

COUNTY OF SANTA CRUZ

OFFICE OF THE COUNTY COUNSEL

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GOVERNMENT TORT CLAIM

RECOMMENDED ACTION

Agenda: 06/26/07

To: Santa Cruz County Board of Supervisors

Re: Kevin O'Connell, Claim No. 607-102

Original document and associated materials are on file at the Clerk of the Board of Supervisors.

In regard to the above-referenced claim, this is to recommend that the Board take the following action:

1. Reject the claim and refer to County Counsel.
2. X Deny the application to file a late claim on behalf of Kevin O'Connell, Claim No. 607-102 and refer to County Counsel.
3. Grant the application to file a late claim on behalf of and refer to County Counsel.
4. Approve the claim of in the amount of and reject the balance, if any, and refer to County Counsel
5. Reject the claim of as insufficiently filed and refer to County Counsel.

RISK MANAGEMENT

By Janet McKinley
Janet McKinley, Risk Manager

DANA McRAE, COUNTY COUNSEL

By Julia Hill
Julia Hill, Assistant County Counsel

007-102 O'CONNELL, K



CLAIM AGAINST THE COUNTY OF SANTA CRUZ
(Pursuant to Section 910 et Seq., Govt. Code)

MAY 14 PM 4:01

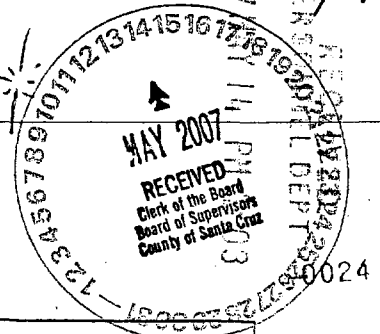
TO: BOARD OF SUPERVISORS
COUNTY OF SANTA CRUZ

ATTN: Clerk of the Board

Governmental Center

701 Ocean Street, Santa Cruz, CA 95060

RECEIVED
PERSONNEL DEPT 2



1. Claimant's Name: O'CONNELL, KEVIN; K-89321;
Address: P.O. BOX 5103, HERN VALLEY STATE PRISON; DEZANO, CA - 93216 -
N/A
Phone No: N/A

P.O. Box to which notices are to be sent: ABOVE ADDRESS

2. Occurrence: TWO (2) CRIMINAL INTERROGATIONS UPON ARREST.

Date: 7/6, 13/1995 Place: SANTA CRUZ COUNTY JAIL AND SHERIFFS GOVERNMENTAL CENTER

3. Circumstances of occurrence or transaction giving rise to claim: 555 WATER ST. AND 701 OCEAN ST., SANTA CRUZ, CA. 95060
POLYMER 5th DELIBERATE INDIFFERENCE AS TO TRAINING EMPLOYED
OFFICERS AS TO INTERROGATION METHODS/TECHNIQUES
(SEE ATTACHED CIVIL COMPLAINT)

4. General description of indebtedness, obligation, injury, damage or loss incurred so far as is now known:
LAW ENFORCEMENT'S CALIF. CONSTITUTIONAL AND COMMON-LAW VIOLATIONS OF
PLAINTIFF'S RIGHTS CAUSALLY LINKED TO FELONY CONVICTION AND DEPRIVED LIBERTY
THEREOF. (SEE ATTACH CIVIL COMPLAINT)

5.

6. Amount claimed
- | Amount claimed | |
|-------------------------------------------|---------------------------|
| Estimated amount of future loss, if known | \$ <u>ACCURATES DAILY</u> |
| TOTAL | \$ <u>UNKNOWN</u> |

7. Basis for above computations:
WHEN I FIND CASE LAW THAT TOTALS DAILY AMOUNT FOR
DEPRIVED LIBERTY CAUSALLY LINKED TO RIGHTS VIOLATIONS COMMON-LAW
TORT AND NEGLIGENCE - I WILL THEN EXTERPOLATE AND SET AN AMOUNT.

8. If the amount claimed is over \$10,000, indicate the court of jurisdiction:
N/A Municipal Court N/A Superior Court

EASE NOTE - PLAINTIFF INVOKES PENDENT JURISDICTION IN FEDERAL U.S. DISTRICT COURT UNDER
1993 CIVIL RIGHTS SUIT. CASE NO. C-07-2167 RMW
CLAIMANT'S SIGNATURE: [Signature]

Note: Claim must be presented to Clerk, Board of Supervisors, within six (6) months after the act which occasioned the injury.

Note: This claim and all attachments become Public Record and are scanned into the World Wide Web (Internet).

Americans with Disabilities Act questions or requests for accommodations may be directed to the ADA Coordinator at 454-2962 (TDD 454-2123).

14

2/5-14-07

PER5003

6/14
6/26

EXHIBIT

A.

Government Claims Program Information and Claim Form

SANTA CRUZ COUNTY AND SANTA CRUZ COUNTY SHERIFFS DEPT.
101 OCEAN ST.
SANTA CRUZ, CA 95060

and Government Claims Board

1-800-955-0045 • www.governmentclaims.ca.gov



Information and Claim Form

Note: New statute
requires \$25 filing fee!

What kind of claims can be filed? Claims can be filed for losses you believe were caused by the action, or inaction, of any state agency. Claims may include:

- Damage to real or personal property
- Reimbursement for state employee property loss, benefits, salary, or travel expenses

- Refund of a tax, fee, or penalty
- Contract disputes

FEDERAL CASE NO. C-07-2167 RM
CIVIL RIGHTS VIOLATION
PURSUANT TO CA CONSTITUTION

Claims for damages caused by a local government agency must be filed directly with the local agency that is involved. Do not file your claim with the state. If your claim is with an institution in the University of California (UC) system, contact the UC Regents directly. Call the Government Claims Program at 1-800-955-0045 to find out more.

Who can file a claim?

Anyone who believes a ~~county~~ agency caused him or her to suffer monetary loss can file a claim.

What are the time limits for filing a claim?

Claims relating to the death or injury of a person, or damage to personal property or growing crops, must be filed no later than six months after the date of the incident. Other claims must be filed no later than one year after the date of the incident. You can request permission to file a late claim. Some claims have no filing deadline. You may want to consult an attorney if you are not sure how the time limits apply to your claim.

PENDING ADVOCATION AS BARS IN FEDERAL COURT

By your claim against the California Department of Transportation (Caltrans)? NO

If your claim is against Caltrans and the damages are \$5,000 or less, you can file your claim directly with Caltrans. Contact your local Caltrans office or visit www.dot.ca.gov to locate a Caltrans office near you. No fee is required for Caltrans claims under \$5,000.

Instructions for filling out this form:

1	Provide the full name of the person claiming damage or injury. <u>KEVIN O'CONNELL; PRO SE.</u>
2	Provide a daytime telephone number. <u>N/A</u> <u>8-89321; CI-111</u>
3	Provide an email address. (Optional) <u>KERN VALLEY STATE PRISON; P.O. BOX 5123</u>
4	Provide a complete mailing address. <u>DELAND, CA 93216</u>
5	Let us know the best way to contact you if we need to call you. <u>VIA U.S. MAIL TO AFOREMENTIONED ADDRESS.</u>
6	If the claim is being filed on behalf of a minor (someone under the age of 18), please give the minor's date of birth. <u>N/A</u>
7	You may wish to consult an attorney for assistance with filing a claim, however it is not required. If an attorney or other person (such as the parent or legal guardian of a minor or conservator of an adult) is representing you, please complete this section. If this section is completed, all correspondence regarding this claim will be sent to the representative. <u>PRO SE.</u>

SANTA CRUZ

0027

Government Claims Form

and Government Claims Board

County of California

SANTA CRUZ COUNTY
SHERIFFS DEPT.

1-800-955-0045 • www.governmentclaims.ca.gov

For Office Use Only
Claim No.:

- ☐ New! Include a check or money order for \$25 payable to the State of California.
- ☐ Complete all sections relating to this claim and sign the form. Please print or type all information.
- ☐ Attach receipts, bills, estimates or other documents that back up your claim.
- ☐ Include two copies of this form and all the attached documents with the original.

Claimant Information

1	O'CONNELL, KEVIN K 89321; CI-III	2	Tel: N/A
Last name First Name MI		3	Email: "
KEVIN VALLEY STATE PRISON			
4	PO. BOX 5103, DELANO	CA	93216
Mailing Address		City	State Zip
5	Best time and way to reach you: STATE PRISON; VIA U.S. MAIL SYSTEM		
6	Is the claimant under 18?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	If YES, give date of birth: MM DD YYYY

Attorney or Representative Information

7	PROPRIA PERSONA	8	Tel: N/A
Last name First Name MI		9	Email:
CI-III; K-89321; PO. BOX 5103; K.V.S.P.			
Mailing Address		City	State Zip
DELANO		CA	93216
11	Relationship to claimant: SAME PERSON; PROSE.		

Claim Information

12	Is your claim for a state-dated warrant (uncashed check) or unredeemed bond?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
State agency that issued the warrant:		If NO, continue to Step 13
Dollar amount of warrant:	N/A	Date of issue: MM DD YYYY
Proceed to Step 22		
13	Date of Incident:	
Was the incident more than six months ago? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		
If YES, did you attach a separate sheet with an explanation for the late filing? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		
14	State agencies or employees against whom this claim is filed:	
SANTA CRUZ COUNTY SHERIFFS DEPARTMENT SANTA CRUZ COUNTY ADMINISTRATIVE UNIT		
15	Dollar amount of claim:	
If the amount is more than \$10,000, indicate the type of civil case: CIVIL RIGHTS VIOLATION		<input type="checkbox"/> Limited civil case (\$25,000 or less) <input type="checkbox"/> Non-limited civil case (over \$25,000)
Explain how you calculated the amount:		
PLAINTIFF USUALLY EXTRAPOLATE AMOUNT WHEN HE LEARNS OF THE COURTS DENIAL		

SYSTEM OF DOLLARS AND CENTS FOR EVERY DAY OF CAJUAL DEPRIVED LIBERTY
STEMMING FROM ALLEGED CONSTITUTIONAL VIOLATIONS

SANTACRUZ COUNTY AND SHERIFF'S DEPT. NOTICE OF CLAIM: PERIODIC FEDERAL INSPECTION

AFFIDAVIT FOR WAIVER OF GOVERNMENT CLAIMS FILING FEE AND FINANCIAL INFORMATION FORM

(Request for Permission to Proceed In Forma Pauperis)

SANTA CRUZ COUNTY AND SHERIFF'S DEPT. 701 OCEAN ST. SANTA CRUZ, CA. 95060

1-800-955-0045 • www.governmentclaims.ca.gov

(FILING DATE: APRIL 19, 2007)

SANTA CRUZ
COUNTY of California
SANTA CRUZ COUNTY
SHERIFF'S DEPT.

0028

For Office Use Only

Claim No.:

FEDERAL CASE NO.: C-07-2167 RMW

I request a fee waiver so that I do not have to pay the \$25 fee to file a government claim with the Victim Compensation and Government Claims Board. I cannot pay any part of the fee.

Claimant Information

1	<i>O'CONNELL, KEVIN</i>	2	Tel: <i>N/A</i>
	<small>Last name First Name</small>		

4 My occupation: *UNEMPLOYED, STATE OF CALIFORNIA PRISON INMATE LAST 11 PLUS YRS CALIF. DEPT. OF CORR. & REHAB. • HOWEVER 'UNEMPLOYED' ON WAITING LIST.*

5 If you are an inmate in a correctional facility, please attach a certified copy of your trust account balance, enter your inmate identification number below **and** skip to step **23**.

Inmate Identification Number: *K-89321*

6 I am receiving financial assistance from one or more of the following programs. ☐ Yes ☐ No

If no, proceed to step **7**. If yes, check all that apply, then skip to step **24**.

☒ SSI and SSP: Supplemental Security Income and State Supplemental Payments Programs

☒ CalWORKS: California Work Opportunity and Responsibility to Kids Act

☒ Food Stamps

☒ County Relief, General Relief (GR), or General Assistance (GA)

7 Number in my household and my gross monthly household income, if it is the following amount or less:

N/A

Number: Total Income:

If you checked a box in step **7** A through I, complete steps **9** through **15**. Then skip to step **24**.

8 My income is not enough to pay for the common necessities of life for me and the people in my family, and also pay the filing fee. *N/A* ☐ Yes ☐ No

If yes, fill in steps **9** through **24**.

Government Claims Program Fee Waiver Request Packet

SANTA CRUZ COUNTY AND SANTA CRUZ COUNTY SHERIFF'S DEPT.
701 OCEAN ST.
SANTA CRUZ, CA 95060

and Government Claims Board

1-800-955-0045 • www.governmentclaims.ca.gov



Information and Instructions

Filing Fee for Government Claims Program

FEDERAL CASE NO. C-07-2167 AMW

Beginning August 17, 2004, anyone wishing to file a government claim for money or damages against the state must pay a \$25 filing fee unless the person qualifies for a fee waiver. (Gov. Code, § 905.2(b).)

To request a fee waiver, you **must** fill out the attached Affidavit for Waiver of Government Claims Filing Fee and Financial Information Form.

Step Instructions for **filling** out each step on the attached form. The form begins on page 3 of this packet.

- 1** On the attached form, provide the full name of the person requesting the fee waiver
- 2** Provide a daytime telephone number. *N/A*
- 3** If you already have a claim number and you know what it is, write it in this space. *FILON-45-8810 COURT, PROBATE JURISDICTION*
- 4** Provide complete contact information for your employer and your spouse's employer, if applicable.
- 5** If you are an inmate in a correctional facility, please attach a certified copy of your trust account balance, provide your Inmate Identification Number, and skip to steps **23** and **24** and complete them. *K-89321*
- 6** Complete this section if you are receiving financial assistance under Supplemental Security Income (SSI), State Supplemental Payments Programs (SSPP), CalWORKS, food stamps, county relief, general relief (GR) or general assistance (GA).
If you answered yes in this category check all types of assistance you get, then complete step **24**. You are finished.
If you checked no, continue to step **7**. *N/A*
- 7** Find the number of people in your household and check the box only if your total monthly household income is less than the amount shown. For instance, if there are five people in your household and the total monthly household income is less than \$2,294.79 or less check E. If there are more than 8 people in your household, calculate the income limit by adding \$331.25 for each additional person to the income level for an eight-person household. List the number of people in your household and total household income in I.
If you checked any box in this step, complete steps **9** through **15** then skip to step **24**. *N/A*
- 8** If you cannot pay for the common items needed for daily life, such as food, shelter, medical care and personal safety for you and your household members, check yes in this category.
If you check yes to this question, fill in steps **9** through **24**. *N/A*

THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

KEVIN O'CONNELL, PRO SE
 PETITIONER/ PLAINTIFF,

vs.

COUNTY OF SANTA CRUZ, A POLITICAL
 SUBDIVISION OF THE STATE OF CALIF.;
 SANTA CRUZ COUNTY SHERIFF'S DEPT.,
 A POLITICAL SUBDIVISION OF THE STATE
 OF CALIF.; FRED PLAGEMANN, INDIVIDUALLY
 AND IN HIS OFFICIAL CAPACITY AS A SANTA
 CRUZ COUNTY DEPUTY SHERIFF DETECTIVE;
 FRANK GOMBS, INDIVIDUALLY AND IN HIS
 OFFICIAL CAPACITY AS A SANTA CRUZ COUNTY
 DEPUTY SHERIFF; MARK TORCH, INDIVIDUALLY
 AND IN HIS OFFICIAL CAPACITY AS THE SANTA
 CRUZ COUNTY SHERIFF; et al.,
 RESPONDENTS/ DEFENDANTS

CASE NO. C07-2167 RMW

— CIVIL COMPLAINT —

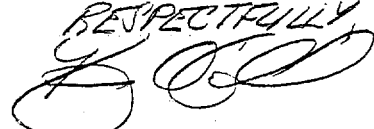
42 U.S.C. § 1983

NOTICE OF CLAIM REQUIREMENT
TO LOCAL ENTITY AND AGENCY AS TO
PENDENT JURISDICTION.

TO THE HONORABLE PRESIDING AND ASSOCIATE JUDGES
OF THE AFOREMENTIONED COURT:

PETITIONER/ PLAINTIFF, KEVIN O'CONNELL, ACTING IN PRO SE, IN
 THE ABOVE-ENTITLED MATTER, NOTIFIES SAID ENTITIES AS TO CLAIMS REQUIRE
 BY LAW PURSUANT TO THE CALIFORNIA TORT CLAIMS ACT WHILE INVOKING
 THE PENDENT JURISDICTION OF THIS FEDERAL COURT. (SEE EXHIBIT A.).

DATED: MAY 8, 2007.

RESPECTFULLY,

 KEVIN O'CONNELL IN PRO SE.

THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

KEVIN O'CONNELL, PRO SE
 PETITIONER/PLAINTIFF

CASE NO C07-2167 RMW

— CIVIL COMPLAINT —

42 U.S.C. § 1983

COUNTY OF SANTA CRUZ, A POLITICAL

SUBDIVISION OF THE STATE OF CALIF.;

THE SANTA CRUZ COUNTY SHERIFF'S DEPT.,

A POLITICAL SUBDIVISION OF THE STATE

OF CALIF.; FRED PLACEMAN, INDIVIDUALLY

AND IN HIS OFFICIAL CAPACITY AS A SANTA

CRUZ COUNTY SHERIFF DEPUTY DETECTIVE;

FRANK GOMBER, INDIVIDUALLY AND IN HIS

OFFICIAL CAPACITY AS A SANTA CRUZ COUNTY

SHERIFF DEPUTY; MARK TRACY, INDIVIDUALLY

AND IN HIS OFFICIAL CAPACITY AS A SANTA

CRUZ COUNTY SHERIFF. et al.
 RESPONDENTS/DEFENDANTS

MOTION FOR LEAVE TO AMEND
CIVIL RIGHTS COMPLAINT TO INCLUDE
PENDENT JURISDICTION AND CITED
AUTHORITY IN SUPPORT THEREOF.

TO THE HONORABLE PRESIDING AND ASSOCIATE JUDGES OF
THE AFOREMENTIONED COURT:

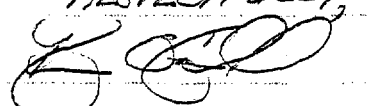
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PETITIONER/PLAINTIFF, KEVIN O'CONNELL, ACTING IN PRO SE.
 IN THE ABOVE-ENTITLED MATTER, MOVES FOR PERMISSION TO AMEND HIS
 ORIGINAL CIVIL RIGHTS COMPLAINT PURSUANT TO 42 U.S.C. § 1983
 TO AMEND SPECIFICALLY INCLUDE HIS INVOCATION OF THE PENDENT

JURISDICTION OF THIS FEDERAL COURT FOR THESE CONSTITUTIONAL AND
 PENDENT CLAIMS DERIVED FROM A COMMON NUCLEUS OF OPERATIVE
 FACTS. PLAINTIFF CONTENDS THE ACTIONS OF SAID DEFENDANTS DENIED
 PLAINTIFF DUE PROCESS OF LAW PURSUANT TO BOTH THE UNITED STATES
 AND CALIFORNIA CONSTITUTIONS, STATUTES, AND REGULATIONS. PLAINTIFF
 LODGED SAID COMPLAINT IMMEDIATELY ON THE HEELS OF THE HIGH
 COURT'S WALLACE DECISION WITH A BONA FIDE CONCERN AS TO EQUITABLE
 TOLLING EXPLAINED IN THE PREFACE OF SAID SUIT FILED APRIL 19, 2007.
 PLAINTIFF NOW COMES FORTH TO IMPLORE PERMISSION TO AMEND SAID
 COMPLAINT FOR IT IS HIS UNDERSTANDING THAT ALL CLAIMS ARISING OUT
 OF AN INCIDENT SHOULD BE RAISED IN THE COMPLAINT OR THE RIGHT
 TO BRING THE CLAIMS MAY BE FORFEITED UNDER THE LEGAL PRINCIPLE
 OF "RES JUDICATA." THUS, PLAINTIFF ALSO ALLEGES UNDER STATE LAW
 THAT SAID DEFENDANTS VIOLATED PLAINTIFF'S CALIFORNIA CONSTITUTIONAL
 RIGHTS, STATUTES, REGULATIONS, AND COMMON-LAW AS TO A RECKLESS
 AND WILLFUL DISREGARD OF PLAINTIFF'S SAID RIGHTS, AN INTENTIONAL
 AND DELIBERATE INFLECTION OF EMOTIONAL DISTRESS, AND COMMON-LAW
 NEGLIGENCE AS TO ONE OF THE SAID DEFENDANTS ALLEGED WRONGDOING
 TO SAY THE LEAST. FURTHER, ONCE THE DISCOVERY PROCESS IS COMPLETE,
 PLAINTIFF BELIEVES THAT A VIABLE MUNICIPAL LIABILITY WILL RISE
 AS TO SUPERVISION, INADEQUATE TRAINING, ABSENT POLICY, OR KNOWLEDGE
 AND ACQUIESCENCE OF POLICY DEMONSTRATING THE POLICYMAKERS
 DELIBERATE INDIFFERENCE WITH RESPECT TO A PROPENSITY OF INTERROGATION
 METHODS TAUGHT AND EMPLOYED IN A FORENSIC CONTEXT. SAID SHERIFF,
 IN AN INDIVIDUAL AND OFFICIAL CAPACITY, ALONG WITH SAID MUNICIPALITIES
 MAY DE FACTO BE HELD LIABLE FOR THE AFOREMENTIONED ALLEGED ACTS
 IN LIGHT OF DISCOVERY. OSTENSIBLY THERE IS A VOID AS TO A HIGH
 OFFICIAL EXERCISING (NAME TYPE OF PERSON) SUPERVISION OVER

A SUBORDINATE OFFICER OR POLICY THEREOF WITH REGARD TO LEGAL METHODS AND LAWFUL TECHNIQUES AS TO INTERROGATION TRAINING AS THE RECORD BEARS OUT IN THE FOREGOING INTERROGATIONS. ERGO, PLAINTIFF INVOKES THE PENDING JURISDICTION OF THIS FEDERAL COURT ALSO UNDER CALIFORNIA STATE TORT AND COMMON-LAW AS TO INJURY AND RECOVERY OF DAMAGES FOR THAT REASON. PLAINTIFF HAS INCORPORATED WITH SAID COMPLAINT TO AMEND PENDING JURISDICTION A NOTICE OF MUNICIPALITY CLAIM AS REQUIRED BY LAW. FURTHER, PLAINTIFF INCORPORATES BY REFERENCE HIS PREVIOUS §1983 CIVIL COMPLAINT¹ AND DISCUSSION AS TO THE ALLEGED INFLECTION OF CONSTITUTIONAL DEPRIVATIONS WHICH WILL ESTABLISH PLAINTIFF INJURY AND DEFENDANT LIABILITY FOR DAMAGES WHEN THE RECORD IS PROPERLY VETTED, AND HENCE PREJUDICIAL ERROR IS FOUND WITH RESPECT TO THE PENDING FEDERAL HABEAS QUESTION. (LOPEZ *vs.* SMITH (9TH CIR. 2000) 203 F.3d 1122.)

DATED: MAY 8, 2007.

RESPECTFULLY,

 KEVIN CONNELL, PRO SE.

1. DURING HIS SENTENCING HEARING IN MARCH OF 1998, PLAINTIFF RECOLLECTS THAT HE RESPECTFULLY ADDRESSED THE COURT AND EXPRESSED ON THE RECORD HIS TRUE BELIEF THAT THESE CONSTITUTIONAL VIOLATIONS HAD OCCURRED ALONG WITH HIS INTENT TO LODGE A §1983 SUIT NOTWITHSTANDING THE TRIAL COURT'S DENIAL OF HIS SUPPRESSION MOTION ALLEGED CAUSAL TO CONVICTION. BY NO MEANS IS PLAINTIFF BEING PRESUMPTUOUS AS TO PREVAILING ON THE PENDING FEDERAL HABEAS QUESTIONS BEFORE THE COURT AS PREVIOUSLY EXPLAINED IN THE PREFACE OF HIS INITIAL SAID §1983 COMPLAINT, PLAINTIFF WAS COMPELLED TO FILE SAID COMPLAINT IN LIGHT OF THE WALLACE DECISION WHICH EMERGED AINED SIGNALS AS TO EQUITABLE TOLLING, THUS HE THOUGHT IT BEST TO

14
 NOW, PLAINTIFF HAS A FIRM BELIEF THESE VIOLATIONS OCCURRED WITH A RECORD IN SUPPORT THEREOF.
 I WISHED THAT I HAD A METHOD FOR THE HONORABLE RONALD W. WHITE TO RESOLVE.

15.

REPRESENTATIVE DEFENDANTS
PAGE

CASE NO.

CIVIL COMPLAINT

42 U.S.C. § 1983

FILED BY
CLERK ON APRIL 19
2007.

I.

INSTRUCTION

PETITIONER, KEVIN O'CONNELL, ACTING IN PRO SE. IN THE ABOVE-ENTITLED MATTER COMES FORTH TO LODGE SAID CIVIL RIGHTS COMPLAINT. PETITIONER IS A PRISONER OF THE STATE OF CALIFORNIA INCARCERATED AT KEARN VALLEY STATE PRISON IN DELANO, CALIFORNIA.

TOMMY HEDGPETH, SUPERINTENDENT, IS THE WARDEN OF

KERN VALLEY STATE PRISON. VIM TILTON, IS THE DIRECTOR OF THE CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION. ERGO, THE LEGAL CUSTODIAN OF PETITIONER.

II.

OATH

I, KEVIN O'CONNELL, DECLARE UNDER PENALTY OF PERJURY THAT THE FOLLOWING FACTS OF THIS MATTER ASSERTED HEREIN ARE TRUE AND CORRECT, EXCEPT AS TO MATTERS THAT ARE HEREIN STATED ON MY OWN INFORMATION AND BELIEF, AND AS TO THOSE MATTERS I BELIEVE THEM TO BE TRUE.

III.

JURISDICTION

PETITIONER BRINGS FORTH THIS COMPLAINT UNDER 28 U.S.C.A. § 1331 AND 28 U.S.C.A. § 1343(3). FURTHER, UNDER 28 U.S.C.A. § 1367(c) AS TO POTENTIAL RELEVANCE PROVIDING PETITIONER PREVAILS ON SAID ISSUES OF A CONSTITUTIONAL NATURE PENDING IN THE UNITED STATES DISTRICT COURT THAT GIVES RISE TO THIS FEDERAL CAUSE OF ACTION. (CASE NO. CV-20263 RMW (PR), FEDERAL HABEAS PETITION CURRENTLY UNDER SUBMISSION.)

IV.

PREFACE

AS A PRELIMINARY NOTE, PETITIONER WISHED TO CONVEY TO THE COURT HIS CURRENT SITUATION, AND REASONING AS TO FILING SAID COMPLAINT IN A PREMATURE FASHION. FOR HIS HABEAS PROCEEDING HAS NOT YET BEEN RESOLVED, LET ALONE ADJUDICATED IN A FAVORABLE MANNER NEEDED TO ESTABLISH CONSTITUTIONAL GROUNDS TO SUPPORT THIS § 1983 SUIT. PETITIONER REALIZES HE IS GROUNDELESS VIND A FAVORABLE RULING BY THE AFOREMENTIONED FEDERAL HABEAS COURT CONCERNING THESE ALLEGED CONSTITUTIONAL VIOLATIONS THAT ARE ALSO ALLEGED AS A CAUSAL NEXUS TO CONVICTION AND INCARCERATION. PETITIONER UNDERSTANDS THAT A JUDICIAL REVIEW BY EITHER

A STATE OR FEDERAL COURT MUST FIRST DEEM THAT THE ALLEGED CONSTITUTIONAL DEPRIVATIONS COMPLAINED OF DID INDEED OCCUR WHICH WOULD SEEM TO BE A PREREQUISITE, HENCE ACT TO ENSCONCE VALID CONSTITUTIONAL GROUNDS TO FILE A §1983 SUIT. OTHERWISE, PETITIONER'S §1983 COMPLAINT WOULD BE WITHOUT MERIT, IF NOT FRIVOLOUS, UNTIL THE COURTS ISSUE A FINAL ADJUDICATION AS TO THE CHALLENGED CONSTITUTIONAL ISSUES ALLEGED CAUSAL TO CONVICTION AND INCARCERATION. IT WOULD MAKE NO SENSE TO MAKE A CONSTITUTIONAL CONTENTION BUILT UPON AN EDIFICE AS STURDY AS THE PROVERBIAL HOUSE OF CARDS. SEE, HECK, (HECK "HUMPHREY 512 U.S. 477 (1994) THE COURT'S POSITION WAS A 'CLAIM FOR DAMAGES UNDER A §1983 FEDERAL CAUSE OF ACTION BEARING RELATIONSHIP TO CONVICTION THAT HAS NOT BEEN INVALIDATED IS NOT COGNIZABLE UNDER §1983, 'Id. at 486-487.) HOWEVER, DUE TO A RECENT UNITED STATES SUPREME COURT'S DECISION IN WALLACE, (WALLACE "KATO et al. 07 C.D.O.S. 1799 (FEB. 21, 2007)) THE COURT OPINED THAT A FALSE ARREST, FOLLOWED BY CRIMINAL PROCEEDINGS, BEGINS TO RUN AT THE TIME THE CLAIMANT BECOMES DETAINED PURSUANT TO THE LEGAL PROCESS AS TO THE STATUTE OF LIMITATIONS. EVEN THOUGH WALLACE WAS SCOPED TO THE FOURTH AMENDMENT, THIS RECENT DECISION IS IN STARK CONTRAST TO HECK. PETITIONER WAS OF THE MINDSET THAT HECK WAS CONTROLLING WITH RESPECT TO THIS TYPE SITUATION CONCERNING THE CONVICTION FIRST HAVING TO BE INVALIDATED, OR AT THE VERY LEAST CONSTITUTIONAL ERROR MUST BE ESTABLISHED BY A JUDICIAL RULING BEFORE A CLAIMANT CAN EVEN LODGE HIS §1983 SUIT. PETITIONER, WHO IS A LAYMAN AS TO LAW, THOUGHT IT BEST TO NOW COME FORTH AND LODGE HIS §1983 COMPLAINT ON THE HEELS OF WALLACE NOTWITHSTANDING HIS PENDING FEDERAL HABEAS PETITION WITH RESPECT TO UNRESOLVED CONSTITUTIONAL ISSUES WHICH ARE THE CORE OF HIS PENDING WRIT AND §1983 COMPLAINT. PETITIONER, BY NO MEANS, IS BEING PRESUMPTUOUS AS TO THE PENDING FEDERAL COURT RULING. PETITIONER IS NOW FILING SAID §1983 COMPLAINT IN LIGHT OF THE RECENT WALLACE DECISION

WHICH SUDDENLY BREEDS CONFLICT WITH HECK. IT BEARS REITERATING, PETITIONER IS NOT CAVALIERLY LOGGING THIS §1983 SUIT IN ADVANCE OF THESE UNRESOLVED CONSTITUTIONAL ISSUES CURRENTLY UNDER SUBMISSION IN THE U.S. DISTRICT COURT THAT MAY POTENTIALLY GIVE RISE TO THIS SUIT PROVIDING A FAVORABLE RULING. PETITIONER COMES FORTH NOW FOR IT WOULD BE A PROCEDURALLY SAFE MOVE IN LIGHT OF WALLACE. THESE AFOREMENTIONED COURT DECISIONS ENGENDER MIXED SIGNALS CONCERNING EQUITABLE TOLLING IN RELATION TO THE STATUTE OF LIMITATIONS. PRIOR TO WALLACE, HECK NOT ONLY APPROVED, IT DEMANDED DILATORY §1983 FEDERAL CAUSE OF ACTION FILING. AT LEAST UNTIL THE ISSUES WERE FAVORABLY DECIDED AND RESOLVED JUDICIALLY, HENCE THE CONVICTION INVALIDATED BEFORE §1983 SUIT RELIEF COULD BE SOUGHT. THEREFORE, PETITIONER/PLAINTIFF NOW COMES FORTH TO LODGE HIS §1983 FEDERAL CAUSE OF ACTION IN A FORTHWITH MANNER AND REQUEST TO HOLD SAID SUIT IN ABEYANCE UNTIL FEDERAL JUDICIAL RESOLUTION OF THE FOLLOWING ISSUES OF A CONSTITUTIONAL NATURE.

V.

COMPLAINT

PETITIONER/PLAINTIFF CLAIMS SAID DEFENDANTS WERE ENGAGED IN ACTION "UNDER COLOR OF" LAW FOR THE PURPOSES OF §1983. THE FACTS WILL SHOW THAT THESE OFFICERS CONDUCT VIOLATED CONSTITUTIONAL RIGHTS, AND THAT THESE RIGHTS VIOLATED WERE CLEARLY ESTABLISHED SUCH THAT IT WOULD BE CLEAR TO A REASONABLE OFFICER THAT HIS CONDUCT WAS UNLAWFUL IN THE SITUATION HE CONFRONTED. FURTHER, PETITIONER ALLEGES THE MISCONDUCT WAS NOT MERELY AN ABUSE OF DISCRETION, FOR IT CONSTITUTED A WILLFUL DISREARD FOR THE LAW. PETITIONER WILL ASSUME THAT AN INQUIRY INTO THE PROPRIETY OF THE CONDUCT IS APPROPRIATE. IN SHORT, PETITIONER CONTENTS SAID OFFICERS VIOLATED

HIS FIFTH AND FOURTEENTH AMENDMENT RIGHTS. SAID OFFICERS WILLFULLY DISREGARDED PETITIONER'S REPEATED MIRANDA INVOCATIONS AND EMPLOYED COERCIVE TECHNIQUES DURING INTERROGATION. THIS CASE INVOLVES ELEMENTS OF 'COLLUSION', 'SUPERVISORY', AND 'FAILURE-TO-TRAIN' AS A BASIS FOR LIABILITY. THESE FACTS MAY SUBJECT BOTH THE COUNTY AND COUNTY SHERIFF DEPARTMENT MUNICIPALITIES TO LIABILITY. (SEE, CITY OF CANTON "HARRIS" 489 U.S. 378 (1989)).

FURTHERMORE, PETITIONER ALSO CLAIMS A STATE CLAIM FOR IT MAY FORM PART OF THE SAME CONSTITUTIONAL CLAIM AS UNLAWFUL UNDER BOTH FEDERAL AND STATE LAW. THEREFOR, ADDITIONALLY IN THE INDIVIDUAL AND OFFICIAL CAPACITY SUBJECTING THE AFOREMENTIONED MUNICIPALITIES ON A RESPONDEAT SUPERIOR THEORY PROVIDING THE STATE OF CALIFORNIA JURISDICTION RECOGNIZES SUCH LIABILITY FOR THE TORTS OF THEIR OFFICERS AS A MATTER OF STATE LAW. THE FIFTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION ESTABLISH A PRIVILEGE AGAINST SELF-INCRIMINATION. AS DO ARTICLE - SECTION 15 OF THE CALIFORNIA CONSTITUTION AND EVIDENCE CODE 940. IN ADDITION, THE USE IN A CRIMINAL PROSECUTION OF AN INVOLUNTARY CONFESSION OR ADMISSION IS A DENIAL OF THE STATE AND FEDERAL CONSTITUTIONAL GUARANTEE OF DUE PROCESS UNDER THE FIFTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION AND ARTICLE I, SECTION 15 OF THE CALIFORNIA CONSTITUTION. (CITATIONS OMITTED.) THE FOLLOWING SYNOPSIS OF THE FACTS CONVEYED IN A CONCISE MANNER AT THIS TIME. FOR UNDER RULE 8 OF THE FEDERAL RULES OF CIVIL PROCEDURE PERMITS THE SCHEME OF NOTICE PLEADING AS TO COMPLAINT NEED ONLY SUPPLY "A SHORT AND PLAIN STATEMENT OF CLAIM SHOWING THAT THE PLEADER IS ENTITLED TO RELIEF." (SEE, CONLEY "GIBSON" 355 U.S. 41 (1957)). (ACCORD, LEATHERMAN "TARRANT COUNTY NARCOTICS INTELLIGENCE AND COORDINATIONAL UNIT" 507 U.S. 103 (1993)).

VI.

STATEMENT OF THE FACTS

IN MID 1995, PETITIONER BECAME A SUSPECT IN THE LITTLEWAY LANE AND HECKER PARK BURGLARIES. DEPUTY FRANK GOMBOS TOOK THE INITIAL REPORTS ON BOTH CRIMES. DETECTIVE FRED PLAGEMAN, THE DETECTIVE IN CHARGE OF THE CASES, DISCUSSED WITH GOMBOS THE CIRCUMSTANCES OF THE LITTLEWAY LANE BURGLARY. PLAGEMAN ALSO SHOWED GOMBOS A PICTURE OF PETITIONER DURING THIS DISCUSSION. A FEW DAYS LATER, ON JULY 6, 1995, GOMBOS CAME ACROSS PETITIONER ON AN UNRELATED 'UNDER THE INFLUENCE' CHARGE AT THE COUNTY JAIL. PRECISELY 15 MINUTES EARLIER, PETITIONER HAD INVOKED HIS MIRANDA RIGHTS ON THE UNRELATED CHARGE. GOMBOS IMMEDIATELY READ PETITIONER HIS MIRANDA RIGHTS AND INTERROGATED PETITIONER ON THE LITTLEWAY LANE BURGLARY. SAID INTERROGATION IS NOT TAPE-RECORDED, HOWEVER IT IS COMPREHENSIVELY MEMORIALIZED IN GOMBOS' SUPPLEMENTAL REPORT. GOMBOS HAD INDEED TOLD PLAGEMAN THAT PETITIONER DISPLAYED SIGNS OF BEING UNDER THE INFLUENCE DURING THE GOMBOS INTERROGATION. GOMBOS EMPLOYED FALSE EVIDENCE TACTICS FROM THE ONSET AND THROUGHOUT THE INTERROGATION. MOREOVER, GOMBOS ASKED PETITIONER IF HE WAS WILLING TO GO TO JAIL FOR A CRIME HE DID NOT COMMIT. GOMBOS THEN INFORMED PETITIONER THAT A LATENT HAD BEEN LIFTED FROM THE POINT OF ENTRY, AND THAT PETITIONER'S HAND WAS TOO LARGE TO HAVE LEFT THE PRINT. (i.e., FINGERPRINT.) GOMBOS LEFT THE ROOM FOR A FEW MINUTES. WHEN GOMBOS RETURNED, PETITIONER ASKED IF HE WOULD BE ARRESTED IF HE TOLD THE TRUTH. GOMBOS TOLD PETITIONER HE WOULD NOT ARREST HIM THAT NIGHT BUT COULD NOT SAY WHAT WOULD HAPPEN LATER. PETITIONER, AN ADDICT ON THE VERGE OF WITHDRAWALS, THEN PLACED THE BLAME ON HIS SMALLER-HANDED FEMALE CO-DEFENDANT. GOMBOS TESTIFIED HE MADE AN AGREEMENT NOT TO ARREST PETITIONER THAT NIGHT AND STUCK TO IT. PETITIONER WAS IMMEDIATELY RELEASED AFTER SAID INTERROGATION. DOCTOR OFSHE, AN EXPERT ON INFLUENCE DURING POLICE INTERROGATION, REVIEWED ALL RELEVANT REPORTS, AS WELL AS GOMBOS' TESTIMONY DURING THE EXTENSIVE THREE DAY HEARING. DR. OFSHE EXPRESSED

THE OPINION THAT COMBOS, ACCORDING TO HIS OWN ACCOUNT, ENGAGED IN IMPROPERLY COERCIVE TECHNIQUES DURING HIS INTERROGATION OF PETITIONER. DEPUTY COMBOS HAD USED IMPROPER THREATS TO ELICIT PETITIONER'S ADMISSION. COMBOS ASKED IF PETITIONER WAS WILLING TO GO TO JAIL FOR A CRIME HE DID NOT COMMIT. ACCORDING TO DR. OFSHE, THOSE REMARKS THREATENED THAT PETITIONER WOULD BE INCARCERATED IF HE DID NOT COOPERATE AND PROVIDE THE INFORMATION COMBOS HAD SOLICITED. COMBOS LEFT PETITIONER ALONE, RETURNED AGREED NOT TO ARREST PETITIONER THAT EVENING IF PETITIONER PROVIDED HIM WITH THE INFORMATION HE SOUGHT, AND OBTAINED THE ADMISSION FROM PETITIONER. THE TIMING OF THE IMPLIED THREATS AND THE ADMISSIONS INDICATES THE THREATS, ALONG WITH THE PROMISES, INDUCED THE ADMISSION. THUS PETITIONER'S STATEMENTS WERE OBTAINED THROUGH THE USE OF THREATS AND OFFERS OF LENITY. DR. OFSHE FOUND IT SIGNIFICANT THAT PETITIONER'S ADMISSIONS CONTAINED NO DETAILS ABOUT THE ALLEGED CRIME, BECAUSE THE LACK OF SUCH DETAIL RENDERED THE NARRATIVE CONSISTENT WITH SOMEONE WHO HAS NO ACTUAL KNOWLEDGE OF THE CRIME AND IS IN FACT INNOCENT. FURTHER, DOCTOR STAMFORD AN EXPERT ON DRUGS AND ADDICTION, TESTIFIED THAT AN ADDICT UNDER THE INFLUENCE OF HEROIN WOULD FIND IT MORE DIFFICULT TO RESIST THE PRESSURES OF POLICE INTERROGATION AND WOULD BE MORE VULNERABLE TO MANIPULATION THAN WOULD A SOBER PERSON. FINALLY, COMBOS TESTIFIED THAT HE HAD BEEN TRAINED IN INTERROGATION, AND THAT HE CAN TELL A PERSON'S SIZE BY THE LATENT FINGERPRINT HE HAS LIFTED.

A WEEK LATER, ON JULY 13, 1995, DETECTIVE FRED PLACEMAN INTERROGATED PETITIONER ON THE LITTLEWAY LANE AND HECKER PASS BURGLARIES. PLACEMAN HAD ALREADY DISCUSSED WITH COMBOS, AND READ HIS REPORT OF THE COMBOS INTERROGATION. PLACEMAN TESTIFIED HE ARRESTED PETITIONER FOR BURGLARY, RECEIVING STOLEN PROPERTY, AND BEING UNDER THE INFLUENCE OF A

NARCOTIC NEAR MIDNIGHT OF JULY 12, 1995. THE PLACEMAN INTERROGATION
 TOOK PLACE ON THE NIGHT OF JULY 12-13, 1995, SHORTLY AFTER MIDNIGHT.
 PLACEMAN HAD LEFT HOME THAT NIGHT ONCE NOTIFIED THAT PETITIONER HAD
 BEEN LOCATED WITH HIS CAR, HENCE PICKED-UP AND ARRESTED BY DEPUTY
 FENSTER. PLACEMAN HAD ISSUED A 'PICK-UP/ARREST' ORDER. PLACEMAN TESTIFIED
 THAT PETITIONER'S CONDUCT WAS CONSISTENT WITH BEING UNDER THE INFLUENCE OF
 A NARCOTIC. THE PLACEMAN INTERROGATION WAS TAPE-RECORDED. FROM THE
 OUTSET OF THE INTERROGATION, PLACEMAN TOLD PETITIONER HE WOULD OBTAIN
 'HELP' FOR PETITIONER ON THE CUSP OF THE MIRANDA ADVISEMENT. PLACEMAN
 DID CONCEDE THAT HE TOLD PETITIONER HE WOULD OBTAIN 'HELP' FOR HIM IN A
 MANNER HE KNEW WOULD CONVEY TO PETITIONER A SUGGESTION THAT HE MIGHT
 EXTRICATE PETITIONER FROM HIS PREDICAMENT. PLACEMAN THEN ADVISED
 PETITIONER OF HIS RIGHTS TO SILENCE AND COUNSEL AND THAT WHAT HE SAID
 COULD BE USED AGAINST HIM IN A COURT OF LAW. PLACEMAN ASKED PETITIONER
 IF HE UNDERSTOOD HIS RIGHTS AND OBTAINED AN AFFIRMATIVE RESPONSE.
 PLACEMAN LAUNCHED INTO QUESTIONING WITHOUT ASKING IF PETITIONER
 WISHED TO WAIVE HIS RIGHTS. PLACEMAN IMMEDIATELY TOLD PETITIONER
 THAT HIS FEMALE CO-DEFENDANT WOULD ALSO BE BROUGHT TO THE
 STATION ON 'SIMILAR CHARGES'. PLACEMAN THEN FALSELY INFORMED
 PETITIONER THAT A "TV AND VCR AND OTHER STUFF" HAD JUST BEEN
 FOUND IN PETITIONER'S CAR, AND WANTED TO KNOW WHERE THOSE
 ITEMS HAD COME FROM. DEPUTY FENSTER, THE OFFICER WHO HAD JUST
 LOCATED PETITIONER AND HIS CAR, AND HAD SEARCHED PETITIONER AND
 HIS CAR, HAD PERSONALLY BROUGHT PETITIONER TO PLACEMAN. FENSTER
 AND PLACEMAN HAD EVIDENTLY DISCUSSED THE RECENT ARREST OF
 PETITIONER. FENSTER PARTICIPATES ALSO IN THE PRELIMINARY C 14
 INTERROGATION, (D.F. = DEPUTY DEREK FENSTER: TOP OF PAGE 1, INTERROGATION
 TRANSCRIPT.) AND HENCE PRESENTLY INDEED, THERE IS A TEMPORAL RELATIONSHIP

AS TO FENSTER'S COLLOQUY WITH PETITIONER TRANSIORY TO PLAGEMAN FALSELY INFORMING PETITIONER THAT A TV AND VCR HAD JUST BEEN FOUND IN PETITIONER'S CAR UPON THE FRESH ARREST. THE SAME CAR FENSTER HAD JUST LOCATED WITH PETITIONER AND SEARCHED WITH KNOWLEDGE SAID ITEMS WERE NOT IN PETITIONER'S CAR. (THE INTERROGATION TRANSCRIPT EVIDENCES CLOSE PROXIMITY BETWEEN FENSTER'S CONVERSATION WITH PETITIONER AND PLAGEMAN'S LIE.)

THUS, IN LIGHT OF THE FOLLOWING EVIDENCE CONTAINED IN THIS RECORD IT CAN BE PROPERLY INFERRED THAT FENSTER WAS PRESENT WHEN PLAGEMAN CONVEYED THIS SPECIFIC FALSEHOOD TO PETITIONER AT THE START OF THE INTERROGATION. MOREOVER, THE FALSITY (I.E. TV JUST FOUND IN PETITIONER'S CAR) THAT PLAGEMAN CONVEYED TO PETITIONER IS THE EXACT ITEM STOLEN IN THE LITTLEWAY LANE BURGLARY. SOON THEREAFTER, PLAGEMAN FALSELY TOLD PETITIONER THAT PETITIONER HAD PREVIOUSLY SAID "WE WERE ROLLING WITH A TV IN THE CAR." PLAGEMAN WAS AWARE THAT COMAR WAS UNABLE TO ELICIT SAID TV IN PETITIONER'S ADMISSION TO CONFIRM THAT PETITIONER HAD INDEED ACTUAL KNOWLEDGE, HENCE INVOLVEMENT IN THE LITTLEWAY LANE BURGLARY. IN SUM, THE RECORD IS LADEN WITH CIRCUMSTANCES EVINCING PLAGEMAN'S DECEPTIONS, IMPLIED PROMISES OF LENITY, AND IMPLIED THREATS. FURTHERMORE, THE RECORD SHOWS THAT PLAGEMAN WAS ON NOTICE OF AND EXPLOITED PETITIONER'S VULNERABLE CONDITION IN PURSUING THE INTERROGATION RATHER THAN WAITING FOR PETITIONER TO RECOVER HIS FACILITIES. IT CAN FURTHER BE PROPERLY INFERRED BY PLAGEMAN'S OWN TESTIMONY THAT HE ATTEMPTED TO CONFUSE PETITIONER IN AN APPARENT UNDERHANDED ATTEMPT TO ELICIT FROM PETITIONER CONFIRMATION OF THE TV TO PROVE ACTUAL KNOWLEDGE OF THE PROPERTY STOLEN IN THE LITTLEWAY LANE BURGLARY. IN ADDITION, PLAGEMAN LIES TO PETITIONER ABOUT EYEWITNESS AND FINGERPRINT EVIDENCE DURING THE INTERROGATION. PLAGEMAN IGNORED PETITIONER'S REQUEST TO SUBMIT TO A

POLYGRAPH TEST TO RESOLVE SAID MATTER DURING THE INTERROGATION. PLAGEMAN RECKLESSLY DISREGARDED PETITIONER'S REPEATED INVOCATIONS OF HIS MIRANDA RIGHT TO REMAIN SILENT. PETITIONER REPEATEDLY TOLD PLAGEMAN HE HAD NO MORE TO SAY AND DID NOT WISH TO TALK ANY LONGER DURING THE COURSE OF THE INTERROGATION. PETITIONER'S STATEMENTS AS A WHOLE AND THE CONTEXT OF THE INTERROGATION AS A WHOLE ESTABLISH THAT PETITIONER'S RIGHT TO CUT OFF QUESTIONING WAS NOT SCRUPULOUSLY HONORED. PLAGEMAN DELIBERATELY IGNORED PETITIONER'S STATEMENTS AND CONTINUED TO INTERROGATE PETITIONER. PLAGEMAN ALSO TESTIFIED HE COMMONLY LIES TO SUSPECTS TO ELICIT INCULCATORY STATEMENTS. PLAGEMAN SUGGESTED TO PETITIONER THAT FAILURE TO COOPERATE MIGHT CARRY ADVERSE CONSEQUENCES. FURTHER, THE COURSE OF THE INTERROGATION ILLUSTRATES THAT PLAGEMAN SUGGESTED AT VARIOUS POINTS THAT COOPERATION ALSO WOULD RESULT IN LENIENCY OR IN "HELP" TO PETITIONER AND DID NOT MERELY EXHORT PETITIONER TO TELL THE TRUTH FOR THE TRUTH'S SAKE.

MOREOVER, PLAGEMAN EXPLOITED THE FRUIT OF GOMBOS' ILLEGAL TACTICS. PLAGEMAN REVIEWED GOMBOS' ORIGINAL REPORT CONCERNING THE LITTLEWAY LANE BURGLARY, DISCUSSED WITH GOMBOS THE PRIOR INTERROGATION, AND KNEW THAT PETITIONER WAS UNDER THE INFLUENCE DURING THE GOMBOS' INTERROGATION. GOMBOS DATED HIS REPORT OF THE JULY 6, 1995, INTERROGATION JULY 13, 1995, AT 2:35 P.M.. PLAGEMAN INTERROGATED PETITIONER ON THE NIGHT OF JULY 12-13, 1995, SHORTLY AFTER MIDNIGHT. PLAGEMAN TESTIFIED THAT HE USED INFORMATION OBTAINED BY GOMBOS TO QUESTION PETITIONER. THE INTERROGATION TRANSCRIPT SHOWS THAT PLAGEMAN EXPLOITED INFORMATION ILLEGALLY OBTAINED BY GOMBOS FOR THE SECOND INTERROGATION OF PETITIONER. PLAGEMAN QUESTIONED PETITIONER ABOUT THE LITTLEWAY LANE BURGLARY AND, LIKE GOMBOS BEFORE HIM, FALSELY REPRESENTED THAT EYEWITNESSES PLACED PETITIONER AT THE SCENE OF

THE LITTLEWAY LANE BURGLARY. PLAGEMAN TESTIFIED HE BASED HIS QUERIES REGARDING A TELEVISION AND VCR ON INFORMATION FROM GOMBOS. DOCTOR STANFORD, THE EXPERT ON DRUGS AND ALCOHOL, FURTHER TESTIFIED THAT HE HAD REVIEWED THE REPORTS AND PLAGEMAN INTERROGATION. DOCTOR STANFORD EXPOUNDED THAT THE COMBINATION OF HEROIN AND ALCOHOL WOULD REDUCE INHIBITIONS AND INCREASE IMPULSIVENESS. DOCTOR STANFORD EXPRESSED THE OPINION THAT PETITIONER SEVERAL TIMES TRIED TO STOP THE PLAGEMAN INTERROGATION, MOREOVER, THAT PETITIONER WAS FAMILIAR ON THE TAPE OF THE PLAGEMAN INTERROGATION.

THE CONTEXT OF THE PLAGEMAN INTERROGATION SHOWS THAT PLAGEMAN UNDERSTOOD PETITIONER SOUGHT TO TERMINATE QUESTIONING SEVERAL TIMES BEFORE THE INTERROGATION ENDED BUT CONTINUED TO QUESTION PETITIONER AND, EVEN AFTER PETITIONER REQUESTED COUNSEL, DID NOT IMMEDIATELY TERMINATE QUESTIONING, BUT INSTEAD TRIED TO ELICIT MORE STATEMENTS BY QUESTIONING PETITIONER'S ASSERTION OF HIS RIGHT TO COUNSEL AND SAYING PETITIONER WAS A "BAD GUY" FOR EXERCISING HIS CONSTITUTIONAL RIGHTS.

IN ADDITION, PLAGEMAN AVOIDED ASKING FOR AN EXPRESS WAIVER OF CONSTITUTIONAL RIGHTS WHEN HE MIRANDIZED PETITIONER. THE TACTICS DISCUSSED ABOVE, TOGETHER WITH THE LACK OF AN EXPRESS WAIVER OF MIRANDA RIGHTS IN THE CONTEXT OF THE RECENT MIRANDA VIOLATION, ALONG WITH THE FACT THE PLAGEMAN REPORT INCORRECTLY STATES THAT PETITIONER INITIATED DISCUSSION AFTER THE MIRANDA ADVISEMENT, RENDERED THE RESULTING STATEMENTS OBTAINED DURING THE PLAGEMAN INTERROGATION INVOLUNTARY. GIVEN THESE FACTORS PREVIOUSLY DISCUSSED ESTABLISH THE PLAGEMAN INTERROGATION ITSELF WAS COERCIVE.

FURTHERMORE, THE IMPROPERLY COERCIVE TECHNIQUES ON THE PART OF GOMBOS ONE WEEK PREVIOUS CONFILATED WITH THE APPARENT

RELATIONSHIP BETWEEN THE PLACEMAN INTERROGATION AND THE GOMBOS INTERROGATION, THE STATEMENTS OBTAINED DURING PLACEMAN'S INTERROGATION SHOULD TOO HAVE BEEN EXCLUDED AS THE FRUIT OF THE GOMBOS INTERROGATION. BECAUSE PLACEMAN EXPLOITED UNRELIABLE INFORMATION IMPROPERLY ACQUIRED BY GOMBOS TO OBTAIN ADDITIONAL STATEMENTS FROM PETITIONER. ERGO, THE PLACEMAN INTERROGATION AND THE RESULTING STATEMENTS WERE INADMISSIBLE FRUITS OF THE UNLAWFUL GOMBOS INTERROGATION.

IT BEARS RETERRATING, IN SUM, PETITIONER HAD INVOKED HIS MIRANDA RIGHT AND REFUSED TO GIVE OFFICER STACKHOUSE A STATEMENT. A MERELY 15 MINUTES LATER PETITIONER WAS SUDDENLY COMPELLED TO GIVE GOMBOS A STATEMENT EVIDENCED AS BOTH INVOLUNTARY AND UNRELIABLE. THEN A WEEK LATER WAS ARRESTED AND QUESTIONED BY PLACEMAN IN A SITUATION WHERE THERE WAS NO EXPRESS WAIVER OF CONSTITUTIONAL RIGHTS AND A SUBSTANTIAL PATTERN OF DECEPTION, SUGGESTIONS OF LENIENCY, AND IMPLIED THREATS PERMEATED THE INTERROGATION PROCESS. AS PREVIOUSLY DISCUSSED, OTHER FACTORS SUPPORT A FINDING OF COERCION IN THIS CONTEXT. PLACEMAN'S REPORT INCORRECTLY STATES THAT PETITIONER INITIATED THE DISCUSSION AFTER THE MIRANDA ADVISEMENT. MOREOVER, THE RECORD SHOWS THAT PLACEMAN RECKLESSLY DISREGARDED PETITIONER'S REPEATED INVOCATIONS OF HIS RIGHT TO REMAIN SILENT DURING THE COURSE OF THE INTERROGATION. THERE IS OTHER EVIDENCE CONTAINED IN THIS RECORD THAT FURTHER ENSCONCES PLACEMAN'S CREDIBILITY AS DUBIOUS. FOR THE SAKE OF JUDICIAL ECONOMY, PETITIONER WILL INCORPORATE BY REFERENCE SAID EVIDENCE AT A LATTER PROCEEDING.

PETITIONER'S STATEMENTS WERE USED AT TRIAL UNDER A THEORY OF FALSE DENIALS ESTABLISHING A CONSCIOUSNESS OF GUILT. THE ERRONEOUS USE OF PETITIONER'S STATEMENTS TO PLACEMAN WAS PREJUDICIAL, THUS CAUSALLY LINKED TO PETITIONER'S UNLAWFUL CONVICTION AND INCARCERATION.

THE CALIFORNIA STATE COURTS HAVE REJECTED PETITIONER'S CHALLENGES AS TO VOLUNTARINESS AND MIRANDA ERROR OF PETITIONER'S

STATEMENTS TO PLACEMAN, AND AS TO VOLUNTARINESS OF PETITIONER'S STATEMENTS TO COMBOS, AND THE POISONED FRUIT THEREOF. PETITIONER FILED A FEDERAL HABEAS PETITION IN SEPTEMBER OF 2001. SAID WRIT WAS FILED IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA WITH RESPECT TO THE AFOREMENTIONED ISSUES OF A CONSTITUTIONAL NATURE. THE HONORABLE RONALD M. WHITE ISSUED AN ORDER TO SHOW CAUSE IN MARCH OF 2002. SAID CONSTITUTIONAL CLAIMS ARE STILL UNDER SUBMISSION.

VII.

MEMORANDUM OF POINTS AND AUTHORITIES

RELEVANT CASE LAW CONCERNING MIRANDA WAIVER,
 (COLLADO "ESTELLE" 940 F.2d 411 (9th Cir. 1991)); ACORD (NORTH CAROLINA "BUTLER" 411 U.S. 369 (1979)); MIRANDA INVOCATION, (COOPER "DUPNIK" 963 F.2d 1220 (9th Cir. 1992) (en banc.); HEURY "KERNAN" 197 F.3d 1021 (9th Cir. 1999); CACI "BUTTS" 195 F.3d 1039 (9th Cir. 1999); MICHIGAN "MOSLEY" 423 U.S. 96 (1975); MIRANDA "ARIZONA" 384 U.S. 436 (1966); PEOPLE "FEEVY" 17 Cal. 4th 1184 (1998));
VOLUNTARINESS, (COLORADO "CONNELLY" 479 U.S. 157 (1986); SPANO "NEW YORK" 360 U.S. 315 (1959); MORAN "BURBINE" 475 U.S. 412 (1986); MALLOY "HOBAN" 378 U.S. 1 (1964); PAYNE "ABRAMS" 356 U.S. 560 (1958); JACKSON "DEAN" 378 U.S. 368 (1964); PEOPLE "VASILA" 38 Cal. App. 4th 865 (1995); PEOPLE "BERGEN" 52 Cal. 3d at 778 (1990); IN RE GILBERT E. 32 Cal. App. 4th 1598-1601 (1995)); FRUITS OF THE POISONED TREE, (BROWN "ILLINOIS" 422 U.S. 590-604 (1975); PEOPLE "HERNANDEZ MONTANO" 206 Cal. App. 3d at 937 (1991)).

THE UNITED STATES AND CALIFORNIA SUPREME COURTS REQUIRE REVERSAL OF A JUDGMENT FOR ERRONEOUS USE OF AN INVOLUNTARY CONFESSION OR ADMISSION UNLESS THE ERROR WAS HARMLESS BEYOND A REASONABLE DOUBT.

(ARIZONA "FULMINANTE" 499 U.S. 279 (1991); PEOPLE "CAHILL" 5 Cal. 4th 478-510 (1993); PEOPLE "SIMS" 5 Cal. 4th 425-447 (1993).)

VIII.

REMEDY

PETITIONER IN SAID ACTION RESPECTFULLY REQUESTS BOTH COMPENSATORY AND PUNITIVE MONETARY RELIEF FOR DAMAGES INCURRED. (i.e. RESULTING IN UNLAWFUL INCARCERATION.) PETITIONER'S RIGHTS AND REMEDIES IN THIS MATTER ARE RESERVED, AND THEREBY NOT WAIVED.

IX.

CONCLUSION

PETITIONER CONTENTS THE AFFOREMENTIONED FACTS PRESERVED ON THIS RECORD ESTABLISHES THE FOLLOWING:

A.) DETECTIVE PLUGEMAN AND DEPUTY GOMBS VIOLATED PETITIONER'S CONSTITUTIONAL RIGHTS, AND THAT SAID RIGHTS WERE CLEARLY ESTABLISHED SUCH THAT IT WOULD BE CLEAR TO A REASONABLE OFFICER THAT HIS CONDUCT WAS UNLAWFUL IN THE SITUATION HE CONFRONTED.

B.) SAID OFFICERS MISCONDUCT CONSTITUTED A WILLFUL DISREGARD FOR CONSTITUTIONAL LAW, THEIR DEMONSTRATED COURSE OF MISCONDUCT FURTHER COMPOUNDED DELIBERATE INDIFFERENCE TO PETITIONER'S CONSTITUTIONAL RIGHTS.

C.) INADEQUATE TRAINING AS TO SAID FAILURE POSSIBLY AMOUNTING TO CUSTOM OR POLICY IN THE MONELL SENSE, (MONELL "NEW YORK CITY DEPT. OF SOC. SERV." 436 U.S. 658, 98 S.Ct. 2018 (1978)) WITH RESPECT TO DELIBERATE INDIFFERENCE CAUSAL TO THE UNCONSTITUTIONAL MISCONDUCT IN QUESTION.

D.) DETECTIVE PLUGEMAN, THE OFFICER IN CHARGE OF THE INVESTIGATION, IS ALSO SUBJECT TO SUPERVISORY LIABILITY BY HIS EVINCED DIRECT PARTICIPATION OF FURTHER MISCONDUCT IN HIS EFFORT TO SALVAGE EVIDENCE ALREADY TAINTED AND ORIGINALLY LINKED TO HIS SUBORDINATE, DEPUTY GOMBS' INITIAL DUE PROCESS ILLEGALITY. **14**

FOR ALL OF THE FOREGOING REASONS, PETITIONER/PLAINTIFF HAS INDEED SUFFERED UNLAWFUL CONVICTION AND DEPRIVED LIBERTY THEREBY AS A RESULT OF RESPONDENT/DEFENDANTS ALLEGED CONSTITUTIONAL VIOLATIONS. PETITIONER/PLAINTIFF IMPLORES FOR LEAVE TO STAY SAID \$1983 ACTION UNTIL, AND IN LIGHT OF A FAVORABLE FEDERAL HABEAS RULING. RESPECTFULLY, **ROD** IN PROSE.

2-8-9-2017
 O. RAKSTAD
 DAVIS, CA 95616

ORIGINAL
 FILED

THE UNITED STATES DISTRICT COURT APR 19 2007

FOR THE NORTHERN DISTRICT OF CALIFORNIA

BY CLARK W. WIEKING
 CLERK, U.S. DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

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KEVIN O'CONNELL, PROSE.
 PETITIONER/PLAINTIFF

VS.

COUNTY OF SANTA CRUZ, A POLITICAL
 SUBDIVISION OF THE STATE OF CALIFORNIA;
 SANTA CRUZ COUNTY SHERIFF'S DEPARTMENT,
 A POLITICAL SUBDIVISION OF THE STATE OF
 CALIFORNIA; FRED PLACEMAN, INDIVIDUALLY
 AND IN HIS OFFICIAL CAPACITY AS A SANTA
 CRUZ COUNTY SHERIFF DEPUTY DETECTIVE;
 FRANK GIBBS, INDIVIDUALLY AND IN HIS
 OFFICIAL CAPACITY AS A SANTA CRUZ COUNTY
 DEPUTY SHERIFF; MARK TREACY, INDIVIDUALLY
 AND IN HIS OFFICIAL CAPACITY AS THE SANTA
 CRUZ COUNTY SHERIFF - et al.
 RESPONDENTS/DEFENDANTS

CASE NO.

CIVIL COMPLAINT

42 U.S.C. § 1983

REQUEST FOR LEAVE TO
 STAY SAID CAUSE OF ACTION.

PETITIONER/PLAINTIFF, KEVIN O'CONNELL, ACTING IN PRO SE, IN THE
 ABOVE-ENTITLED MATTER REQUESTS THE COURT'S PERMISSION TO STAY SAID § 1983
 FEDERAL CAUSE OF ACTION UNTIL HIS FEDERAL HABEAS (CASE NO. COI-20863 RMW/PJL)
 IS RESOLVED, FOR SAID WRIT IS THE CORE THAT GIVES RISE TO THE § 1983 CAUSE
 OF ACTION. (SEE *HECK v. HUMPHREY*, 512 U.S. 477 (1994)).

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DATED: APRIL 9, 2007

RESPECTFULLY,

KEVIN O'CONNELL

APPLICATION FOR LEAVE TO FILE A LATE CLAIM

Pursuant to Section 911.4 of the Government Code

TO: County of Santa Cruz
 Clerk of the Board of Supervisors
 701 Ocean Street, Room 500
 Santa Cruz, CA 95060

(831) 454-2323 telephone
 (831) 454-2327 fax

I, KEVIN O'CONNELL, hereby apply for leave to present a late claim
 (Name)

for damages arising from injuries which occurred on JULY 6th 13, 1995,
 (Date of Injury)

and for which a claim was not presented within six (6) months (for death, injury to personal property or person or crops), or one (1) year (any other cause of action), as required by Section 911.2 of the Government Code.

ATTACHED TO THIS APPLICATION IS A PROPOSED CLAIM WHICH DESCRIBES THESE INJURIES AND EXPLAINS HOW THEY OCCURRED. I UNDERSTAND THAT IF I DO NOT ATTACH A CLAIM TO THIS APPLICATION THAT THIS APPLICATION WILL NOT BE ACTED UPON BY THIS PUBLIC ENTITY.

The reasons this claim is late are:

PLEASE REFER/READ ATTACHED FEDERAL CIVIL RIGHTS COMPLAINT AND AMENDED COMPLAINT THAT ASSERTS SAID CLAIM. EXHIBIT A

BECAUSE THESE CLAIMS CONSTITUTIONAL AND U.S. CONSTITUTIONAL DEPRIVATIONS ARE STILL ONLY ALLEGED, AND MUST FIRST, AS A PREREQUISITE, MUST BE DEEMED AS TO HAVE ILLEGALLY OCCURRED. THIS MATTER IS A PENDING FEDERAL HABEAS QUESTION (STILL UNRESOLVED). I PREMATURELY FILED THIS SUIT NOW DUE TO A HIGH COURT RULING. I HAVE EXPLAINED THIS COMPLETELY IN THE PREFACE OF SAID CIVIL SUIT. (SEE/READ CIVIL RIGHTS COMPLAINT AND AMENDED COMPLAINT INVOKING PETIT JUDICICTION ATTACHED FOR BETTER UNDERSTANDING)

WHEREFORE, I respectfully request that this application be granted pursuant to Government Code Section 911.6 and that the attached claim be received and acted on in accordance with Government Code Section 910 et seq.

GROUND TO PLEAD, ON THE FINAL PG. OF CLAIM IS A REQUESTED STAY PENDING RESOLVEMENT JUDICIALLY OF THE STILL ALLEGED CONSTITUTIONAL VIOLATIONS.

DATED: MAY 29 2007 CLAIMANT SIGNATURE: [Signature]

IT BEARS REITERATING PLEASE READ CIVIL RIGHTS COMPLAINT (i.e. PREFACE, FOR COMPREHENSION) WHICH SHOULD VOUCHERABLE EXCUSE TARDY FILING OF THIS CLAIM PURSUANT TO SECTION 911.4/GOV. CODE. IN CONJUNCTION, I SERVED VIA THE U.S. MAIL ALL PARTIES (DEFENDERS) IN THIS MATTER WITH SAID CLAIM AND COMPLAINTS THE SAME TIME I SERVED YOUR ENTITY (i.e. SHERIFF DEPT., OFFICER PLACEMAN, OFFICER GAMBO, SHERIFF TOLLY

9/983 SUIT ; FEDERAL CAUSE OF ACTION ; CASE NO. CO72167R

ORIGINAL
FILED

APR 19 2007

THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

RICHARD W. WIEKING
 CLERK OF DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA

C 07 2167

KEVIN P. O'CONNELL, PRO SE.
 PETITIONER/ PLAINTIFF

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CASE NO. _____

— CIVIL COMPLAINT —
 42 U.S.C. § 1983

I.

INTRODUCTION

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PETITIONER, KEVIN O'CONNELL, ACTING IN PRO SE. IN THE
 ABOVE-ENTITLED MATTER COMES FORTH TO LODGE SAID CIVIL RIGHTS
 COMPLAINT. PETITIONER IS A PRISONER OF THE STATE OF CALIFORNIA
 INCARCERATED AT KERN VALLEY STATE PRISON IN DELANO, CALIFORNIA.

4/9/2007

TONY HERGPETH SUPERINTENDENT, IS THE WARDEN OF