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7 UNITED STATES DISTRICT COURT  
8 EASTERN DISTRICT OF CALIFORNIA  
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10

11 PAMELA FOX, ON BEHALF OF  
HERSELF AND AS NEXT FRIEND TO  
12 C.M.R., A MINOR.

Case No.: 1:11-CV-00520-AWI-SMS

13 Plaintiffs,

**PLAINTIFFS' OPPOSITION TO  
DEFENDANTS' CASTANEDA, ET AL,  
MOTION TO DISMISS**

14 vs.

15 COUNTY OF TULARE, LETICIA  
CASTANEDA, ERICA SOTO, RON  
16 CASTANEDA, JULIA LANGLEY,  
CAROL HELDING, JOHN ROZUM,  
17 STEVEN ROGERS and DOES 1 - 100,

**DATE: August 29, 2011  
TIME: 1:30 p.m.  
CTRM: No. 2**

18 Defendants.  
19 \_\_\_\_\_/

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1 **I. INTRODUCTION**

2 Defendants Ron Castaneda, Leticia Castaneda and Erica Soto, ask this court to dismiss  
3 the Complaint based on the protections offered by *DeShaney v. Winnebago County*, 489 U.S.  
4 189 (1989), failure to comply with California Tort Claims Act and State Statutory Immunities.

5 Plaintiffs oppose this motion on the grounds that *DeShaney* doesn't apply because the  
6 social workers are liable directly to Plaintiffs because of their conduct. The Defendants are  
7 liable under the theory of State Created Danger as set forth in *Currier v. Doran*, 242 F.3d 905  
8 (10<sup>th</sup> Cir. 2001) and a special relationship.

9 Plaintiffs have complied with the Claims Statutes.

10 Any immunities that the social workers might have had have been washed away by their  
11 conduct because they made false representations, committed fraud on the Court, and concealed  
12 exculpatory evidence, all with malice (California Government Code Section 820.21).

13 As to Defendant Ron Castaneda, individually, his part in the conspiracy is clearly set  
14 forth in the Complaint sufficiently to provide notice of the claims against him.

15 Plaintiffs concede the Eighth Cause of Action for Negligent Infliction of Emotional  
16 Distress should be dismissed.

17 **II. ERRATA**

18 Plaintiffs move to amend the citation at Complaint at Pg. 4:4 wherein the case name  
19 *Martirosyan* was mistakenly taken from another case on the same page of the reporter,  
20 however, the page citation is correct. It should properly read *Currier v. Doran, supra*.

21 **III. FACTS**

22 In 1997, Plaintiff Fox and her two older children were assaulted by a previous  
23 boyfriend. He was arrested and convicted. Cmpt, Par. 27-29.

24 In 2005, Plaintiff C.M.R. was born from a relationship with Defendant Rogers. One-  
25 and-a-half weeks after the child's birth, the relationship between Plaintiff Fox and Defendant  
26 Rogers ended.



1 In 2006, Defendant Rogers began accusing Plaintiff Fox of neglecting Plaintiff C.M.R.  
2 Cmpt, Par. 33.

3 In 2007, Defendant Rogers accused Plaintiff Fox's boyfriend at the time, Edward  
4 Skelton, of molesting Plaintiff C.M.R. Cmpt. Par. 34-42.

5 Defendant Ron Castaneda wrote a report to cover Defendant Rogers' taking Plaintiff  
6 CMR to a hospital for an invasive sexual assault examination. He gave a copy to Defendant  
7 Rogers who filed it in his moving papers in his motion for custody.<sup>1</sup> Cmpt. Par. 40.

8 To bolster his allegation, Defendant Rogers, in concert with Defendant Ron Castaneda,  
9 illegally obtained Mr. Skelton's criminal history. In addition, Defendant Ron Castaneda planted  
10 narcotics in Mr. Skelton's car which was discovered by Mr. Skelton and reported to the Internal  
11 Affairs of the Sheriff's Department. Cmpt. Par. 39.

12 Shortly thereafter, Defendant Ron Castaneda terminated his employment with the  
13 Sheriff's Department, retiring early. Cmpt. Par. 47.

14 In 2008, Plaintiff C.M.R. disclosed that she had been sexually abused and had been  
15 photographed in a sexually explicit pose by Defendant Rogers. Cmpt. Par. 51.

16 The Tulare County Sheriff's Department investigated and discovered child pornography  
17 on Defendant Rogers' computer. Cmpt. Par. 52-55.

18 Defendant Soto, the social worker working under Supervising Social Worker,  
19 Defendant Leticia Castaneda, began to interfere in the Sheriff's investigation, informing the  
20 Sheriff's Department that Plaintiff Fox had falsely accused her previous boyfriends of various  
21 crimes. Cmpt. Par. 68-70.

22 Defendant Rogers, over the time period from October 12, 2006, through July, 2009,  
23 falsely accused Plaintiff Fox of abusing Plaintiff C.M.R. Making reports to Child Welfare  
24 Services seven times. No action was taken against Defendant Rogers, despite the fact that he  
25 had taken the child to a doctor for invasive examinations for sexual assault, despite the fact that

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<sup>1</sup>Plaintiffs move to amend to include these facts.

1 he had misrepresented his affiliation with the Sheriff's Department, had been ordered not to do  
2 so by a family court judge and these examinations were traumatic for the child. Cmpt. Par. 33-  
3 118.

4 Between the time period of August 14, 2008, through July, 2009, various professionals  
5 and some individuals who are not identified, reported that Plaintiff C.M.R. had been molested  
6 by Defendant Rogers. No action was taken on these cases against Defendant Rogers. However,  
7 both Defendant Soto and Defendant Leticia Castaneda began to accuse Plaintiff Fox of falsely  
8 reporting the abuse and of causing the child to be examined by physicians unnecessarily. They  
9 threatened and intimidated her into not reporting later acts of abuse. Cmpt. Par. 59-118.

10 Concurrently with these allegations made to child welfare services, the family court  
11 hearing the custody matter involving Plaintiff Fox and Defendant Rogers was proceeding to  
12 consider custody arrangements between the parties. Cmpt. Par. 49-118.

13 On December 3, 2008, Defendant Leticia Castaneda and Defendant Soto contrived a  
14 confrontation with Plaintiff Fox wherein, in the presence of Defendant Rogers, they released  
15 confidential information regarding allegations of abuse related to Plaintiff Fox's older children,  
16 alleging that there were false allegations made concerning the older children's abuse. Cmpt.  
17 Par. 78-80.

18 This confrontation occurred just before Defendant Rogers filed for custody again in the  
19 Family Court where Defendant Rogers used this information to discredit Plaintiff Fox.

20 On at least two occasions, the Family Court Services mediator (the person who makes  
21 recommendations to the judge regarding custody) interviewed Defendant Soto and Defendant  
22 Leticia Castaneda concerning their concerns and conclusions about the risk to Plaintiff C.M.R.  
23 when she was in the custody of Plaintiff Fox. Cmpt. Par. 94-98.

24 Repeatedly, Defendant Soto and Defendant Leticia Castaneda informed the mediator  
25 that Plaintiff Fox had repeatedly made false allegations, necessitating the unnecessary invasive  
26 medical examinations. Cmpt. Par. 94-98.

1 In May of 2009, based on the recommendations of the mediator as a result of her  
2 conversations with the Defendant social workers and Defendant Rogers, Plaintiff C.M.R. was  
3 removed from Plaintiff Fox's custody and given to Defendant Rogers. Cmpt. Par. 99.

4 **IV. LAW AND ARGUMENT**

5 **1. Defendants' Motion to Dismiss Pursuant to *DeShaney, supra*, Should Be Denied**  
6 **Because of Defendants' Direct Acts of Concealment, Misrepresentation, and**  
7 **Fraud on the Court.**

8 Defendants' Motion to Dismiss should be denied because, the Supreme Court carved  
9 out certain conditions and circumstances that nullify *DeShaney* application.

10 Here, Defendant social workers intentionally made false representations to protect a co-  
11 conspirator from arrest for molestation and child pornography charges as well as to secure  
12 custody of his victim, his daughter. In doing so, they told Plaintiff Pamela Fox not to report the  
13 fact that her daughter Plaintiff C.M.R., was being molested by Defendant Rogers. They  
14 convinced Sheriff's Investigators that Plaintiff Fox was making false allegations which resulted  
15 in the Sheriffs informing Plaintiff Fox that they would arrest her if she continued to make false  
16 allegations.

17 The protections that *DeShaney* offers are fact based rules. At the pleading stage,  
18 Defendants have sufficient notice of the claims made against them such that discovery, on both  
19 sides, will flesh out the operative facts sufficient that a court may make a ruling on a summary  
20 judgement motion. The raising of the *DeShaney* defense is premature and should be denied.

21 Defendants' citation to *DeShaney v. Winabego County, supra*, is mistaken. Defendants  
22 offer a portion of a quote from page 196 of the decision concerning the intentions of the  
23 enactment of Section 1983. (MTD, 4:21-28) However, they omit the most significant part of  
24 the passage. In full it reads:

25 "..."the due process clause of the Fourteenth  
26 Amendment was intended to prevent government  
'from abusing [its] power, or employing it as an  
instrument of oppression,' [citation omitted] 'to  
secure the individual from the arbitrary exercise of  
the powers of government,' 'and to prevent

1 government power from being ‘used for purposes  
2 of oppression’ [citations omitted] ‘its purpose was  
3 to protect the people from the state’...” *DeShaney*,  
4 *supra* 49 U.S. at 196. (Emphasis added)

5 Whereas *DeShaney* clearly stands for the proposition that the government is not held to  
6 a duty to protect an individual from a third person, based on this clear and unequivocal  
7 statement by the Supreme Court, *the Government is responsible* for the acts of government  
8 agents where, a group of government employees including social workers conspire and initiate  
9 overt acts in a conspiracy to deprive a mother and child of their constitutional rights.

10 Here, the social workers have, repeatedly, used their position of governmental power  
11 and arbitrarily acted to promote the interests of a member of their social circle. They have  
12 protected themselves and through oppression, intimidated Plaintiff Fox and manipulated the  
13 Family Court in order to deprive Plaintiff Fox of custody of her daughter, Plaintiff C.M.R. The  
14 purpose of Section 1983 is to protect people from abuse by State actors. *DeShaney*, which  
15 involves harm solely inflicted by the father in that case, doesn’t apply.

16 **2. These Moving Defendants Sent Plaintiff’s into a State Created Danger**

17 Where the state creates the danger, it must provide adequate protection against that  
18 danger. *DeShaney, supra*, 49 U.S., at 201.

19 The Tenth Circuit, in applying *DeShaney* analysis found that:

20 “...state officials can be liable for acts of third parties where  
21 those officials created the danger that caused the harm.”  
22 Emphasis added. *Seamons v. Snow*, 84 F.3d 1226, 1236 (10<sup>th</sup> Cir.  
23 1996).

24 In another Tenth Circuit case, the court found:

25 “Neither *DeShaney* nor other authorities shielded the defendants.  
26 When the state affirmatively acts to remove a child from the  
27 custody of one parent and then places the child with another  
28 parent, *DeShaney* does not foreclose constitutional liability.”  
29 *Currier v. Doran, supra*, 242 F.3d at 919.

30 In *Currier* where a state social worker failed to investigate allegations of the father  
31 abused his child and another social worker instructed the child’s mother to stop making

1 accusations of child abuse against the child's father, the court found that they have created the  
2 danger where the child's father abused the child in question.

3 Here, we have the same facts. Two social workers began to discredit Plaintiff Fox after  
4 previous social workers working on the case began to validated the claims of abuse by  
5 Defendant Rogers and the Sheriff's Department began to find hard evidence of the molestation.  
6 They made false claims that she had falsely accused her previous relationships of abusing  
7 Plaintiff Fox and her older children. Defendants Leticia Castaneda and Erica Soto shut down  
8 and interfered with further investigations concerning Plaintiff Fox's reports of abuse of  
9 Plaintiff CMR by Defendant Rogers. Instead, they pursued Defendant Rogers' claims that  
10 Plaintiff Fox posed a risk to the child. These moving Defendant social workers threatened  
11 Plaintiff Fox, intimidating her into not reporting Plaintiff CMR's abuse by Defendant Rogers.  
12 Defendant social workers in this case have created the danger that caused the harm to Plaintiff  
13 C.M.R. They participated in committing a fraud on the Court that violated both Plaintiffs'  
14 constitutional rights to free association and prevented Plaintiff Fox from parenting her child.

15 In a case, involving a suit brought against social workers as the result of injuries  
16 suffered where a child was abused at the father's home, the court stated that:

17 "...[i]f the [social workers] knowingly placed [Plaintiff] in a  
18 position of danger, they would not be shielded from liability in  
19 *DeShaney.*" *Bank of Illinois v. Over* 65 F. 3d 76, (7<sup>th</sup> Cir. 1995)

20 Here, that is exactly what happened. The social workers were well aware of the risk and  
21 danger posed by Father's having unfettered access to his daughter when the child had made  
22 clear disclosures of being touched sexually by her father and photographed in lewd poses. This  
23 was especially so when the Sheriff's Department found child pornography on the father's  
24 computer. They informed the Defendant social workers. The Defendant social workers  
25 concealed this fact when reporting potential risk to the Family Court mediator who made  
26 recommendations for custody to the Family Court judge.

The *Currier* Court reiterated the standard to establish a danger creation claim. To do so,

1 a Plaintiff must illustrate that:

- 2 (1) The charged state entity and charged individual actors created
- 3 the danger or increased Plaintiff's vulnerability to the danger in
- 4 some way;
- 5 (2) Plaintiff was a member of a limited and specifically definable
- 6 group;
- 7 (3) Defendant's conduct put Plaintiff at substantial risk of
- 8 serious, immediate, and proximate harm;
- 9 (4) The risk was obvious or known;
- 10 (5) Defendants acted recklessly in conscious disregard to that
- 11 risk; and
- 12 (6) Such conduct, when viewed in total, is conscience shocking.
- 13 (Citation omitted) *Currier*, 242 F. 3d 918

14 **1. Created Danger:**

15 Here, Defendant social workers both created the danger by manipulating the facts given  
16 to the mediator who the relayed them to the Family Court judge making placement decisions  
17 and, increased the child's vulnerability by doing so, when the child was placed with Father.

18 **2. Definable Group:**

19 The child and her mother were the only persons at risk and clearly identifiable as (the  
20 child) being at risk for abuse and (the mother and child) being at risk of loss for consortium and  
21 familial affiliation.

22 **3. Conduct Put Plaintiff at Substantial Risk:**

23 Defendant social workers' conduct put Plaintiff C.M.R. at substantial risk of serious,  
24 immediate and proximate harm having the child placed in the direct proximity, without  
25 restriction, of the person who was sexually abusing her.

26 **4. Risk Was Obvious:**

The risk was obvious to anyone trained as a front line social worker involved in the  
investigation and identification of incidents of Father-Child incest and the making and use of  
child pornography. In California, these risks are so well known, their required intervention is  
codified both in the California Penal Code (see California Penal Code Sections 11165, et seq  
[child abuse mandatory reporting]) and the Welfare and Institutions Code (see Welfare and  
Institutions Code Section 300 [child abuse defined]).

1           **5. Reckless Acts:**

2           Defendant social workers acted recklessly in conscious disregard for those risks by both  
3 securing sole custody for the father, placing Mother on supervised visitation and to cover up  
4 their own complicity in the acts once Plaintiff Fox hired a new lawyer to investigate.

5           **6. It Shocks the Conscience:**

6           The Defendant social workers' conduct is so shocking that any individual from the  
7 general public would be shocked. Social workers working for Child Welfare Services are  
8 specifically charged with the responsibility of protecting abused children. Where a social  
9 worker would, due to friendship and familial relationships, put the well being of a sexually  
10 abused child below that of the person molesting her would shock the conscience. If it became  
11 known that the social worker manipulated the courts in such a fashion to benefit that molester,  
12 it would send a person reeling with disbelief, outrage and anger.

13           Therefore, because Defendant social workers have created the danger causing harm to  
14 both Plaintiffs, the motion should be denied.

15           *Currier* is directly on point in this case. In *Currier*, a social worker, like the social  
16 workers here, was found to have created the danger through his failure to investigate numerous  
17 allegations of abuse and his responsibility for ultimately getting a court order granting legal  
18 custody to the child's father. That is exactly what happened here. Defendant social workers  
19 ignored the repeated reports made by people other than Plaintiff Fox. Plaintiff Fox had only  
20 made **one** report directly to authorities in 2008 which resulted in the discovery of the child  
21 pornography. The other report came to the authorities when she spoke with the child's  
22 therapist, in July 2009, reporting the child's specific disclosures of abuse made in Plaintiff  
23 Fox's presence.

24           In *Currier*, the mother and child were found to be of a "limited and specifically  
25 definable group" just as Mother and Child are here. Although the children were actually taken  
26 into protective custody in *Currier*, the ultimate result was the same here where the child was

1 removed from Mother's care and given, exclusively, to Father with Mother having supervised  
2 visitation as a result of the social workers input and influence on the Family Court mediator.

3 In *Currier*, the social workers failed to investigate the allegations of child abuse and, by  
4 recommending that the father assume legal custody, the social worker put the children at  
5 obvious risk of serious, immediate, and proximate harm, a harm that the social worker  
6 recklessly and consciously disregarded. The court found that the social worker's failure to  
7 investigate the bruises and allegations and the worker's subsequent responsibility for the court  
8 order granting the father sole legal custody could shock the conscience. Here, that is exactly  
9 what the social workers did and it does shock the conscience.

10 A "state creates danger when it cuts off the potential sources of proximate aid. (Citation  
11 omitted)" *Currier* 242 F. 3d at 922. In *Currier*, a social worker discouraged the mother from  
12 reporting additional indications of abuse, which increased the children's vulnerability to their  
13 father's abuse. The court found that while the social worker wasn't constitutionally required to  
14 "rescue the children" the social worker's comments to the mother discouraged her from  
15 reporting further evidence of abuse to either the police or Child Protective Services which  
16 might then have acted to rescue the children. *Ibid*

17 In other words, the social worker's acts interfered with:

18 "the protective services which would have otherwise been  
19 available in the community." *Ibid*

20 This is precisely what happened here. The social workers' threats and intimidation  
21 caused Mother to stop making reports of abuse.

22 In *Currier*, the court found that a state "can be liable when it cuts off potential sources  
23 of private aid" stating that a "state actor can also be constitutionally liable when it cuts off  
24 potential sources of state aid." *Ibid*

25 That, is exactly what happened here. Plaintiff Fox was told not to report abuse and was  
26 threatened that if she did, she would lose custody.

*Currier* is also instructive as to Defendant Leticia Castaneda's failure to train her



1 subordinates as well as her deliberate indifference to the rights of both Plaintiffs. There, the  
2 court stated that inadequate training may serve as the basis for 1983 liability. *Currier*, 242 F. 3d  
3 at 923. The court went on to include the fact that the supervisor's conduct must shock the  
4 conscience. There, it found that the supervising social worker had knowledge that the alleged  
5 unconstitutional behavior was being perpetrated by the two subordinate social workers. Having  
6 knowledge that the subordinates were depriving young children of their constitutional rights,  
7 the supervising social worker's failure to correct this conduct amounts to a deliberate  
8 indifference to the rights of the children involved that could be considered conscience  
9 shocking. *Ibid*

10 This is the exact same fact pattern here. Therefore, Defendant Leticia Castaneda is  
11 clearly on the hook. The *Currier* court went on to say that once the issue of qualified immunity  
12 was raised, a Plaintiff must demonstrate to the court that the law on which Plaintiff relies is  
13 clearly established in its actions. Suffice to say, the California Penal Code Statutes requiring  
14 police and social workers to enforce the laws protecting children were enacted long before the  
15 conduct by Defendant social workers in 2008. The Penal Statutes were originally enacted in  
16 1980 and the dependency statutes were enacted in 1976. In 1999, the California Appellate  
17 Courts found that these statutes imposed mandatory duties upon police officers through the  
18 decision of *Alejo v. City of Alhambra* (1999) 75 Cal App 4<sup>th</sup> 1180.<sup>2</sup> The *Beltran* case was  
19 ultimately decided in January of 2008 and sent a different shockwave through those social  
20 workers working in California's Ninth Circuit jurisdiction. The State Created Danger concept  
21 was recognized by the Ninth Circuit in the case cited by Defendants, *Wood v. Ostreander*, 879 F.  
22 2d 583 (9<sup>th</sup> Cir. 1989).

23 **3. Defendant Social Workers' Motion Should be Denied Because They Were**  
24 **Engaged in a Special Relationship with Plaintiffs.**

25 \_\_\_\_\_ The *DeShaney* court admits:  
26 \_\_\_\_\_

<sup>2</sup>Plaintiff's counsel was the Plaintiff's expert in that case.

1 “It is true that in certain limited circumstances the constitution  
2 imposes upon the State affirmative duties of care and protection  
with respect to particular individuals.” *DeShaney* 489 U.S. 198.

3 Known as the “special relationship” circumstances, where a government entity takes the  
4 responsibility for housing and caring for an individual, it is responsible for protecting that  
5 individual. Under these circumstances, there is affirmative duty to protect not from the state’s  
6 knowledge of the individual predicament or from its “expressions of intent to help him, but  
7 from the limitation for which it has imposed on his freedom to act on his own behalf. [citation  
8 omitted].” *DeShaney*, 489 U.S. at 200. In the substantive due process analysis, it is the state’s  
9 affirmative act restraining the individuals freedom to act on his own behalf which is the  
10 “deprivation of liberty” triggering the protections of the due process clause. *Ibid*.

11 Here, Defendant social workers, intent on securing full physical custody of Plaintiff  
12 C.M.R. to Defendant Rogers, created a situation where Plaintiff C.M.R. was unable to seek the  
13 help of others, in particular, her mother. The subsequent acts of the social workers, ensured that  
14 Plaintiff Fox would be unable to protect her child because she was only allowed to see her on  
15 supervised visits and not able to talk about the case or what was going on in the father’s home.  
16 The child, only three years old, was also isolated from assistance of others.

17 Like the State Created Danger, eliminating the ability of the Plaintiff to seek state aid,  
18 here, the same result befell Plaintiffs. Therefore, this special relationship takes this case out of  
19 the purview of *DeShaney*. Defendant’s Motion to Dismiss should be denied.

20 **4. Social Worker Immunity.**

21 **a. Social Workers are Not Entitled to Absolute Immunity on Constitutional**  
22 **Claims.**

23 Defendant’s cite *Meyers v. Contra Costa County*, 812 F. 2d 1154 (9<sup>th</sup> Cir. 1987) for the  
24 proposition that social workers are absolutely immune. First, *Meyers* has different facts. In  
25 *Meyers*, a Juvenile Court proceeding was initiated by the social workers and the work  
26 conducted by the social workers was intended to be in Juvenile Court, not Family Law.

1 This distinction was recognized by the Ninth Circuit in *Beltran v. Santa Clara*<sup>3</sup>. Two  
2 social workers conducted an investigation and were found to have lied in declarations and  
3 petitions filed with the Juvenile Court. The court found that:

4 “Social workers have absolute immunity when they make  
5 ‘discretionary quasi-prosecutorial decisions to institute court  
6 dependency proceedings’...[.]...But they are not entitled to  
7 absolute immunity from claims that they fabricate evidence  
8 during an investigation or made false statements in a dependency  
9 petition affidavit that they sign under the penalty of perjury,  
10 because such actions aren’t similar to discretionary decisions  
11 about whether to prosecute.” (Emphasis added) *Beltran, supra* at  
12 908.

9 The court also went on to state [which is also of relevance to the alleged immunities  
10 attorney Defendants claim] where the court said:

11 “a prosecutor doesn’t have absolute immunity if he fabricates  
12 evidence during a preliminary investigation, before he could  
13 properly claim to be acting as an advocate, [citation omitted] or  
14 makes false statements in a sworn affidavit in support of an  
15 application for an arrest warrant. [Citing *Kalina v. Fletcher* 522  
16 U.S. 118, 129-130 (1997)].” *Ibid*

15 Here, there never was a juvenile petition filed in the Juvenile Court. No juvenile  
16 proceedings were ever initiated by Defendant social workers. The social workers provided false  
17 statements to the family court mediator in the Family Law matter. The Defendant social  
18 workers manipulated the situation and provided confidential information from Child Welfare  
19 Service’s files to Defendant Rogers. In July, 2009, in violation of law, the Defendant social  
20 workers gave a confidential document provided to the CWS by the child’s therapist concerning  
21 disclosures Plaintiff C.M.R. had made to Plaintiff Fox regarding Plaintiff C.M.R.’s molestation  
22 by Defendant Rogers. That document was attached to the pleadings filed by Defendant Rogers  
23 in July 2009, within a few days after its being given to Child Welfare Services. None of these  
24 functions were for the purpose of initiating or prosecuting a child dependency matter. None of  
25 these acts were acting as an advocate in the Juvenile Court. The Defendant social workers

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26 <sup>3</sup>514 F. 3d 906

1 meddled in the Family Law case by providing information to Defendant Rogers, a co-  
2 conspirator, at times which coincided with his Family Court proceedings. Because none of this  
3 conduct is immunized, Defendant social workers Motion to Dismiss should be denied.

4 **5. Defendant Ron Castaneda's Conspiratorial Conduct and Motive to Retaliate**  
5 **Through His Sister-In-Law, Defendant Leticia Castaneda, Makes Him Liable on**  
6 **All of the Constitutional and Tortious Claims.**

7 Defendant Ron Castaneda, in a blatant and illegal act, in concert with Defendant  
8 Rogers, falsified a report that Ron Castaneda filed with the Sheriff's Department claiming that  
9 Plaintiff C.M.R. was being molested by the, then, boyfriend (Edward Skelton) of Plaintiff Fox.  
10 This act, in April of 2007, set off a chain of events wherein Defendant Ron Castaneda planted  
11 narcotics evidence in Mr. Skelton's car and was, apparently, forced to retire early as a result.

12 Defendant Leticia Castaneda then picked up the ball and committed the acts alleged in  
13 our claims for relief both for constitutional violations and tortious conduct. Complaint,  
14 Paragraphs 15-19.

15 Defendants allege that Plaintiffs have not made specific allegations concerning  
16 Defendant Ron Castaneda's culpability in this case. MTD 5:16-21

17 Perhaps Defendant Ron Castaneda missed the second reference to Defendant Castaneda  
18 in the Complaint in Paragraphs 46-47. A claim is facially plausible "when the Plaintiff pleads  
19 factual content that allows the court to draw [an] inference that the Defendant is liable for the  
20 misconduct alleged." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 at 556. Under Rule

21 "...must treat the complaint's factual allegations as true [and]  
22 must grant [the] Plaintiff the benefit of all reasonable inferences  
23 [that can be derived] from the facts alleged." *Trudeau v. FTC*,  
456 F. 3d 178, 193 (D.C. Cir. 2006). (Emphasis added)

24 Here, it may be inferred that the point of demarcation where Child Welfare Services  
25 was first supporting, then condemning Plaintiff Fox was June 14, 2007. Complaint, Paragraph  
26 45.

Subsequent to Plaintiff Fox making an Internal Affairs complaint which resulted in

1 Defendant Ron Castaneda's departing the Sheriff's Department for early retirement, false  
2 allegations made by Defendant Rogers and other unknown individuals, began in earnest with  
3 an about-face by Child Welfare Services in their support of Plaintiff Fox. Complaint,  
4 Paragraphs 56, 58-139.

5 It may be inferred through the familial relationship between Defendants Ron Castaneda  
6 and Leticia Castaneda that, after Ron Castaneda was cast out from the Sheriff's Department, he  
7 retaliated through his sister-in-law when his close friend, Defendant Rogers, was accused of  
8 molestation.

9 Defendants cite *Rizzo v. Goode*, 1423 U.S. 362 (1996) for the proposition that there  
10 need be some "affirmative link or connection between Defendant's actions and claimed  
11 deprivation." MTD 5:23. *Rizzo*, the mayor of Philadelphia, his police commissioner and  
12 various others were sued in a class action alleging pervasive pattern of illegal and  
13 unconstitutional police mistreatment of minority citizens in Philadelphia. After extensive  
14 hearings, the trial court made findings which were ultimately reversed by the Supreme Court.  
15 The facts of *Rizzo* are so attenuated that no parallels can be drawn to the facts of this case. In  
16 the *Rizzo* case, no conspiracy was alleged. In *Rizzo*, there were multiple individuals sued for  
17 constitutional violations which ultimately came down to twenty incidents involving a very  
18 small number of a police force of seventy-five hundred sworn officers. Here, the Defendant  
19 social workers' and Defendant Ron Castaneda's conduct is clearly identified all by reports that  
20 they wrote and interactions that they had with family court professionals who documented  
21 those contacts. A link between them is drawn in our complaint starting at Paragraph 16 through  
22 135, as previously described above.

23 Defendants also cite *May v. Enomoto*, 633 F. 2d 164 (9<sup>th</sup> Cir. 1980) for the same  
24 proposition. Once again, the facts are nothing like those of this case. In *May*, a prison inmate  
25 sued for failure to provide him medical treatment after he injured himself doing prison work.  
26 After a jury trial, the judge found that the director of the Department of Corrections for the

1 entire State of California was not proved to know of or be responsible for any of the delay in  
2 treatment that was claimed of by the Plaintiff. No conspiracy was alleged.

3 Defendants also cite *Johnson v. Duffy*, 588 F. 2d 740 (9<sup>th</sup> Cir. 1978) for the same  
4 proposition. MTD 5:24-27. Although in the *Johnson* case, the Ninth Circuit found that the  
5 Sheriff could not be found responsible for the inaction of his subordinates, the court laid out  
6 some very clear rules that relate directly to what happened in this case.

7 Citing the Fifth Circuit, the court said:

8 “A person ‘subjects’ another to the deprivation of a constitutional  
9 right, within the meaning of *Section 1983*, if he does an  
10 affirmative act, participates in another’s affirmative acts, or  
11 admits to preform an act which he is legally required to do that  
causes the deprivation of which complaint is made.” *Johnson*,  
*supra*, at 743. (Emphasis added)

12 Although Defendants currently cite a portion of this quote, they fail to go to the next  
13 paragraph which states:

14 “moreover, personal participation is not the only predicate for  
15 *Section 1983* liability. Anyone who ‘causes’ any citizen to be  
16 subjected to a constitutional deprivation is also liable. The  
17 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  
constitutional injury.” (emphasis added) *Ibid*

18 This is where Defendant Ron Castaneda becomes liable. His acts of trying to frame  
19 Plaintiff Fox’s boyfriend, filing a false report with the Sheriff’s Department to justify  
20 Defendant Rogers’ conduct and to attempt to discredit Plaintiff Fox in order that Defendant  
21 Rogers secure custody of his child, Plaintiff C.M.R., is when this entire conspiracy began. The  
22 inferences, as described above, are clear as one only has to follow the trail beginning in the  
23 Complaint, Paragraph 16 through 139.

24 Defendants cite *Southern California Gas v. City of Santa Ana* 336 F. 3d 885, 887 (9<sup>th</sup>  
25 Cir 2003) for the definition of who sustains liability for depriving another of rights secured by  
26 the Constitution of the United States. MTD 6:2. This case is not on point. It is a contract right

1 case examining a summary judgment motion granted in the trial court. However, if anything  
2 can be gleaned from the case, the next line following that cited by Defendants states:

3 “the rights guaranteed by Section 1983 are ‘liberally and  
4 beneficently construed.’” *Ibid*

5 In that case, the City of Santa Ana was found to have interfered with the contractual  
6 rights of the gas company and the Ninth Circuit upheld the trial court’s granting summary  
7 judgement for the plaintiff. Here the ultimate goal was revealed when Defendant Ron  
8 Castaneda first conspired with Defendant Rogers to deprive both Plaintiffs of their liberty  
9 rights by falsely accusing Plaintiff Fox’s boyfriend of abuse. This was in anticipation that the  
10 Family Court would remove Plaintiff CMR from Plaintiff Fox’s custody. Defendant Ron  
11 Castaneda was, then, a lieutenant in the Sheriff’s Department and therefore a State actor.

12 Defendants cite *Wood v. Ostreder, supra*, 879 F. 2d 583, 587 (9<sup>th</sup> Cir. 1989) for the  
13 proposition that to sustain an action under Section 1983, Plaintiff must show that the conduct  
14 complained of was committed by a person acting under color of state law and that the conduct  
15 deprived Plaintiff of a Federal Constitutional right. Defendant Ron Castaneda wore a pair of  
16 single gold bars on the collar of his shirt denoting that he was a lieutenant of the Sheriff’s  
17 Department writing an official report filed with the Sheriff’s Department for the express  
18 purpose of supporting Defendant Rogers, his friend, in Defendant Rogers’ quest to secure  
19 custody of Plaintiff CMR over Plaintiff Fox’s rights to custody. Ultimately, after more than a  
20 year, Defendant Rogers was successful when the Family Court gave him custody of Plaintiff  
21 CMR. *Wood* is a summary judgement case, grounded on State Created Danger. The Court  
22 found that the plaintiff had established evidence that the state actor, a police officer, abandoned  
23 a woman in a high crime area after stopping a car in which she was a passenger and she was  
24 subsequently raped. The court found that there was evidence demonstrating that the officer had  
25 shown a disregard for the Plaintiff’s safety amounting to deliberate indifference. As to  
26 Defendant Ron Castaneda, he was the first link in the chain which began to immobilize  
Plaintiff Fox and isolate Plaintiff CMR such that Defendant Rogers would have access and the



1 ability to molest her again without interference by Plaintiff Fox or the authorities. Defendant  
2 Ron Castaneda did this with deliberate indifference to Plaintiffs' rights.

3 Next, Defendants cite *Taylor v. List* 880 F. 2d 1040, 1045 (9<sup>th</sup> Cir. 1989) for the  
4 proposition that liability for a constitutional tort can only be shown by demonstrating personal  
5 participation by the Defendant. However, three pages later the court cites *United Steel Workers*  
6 *of America v. Phelps Dodge Corp.*, 865 F. 2d 1539, 1540 (9<sup>th</sup> Cir. 1989) for the proposition that  
7 personal participation and the intent of the co-conspirators may be proved by conduct.

8 In *United Steel Workers* the court was examining the conspiratorial relationship  
9 between the police and the Phelps Dodge Corporation for their designation of who to arrest  
10 during those tumultuous times of the steel worker strikes in the 1980s. There, the court said:

11 “...to be liable, each participant in the conspiracy need not know  
12 the exact details of the plan, but each participant must at least  
13 share the common objective of the conspiracy.[citation omitted]  
14 Evidence that police failed to exercise independent judgement  
15 will support an inference of conspiracy with a private party.  
16 See *Gramenos v. Jewel Companies Inc.*, 797 F. 2d 432, 435-36  
17 (7<sup>th</sup> Cir. 1986) (Police agreement to arrest anyone designated by  
18 shopkeeper constitutes conspiracy.” (Emphasis added)  
19 *United Steel Workers, supra*, at 1541.

20 The parallel here is Defendant Ron Castaneda and Defendant Rogers engaged in a  
21 conspiracy to contrive circumstances that would manipulate the courts to get custody away  
22 from Plaintiff Fox. The common objective, throughout this matter, beginning from the time of  
23 the initiation of the conspiracy between Defendants Ron Castaneda and Rogers, was for Rogers  
24 to get custody. This was carried through all the way to the end, in 2010, when Plaintiff Fox was  
25 finally able to convince the court of the truth of Rogers' risk to C.M.R. and she regained  
26 custody. Defendant Ron Castaneda's personal involvement in starting the ball rolling tags him  
for a violation of Section 1983.

24 **6. Plaintiffs Have Stated a Claim for Conspiracy Under 42 U.S.C. 1985(3).**

25 Defendants' Motion to Dismiss based on failure to state a cause of action for conspiracy  
26 under Title 42 Section 1985 should be denied because Plaintiffs have stated specific facts tying



1 all Defendants to a conspiracy intended to secure custody for Defendant Rogers and then  
2 initiating a cover up of their conduct.

3 Plaintiffs' third cause of action is based on the facts and discussion described above in  
4 sections 1-5 which we hereby incorporate by reference.

5 Defendants cite *Karim-Panahi v. Los Angeles Police Department*, 839 F. 2d 621, 626  
6 (9<sup>th</sup> Cir. 1088) for the proposition that it is necessary to state specific facts describing the  
7 conspiracy. As we have discussed above, the conspiracy involving all Defendants in this  
8 motion have been clearly spelled out. Defendants are hung by their own documentation which  
9 chronicles each act constituting their own involvement in the case post-April, 2007, when  
10 Defendant Ron Castaneda first intervened on behalf of Defendant Rogers.

11 *Karim-Panahi*, although an appeal of a dismissal under 12(b)(6), involves extreme  
12 facts. The Plaintiff, a pro se litigant, was having great difficulty in articulating his causes of  
13 action. As such, he made legal conclusions without specification of facts to support the claim  
14 of conspiracy. That is not the case here. Although we characterize conduct as a conspiracy, we  
15 then follow up with specific acts describing the conduct that furthered the objective of the  
16 conspiracy. See Complaint, Paragraphs 16-135.

17 Defendants cite *American Tobacco Co. v. United States*, 328 U.S. 781, 809-810 (1946)  
18 for the proposition that a conspiracy may "only" occur when the parties have reached a unity of  
19 purpose and what amounts to an unlawful agreement. MTD 6:21-22. This is an excellent case  
20 because it is the Supreme Court affirming a conviction for conspiracy to "price-fix." If, in the  
21 criminal court, these standards apply, certainly in the civil context, they should as well. There,  
22 the court said:

23 "...acts done to give affect to the conspiracy may be in  
24 themselves wholly innocent acts. Yet, if they are part of the sum  
25 of the acts which are relied upon to effectuate the conspiracy  
26 which the statute forbids, they come within its prohibition. No formal agreement is necessary to constitute an unlawful conspiracy. Often crimes are a matter of inference deduced from the acts of the person accused and done in the pursuance of a

1 criminal purpose. Where the conspiracy is proved, as here, from  
2 the evidence of the action taken in concert by the parties to it, it  
3 is all the more convincing proof of the intention to...[obtain the  
4 objective]...[of] that conspiracy.” (Emphasis added) *American*  
5 *Tobacco Co., supra*, 328 U.S. at 810.

6 Here, Defendant social workers and Defendant Ron Castaneda engaged in acts which  
7 might otherwise be considered routine interventions in a child dependency case. However,  
8 looked at in the context of their conduct [that of interfering in a Family Law matter] the true  
9 objective and inference of an agreement by concerted action reveals their true pursuance of an  
10 unlawful purpose. Looked at in total, one can see both the acts which furthered the conspiracy  
11 and its end result. At the beginning, Defendant Ron Castaneda began to create false  
12 documentation intended to discredit Plaintiff Fox and mislead the Family Court to believe that  
13 Plaintiff CMR was at risk in Plaintiff Fox’s custody. A copy of his report written in 2007 was  
14 given to Defendant Rogers who attached it to his motion filed in the Family Law matter.

15 The *American Tobacco Co.* Court said it best when it said:

16 “Where the circumstances are such as to warrant a jury in finding  
17 that the conspirators had a unity of purpose or a common design  
18 and understanding, or a meeting of the minds in an unlawful  
19 arrangement, the conclusion that a conspiracy is established is  
20 justified.” (Emphasis added) *Ibid.*

21 If in a criminal setting where the liberty interests weigh strongly in the favor of  
22 Defendants such a conclusion is possible, certainly under these circumstances in a civil setting  
23 they should be the same. The jury could find a conspiracy from the circumstances surrounding  
24 all of the Defendants’ conduct which ultimately, took custody away from Plaintiff Fox.

25 Defendants correctly cite the rule of *Gillespie v. Siviletti* 629 F. 2d 637, 641 (9<sup>th</sup> Cir.  
26 1980) describing the elements of Section 1985(3). Plaintiffs must prove (a) conspiracy; (b)  
violation of equal protection; (c) acts in furtherance of a conspiracy; (d) injury.

**A. Conspiracy**

Plaintiffs have clearly, by labeling them as a conspiracy, identified facts demonstrating  
that Defendants have acted in concert with a planned objective. See Cmpt. Par. 16-20.



1 this is also a matter which has been caused by a gender based bias and discrimination. *RK*  
2 *Ventures Inc. v. City of Seattle* 307 F. 3d 1045,1056 (9<sup>th</sup> Cir. 2002).

3 Defendants were right to cite *RK Ventures Inc.* That case found that African-Americans  
4 were a protected class. It found the Defendant's acts were likely to be racially motivated and  
5 the Ninth Circuit overturned a summary judgement in favor of Defendants. Here, gender bias is  
6 an invidious discrimination which is found to be, particularly, common in the Family Court  
7 arena.

8 In 2002, California National Organization for Women (CA NOW) released a report  
9 based on the complaints of nearly 300 women who felt they had been discriminated against in a  
10 California family court.<sup>5</sup> CA NOW identified gender bias and denial of due process as among  
11 the ways women are not justly served in family courts. Within the category of "denial of due  
12 process," CA NOW identifies the inability to present evidence of child sexual abuse and  
13 domestic violence as an especially egregious barrier to women having a fair trial. Eighty six  
14 percent of those complaints involved domestic violence and a smaller subset involved  
15 allegations of child abuse. *Only 31 percent* of the women litigants in these trials were *able to*  
16 *present their own testimony* about the abuse to a judge. *Only 25 percent* were *allowed to*  
17 *present witness testimony*.<sup>6</sup> The denial of due process to women involved in such cases places  
18 women and children at risk of harm and cannot be permitted to continue.

19 Family law judges and professionals involved in child custody matters (ie: social  
20 workers and lawyers) often believe that mothers who raise allegations of sexual abuse and  
21 domestic violence are "overprotective" or worse and that they are deliberately making false  
22 claims to secure custody or "get back at" former husbands or boyfriends.

23 Custody disputes ...[where] mother alleges that the father has sexually abused a child  
24 ...trigger the application of stereotypes by those called upon to participate in the custody  
25

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26 <sup>5</sup> California National Organization for Women, *Family Court Report* (2002), <http://www.canow.org/fam.html>.

<sup>6</sup> These statistics have not yet been published, and are on file with CA NOW.

1 decision. Some fathers assert and judges believe the allegations are usually false, made by  
2 hysterical or vindictive women seeking to gain financial or other advantage in a bitter custody  
3 dispute. Research in the field indicates that these stereotypes are not valid. The fact [judges  
4 believe false reports are common] ...emphasizes the lack of credibility our system affords  
5 women and children.<sup>7</sup>

6 A woman's credibility is immediately suspect because the perception among judges and  
7 other judicial actors (custody evaluators, special masters, etc.) is often that she is simply trying  
8 to gain advantage.<sup>8</sup> Her word is often doubted as soon as the allegation is raised.<sup>9</sup>

9 The stereotype of the woman as over-emotional or vindictive is prevalent in our society  
10 and has its roots in historical beliefs about the female psyche. Professor John E.B. Myers, the  
11 most often quoted legal expert on child sexual abuse by the Supreme Court<sup>10</sup> quoted John  
12 Henry Wigmore, whom he found was heavily influenced by Freud:

13 ".... [Women's] psychic complexes are multifarious, distorted  
14 partly by inherent defects, partly by diseased derangements or  
15 abnormal instincts, partly by bad social environments, and partly  
16 by temporary physiological or emotional conditions."

17 "One form taken by these complexes is that of contriving false  
18 charges of sexual offenses against men. The unchaste mentality  
19 finds incidental but direct expression in the narration of  
20 imaginary sex incidents of which the narrator is either the heroine  
21 or the victim."

22 "On the surface, the narration is straightforward and convincing.  
23 The real victim, however, too often in these cases is the innocent  
24 many."

25 "No judge should ever let a sex offense charge go to the jury  
26 unless the female complainant's social history and mental make-  
up have been examined and testified to by a qualified

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<sup>7</sup> Judicial Council of California Advisory Committee on Gender Bias in the Courts, Achieving Equal Justice for Women and Men in the California Courts (Final Report) 151 (1996)[hereinafter "Report"].

<sup>8</sup> Women's Credibility Doubted in Many Family Courts, Women's e-News (Sept. 21, 2001), at [http://www.canow.org/issues/famlaw\\_courts.html](http://www.canow.org/issues/famlaw_courts.html). (Victoria Graham, 22 yrs as Associated Press journalist and is Managing Editor).

<sup>9</sup> *Id.*

<sup>10</sup> Judicial Council Report, *supra* note 1, at 153.

1           physician.”<sup>11</sup>

2           This bias is still prevalent today. Women reporting sexual abuse and domestic violence  
3 are still dismissed by some courts as pathological, crazy, or deliberately spiteful.

4           Such views of women are particularly apt to be held when fathers are connected/related  
5 to or are professional people [translation: people in trusted positions - *ie*: law enforcement,  
6 social workers].<sup>12</sup> One authority said it is more in accord with our images of the world to regard  
7 a mother as “crazy or hysterical” rather than to recognize an otherwise seemingly rational and  
8 caring father as capable of the behaviors described.<sup>13</sup> Gender bias, along with class bias,  
9 permeates society at such a deep level that “rational, logical, professional” men are easily found  
10 more believable than “crazy, hysterical” mothers. Social workers are not immune from these  
11 biases.

12           The Equal Protection Clause of the Fourteenth Amendment states that “no State shall ...  
13 deny to any person within its jurisdiction the equal protection of the laws.” Yet, the justice  
14 system has a long history of mistreating violence against women in a manner that  
15 disproportionately fails to protect women from gender-based violence. As the Fourth Circuit  
16 has recognized:

17                           “Traditional State law sources of protection have proved to be  
18 difficult avenues of redress for some of the most serious crimes  
19 against women. Study after study has concluded that crimes  
20 disproportionately affecting women are often treated less  
21 seriously than crimes affecting men. [C]ollectively, these reports  
22 provide overwhelming evidence that gender bias permeates the  
23 court system and that women are most often its victims.”

24                           *Brzonkala v. Virginia Polytechnic Institute and State University*  
25 132 F.3d 949, 971 (4th Cir. 1997).

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26           <sup>11</sup> *Id.* at 154.

<sup>12</sup> Report, *supra* note 4, at 152, quoting Sandra Joan Morris, a certified family law specialist and past vice-president of the American Academy of Matrimonial Lawyers.

<sup>13</sup> Sandra Joan Morris, *Sexually Abused Children of Divorce*, 5 *Journal of the American Academy of Matrimonial Lawyers* (1989) at 35, citing Waterman et al. *Sexual Abuse of Young Children* 150 (1986), cited in Judicial Council Report, *supra* note 1, at 153.

1 This disparity prompted Congress to pass the Violence Against Women Act (VAWA)<sup>14</sup>,  
2 a civil rights law designed to confront head on, "existing bias and discrimination in the criminal  
3 justice system." H.R. conf. rep. no. 103-711, at 385 (1994), reprinted in 1994 U.S.C.C.A.N.  
4 1839, 1853.

5 Even the Ninth Circuit has acknowledged the gender bias problem.<sup>15</sup>

6 Defendants cite *Western Telecasters, Inc. v. California Federation of Labor, AFL-CIO*,  
7 415 Fed Supp 30, 33 (S.D. Cal, 1976) for the policy behind the enactment of Section 1985(3).  
8 First, *Western Telecasters, Inc.*, has no application to this case because its facts are far from  
9 similar. A union employment action cannot be analogized to the kind of discrimination that is  
10 present in the instant case. However, if this court is to interpret the congressional intent, given  
11 the state of the family courts and professionals involved in child abuse allegations in the  
12 context of child custody, one cannot ignore the research and literature that has found gender  
13 bias rampant in the courts.

14 As stated above, in a Motion to Dismiss, the court must take the facts in the most  
15 favorable light to Plaintiff. In addition, the court must make all inferences to the benefit of the  
16

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17  
18 <sup>14</sup>In support of the VAWA, numerous studies were submitted to Congress, most of which were state-sponsored,  
19 demonstrating systemic gender bias and a failure to provide equal justice for women. They included the following:  
20 Administrative Office of the California Courts Judicial Council, *Achieving Equal Justice for Women and Men in the*  
21 *Courts* (1990); Colorado Supreme Court Task Force on Gender Bias in the Courts, *Gender & Justice in the Colorado*  
22 *Courts* (1990); Connecticut Task Force on Gender Justice and the Courts (1991); Florida Supreme Court Gender Bias  
23 Study Commission, Report (1990); Supreme Court of Georgia, *Gender and Justice in the Courts* (1991); Illinois Task  
24 Force, *Gender Bias in the Courts* (1990); Maryland Special Joint Committee, *Gender Bias in the Courts* (1989);  
25 Massachusetts Supreme Judicial Court, *Gender Bias Study of the Court System in Massachusetts* (1989); Michigan  
26 Supreme Court Task Force on Gender Issues in the Courts, Final Report (1989); Minnesota Supreme Court Task Force  
for Gender Fairness in the Courts, Final Report (1989); Nevada Supreme Court Gender Bias Task Force, *Justice For*  
*Women* (1989); New Jersey Supreme Court Task Force, *Women in the Courts* (1984); New York Task Force on Women  
in the Courts, Report (1986); Rhode Island Supreme Court Committee on Women in the Courts (1987); Utah Task Force  
on Gender and Justice, Report to the Utah Judicial Council (1990); Vermont Supreme Court and Vermont Bar  
Association, *Gender and Justice: Report of the Vermont Task Force on Gender Bias in the Legal System* (1991);  
Washington State Task Force, *Gender and Justice in the Courts* (1989); Wisconsin Equal Justice Task Force, Final  
Report (1991). See S.Rep. No. 103-138, at 49 n.52.

<sup>15</sup> *Executive Summary of the Preliminary Report of the Ninth Circuit Gender Bias Task Force* by Ninth Circuit  
Gender Bias Task Force, San Francisco, CA; July 1993



1 Plaintiffs. Whereas the rule of *Bell Atlantic Corp. v. Twombly*, 127 Supreme Court 1985, 1965  
2 (2007) requires more than just “speculation” here, we have stated fact after fact in paragraphs  
3 16 through 204 of the Compliant, demonstrating the disparate treatment and deference given to  
4 Defendant Rogers, a male, over Plaintiff Fox, a female, when all allegations of abuse were  
5 made. When Defendant Rogers made false allegations, nothing was done. When Plaintiff Fox  
6 made allegations which were automatically taken to be false by Defendant social workers, they  
7 moved to favor Defendant Rogers.

8 Based on the forgoing, Defendants have “overgeneralized” their objections to the equal  
9 protection conspiracy claims pertaining to Section 1985(3) protections and their Motion to  
10 Dismiss should be denied.

11 **7. State Law Claims**

12  
13 **a. Plaintiffs Have Complied With the Government Tort Claims Act and**  
14 **Defendants’ Motion to Dismiss on Those Grounds Should be Denied.**

15 The Ninth Circuit has confirmed that Federal Law is in accordance with California  
16 State Law relating to the time-frame when a Statute of Limitations begins to run on a  
17 conspiracy. See *Wasco Products Inc. v. SouthWall Technologies Inc.* 435 F. 3d 989, 992 (9<sup>th</sup>  
18 Cir. 2006). Citing the California Supreme Court, (*Wyatt v. Union Mortgage Comp.* 24 Cal App  
19 3<sup>rd</sup> 773 (1979) ), the court said:

20 “when a civil conspiracy is properly alleged and proved, the  
21 statute of limitations does not begin to run...until the ‘last overt  
22 act’ pursuant to the conspiracy has been completed. [citation  
23 omitted]. Under California law ‘to state a cause of action for  
24 conspiracy, the complaint must allege (1) the formation and  
25 operation of the conspiracy, (2) the wrongful act or acts done to  
26 pursuant thereto and, (3) the damage resulting from such act or  
acts’ [citation omitted]” *Ibid*

25 The members of this conspiracy, in order of their involvement are Defendant Rogers,  
26 who enlisted and conspired with Defendant Ron Castaneda to secure custody of his daughter,



1 Plaintiff CMR. Next, social workers Defendant Leticia Castaneda and Erica Soto began a  
2 campaign of disinformation to discredit Plaintiff Fox and secure custody for Defendant Rogers.  
3 This lead to a coverup and concealment of material, dispositive incriminating evidence against  
4 Defendant Rogers (conversely, exculpatory evidence pertaining to Plaintiff Fox) in the form of  
5 the child pornography found on Defendant Rogers' computer. Joining in the conspiracy to  
6 accomplish all of the aforementioned objectives, Defendants Julia Langley and Carol Holding  
7 perpetrated acts in furtherance of those objectives, the last occurring on April 23, 2010.

8 Defendants cite *Magistratetti Co. v. Merced Irrigation Dist.* (1972) 27 Cal App 3<sup>rd</sup> 270,  
9 274, *Neal v. Gatlin* (1973) 35 Cal App 3<sup>rd</sup> 871, *Carr v. State of California* (1976) 58 Cal App  
10 3<sup>rd</sup> 139, 145 and *Taylor v. Mitzel* (1978) 82 Cal App 3<sup>rd</sup> 665, 671, as reasons this court should  
11 dismiss the State claims based on failure to timely comply with a claims statute.

12 Defendants cite the rule of *Carr v. State of California* (1976) 58 Cal App 3<sup>rd</sup> 139, 145.  
13 That case was decided before the *Wyatt* case previously discussed concerning accrual of  
14 limitations period. In addition, if the injury is of a continuing nature, a claimant may treat the  
15 entire sequence of events that has occurred previous to the filing as one occurrence from which  
16 the claim arose and compute the time to present a claim from the last event in the series. See  
17 *Natural Soda Products v. City of Los Angeles* (1943) 23 Cal App 2<sup>nd</sup> 193 [repeated and  
18 continual flooding over years warranted claim to run at the last event when harm occurred.]

19 As outlined above, the acts furthering this conspiracy began in 2007 and carried forth  
20 through the last act which occurred on April 26, 2010, when co-conspirator Defendant Langley  
21 made her last attempt to prevent Plaintiff's access to the computer hard-drive. *Carr* was not  
22 decided on the issue on timeliness of filing a claim involving conduct that was an alleged  
23 conspiracy. Therefore *Carr* is inapposite.

24 Defendants cite *Pactell v. County of Riverside* (1980) 106 Cal App 3<sup>rd</sup> 183, 188, for the  
25 proposition that failure to file a claim is fatal to the cause of action because compliance is  
26

1 mandatory. The *Pactell* court, in deciding an issue that had nothing to do with conspiracy,  
2 acknowledged that there is a body of law embracing the tolling of the claims statute under  
3 certain circumstances. In *Myers v. County of Orange* (1970) 6 Cal App 3<sup>rd</sup> 626, the trial court's  
4 dismissal of a civil action was reversed on the grounds that the claim was tolled by Plaintiff's  
5 previous application for a hearing before an appellate board in the claim underlying the case. In  
6 that case, the court concluded that:

7 "the injured person should not be required 'to predict at his peril  
8 to precise legal theory [remedy] supporting ultimate recovery. He  
9 should not be placed in the dilemma of awaiting 'jurisdictional'  
10 decisions...[of one tribunal]...while the clock of limitations ticks  
11 in his ear. [citation omitted]." *Myers, supra*, at 636.

12 Here, Plaintiff was embroiled in a series of custody hearings in the Family Court. She  
13 had a hostile antagonist in the person of Defendant Rogers and sympathetic supporters in the  
14 person of these moving Defendants. Although, Plaintiff Fox complained to Defendant social  
15 workers' supervisors concerning their conduct in December of 2008, she should not be placed  
16 in the situation anticipated in *Myers* where she must pick her remedy<sup>16</sup>. Had she made a formal  
17 tort claim and subsequently filed suit, she surely would have immediately lost her child to the  
18 manipulations and misrepresentations made by all Defendants. Like *Myers*, she shouldn't have  
19 to have been placed in the dilemma of choosing remedies.

20 **8. The Claims were Filed within the Time Limits**

21 The purpose of the California Tort Claims Statute is to provide the County with notice  
22 of a potential claim in order that they may have time to investigate and settle valid claims,  
23 thereby protecting the tax payer's dollar. *DiCampli-Mintz v. County of Santa Clara*, (May 26,  
24 2011) WL 2041825, at Pg.5, and see *Elias v. San Bernardino Flood Control District* (1977) 68  
25 Cal.App. 3<sup>rd</sup> 70, 74.

26 <sup>16</sup> Plaintiffs move to amend to include the complaints filed against Defendant social workers by Plaintiff Fox  
on December 4<sup>th</sup> and 16<sup>th</sup> 2008.

1 On two occasions, within a month of each other, Plaintiffs served a Government Tort  
2 Claim upon the clerk of the Board of Supervisors of Tulare County. The first tort claim is  
3 attached to Defendants' County, et al, Request for Judicial Notice as Exhibit A. It specified that  
4 the time-frame in which the acts of the conspiracy resulting in harm to Plaintiffs were on-going  
5 from June 8, 2007, extending through September 17, 2010. That document was served on  
6 September 17, 2010. That claim was returned to Plaintiff on September 21, 2010, supposedly  
7 because the claim was not filed in a timely fashion, when, in fact, it was timely. The claim time  
8 period ended on March 17, 2011.

9 On October 14, 2010, Plaintiffs submitted another tort claim, substantially the same as  
10 the first except more clearly specifying the continuing acts beginning June 8, 2007, through  
11 October 22, 2010. Again, filing within the time period for filing said claim: that one to end on  
12 April 22, 2011. That claim form is attached to Defendants' County, et al, Request for Judicial  
13 Notice, Exhibit C. It, too, was wrongly returned to Plaintiff stating the claim was not timely  
14 filed when in fact the acts underlying the claim were continuing even through the date that the  
15 document was filed.

16 When a government entity wrongly determines that a claim was untimely, thereby  
17 sending it back to the Claimant, the incorrect determination of untimeliness should be  
18 considered a rejection of the claim pursuant to Government Code Section 912.4. Failure to give  
19 proper notice of that rejection will extend that Statute of Limitations. *Rason v. Santa Barbara*  
20 *City Housing Authority* (1988) 201 Cal.App. 3<sup>rd</sup> 817, 829. Where the Claimant disputes (as do  
21 Plaintiffs in this case) the public entity's determination of untimeliness, the Claimant *must* file  
22 a compliant for damages in order to raise this issue. *Toscano v. County of Los Angeles* (1979)  
23 92 Cal.App. 3<sup>rd</sup> 775, at 782-783. A trial court hearing a Section 946.6 Petition (as suggested by  
24 County's Notice of Return to Plaintiffs in this case) cannot consider whether a claim was  
25 timely, "because that issue is not within the scope of that proceeding." *Rason*, 201 Cal.App. 3<sup>rd</sup>  
26

1 at 827, see also, *Toscano, supra* at 782.

2 The court in *Scott v. County of Los Angeles* (1977) 73 Cal.App 3<sup>rd</sup> 476, held that  
3 because the original claim in that case, *on its face, alleged facts which if true made the claim*  
4 *timely*, the County's determination that the claim was untimely should be construed as an  
5 outright rejection, thereby releasing the Plaintiff to file suit. *Scott, supra*, 73 Cal.App 3<sup>rd</sup> at pg.  
6 482. The *Scott* case is almost on the same facts as that of the matter before this court. The *Scott*  
7 Plaintiff filed two claims, both valid on their face and both returned without action indicating  
8 that they were untimely. The Claimant then filed a Complaint for Damages. The court found  
9 that because the original claim, on its face alone, alleged facts which, if true, made the claim  
10 timely, the County's determination that the claim was untimely was to be construed as an  
11 outright rejection. *Scott v. County of Los Angeles, supra*, 73 Cal.App. 3<sup>rd</sup> at 482. That is what  
12 has happened here and this Court should find that the Government Tort Claim Statute has been  
13 satisfied.

14 **9. Substantial Compliance**

15 **a. Plaintiffs have Substantially Complied With the Tort Claim Statute**

16 Assuming, *arguendo*, the Court finds that the claims are not timely, Plaintiffs have  
17 substantially complied with the statute.

18 Courts have found substantial compliance with claim statutes where the recipient is  
19 directly involved in handling the claims against the defendant entity. *DiCampli-Mintz, supra*, at  
20 pg. 7. The court should note that not only were Plaintiffs' government tort claims handled by  
21 the risk management division of the Office of Tulare County Counsel, those claims and their  
22 notice letters were sent by carbon copy to Mike Woods, of McCormack and Barstow,  
23 Defendants' County, et al, current counsel. See Defendant's County, et al, Request for Judicial  
24 Notice, Exhibits B and D. There is no doubt that the County was given notice of the claims.  
25

26 The *DiCampli-Mintz* court concluded that a claimant:

1 “...may substantially comply with the act...if ... [the claim] ... is  
2 given to a person or department whose functions are to include  
management or defense of claims against the defendant entity.”

3 *DiCampli-Mintz, supra*, at pg. 8.

4 More importantly, the *DiCampli-Mintz* court found that they had substantially complied  
5 due to the fact that the Plaintiffs’ claim was properly communicated to the Office of County  
6 Counsel. In the case before this court, not only was the claim received by the County’s Risk  
7 Management division, it was sent to their private counsel who defends the County as he is  
8 doing today in this matter.

9 The *DiCampli-Mintz* court also said that:

10 “... such a view is consistent with the duties and functions of the  
11 County’s attorney’s office, which include to ‘defend and  
12 prosecute all civil actions and proceedings in which the County  
13 or any of its officers is concerned or is a party in his or her  
official capacity and generally to defend any action or proceeding  
brought against an officer, employee, or servant of the county’.”

14 *Ibid*

15 This is significant in this case because the county did in fact investigate the claim prior  
16 to Plaintiffs filing this lawsuit.

17 **b. The County Had Time To and, In Fact, Did Investigate the Claims.**

18 The court is requested to take judicial notice of Exhibit A<sup>17</sup> a Petition to release juvenile  
19 records filed by the County Counsel, Kathleen Bales- Lange on or about November 10, 2010,  
20 one month after Plaintiffs filed their claims. In that Petition, Ms. Bales-Lange specifically  
21 asked for and was granted the release of the same documentation provided to Plaintiffs in the  
22 Family Law action for the purposes of investigating the potential lawsuit facing the County.

23 Defendants make a highly technical defense that Plaintiffs did not file a Petition for  
24 Relief of a Late Claim and therefore the case should be dismissed. In the *DiCampli-Mintz*,

25 \_\_\_\_\_  
26 <sup>17</sup>Filed with Order Requesting Seal to comply with Juvenile Court Confidentiality in Plaintiffs’ Opposition to  
Defendants’ County, et al, Motion to Dismiss, document # 12 .

1 case, the court deemed the second claim filed by the plaintiffs in that action was a petition for  
2 relief and thereby relieved them of the defect. The courts do not take kindly to “highly  
3 technical” defenses on Tort Claim cases. On such an issue, one court said:

4 “We could not allow the City to prevail here without having been  
5 guilty of the kind of legalistic myopia which brings that law into  
6 disrepute. Even assuming that the city gave serious consideration  
7 to plaintiff’s claim rather than merely turning it over to its  
8 insurer, the city could not have been prejudiced by the premature  
9 filing of the action since the complaint was not served until the  
10 time period had run. Thus the defect had ceased to exist before  
11 the city was even formally notified that suit had been brought.”

12 *Cory v. City of Huntington Beach* (1974) 43 Cal.App.3d 131, 136

13 Neither the County nor the other defendants have been prejudiced in this matter as the  
14 result of Plaintiff’s not filing a petition. In the case before this court, not only was the county  
15 apprised of the potential suit by the two independent tort claims filed by Plaintiffs, Defendant  
16 County had ample time to and did investigate the claims prior to this suit being filed.

17 The test of “substantial compliance” is:

18 “Is there sufficient information disclosed on the face of the filed  
19 claim to reasonably enable the public entity to make an adequate  
20 investigation of the merits of the claim and to settle it without the  
21 expense of a lawsuit?” *City of San Jose v. Superior Court* (1974)  
22 12 Cal.App 3<sup>rd</sup> 447, 456.

23 On both occasions claims were submitted in this case, Plaintiffs spelled out the causes  
24 of action by describing the conduct, the time periods in which that conduct occurred and  
25 identified those people it anticipated would be defendants at the time the claim forms were  
26 submitted.

The gist of the substantial compliance doctrine is that in appropriate cases the courts  
will look beyond the terms of a statute to consult its underlying purpose, particularly where a  
strict adherence will result in the loss of important rights. By requiring a Plaintiff to bring his or  
her compliance squarely within the terms of the governing statute, without regard to its

1 purpose, effectively renders the doctrine of substantial compliance inapplicable to the  
2 presentment of government claims. *DiCampli-Mintz, supra*, at 11. The *DiCampli-Mintz* court  
3 also addressed that issue by saying:

4 “Substantial compliance means that the notice has been given in  
5 a way that, although technically defective, it substantially  
6 satisfies the purpose for which notices of claim are required.”  
[citation omitted] *Ibid.*

7 Here, Plaintiffs have given specific descriptions of the conduct, the time frame in which  
8 that conduct occurred and the people it believed were responsible at the time the claims were  
9 filed. They did this twice. Plaintiffs have satisfied the purpose for which the statute was  
10 created. The County has investigated the claims. Perhaps there is irony here too, because the  
11 conduct complained of in the claims filed by Plaintiffs directly implicates the Office of County  
12 Counsel. They had the ability to immediately gather information from their own employees  
13 about what happened. Who better to adjudge their liability than the lawyers in that office. There  
14 has been no prejudice to Defendants. Therefore, there is substantial compliance with the statute  
15 and the motion to dismiss on these grounds should be denied.

16 **10. Defendants’ Motion to Dismiss Defendant Ron Castaneda Should be Denied**  
17 **Because the Tort Claims Have Been Properly Filed and, From Those Claims, The**  
18 **County Has Sufficient Information to Identify Him as a Defendant.**

19 \_\_\_\_\_Defendant Ron Castaneda asks that he be dismissed from this lawsuit because he is not  
20 specifically named, by name, in the tort claims filed in this matter. He cites no case law and  
21 only cites to Government Code Sections 911.2 and 950.2. Neither of which specify that the  
22 individual employee must be named, by name.

23 In *D.K. by G.M. v. Solano County Office of Education* 667 Fed. Supp. 2<sup>nd</sup> 1184 (E.D.  
24 Cal. 2009) the Court decided a tort claim case using California Law. There, a student’s failure  
25 to identify a particular school district employee responsible for supervising a special education  
26 classroom in a claim that he sent to the district did not bar his negligence claim against the

1 supervisory employees where the claims noted that the students had disabilities, alleged that the  
2 offending actions occurred within the school district’s jurisdiction and they described the  
3 alleged abusive incidents in detail. The court will note in the documents requested for Judicial  
4 Notice filed with Defendants’ County of Tulare, Langley, Holding and Rozum, at Exhibit A  
5 and C, (the tort claims) the word “Sheriff” appears no less than thirteen times. Six of those  
6 times as “Sheriff’s Department” and six times under the abbreviation “TCSD.”

7 The name “Castaneda” appears four times, in particular in the second paragraph of the  
8 first page where it states:

9 “at no time did Leticia Castaneda disclose her close and personal  
10 relationship with C.M.R.’s father whose best friend was her  
11 brother-in-law [unnamed however, in fact is Ron Castaneda]”  
(emphasis added)

12 Although the claims form itself does not mention the personnel complaint made by  
13 Plaintiff Fox and her counsel, James Christenson, described in our complaint at paragraph 46,  
14 the County was certainly put on notice both by the investigation conducted by the Sheriff’s  
15 Internal Affairs and by the claims filed that, had they looked into the matter further, they would  
16 have identified the interrelationship between Defendants Ron and Leticia Castaneda. The  
17 conspiracy is alleged, in no uncertain terms, in both claim forms. Therefore, like the students in  
18 *D.K.*, Plaintiffs have given ample notice to Defendant County that Defendant Leticia  
19 Castaneda’s “brother-in-law” was involved in this case. Therefore, Defendant Ron Castaneda’s  
20 request to be dismissed in this matter should be denied.

21 **11. Plaintiffs Move to Amend Claim Eleven, Civil Conspiracy**

22 **a. All of These Moving Defendants Knew they Were Assisting**  
23 **Defendant Rogers in His Tortious Conduct**

24 An agreement and knowledge of the tortious scheme may be inferred from the conduct  
25 itself:  
26



1 “The requisite concurrence in the tortious scheme with  
2 knowledge of its unlawful purpose may be inferred from the  
3 nature of the acts done, the relation of the parties, the interests of  
4 the alleged conspirators, and other circumstances.”

*Wyatt v. Union Mortgage Co., supra*, (1979) 24 Cal.3d 773, 784;  
5 *5 Witkin, Summary of Cal. Law* (10th ed., 2005) Torts, §45

6 Here, every one of these Moving Defendants knew they, in a unity of purpose, were  
7 assisting Defendant Rogers in his quest to deprive Plaintiff Fox of her custody and, in so doing,  
8 committed acts of misrepresentation, presentation of false evidence, violating duties to the  
9 child and the court (Family Law) through fraud on the court, as well as filing false law  
10 enforcement and social service reports as set forth in detail in the Complaint, Paragraphs 16,  
11 40, 56, 68, 69, 83 and 96. The objective of the conspiracy is clear when one looks at the  
12 conduct in its entirety with the fact that Defendant Rogers is the common thread and his false  
13 complaints to the Child Welfare Services all revolved around his gaining advantage by alleging  
14 Plaintiff Fox was abusing Plaintiff CMR.

15 Defendant Ron Castaneda has committed misdemeanor crimes that were enacted to  
16 protect children and others, which are, *per se*, negligent.

17 The interrelationships and actions of these Defendants draw the inference of collusion  
18 and the facts tie them together when one looks at their individual conduct in light of the  
19 ultimate objective.

20 The Supreme Court recognized their co-conspirator liability when it said:

21 “... by participation in a civil conspiracy, a co-conspirator  
22 effectively adopts as his or her own torts of other co-conspirators  
23 within the ambit of the conspiracy. [citation omitted] In this way  
24 a co-conspirator incurs tort liability co-equal with the immediate  
25 tortfeasors ...[]... ‘a civil conspiracy however atrocious, does not  
26 per se give rise to a cause of action unless a civil wrong has been  
committed resulting in damages.’ ” (emphasis added)  
*Applied Equipment Corp. v. Litton Saudi Arabia, Ltd.*, (1994) 7  
Cal App 4<sup>th</sup> 503, 511.

1           There have been civil wrongs in this matter. Each of them are described in the  
2 Complaint at as our Eleven Causes of Action.

3           Defendants are right to cite *Kidron v Movie Acquisition Corp.* (1995) 40 Cal.App.4th  
4 1571, but, they missed the most important part where it says:

5                           “... civil conspiracy is a ‘legal doctrine that imposes liability on  
6 persons who, although not actually committing a tort themselves,  
7 share with the immediate tortfeasors a common plan or design in  
8 its perpetration. [Citations omitted.]’ As Witkin explains, “If [the  
9 plaintiff] can show that each [of several defendants] committed a  
wrongful act or some part of it, e.g., that each made false  
representations, he has no need of averments of conspiracy.  
*Kidron, supra*, at 1581

10           We have shown that each of these Moving Defendants have taken a part of Defendant  
11 Rogers’ scheme making false representations and running with it.

12           The *Kidron* court then cites *Wyatt, supra*, as reported above and says:

13                           “An inference must flow logically from other facts established in  
14 the action. *Kidron, supra*, at 1582

15           Each link in the chain of this conspiracy logically connects the first overt acts through  
16 the ultimate change in custody. Defendants Ron Castaneda and Rogers filing a false report and  
17 justifying Rogers’ trip to the hospital for a sexual assault examination with Plaintiff C.M.R. in  
18 2007 was the beginning. The links continue through the acts of Defendant social workers  
19 misleading the Sheriff’s investigators about Plaintiff Fox’s reports of abuse. They involve  
20 Defendant social workers’ misrepresenting the facts to the Family Court mediator about those  
21 reports. They involve the Defendant social workers’ own concealment of the discovery of child  
22 pornography, found on Defendant Rogers’ computer, of which they had direct knowledge and  
23 were aware of its importance and impact on the case, from 2008 through 2010. It involves the  
24 Defendant social workers’ collusion with Defendant Attorneys to cover up and prevent the  
25 facts from being revealed about the child pornography and their own conduct.  
26

1           Whereas a conspiracy cannot create a duty, when one exists the conspiracy cannot  
2 abrogate a duty when owed to a particular plaintiff. *Applied Equipment Corp. v. Litton Saudia*  
3 *Arabia Ltd.*, (1994) 7 Cal.4th 503, 514. All of these Moving Defendants owed a duty to  
4 Plaintiff C.M.R. to honestly investigate child abuse allegations. Here, these Moving  
5 Defendants, each and every one of them, failed to do so, falsifying reports, interfering in the  
6 investigation of the real dedicated and honest sheriff's investigators who were pursuing the  
7 child pornography and molestation case in 2008, and would not have stopped had these  
8 Moving Defendants not inter-meddled.

9           Plaintiffs have established our Eleventh claim as conspiracy to falsify evidence,  
10 misrepresentation, commit fraud on the court, deprive Plaintiffs of their familial relationship  
11 and inflict emotional harm. We move to amend accordingly.

12           **b. Defendants Are Not Immune Because of the Special Exclusion for Public**  
13 **Officials Who Initiate Proceedings of Child Protection Pursuant to Gov.**  
14 **Code Sec. 820.21**

15           Although Defendants would be immune from suit in other circumstances, they are not  
16 under the facts of this case. The legislature has enacted a statute that removes public  
17 employees' immunities for those persons authorized to initiate Dependency proceedings in  
18 certain circumstances. The statute states that civil immunities shall not extend to those persons  
19 who commit perjury, fail to disclose exculpatory evidence and/or commit fraud, if committed  
20 with malice. See Government Code Section 820.21(a)(1-4).

21           In *Parks v. County of San Diego*, 345 F.Sup. 2<sup>nd</sup> 1071 (So. Dist. Cal. 2004), interpreting  
22 California Government Code Section 820.21 the court found that the social worker failed to  
23 disclose exculpatory evidence to the parents and to the court and therefore lost the protections  
24 of the governmental immunities. Section 820.21 includes social workers and police officers  
25 because they are public employees who are authorized to initiate proceedings in the Juvenile  
26 Court, filing petitions of protection for abused and neglected children.

1 In this case, Defendants Soto and Castaneda have committed fraud on the court when  
2 they misrepresented the true facts concerning Plaintiff Fox' previous child abuse and domestic  
3 violence reports when they spoke to the Family Court mediator and the sheriff's detectives.  
4 They concealed from the Family Court the fact that child pornography was found on Defendant  
5 Rogers' computer. The child pornography was exculpatory evidence on her behalf. They  
6 contrived the "opinion" that Plaintiff Fox had been making false allegations of abuse when she  
7 reported that her child had told her that Defendant Rogers had been taking nude pictures of  
8 Plaintiff CMR and molesting her.

9 As shown above, all Defendants have acted with malice. They retaliated against  
10 Plaintiff Fox because Defendant Ron Castaneda was forced to retire. They failed to disclose  
11 evidence that would demonstrate Defendant Rogers' propensity to molest his daughter and  
12 exonerate Plaintiff Fox from the allegations she was creating false allegations of abuse. All to,  
13 at first, help Defendant Rogers get custody, to retaliate and, later, to protect themselves.

14 Therefore, like the social workers in *Parks*, supra, all defendants have lost the  
15 protections of the government immunities. The Motion to Dismiss Plaintiffs' Fifth, Sixth,  
16 Seventh and Eleventh Cause of Action should be denied.

## 17 V. CONCLUSION

18  
19 For the reasons stated herein, all of Defendants' Request to Dismiss Plaintiffs'  
20 Complaint should be denied, except for Cause of Action Eight, Negligent Infliction of  
21 Emotional Distress.

22 Respectfully Submitted

23 Dated: August 15, 2011

/s/ Seth L. Goldstein

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Attorney for Plaintiffs