in common, and were a "strategic partnership" The court noted that the group was an enterprise despite the fact that they "now complete.") *Mitsui O.S.K. Lines, Ltd. v. Seamaster Logistics, Inc.*, 871 F. Supp. 2d 933, 941 (N.D. Cal. 2012); *Bryant v. Mattel, Inc.*, 573 F. Supp. 2d 1254, 1263 (C.D. Cal. 2007)(misappropriate of plaintiff's name and likeness by common use of a single email address and "repeated communications" by enterprise affiliates); *In re Countrywide Fin. Corp. Mortgage Mktg. & Sales Practices Litig.*, 601 F. Supp. 2d 1201, 1213 (S.D. Cal. 2009) (corporate parent and subsidiaries); *Stitt v. Citibank, N.A.*, 12-CV-03892-YGR, 2013 WL 1787159 (N.D. Cal. Apr. 25, 2013) (holding that allegations that "CitiMortgage, Inc. is alleged to be the mortgage servicer and subsidiary of Citibank, N.A. . . . that acts with the permission and consent of Citibank, N.A. . . ." that "Citibank, N.A. exercises specific and financial control over CitiMortgage, Inc., dictates its policies and practices, and ultimate receives the ill-gotten gains. . . " and that "executives at Citibank, N.A. and CitiMortgage, Inc. organized the fraudulent scheme and carried out the scheme with subordinate employees, third-party property preservation vendors, and real estate brokers", that "Citibank acted with permission and consent of Citibank, N.A." ongoing organization to commit fraud pled with "sufficient particularity"). *Stitt v. Citibank, N.A.*, 12-CV-03892-YGR, 2013 WL 1787159 (N.D. Cal. Apr. 25, 2013); *Gonzales v. Lloyds TSB Bank, PLC*, 532 F. Supp. 2d 1200, 1209 (C.D. Cal. 2006); *Vierria v. California Highway Patrol*, 644 F. Supp. 2d 1219, 1233 (E.D. Cal. 2009); *In re Nat. W. Life Ins. Deferred Annuities Litig.*, 635 F. Supp. 2d 1170, 1174 (S.D. Cal. 2009); *United States v. Frega*, 179 F.3d 793 (1999).

Courts within this circuit found an *absence* of "ongoing organization" rarely—in one case the complaint alleged only activities of one of several defendants and described no relationship between the single acting defendant and other defendants. *Izenberg v. ETS Servs*., LLC, 589 F. Supp. 2d 1193, 1203 (C.D. Cal. 2008).

Consistent with RICO's purpose to prevent the "infiltration" of legitimate industry by organized crime, the instant Complaint distinguishes between the legitimate operations of the Family Law Community and the criminal elements of that industry, the "DDICE" as the "black hat" operators of the larger "Domestic Dispute Industry." These "black hat" DDICE operations are described more specifically in the following paragraphs: Compl. ¶¶ 4-56, 59, 60 ("Collectively, the above-referenced defendants, operating full or part time as part of a broader "Family Law Community" of professionals, institutions, entities, practices, methods, products and services and its ancillary arms shall hereafter be referred to as the Domestic Dispute Industry (DDI).") and Compl. ¶¶ 72, 74, 112, 158, 160, 162, 167, 168, 169, 170, 173, 174, 178, 181, 182,

184-188, 191, 205, 207, 209, 211-214, 236-243, 247-251, 253, 256, 260-266, 299, 303, ("black hat operations"). Complaint allegations detailing the "*ongoing*" nature of the respective RICO DDICE organizations include the following:

> 273. The California Domestic Dispute Industry Criminal Enterprise (DDICE) consists of individual private and public professionals, professional corporations, professional membership organizations, and governmental entities engaged in that portion of "family law" practice in which two or more parties' have competing interests, or compete with the government for such interests, and is described herein as "Domestic Dispute Law." Domestic Dispute Law includes marital dissolution, parentage, child custody, child support, domestic violence, and related areas.
>
> …
>
> 274. . . . These entities, acting concert with one another, are organized and maintained by and through a consensual hierarchy of agents, partners, managers, directors, officers, supervisors, agents, deputies, and/or representatives that formulate and implement policies, practices, relationships, rules, and procedures related to Domestic Dispute Law.
>
> …
>
> 275. In San Diego, the relationships among DDICE operators and affiliates are created and supported through what has been denominated by members of the DDICE as the San Diego "family law community" Ex. 2, 26. The SD-DDICE is comprised of individual family law attorneys and law firms, professional "service providers", domestic dispute judges, the Family Law Subsection of the San Diego County Bar Association and SDCBA staff, officers, and employees . . .
>
> …
>
> 276. SD-DDICE utilize and share private and SDCBA, SCSDC, SAC, DDIPS and others' communications systems, offices, fixtures and equipment, professional and personal networks, campaign and lobbying vehicles and personnel, and political organizations and networks. DEFENDANTS' CIVIL CONSPIRACIES, HARRASSMENT AND ABUSE, agenda detailed above for the benefit of the enterprise and detriment of the DDIL.
>
> 277. The DDICE and SD-DDICE have been in existence for as long as the FLC has been organized—dating back far longer than ten years. The DDICE and SDDDICE have gained influence in recent years since the passage of the Domestic Dispute Intervention Legislative Scheme (DVILS) in 1993-1997. Since passage of the DVILS, DDICE members have been empowered and increasingly skilled at utilizing one or more of the schemes and artifices to defraud (SAD) described below to further the purposes of the ENTERPRISES and commit racketeering activity.
>
> 278. These entities, acting concert with one another, are organized and maintained by and through a consensual hierarchy of agents, partners, managers, directors, officers, supervisors, agents, deputies, and/or representatives that formulate and implement policies relative to

business development coordination, education, social networking, informational services to the public about various areas and practices of lawyers practicing law, including, but not restricted to, aspects of family law, child custody, and domestic relations in the San Diego area.

279. The SD-DDICE acting in concert with San Diego DDIJO, SCSDC, SDCBA, DDISO, and the SAC engage in a course of conduct and a pattern of practice to illegally compete in the DDIL marketplace by illegal antitrust affiliations, barriers to entry, fraudulent "certifications", and predatory tactics such as the STUART ASSAULT and ongoing HARRASSMENT AND ABUSE.

280. Through mutual anticompetitive pacts, fraudulent licensing, certification, specialization, excluding or deterring fair competition from the market, the DDICE compete illegally in the DDIL marketplace, sharing access only those attorneys and law firms that share and promote the interests of the ENTERPRISES, and committing HARRASSMENT AND ABUSE against entities such as PLAINTIFFS which they view as competition in the DDIL marketplace.

…

DDI-IACE constitutes a RICO criminal enterprise, organized and maintained by and through a consensual hierarchy of, managers, directors, officers, supervisors, agents, deputies, and/or representatives that formulate and implement policies relative to family law, child custody, and domestic relations.

282. The DDI-IACE ENTERPRISE, acting in concert with AOC, CJC, DDISW, DDIJO, and DDISO Defendants engage in a course of conduct designed and intended to deprive and conspire to commit one or more SAD, deprive DDIL of FFR and CFR, and commit HARASSEMENT AND ABUSE as described herein through the illegal practice of law, abuse of process, illegal advice, guidance, form selection, individual litigant support, advocacy, and services through the ALLIANCE and county court locations across the state. The DDI-IACE's activities focus on topics such as divorce, restraining orders, constitutional law, child custody, parents' and children's rights, guardianship, adoption, , domestic violence, "abuse" and "harassment."

…

283. The DDI-IACE commercial purpose is to generate revenue and income within this District by expanding the ENTERPRISE and the criminal activities of the DDIJO, DDISW, DDISO, and others associated with it, by committing fraud on the United States, and state and local charities. Funding for statewide DDI-IACE entities is obtained from billions of dollars in Violence Against Women Act grants and awards, and private foundations. Ex. 1.

…

284. The DDI-FICE consists of behavioral science "professional custody evaluators," mediators, and the organizations which certify, oversee, discipline, appoint, refer, conspire, associate, or affiliate with them, and includes Defendants ACFEI, DOYNE, DOYNE, INC.,

LOVE, LOVE INC. BLANCHET, BIERER, FRITZ, SCSDC and DDICE DOES 1501-2000. These RICO DEFENDANTS constitute a criminal enterprise, organized and maintained by and through a consensual hierarchy of, managers, directors, officers, supervisors, agents, deputies, and/or representatives that formulate and implement policies relative to providing the rendition of "forensic psychology" services to the public, including, but not restricted to, DDIL, their lawyers, judges, and others in the field of family law, child custody, and domestic relations.

285. The DDI-IACE ENTERPRISE Defendants engage in a course of conduct designed and intended to conspire to commit one or more SAD, deprive of FFR and CFR, and commit HARASSEMENT AND ABUSE as described herein through the illegal practice of law, abuse of process, illegal advice, guidance, form selection, individual litigant support, advocacy, and services through the ALLIANCE and county court "facilitator offices" locations across the state. The DDI-IACE's activities focus on topics such as parental/domestic dispute mediation, civil rights, child custody, domestic violence, and harassment.

286. The DDI-IACE commercial purpose is to generate revenue and income within this District committing one or more SAD, false COMMERCIAL SPEECH, including HARASSMENT AND ABUSE.

…

287. The AHCE is a well-established enterprise formation which is formed when two or more DDIL enter the DDIL marketplace and hire one or more DDIA. The enterprise affiliates—ordinarily one DDIA attorney for a Petitioner, and one for Respondent—engage with their clients, make fraudulent COMMERCIAL SPEECH misrepresentations to them regarding their FFR, the family court laws and processes, and begin exploiting them by use of one or more SAD. Depending on how malicious the DDIA conduct their fraud, DDIL may be induced into engaging in "Poser Advocacy" and one or more SAD, either as initiator or forced responder, thereby generating revenue for both DDIA. The process by which the AHCE enterprise is ordinarily formed is described in detail in a publication entitled A Promise To Ourselves: A Promise to Ourselves: A Journey Through Fatherhood and Divorce, Baldwin, A., ISBN-10: 0312586019. PLAINTIFFS have not received permission to reproduce this publication and therefore reference it as Exhibit 32 as if set forth herein in full.

…

289. The STUART AHCE is organized and maintained by and through a consensual hierarchy of, managers, directors, officers, supervisors, agents, deputies, and/or representatives that formulate and implement policies relative to the dispensing and providing the rendition of judicial services to the public , including, but not restricted to, lawyers practicing before, networking with, funding, and collaborating with this enterprise, including, but not restricted to, aspects of family law, child custody, and domestic relations. The STUART AHCE enterprise, acting in concert with one and others unknown to PLAINTIFFS, engaged in a course of conduct and a pattern of practice formulated, designed, intended, implemented, and executed to as part of one or more SAD.

…

292. The ENTERPRISES operate as a "cabal," a semi private, sometimes secret, informal affiliation of entities with public presence and identity that is wholly or partially inaccurate and misleading as to the true goals, affiliations, and processes of the cabal. The ENTERPRISES achieve their respective purposes by fraudulent collusion among DDICE operators and affiliates, who in their COMMERCIAL SPEECH represent to their DDIL clients that the relationships among the DDICE members are in compliance with legal and ethical PROFESSIONAL DUTIES when they in fact are not. See "False Flag" and "Pose Advocacy" SAD below.

293. The ENTERPRISES also compete unfairly through their COMMERCIAL SPEECH by misrepresenting the legitimacy of the ENTERPRISES, by representing to DDIL that their illegal behavior is "how it is" in a "take it or leave it" breach of one or more PROFESSIONAL DUTIES.

294. The ENTERPRISES also compete unfairly within the DDI marketplace by creating the impression that non- ENTERPRISE entities are incapable of representing the interests of family law clients. In the present case, the ENTERPRISES operated as alleged to suppress and retaliate for PLAINTIFFS FFRRESA and PUBLIC BENEFIT ACTIVITIES by HARRASSMENT AND ABUSE to restrict the family law marketplace access, knowledge, and awareness to only ENTERPRISE operators and affiliates.

295. Funded by fraudulent exploitation of the DDIL TCE, ENTERPRISE operators and affiliates engage in bribery, exchanging value, emoluments, patronage, nepotism, and/or kickback schemes within their networks to assure system-wide "cash flow" and continued viability and vitality of the ENTERPRISES. ENTERPRISES refuse such cooperation with non-affiliates, thereby baring potential competitors. These bars include fraudulently manipulated referrals, representations, certifications, nepotism, illegal antitrust tactics, and manufactured pitfalls to support the pervasive "who you know" cabal in defiance of the rule of law.

296. When necessary, illegal marketplace protections are perpetrated by illegal criminal justice system sanctions by DDIJO and DDISO, direct attacks such as the STUART ASSAULT DDISO, and HARASSMENT AND ABUSE. This predatory competitive behavior targets any entity, association, or organization that supports and advocates for DDIL that appears as a potential or probable threat to these DDICE purposes, including PLAINTIFFS (ENTERPRISE UNFAIR COMPETITION).

Domestic Dispute Industry Legal Services Marketplace

297. The ENTERPRISES are successful due to manipulation of unique factors characterizing the marketplace for Domestic Dispute Industry legal services. DDIL are ordinarily families in crisis seeking to resolve their personal difficulties by altering relationships. In doing so they must often seek the involvement of the state. For contested or unusually complex matters, DDIL enlist experts to help navigate the market. Hence, a market for family law

experts to assist in navigating the complexity and/or maximizing outcome exists. (DDI MARKET).

…

299. ENTERPRISE affiliates who serve or cultivate the illegal purposes of the enterprise—"black hat" operatives—view DDIL as a "raw material:" a resource from which to extract net profit. While each case may present different circumstances, and while DDICE associates market their services as "specialized", in fact the DDICE operate in conspiracy with common SAD applied to each DDIL in the DDI MARKET; providing "white hat" services to those seeking simple, healthy solutions, while still preserving, promoting, misrepresenting, and protecting the ability to deliver illegal, unhealthy, yet far more profitable "black hat" services.

300. However, to maintain long-term vitality, DDICE operatives must govern themselves to avoid exposure of their illegal SAD, or "overfising"—extracting so much value from one or more DDIL that they "sour" to the DDIL marketplace or reveal the ENTERPRISE and SAD, thereby inducing reform such as FFRRESA, and DUE COURSE OF JUSTICE.

301. Yet the balance necessary to achieve maximum TCE extraction without fair competition, revelation, or overfishing cannot be achieved without cooperation between the petitioner's and respondent's counsel—hence "False Flag" and other fraudulent SAD by which DDIA, DDIJO, and DDIPS exercise "client control" by refraining from zealous advocacy or honest services in hopes of lowering extraction costs for Petitioner's counsel, maximizing TCE extraction, and leaving at least one "unburned" DDIL to perpetuate future SAD on future DDIL market entrants.

302. Petitioner and Respondent counsel (seeking to maximize wealth transfer) evaluate each case early through compelled disclosures known as "Income and Expense Declarations." These forced sworn statements require both parties to reveal extensive details regarding income, assets, and expenses. The putative goal is for the determination of support levels. However ENTERPRISE operators and affiliates also use the declarations to plan how to maximize extraction of value from the TCE. This collaboration is evidenced by the common observation that DDICE operators and affiliate follow the business rule to "bill until the client runs out of money or patience, then quit." (or, in the case of even "white hat" operatives, finish for free). DDIJO fully comply by allowing DDIA withdrawals for nonpayment with unusual ease, in further violation of the equal protection of the laws.

303. Unfortunately, unlike commercial legal markets populated by business clients and in-house counsel, many DDIL lack the sophistication, intelligence, market awareness, or general psychological stability in a time of crisis to recognize the SAD until it is too late—if then. As such, educating the DDIL marketplace to improve awareness and thereby eliminate the competitive advantage of illegal "black hat" operators has been a central theme both in PLAINTIFFS FFRRESA and BUSINESS DEVELOPMENT.

304. For the DDICE operatives, the market for perpetrating the SAD on unwary DDIL has become almost too easy—the main goal is no longer to facilitate the illegal extraction but to

avoid "overfishing." DDICE operatives must seek to maximize the value extracted from the TCE in the short term without achieving a "burned DDIL" rate that deters potential future market entrants from seeking services, or becoming "too aware" of the market dynamics enabling crime. This balance can only be achieved through coordination among DDIA, DDIPS, and DDIJO Enterprise operatives who must defy their PROFESSIONAL DUTIES to coordinate the cabal.

305. They do so by the False Flag SAD described below, including "Poser Advocacy" "paperwads" and "kite bombs" to achieve maximum TCE extraction with as little risk for deterrence and exposure. Hence the tendency of the DDICE to utilize irrational motivating tactics such as The PIT "fear or anger" or DDI-FICE (selfishness, greed), with "balancing" tactics such as illegal conspiracy through SAD, drives illegal market collusion.

Interstate and International Commerce of the ENTERPRISES

306. The activities of the DDICE affect interstate and international commerce as follows:

A. The DVILS are authorized and enforceable under federal law and entitled to full faith and credit under the multiple state laws (18 U.S.C. § 2261(a)(1), 2265) (Ex. 33);

B. Child Support awards may be enforced in foreign countries through bilateral international treaty including by revoking passports of U.S. citizens (Ex. 33);

C. State child support awards are enforceable in all U.S. Military Courts (Ex. 33);

D. The affairs of families is a worldwide industry generating tens of billions of dollars acquired by the DDICE ENTERPRISES each year.

Longevity

307. In conducting the affairs of the ENTERPRISES, and in committing the acts, omissions, misrepresentations, and breaches referred to herein beginning as far back as 1997 and continuing up through initiation of these proceedings, RICO DEFENDANTS engaged in a pattern of racketeering activity in contravention of Title 18 United States Code § 1962(c) inasmuch as the defendant was employed by, or associated with, one or more ENTERPRISE engaged in activities that affect federal interstate and/or foreign commerce, and conducted such multiple criminal enterprise affairs by and through a pattern of racketeering activity.

The complaint proceeds to detail, six *ongoing* "schemes to defraud," thirteen Claims for Relief, thirty-two distinct federal crimes, all involving your clients as operators and affiliates of the DDICE in one or more capacities, functions, and acts. See also, *United States v. Frega*, 179 F.3d 793 (1999).

I suggest that these allegations aver facts sufficient to describe organization that is "something more than" the coincident commission of two or more predicate crimes—an "ongoing organization"—to provide your clients with adequate notice to defend.

b. *"individual actions of any Superior Court Defendants",*

Having studied the MTD I confess that I am unable to determine which of the several elements which relate to "action" and "conduct" (MTD 20:1-7) you assert are required but missing. I therefore address the statute and allegations thereunder generally.

18 U.S.C. § 1964(c) and (d) impose liability for actions described as follows:

> (c) It shall be unlawful for any person employed by or associated with any enterprise engaged in, or the activities of which affect, interstate or foreign commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering activity or collection of unlawful debt.
>
> (d) It shall be unlawful for any person to conspire to violate any of the provisions of subsection (a), (b), or (c) of this section.

The relevant culpable "actions" for attributing liability to a RICO "person" under 18 U.S.C. § 1962(c) are (1) "employed or associated with" (2) "conduct or participated", and (3) "racketeering activity."

i. <u>"employed or associated with"</u>

"Employed by" and "Associated with" have been defined according to their ordinary language meanings—an extremely broad definition which you likely would not challenge. *See, e.g., Reves v. Ernst & Young*, 507 U.S. 170, 177, 113 S. Ct. 1163, 1169, 122 L. Ed. 2d 525 (1993). Your clients are employees of San Diego Superior Court and as such they have a formal employment relationship with two RICO "persons"—the county and the court—implicated in each of the five enterprises of which the San Diego County Superior Court is a member. Further, they are directly "associated" or "affiliated" the same enterprises by virtue of their involvement and participation with the DDI and Family Law Community in part through the SDCBA, as well as through their interaction with the court's FLF offices, the private commercial forensic psychology enterprises, and their day-to-day interaction with other co-defendants, including known criminal and RICO operatives, in the course of their roles as judicial offers. *See, e.g., United States v. Frega*, 179 F.3d 793 (1999); *Imbler v. Pachtman*, 424 U.S. 409, 428, 96 S. Ct. 984, 994, 47 L. Ed. 2d 128 (1976); *U.S. v. Angelilli*, 660 F.2d 23 (2d Cir. 1981).

ii. "<u>conduct or participate</u>"

"Conduct or participate" has been interpreted to describe a "level of control." *Id.* It distinguishes "low level" employees with no decision-making authority from those who have

some level of discretion or influence; "conduct" being the highest level, with "participate" being only modest control. *Id*. The terms have been equated with "operation or management." Id. "In order to "participate, directly or indirectly, in the conduct of such enterprise's affairs," one must have some part in directing those affairs. Of course, the word "participate" makes clear that RICO liability is not limited to those with primary responsibility for the enterprise's affairs, just as the phrase "directly or indirectly" makes clear that RICO liability is not limited to those with a formal position in the enterprise, but some part in directing the enterprise's affairs is required. The "operation or management" test expresses this requirement in a formulation that is easy to apply." *Reves v. Ernst & Young*, 507 U.S. 170, 179, 113 S. Ct. 1163, 1170, 122 L. Ed. 2d 525 (1993). "Directly or indirectly" is also given broad meaning as including "outsiders" with no "formal" position in the enterprise. *Id*.

Allegations describing each ENTERPRISE and your client's role therein are detailed in Complaint paragraphs 273-296 recited above. With regard to each of the first three ENTERPRISES, the DDICE, SD-DDICE, and DDI-IACE, each of your clients is alleged to have at least "participate" level authority, and for most, "conduct" level by virtue of (1) their employment and affiliation with the San Diego County Superior Court, (2) their administrative policymaking authority and/or participation in such employment and authority, (3) their administrative role in implementing such policy with regard to each SAD through in-house court operations (FLF Offices), supervision, oversight, issuance and control of the DVILS ORDERS, including DVILS forms, form selection, standards and policies for issuance, and enforcement, (4) their role in participating in, encouraging, facilitating, permitting, and enforcing the SAD and its related mail and honest services fraud occurring within the ambit of their power, influence, and control (Compl. ¶¶ 308-335), (5) the private and/or ultra vires referral, recommendation, endorsement and oversight of the commercial forensic psychology and law enterprises (DDIPS and DDIAS in DDI-FICE) (Compl. ¶¶ 337-347); (6) their role in the civil and criminal conspiracies relating to the witness tampering/obstruction of justice (Compl. ¶¶ 348-373).

Regarding Mr. Roddy, the Complaint identifies his position with the Superior Court "Court Executive Officer"—a "conduct" level affiliation, with remaining authority at "participate" level or above. His responsibilities are described as similar to the other Superior Court defendants, but limited to items (1)-(5) above, but not including the SAC allegations or any acts requiring the exercise of judicial discretion or authority. See Compl. ¶¶ 11, 12, 23, 94, 96, 140, 162-170, ENTERPRISES 2 and 3, SAD 2.

c. *"racketeering activity"*

The Complaint satisfies this requirement by alleging your clients' involvement in no fewer than the 13 "Racketeering Claims for Relief" at ¶¶ 337-373 and FICRO Counts 1-34 at ¶¶ 376-385. The Complaint further alleges additional relevant racketeering activity under 18 U.S.C. § 1961 at ¶¶ 336.

d. *"allegations amounting to a pattern."*

The "pattern" requirement is addressed in part at Section III. E 2.(a) ("ongoing organization") above. The "pattern" requirement is satisfied simply by identifying the

commission of two or more predicate crimes within a ten year period. 18 U.S.C. 1961(5). The Complaint alleges this generally at ¶ 277. With regard to each defendant, I submit that they are each alleged to have been involved, directly or indirectly, as principals and/or accessories, in each of the 13 predicate crimes, under relevant RICO liability principles (see *Accomplice/Accessory Liability* below). Yet they are also specifically identified in two or more of the RICO Claim For Relief as follows:

- Claim 2: Honest Services Fraud: All Defendants (Compl. ¶¶345-347);
- Claim 3: Influencing or injuring officer or juror generally: SAC defendants (Comp. ¶ 348);
- Claim 4: Obstruction of proceedings before departments, agencies, and committees: SAC defendants (Compl. ¶¶ 350-351);
- Claims 5, 6, 7, 8, 9, 10, 11, 12, 13: Tampering with/Retaliating with a witness, victim, or informant; : SAC defendants (Compl. ¶ 353, 355, 357, 359, 361, 362-365, 369, 371, 373).

Under *Bridge v. Phoenix Bond & Indem. Co*. 553 U.S. 639 (2008), each of the 28 or more predicate crimes identified in Coml. ¶ 336 would also be relevant for determining a pattern. Under similar theories, should you insist, I will amend to include additional violations of 18 U.S.C. § 1341 to include any of what are likely millions of other uses of the mail by your clients to commit one or more SAD.

Accomplice/Accessory Liability

The thrust of your attack that the RICO allegations in the Complaint do not specify particular acts of each defendant may arise from a misunderstanding of the degrees of involvement by RICO persons involved in the conduct of the enterprise as principals. Under RICO, a defendant may be held liable under 18 U.S.C. §§ 1964(c) and (d) for all acts for which they may be liable under ordinary statutory and common law theories of relief, including in your clients' case theories of deliberate indifference and trespass described at Section III. C. 1(b), above. They may *also* be held liable under RICO's criminal provisions as any ordinary criminal defendant for aiding and abetting and accessory acts. "Aid and abet" "comprehends all assistance rendered by words, acts, encouragement, support, or presence." Black's Law Dictionary 68 (6th ed. 1990)" *Reves v. Ernst & Young*, 507 U.S. 170, 178, 113 S. Ct. 1163, 1170, 122 L. Ed. 2d 525 (1993). "RICO's civil provisions are to be construed liberally to effectuate the statute's "remedial purposes." *Brady v. Dairy Fresh Products Co*., 974 F.2d 1149, 1153 (9th Cir. 1992); *Sedima, S.P.R.L. v. Imrex Co., Inc.*, 473 U.S. 479, 498, 105 S. Ct. 3275, 3286, 87 L. Ed. 2d 346 (1985). The Complaint alleges liability based upon such accomplice/accessory liability provisions. Compl. ¶ 336Z.

> The term 'accomplice' is employed as the broadest and least technical available to denote criminal complicity. Unlike 'accessory' it has no special meanings under the common law or modern legislation." 1 American Law Institute (ALI), Model Penal Code and Commentaries 306 (1985) [hereinafter ALI, Commentaries]. "The common classification of parties to a

felony consisted of four categories: (1) principal in the first degree; (2) principal in the second degree; (3) accessory before the fact; and (4) accessory after the fact." Wayne R. LaFave & Austin W. Scott, *Criminal Law* 569 (2d ed. 1986); 4 William Blackstone, *Commentaries on The Laws of England* 34-40 (1769) ("A man may be a principal in an offense in two degrees: first degree … and second degree …. An accessory … either before or after the fact.") (emphasis in original); 1 Sir Matthew Hale, Historia Placitor Um Coronae 615-17 (stating that in … treason, there are no accessories … before nor after, for all consenters, aiders, abettors, and knowing receivors of traitors, are all principals …. In cases that are criminal, but not capital … there are no accessories, for all the accessories before are … principals … and [so are] accessories after …. As to felonies by act of parliament, regularly if an act of parliament enacts an offense to be felony, though it mentions nothing of accessories before or after, yet virtually, and consequently those that counsel or command the offense are accessories before, and those that knowingly receive the offender and accessories after…. [P]rincipals are in two kinds, principals in the first degree, which actually commit the offense, principals in the second degree, which are present, aiding, and abetting of the fact to be done. An accessory before, is he, that being absent at the time of the felony committed, doth yet procure, counsel, command, or abet another to commit a felony…. [An] accessory after the fact is, where a person knowing the felony committed by another, receives, relieves, comforts, or assists the felon.); 2 Frederick Pollock & Frederic W. Maitland, *The History of English Law* 509 (2d ed. 1896) (stating that Ancient law has as a general rule no punishment for those who have tried to do harm but have not done it …. On the other hand, it is soon seen that harm can be done by words as well as by blows, and that if at A's instigation B has killed C, then A is guilty of C's death …. The law of homicide is wide enough to comprise not only him who save the deadly blow and those who held the victim, but also those who 'procured, counselled, commanded or abetted' the felony."). "A principal in the first degree may simply be defined as the criminal actor. He is the one who, with the requisite mental state, engages in the act or omission concurring with the mental state which causes the criminal result; LaFave & Scott, supra, at 569; see also Blackstone, supra, at 34 ("he that is the actor"). "To be a principal in the second degree, one must be present [[[actually or constructively] at the commission of a criminal offense and aid, counsel, command or encourage the principal in the first degree in the commission of that offense." LaFave & Scott, supra, at 571; see also Blackstone, supra, at 34 ("he who is present [actually or constructively] aiding and abetting the fact to be done"). "An accessory before the fact is one who orders, counsels, encourages, or otherwise aid and abets another to commit a felony and who is not present at the commission of the offense." LaFave & Scott, supra, at 571. "At common law, one not … a principal … was an accessory after the fact if a … felony had … been committed …; he knew of … [it] and he gave aid to the felon personally for the purpose of hindering [law enforcement]." Id. at 596; see also Blackstone, supra, at 35 ("not the chief actor … nor present … but in some way concerned … either before or after the fact committed") (emphasis in original).

Wayne R. LaFave, 2 *Subst. Crim. L.* § 13.2 (2d ed.); Model Penal Code § 2.06

Though the distinctions between "principal" and "accessory" are relevant to the criminal law for purposes of degree and sentencing, they are also relevant to identifying the scope of individuals and entities liable for foreseeable injuries caused by aiding and abetting predicate

crimes. As each of your clients are alleged to have participated in the fraudulent private for-profit commercial forensic psychology and legal ENTERPRISES described in the Complaint, they have aided and abetting in each of the RICO Claims for Relief, including those specifically naming them and others in which they are not specifically named.

As these allegations describe the commission by each of your clients of at least two predicate crimes within ten years, the Complaint sufficiently alleges "pattern of racketeering activity."

H. The Complaint Alleges Standing for Prospective Relief (MTD 21:9-22:11)

The MTD grossly mischaracterizes the Complaint averments relevant to standing to assert Prospective Relief Count 1 and 2. At paragraph 21:12-13 the MTD alleges "The Complaint generally asks the Court to enjoin defendants from further alleged violations of Stuart's rights At 22:2-5 "Absent from the Complaint are any allegations that Stuart is likely to be wronged in the future by any of the Superior Court Defendants. Stuart's claim for prospective relief is simply in response to alleged past wrongs committed by the Superior Court Defendants."

1. The Complaint Allegations of Past Injury, Present Deprivation, and Present/Future Threat

The Complaint explicitly details the past, current, and *ongoing* injury and *future* threat to plaintiffs' existing exercise, support, advocacy, (FFRRESA), BUSINESS DEVELOPMENT, and PUBLIC BENEFIT ACTIVITIES and alleges "ongoing" continuing HARRASSMENT and ABUSE as follows:

> 387. PLAINTIFFS are victims and witness to FICRO Counts 1-34, and numerous civil rights offenses committed by DEFENDANTS as described herein. PLAINTIFFS continue to interact with FEDERAL LAW ENFORCEMENT AGENTS in the DUE ADMINISTRATON OF JUSTICE, including in ongoing criminal investigations involving DEFENDANTS herein and exercise FFRRESA.
>
> 388. DEFENDANTS have undertaken a course of conduct to harass, interfere with, intimidate, harm, and retaliate for PLAINTIFFS protected activities, and continue to do so.
>
> 389. PLAINTIFFS have experienced and are in fear of further harassment, threats, and intimidation, and submit that from the allegations set forth in this Verified Complaint.

The Complaint alleges plaintiff's past course of conduct in its PUBLIC BENEFIT ACTIVITIES which was interrupted and is presently oppressed by Defendants' HARRASSMENT and ABUSE, CHILLING as follows:

74. Plaintiffs have organized to confront the State of California's dispossession of law and reason by engaging those within the Domestic Dispute Industry who administer the decay—family court judges. An astonishingly vast judicial administrative bureaucracy, domestic dispute industry attorneys, psychologists, and other professionals whose nearly imperceptible deliberate indifference to the creeping deprivations of parental rights is leaving the family cupboard nearly bare.

75. PLAINTIFFS' efforts on behalf of parents and children have included increasing public and governmental awareness of family rights, representing and supporting parents and children in exercising and enforcing such rights, lobbying state and federal policymakers to improve protections for federal rights under state law, and undertaking litigation, complaints, or other formal and informal engagements with state and federal authorities to assert, exercise, communicate regarding, educate, inform, establish and defend such rights with the goal of enabling parental autonomy and empowerment through reform state of California domestic dispute laws, practices, and institutions. ("ENGAGEMENT")

…

Plaintiffs' Support and Advocacy for FFR

77. PLAINTIFFS have been active in supporting and advocating for the FFR, including the institutions, laws, and entities of the United States that protect, uphold, and defend them against state intrusion. Though the FFR are well-recognized under federal (and state) laws, it has been PLAINTIFFS' collective experience that within the state of California the FFR are frequently ignored in the hands of those exercising jurisdiction over parents and families, including DEFENDANTS and the entities of which they are associates and members. Notwithstanding that such state actors may legally exercise their enormous powers only when according to law, and notwithstanding that such actors enjoy limited immunities only when they exercise such powers legally, state of California color of law actors regularly wander far off the reservation to inflict unjust, irrational, and often heinous crimes against civil liberty.

78. PLAINTIFFS have acted to end these trespasses and redress the grievances of those offended. These efforts have included support and advocacy for the supremacy of the Constitution and laws of the United States vis-à-vis relevant sections of California Family and Penal codes, including the Domestic Violence Intervention Legislative Scheme ("DVILS") discussed below and in Ex. 1. PLAINTIFFS have advocated for, supported, sought to educate, exercise, and enforce the FFR and for the institutions and processes of the United States upholding, protecting, and defending the same. PLAINITIFFS' reform efforts have specifically directed to bringing California's domestic relations law and practice into compliance with the protections afforded to all United States citizens under federal institutions, laws, and practice.

[¶¶ 78-98 listing ongoing education, reform, advocacy (FFRRESA), and ENGAGEMENT efforts, DUE ADMINISTRATION OF JUSTICE, and support and

advocacy for United States Representatives, institutions and processes that have been subject to CHILLING and HARRASMENT AND ABUSE]

…

90. STUART has continued to interact with the FEDERAL LAW ENFORCEMENT OFFICERS regarding the DDIJO COMPLAINTS through the present day.

…

98. On information and belief, state and FEDERAL LAW ENFORCEMENT OFFICERS have and continue to investigate PLAINTIFFS' allegations under the CRCCS toward presentment to a grand jury, indictment, and prosecution under federal law.

99. The above-described activities of PLAINTIFFS' and their affiliates in interaction and cooperation with FEDERAL LAW ENFORCEMENT OFFICERS, constitutes attendance as a witness or party at proceedings, giving of evidence, documents, records, objects, or other testimony given or any record, document, any information relating to the commission or possible commission of a CRCCS violation or otherwise regarding PLAINTIFFS' FFRRESA and related matters to the FEDERAL LAW ENFORCEMENT OFFICERS in pursuit of investigation, presentation, indictment, prosecution, redress, reform, and punishment of DEFENDANTS shall hereafter be referred to as the DUE ADMINISTRATION OF JUSTICE.

…

101. Recognizing the widespread deprecation to tens of thousands of victim parents and children wrought by California's unchecked operation of its uniquely pernicious Domestic Dispute Industry in violation of the FFR, CCFC's commercial activities have been directed toward educating, empowering, supporting, and representing parents and children to withstand and eventually reverse this well-armed invidious bureaucratic tide eroding parents' and children's welfare. CCFC has advanced public and governmental awareness of the underserved needs of the "Domestic Relations Class" including defending parents against numerous alarming deprivations of parents' and children's financial interests by the steamroller public/private enterprise Domestic Dispute Industry. CCFC works closely with national parenting organizations such the National Parents Organization, ACFC, and Up To Parents to provide healthy, safe, and legal counseling, resources, representation, services, and support alternatives to traditional domestic dispute services.

…

Business Development Activities of PLAINTIFFS

109. In furtherance of PLAINTIFFS' FFRRESA and COMMERCIAL PURPOSES, in 2008 PLAINTIFFS established and began growing independent parent-child-oriented

private support networks and services to share resources, improve awareness, advance joint social, political, and legal goals, protect and promote the independent interests of families and children in domestic dispute matters, develop superior, more efficient, safer, and legal alternatives to traditional family law practices, and to improve the visibility of parent-child interests to legal institutions including policymakers, law enforcement, and courts. Recognizing abundant opportunity to fill a demand for more efficient, safe, and legal services within the family law community, CCFC's early business development efforts focused on gaining intelligence about the Domestic Dispute Industry to better understand the existing business structures and thereon reform and/or influence and build more efficient, effective, safe, and legal services for parents and children who have no effective advocates in the present industry. These goals include improving professional standards of care for DDI professionals—including DDIA, DDIPS, DDIJO, DDISW, DDISO, and others, providing more consumer-oriented legal and government services, inform and improve industry governance, improve licensing, certification, discipline, oversight standards, from consumer (parents' and children's) perspectives, and develop or assist in developing superior service products to compete in that healthier environment.

110. In furtherance of the COMMERCIAL PURPOSES, PLAINTIFFS have undertaken the following business development activities:

A. Studies of the "closed society" of the multi-billion dollar Domestic Dispute Industry (DDI) both from "outside" and "inside" to observe and understand the DDI "money flow" from DDIL to DDIA, DDIP, DDIJO, DDISW, and DDISO;

B. Identification of existing industry-wide fraud schemes and artifices, including consumer fraud, Lanham Act violations, bribery, "kickbacks", invidious discrimination, unchecked abuse of power, nepotism, illegal conduct, and general inefficiency;

C. Identification of the Domestic Dispute Industry "dealmakers"; the structure of its commercial relationships and networks between DDIAS, DDIPS, DDIJOs, and other DDI agents and affiliates;

D. Contribute to the ongoing analysis of the DDI to prepare legal actions to restrain the DDI operatives from violations of law providing it with unfair competitive advantages;

E. Contribute to preparation of competitive business models to better serve DDI clients with more efficient, less expensive, less disruptive, ethical and legal services, including law, social/governmental parenting support and dispute resolution services;

F. Development of personal and professional networks at events such as the SDCBA SEMINAR to convert "traditional" Domestic Dispute Industry agents to CCFC's healthier, safer, more efficient, and legal alternative business models;

G. Promote parent/child (consumer) awareness of rights and options in holding existing "black hat" DDI affiliates to their PROFESSIONAL DUTIES, and developing strategies

for development and promotion of competitive services and increased self-regulation of professionals to level the playing field for "white hat" competitors such as CCFC, LEXEVIA, Up To Parents, and other "white hat" FLC members which chose to adopt safer, healthier, more efficient, and legal business models (Ex. 25);

H. Develop understanding and awareness of existing "free" resources presently discouraged by DDICE affiliates such as court-sponsored mediation, expert services, and ordinary adjudication; to understand the causes of the common perception that divorce is "inevitably" brutalizing, unfair, and expensive (Ex. 25);

I. Obtain awareness useful to state and federal authorities in discipline and reform of the DDI operatives, through the DUE ADMINISTRATION OF JUSTICE; (Ex. 4.);

J. Obtain awareness useful to CCFC in its activism, social justice, and justice system FFRRESA (Ex. 10);

K. Advance Lexevia's marketable legal expertise in representing CCFC, parents, and DDI victims through potential individual actions, class actions, civil rights, racketeering, or other lawsuits under the CRCCS adverse to the DDI (Ex. 1);

L. Advance CCFC's and LEXEVIA's knowledge and divisibility within the DDI as part of a foundation for building improved domestic dispute service models for citizens in domestic disputes, including social, financial, psychological, faithbased, and criminal justice system capabilities such as those presently operated by CCFC affiliate "Up To Parents" (Ex. 25). common perception that divorce is "inevitably" brutalizing, unfair, and expensive (Ex. 25).

IV. COMMON ALLEGATIONS

112. This matter arises out of DEFENDANTS' criminal and tortious interference with and retaliation for PLAINTIFFS PUBLIC BENEFIT ACTIVITY. DEFENDANTS are owners, associates, participants, collaborators, affiliates, benefactors, associates of entities providing "traditional" professional, legal, social, and government services as part of the DDI. They have acted aggressively and illegally against PLAINTIFFS to commit criminal and civil violations of PLAINTIFFS' state and FFR civil rights, obstruct justice, abuse process, interfere with existing and prospective business relations, and commit civil and criminal violations federal law prohibiting RACKETEERING ACTIVITY under 18 U.S.C. 1961 (b).

…

The SDCBA ENGAGEMENT

113. As part of PLAINTIFFS' PUBLIC BENEFIT ACTIVITY, PLAINTIFFS have sought opportunities to ENGAGE FLC professionals and clients to raise awareness of the

ongoing unsafe, inefficient, and illegal activity and harm to clients being caused by the FLC, and to influence DEFENDANTS toward adoption of safer, more efficient, and legal "white hat" alternatives to FLC practices such as those advanced by PLATINTIFFS. In furtherance of those goals PLAINTIFFS have initiated and/or coordinated numerous ENGAGEMENTS with FLC members, including DEFENDANTS.

Counts 1-18 describe *present* policies, practices, custom, and habits (Compl. 167, 173) relating to *ongoing* failures to observe laws relating to the FFR to which I and other CCFC members are *presently* entitled yet *presently* deprived in our current and *ongoing* relationships with other members of the EQUAL PROTECTION CLASSES. As family court jurisdiction within your clients' control, each CCFC member and plaintiffs herein *presently* are deprived of rights, privileges, and immunities, and as each parent and child will inevitably face additional interaction with family court, absent a change in existing policies that jeopardy is real, ongoing, and further deprivations are *certain*.

185. DEFENDANTS disfavored PLAINTIFFS' PUBLIC BENEFIT ACTIVITIES; Specifically PLAINTIFFS' "JUDGES BEHAVING BADLY" MESSAGE, and PLAINTIFFS' ongoing FFRRESA.

186. DEFENDANTS' affected the STUART ASSAULT to cause PLAINTIFS, their members and affiliates, HARM, injury, embarrassment, intimidation, and humiliation, to their person and property CULPABLY and in retaliation for and with the intent to suppress, deprive, interfere with, and obstruct PLAINTIFFS' FFRRESA.

188. By the STUART ASSAULT DEFENDANTS intended, attempted, and did CHILL PLAINTIFFS and their affiliates from further FFRRESA as PLAINTIFFS, their affiliates, including the DDIA, DDIPS, DDIJO, DDIL, and others at or aware of the STUART ASSAULT were frightened, worried, demoralized, and emotionally and psychologically traumatized. PLAITNIFFS and their affiliates have since abandoned further PUBLIC BENEFIT ACTIVITY, dissembled, disassociated, avoided interactions with other PLAINTIFFS, causing personal and property HARM to PLAINTIFFS. After the STUART ASSAULT, PLAINTIFFS were inundated with business contacts, queries, and requests for direction which PLAINTIFFS, compromised, terrorized, and debilitated by the affect of the HARRASSMENT AND ABUSE, could not adequately respond to, further exacerbating damages to PLAINTIFFS' CCFC FFRRESA, and PUBLIC BENEFIT ACTIVITY.

189. Further, PLAINTIFFS' clients, professional colleagues, and affiliates at or aware of the STUART ASSAULT who previously had high opinions of PLAINTIFFS and referred them significant business stopped referring business to PLAINTIFFS and their affiliates out of fear of reprisal by DEFENDANTS.

Each Lanham Act violation identifies *ongoing* misrepresentations as to the nature and quality of defendants' services are also ongoing, impacting my ability to recover from CCFC and LEXEVIA's devastation caused by the STUART ASSAULT, CHILLING, and HARASSMENT AND ABUSE. Compl. ¶¶ 260-266.

The Complaint also identifies *ongoing* SAD and ENTERPRISES to which I and CCFC members will remain subject as interaction with family court often requires retention of DDIA members of one or more ENTERPRISES exercising one or more SAD with impunity, and requires interaction with one or more DDIJO empowered to issue illegal DVILS ORDERS. Such interaction may involve an encounter with DDISW or the court FLF offices or non-profit entities utilizing illegal DVILS forms and orders and DDISO enforcing them illegally. Notwithstanding that the Complaint refers in places to those policies, practices, customs, and habits in the past tense, because I am a parent, my ongoing jeopardy is apparent, and easily discovered, that the jeopardy is *present* and *ongoing*.

> 387. PLAINTIFFS are victims and witness to FICRO Counts 1-34, and numerous civil rights offenses committed by DEFENDANTS as described herein. PLAINTIFFS continue to interact with FEDERAL LAW ENFORCEMENT AGENTS in the DUE ADMINISTRATON OF JUSTICE, including in ongoing criminal investigations involving DEFENDANTS herein and exercise FFRRESA.
>
> 388. DEFENDANTS have undertaken a course of conduct to harass, interfere with, intimidate, harm, and retaliate for PLAINTIFFS protected activities, and continue to do so.
>
> 389. PLAINTIFFS have experienced and are in fear of further harassment, threats, and intimidation, and submit that from the allegations set forth in this Verified Complaint.
>
> 390. Pursuant to 18 U.S.C. § 1514(b), PLAINTIFFS respectfully submit that there are reasonable grounds for the court, on its own motion, to (1) believe that such harassment exists, and (2) an Order is necessary to prevent and restrain DEFENDANTS from further and ongoing offenses under section 1512 of this title, other than an offense consisting of misleading conduct, or under section 1513 of this title.
>
> 391. PLAINTIFFS respectfully request that the Court issue, on its own motion, an Order:
>
> A. Restraining and enjoining DEFEDANTS and each of them from further acts of HARRASSMENT AND ABUSE in connection with this matter and any ongoing DUE ADMINISTRATION OF JUSTICE and FFRRESA in which PLAINTIFFS are involved;
>
> …
>
> F. That a motion for a protective order shall be set down for hearing at the earliest possible time;

G. That the temporary restraining Order is based on:

i. The DEFENDANTS' past harassment, obstruction, tampering, and retaliation as set forth herein,

ii. The civil rights HARASSMENT AND ABUSE described STUART Assault and the DDIJO COMPLAINTS; and

iii. PLAINTIFFS' ongoing FFRRESA and the DUE ADMINISTRATION OF JUSTICE,

The MTD's claim that these averments are "simply in response to alleged past wrongs committed by the Superior Court Defendants" and a "mere desire to effectuate what he believes to be the proper application of the law" (MTD 21) is disingenuous.

2. These Allegations Plead Facts to Sufficient to Establish Article III Standing

To allege Article III Standing "[f]irst the plaintiff must have suffered an "injury in fact"—an invasion of a legally protected interest which is (a) concrete and particularized, see *id.*, at 756, 104 S.Ct., at 3327; *Warth v. Seldin*, 422 U.S. 490, 508, 95 S.Ct. 2197, 2210, 45 L.Ed.2d 343 (1975); *Sierra Club v. Morton*, 405 U.S. 727, 740–741, n. 16, 92 S.Ct. 1361, 1368–1369, n. 16, 31 L.Ed.2d 636 (1972);[1] and (b) "actual or imminent, not 'conjectural' or 'hypothetical,' " *Whitmore, supra*, 495 U.S., at 155, 110 S.Ct., at 1723 (quoting *Los Angeles v. Lyons*, 461 U.S. 95, 102, 103 S.Ct. 1660, 1665, 75 L.Ed.2d 675 (1983)). Second, there must be a causal connection between the injury and the conduct complained of—the injury has to be "fairly ... trace[able] to the challenged action of the defendant, and not ... th[e] result [of] the independent action of some third party not before the court." *Simon v. Eastern Ky. Welfare Rights Organization*, 426 U.S. 26, 41–42, 96 S.Ct. 1917, 1926, 48 L.Ed.2d 450 (1976). Third, it must be "likely," as opposed to merely "speculative," that the injury will be "redressed by a favorable decision." *Id.*, at 38, 43, 96 S.Ct., at 1924, 1926." *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61, 112 S. Ct. 2130, 2136, 119 L. Ed. 2d 351 (1992).

The referenced allegations satisfy each of these requirements sufficient to establish standing. I and other members of CCFC remain at jeopardy for further injury due to rightful exercise of FFRRESA, DUE ADMINISTRATION OF JUSTICE, and existing and potential new illegal DVILS ORDERS applicable to ongoing Family Court cases and jurisdiction. In San Diego County alone over 200 DVILS ORDERS are issued every week. Moreover, the Ex Parte Motion for Temporary Harassment Restraining Order and exhibits thereto allege that the pattern of HARASSMENT and ABUSE continue unabated. (Dkt. #4)

The MTD cites unhelpful precedent. None of the cases asserted are motions attacking the pleadings. Further, the cited cases turn on facts not present here—a "change in circumstances" between the time the injury occurred and the assertion of Declaratory Judgment during which time the underlying facts changed so that the relief, even if granted, would no longer cure circumstances of the party seeking relief—where the injury suffered or threatened by Plaintiff

was no longer present or present but only speculative, and thus granting Plaintiff relief will not satisfy the third element of "likely that the injury will be redressed by a favorable decision." *Lujan, infra*. In this case, as alleged in the Complaint sections recited above, the conditions causing injury in the present case cited above have not changed, are ongoing, presently oppressive, and very likely to continue if not enjoined.

Citations

Plumas: In *B.C. v. Plumas*, the Plaintiff, a high school senior, filed an action in district court seeking money damages and declaratory judgment in a class action on behalf of all other similarly situated students against his high school and law enforcement for an illegal "dog sniff" search of school students. The cases proceeded past the Rule 12 stage at which the present action is at, into discovery and summary judgment. Because "the material facts were not disputed," both parties filed cross-motions for summary judgment, and plaintiff filed additional motions for preliminary injunction to stop the dog sniff searches and for class certification. Id. at 1262-3. The district court denied all three of plaintiff's motions. Plaintiff appealed. Id. at 1264.

On appeal, the Court of Appeals affirmed dismissal of the preliminary injunction, but not on the same grounds ruled on by the district court. The Court of Appeals focused on the fact that, because a year and a half had passed since the case was filed in district court, briefed on summary judgment, ruled upon, appealed, briefed again and argued in the Court of Appeals, *plaintiff was no longer a student at the high school*. *Id*. at 1264. During the passage of time the cases had "over-ripened" for decision on the injunctive relief sought—B.C., now graduated from the school, was no longer in jeopardy of harm by the allegedly illegal policy. Yet this change in underlying facts was not at issue on appeal because Defendants did not raise the standing defense at the time of filing or in the motion for summary judgment in the district court because it was not an adequate defense while B.C. was still in jeopardy at the school. The Court of Appeals found that by the time the case reached appeal, the Plaintiff no longer had standing. *Id*. "The standing issue was not raised in the district court. Nor was it raised by the parties before this court. But federal courts are required *sua sponte* to examine jurisdictional issues such as standing." *Id*. at 1263. Defendants did not and could not have raised the issue of standing while because B.C. remained subject to the jurisdiction of the school

Lyons: In *City of Los Angeles v. Lyons*, 461 U.S. 95, 103 S. Ct. 1660, 75 L. Ed. 2d 675 (1983) the Plaintiff sought a preliminary injunction to enjoin a Los Angeles Police Department chokehold policy which he alleged was excessive force and had caused him injury in October, 1976. The case was filed in U.S. District Court for the Central District of California on February 7, 1977. Before the case entered discovery, law enforcement defendants sought a motion for judgment on the pleadings, which was granted by the district court but reversed on appeal. "The Court of Appeals held that there was a sufficient likelihood that Lyons would again be stopped and subjected to the unlawful use of force to constitute a case or controversy and to warrant the issuance of an injunction, if the injunction was otherwise authorized." LAPD appealed, but the U.S. Supreme Court denied certiorari,

leaving the injunction claim at issue. *LA v. Lyons*, 449 U.S. 934, 101 S.Ct. 333, 66 L.Ed.2d 158 (1980)

On remand, Lyons sought the injunction baring the choke hold that he alleged had caused his injury now four years prior in 1976. The motion was supported by "affidavits, depositions, and government records" *Id.* at 99. The District Court, having been reversed once, performed a meticulous analysis. LAPD argued "changed circumstances"—it had implemented an improved training it claimed ameliorated the threat of injury and claimed that program and other policy changes made the future threat of injuries remote. The District Court nevertheless granted the injunction. The Court of Appeals affirmed. 656 F.2d 417 (1981).

In 1981 the U.S. Supreme Court granted certiorari (455 U.S. 937) and in 1983—*six years* after the initial choke hold injury and policy was accused—reversed the Court of Appeals. *Lyons* at 100.

In its 1983 opinion the Court noted that "Since our grant of certiorari, circumstances pertinent to the case have changed." *Id*. at 100. Law enforcement had changed its choke-hold policies, placed a "moratorium" on choke holds, and Lyons had reversed his position, now seeking to withdraw his request for a choke hold injunction, apparently comfortable by the "moratorium."

Lyons is of questionable precedential value for any purpose; a more convoluted posture for a preliminary injunction has likely never existed. Despite the high altitude of its pronouncement, *Lyons* is by the Supreme Court's own description so peculiar as to be in a class by itself; certainly distinguishable from the challenged standing count raised by the MTD here.

The Court based its reasoning on the fact that the choke hold-even was only illegal when applied in extremely rare circumstances—where a suspect is killed while being subdued. Because the policy permitting the choke hold caused unconstitutional injury (death) in only a tiny fraction (0.03% of cases), the likelihood of unconstitutional injury by use of the choke-hold with the proper training and policy changes implemented since the six year old incident was so remote to be speculative, and therefore an insufficient basis to support a finding that any citizen faced any real likelihood of unconstitutional injury *even if the choke-hold was continued in use*. Further, the Court noted that in the event that constitutional injury did occur, the victims had adequate remedy at law in the form of an excessive force lawsuit for money.

The instant Complaint alleges that the laws, policies, procedures, and behaviors sought to be enjoined remain in effect, plaintiffs remain thwarted in their PUBLIC BENEFIT ACTIVITIES including FFRRESSA the DUE ADMINISTRATION OF JUSTICE, and LEXEVIA and CCFC COMMERCIAL PURPOSES. The DVILS today remain in effect and daily form the basis of state family courts regularly issuing highly invasive DVILS ORDERS including "move-out" orders, personal and real property seizures, liberty restrictions, restrictions on speech, access to courts, right to trial by jury, due process, assistance of counsel, without due process of law in thousands of courtrooms across the state of California.

I and many of the parents affiliated with CCFC, and former clients of LEXEVIA seeking relief from such DVILS ORDERS are presently under orders issued by one or more defendants, and are daily in jeopardy of punishment for their violation, including drastic deprivations of civil rights, for alleged violations. Under the present policies, habits, and customs sought to be enjoined, we cannot obtain relief. As such, the existence and likelihood of constitutional injury from each grant of a DVILS ORDER is not absent as in *Plumas* or remote as in *Lyons*—it's *real, substantial, present, and certain.*

I. Corporate Plaintiffs' Capacity and Representation

1. CCFC and LEXEVIA are Represented by Counsel, Mr. Webb

Your claims that "[n]either Stuart nor Mr. Webb are counsel for CCFC" (MTD 7), and "Lexevia has appeared in this action without counsel" (MTD 9) are plainly incorrect. The caption page of the Complaint clearly identifies Mr. Webb as "Attorney for Plaintiffs California Coalition for Families and Children, Inc. and Lexevia, PC." (Compl. p. 1). I nowhere claim to be counsel for any party. I have consistently appeared only pro se in each pleading. See Verified Complaint, Verification (Compl. ¶¶ 171, 272; Ex Parte Application for Temporary Harassment Protective Order (Dkt #4); Ex Parte Application for Leave To Utilize Electronic Filing System (Dkt #6).

All pleadings similarly identify that CCFC and LEXEVIA are represented by counsel. Mr. Webb's notation that he is in process of obtaining pro hac vice admission is accurate yet irrelevant to the MTD's assertion.

2. LEXEVIA Capacity vs. Standing

LEXEVIA has averred and possesses capacity sufficient to maintain standing to sue both as a corporation and "unincorporated association." *Nat'l Org. for Women, Inc. v. Scheidler*, 510 U.S. 249, 255, 114 S. Ct. 798, 802, 127 L. Ed. 2d 99 (1994). This term covers any group (profit or nonprofit) whose members share a common purpose and who function under a common name. This includes churches, labor unions, political parties, professional or trade associations, social clubs, homeowners' associations, etc. See *Committee for Idaho's High Desert, Inc. v. Yost* (9th Cir. 1996) 92 F3d 814, 819. As I am the sole remaining member of the firm I founded, LEXEVIA has been devastated by the events described in the Complaint. It is presently in process of reviving its corporate status pursuant to the Revenue and Tax Code §23305a which provides: "Upon the issuance of the certificate by the Franchise Tax Board the taxpayer therein named shall become reinstated but the reinstatement shall be without prejudice to any action, defense or right which has accrued by reason of the original suspension or forfeiture, except that contracts which were voidable pursuant to Section 23304.1, but which have not been rescinded pursuant to Section 23304.5, may have that voidability cured in accordance with Section 23305.1. The certificate of revivor shall be prima facie evidence of the reinstatement and the certificate may be recorded in the office of the county recorder of any county of this state." Cal. Rev. & Tax. Code § 23305a (West).

Paragraph 3 of the Complaint avers sufficient capacity to permit this action to proceed without amendment on this issue. In the event that your clients will insist on pressing this issue I will seek leave to amend to allege these facts. Leave to amend "shall be freely given when justice so requires," Fed.R.Civ.P. 15(a), and this policy is to be applied with "extreme liberality." See *DCD Programs, Ltd. v. Leighton*, 833 F.2d 183, 186 (9th Cir.1987).

The MTD acknowledges LEXEVIA's present ability to revive its capacity to sue, but asserts that dismissal is appropriate because LEXEVIA lacked standing under Article III at the time that the law suit was filed. MTD 8. This assertion is incorrect—a confusion of the concepts of "capacity" and "standing." A corporation has Article III standing if it can satisfy the three elements described in *Lujan*: (1) it suffered an injury in fact, (2) a causal connection between the injury and the conduct complained of, and (3) the injury will be redressed by a favorable decision. See also *Paradise Creations, Inc. v. UV Sales, Inc*., 315 F.3d 1304, 1308 (Fed. Cir. 2003). Capacity to sue is a distinct doctrine; it is simply the permission necessary to utilize state and federal court systems. *Color-Vue, Inc. v. Abrams*, 53 Cal.Rptr. 2d 443, 446 (1996); Cal. Rev. & Tax. Code § 23301. The lack of capacity has no impact on the issues of standing—the critical question on standing relates to injury, not permission to sue. As LEXEVIA has pled injury in existence at the time the Complaint was filed, the MTD's assertion that it lacks standing based on that injury is error.

IV. Conclusion

In summary, I propose the following:

1. *Page Limit Extension Stipulation:* Because the MTD sweeps broadly, traditional page limits are unlikely to permit accurate briefing of pleadings and issues which will likely form the basis of an appeal. I suggest that we permit ourselves the space to fully brief the Court to permit it to have the benefit of our best analysis toward an accurate decision. I suggest an additional ten pages in each of the Opposition and Reply, and request your reply by no later than **Friday October 31, 2013**. In the event you are unable to reply by that date, this will serve as notice that I intend to seek relief from the Court by ex parte motion for such relief on **Friday October 31, 2013**.

2. *Withdrawal of Pleadings:* The RJN, Nesthus Declaration, and all exhibits thereto are controversial evidentiary matter inappropriate for admission by judicial notice or under a Motion to Dismiss under Rule 12(b)(6). I request that they be withdrawn.

3. *Withdrawal of Arguments:* The following arguments in the MTD are meritless:

   a. *CCFC and LEXEVIA May Not Proceed Represented by Webb (MTD IV A);*
   b. *All Immunity Arguments (MTD IV C):* Immunity is an affirmative defense not properly asserted as an attack on the present Complaint. As the Complaint admits no immunities, the immunity portions of the MTD are futile. I request their withdrawal;
   c. *Rooker-Feldman Bar (MTD IV H);*
   d. *Lanham Act Violation By Government (MTD IV I); and*

e. RICO Claims Lack "pattern" and "ongoing organization" averments (MTD IV J).

4. *Stipulation to Amend:* The following arguments in the MTD are easily curable and so insignificant I cannot imagine burdening the Court with their simple resolution either by waiver at this stage or stipulation to amend. Should you insist on pressing them, I suggest I will successfully obtain leave to amend to cure, and therefore request that you either (1) waive at this stage without prejudice to re-assert at any future time, or (2) stipulate to the Court granting leave to amend, obviating the necessity for the Court's devotion of time to easily resolved issues:

    a. *LEXEVIA Capacity Cure (MTD IV A);*
    b. *Statute of Limitations Cures (MTD IV G, H); and*
    c. *Standing Cure (MTD IV K).*

As to remaining issues, I am hopeful that your consideration of the authority on which you bring your motion and the additional authority and analysis herein will distill the truly justiciable issues. To the extent that reasonable compromise is possible, I have and am available to additional suggestions. I look forward to your reply toward further meet and confer discussions.

Sincerely,

Colbern C. Stuart, III

Colbern Stuart
President, California Coalition for Families and Children

cc:
Dean Browning Webb, Esq.