IN THE COURT OF APPEAL STATE OF CALIFORNIA

FOURTH APPELLANT DISTRICT, DIVISION 1

ANTWOINE BEALER
Plaintiff & Appellant

Court of Appeal No. D083677
Superior Court No.
37-2021-00030001-CU-WM-CTL

v.

COUNTY OF SAN DIEGO et.al.
Defendants & Respondents

Appeal from an Order
Of the Superior Court of California, County of San Diego
The Honorable Richard S. Whitney
(Case no. 37-2021-00030001-C-WM-CTL)

APPELLANTS' OPENING BRIEF

ANTWOINE BEALER in PRO SE
[redacted]

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INTRODUCTION

This is an appeal following the granting of Demurrer based on the grounds that the Verified Petition for Writ of Mandate (37-2021-00030001-CU-WM-CTL) failed to state facts sufficient to constitute a cause of action and is barred by Res Judicata. In the petition for Writ of Mandate Appellant brought claims against the Respondents for failing to fully comply with order of the Superior Court Judge from a Writ of Mandate filed on April 12, 2018 (37-2018-0001849544-CU-WM-CTL). Despite the Appellant (Petitioner) having a clear cause of action (SC ROA 1), res judicata not being applicable in this case, and the Judge allowing the respondents to file a demurrer 69 days (about 2 and a half months) after complaint/summons was filed in violation of Code of Civil Procedure 430.40(a)

The Superior court made a judgment that violated the Appellant right to obtain exculpatory evidence that is in the possession of the defendants in which they have been withholding almost 20 years and they are bound by law to turn over under the California Public Record Act (CPRA) and the 14th Amendment to the Constitution.

Simple Case Made Extraordinarily Hard Intentionally

"B. Facts Underlying the Traffic Stop At the time of the robbery, Deputy Sheriff Efrain Garcia was on patrol in the Lemon Grove area of San Diego. He received a radio call at approximately 1:19 a.m. regarding the robbery. The call stated that the ARCO gas station had "just been robbed"" by a 5'11" 160-pound male wearing a black ski mask. Garcia, who was

approximately three blocks away from the gas station, began driving his patrol car towards the gas station. About five seconds after receiving the initial radio call, he observed a vehicle, driven by Bealer, headed towards him, away from the gas station." (SC RJN Exhibit 1)

The words taken from this Not Officially Published document are riddled with falsehoods and errors and the judicial notice of this publication appears to be just another cover up for Sheriff Garcia's who testified under oath to facts he knew to be false. There are three main witnesses to the incident that night - Sheriff Garica, the Appellant Antwoine Bealer, and the documents the Appellant has being trying to obtain for almost 20 years. The Appellant asks you not to believe him or Officer Garcia but to believe the unbiased observer – the documents. Documents the Appellant believes have been strategically hidden to cover up for Deputy Sheriff Garcia and the people who knew his testimony was inaccurate. To keep the Appellant hidden away to protect the errors and falsehoods.

Appellant had never been to prison in his life before being sent to one of the worse prisons in the U.S. (Corcoran). This was the same prison Charles Manson resided in. Exhibit 1 of the Judicial notice filed (SC RJN Exhibit 1) by the County appears to be filed to paint an ugly picture of the Appellant. This picture is intentional. Every chance they get they add more dirt to muddy him up to make it palatable to deny him his constitutional rights. The Court in the 2018 case says, "The Court also does not find the descriptions of petitioner as a "convicted felon" significant to the analysis, which turns on an interpretation and application of the California Public Record Act." (SC RJN Exhibit 2) The Respondent knew that the term felon had nothing to do with the issue. The case is simple. Is the Appellant entitled

to the exculpatory evidence? The Judge in the 2018 case said yes. Instead, they are trying to make this about his character.

They have muddled this simple issue of is the appellant entitled to exculpatory evidence into trying to paint him as a bad character. They intentionally tried to degrade the Appellant in their filing in the 2018 case and the Judge had to point out their attempt to attack his character had nothing to do with his case. This tactic can make it difficult for potential attorneys to take his case and represent him or make it very cost prohibited. Which leaves the Appellant going up against well versed and educated attorneys.

1. 5'11" 160-pound male

The ARCO Clerk said the person was between 160 and 180 lbs. The Judge who allowed this to go to court knew that the Appellant weighed only 119 lbs. when he was arrested. He had to go to the doctor the night he was arrested, and his weight was documented as 119 by the medical examiner on staff at the jail. This was part of the official record, but it made no difference to them. It made no difference to them that the clerk said he could not identify the assailant because the person was covered up. All of this is documented and in court records, but it has made no difference to anyone because they are protecting Sheriff Garcia and continuing to keep this record hidden.

2."Garcia, who was approximately three blocks away from the gas station, began driving his patrol car towards the gas station. About five seconds after receiving the initial radio call, he observed a vehicle, driven by Bealer, headed towards him, away from the gas station." This is where the false statements and cover up began. The truth lies in the exculpatory evidence that has been withheld since 2004. The Computer Aided Dispatch

(CAD) Radio & transcript of Officer Efrain Garcia will show that this whole statement is false. It will show Sheriff Garcia was not three blocks from the gas station. It will show Garcia was not driving his vehicle toward the gas station when he observed the appellant. It will show it was not five seconds after he received the initial call. It will show that the Sheriff provided falsehoods to the court, and it has been covered up to keep those false statements from ever becoming exposed. The records will show Sheriff Garcia provided false testimony under oath and in fact when he stopped the Appellant, he was nowhere near Arco gas station.

Why has the Sheriff Department and the District Attorney Office both kept this exculpatory information away from the Appellant? If what was testified under oath was true, the incomplete GPS log provided would have the entire movements of Deputy Sheriff Garcia (from the time he got the call until the time he arrested the Appellant). The GPS log given has the time he received the call and the arrest time, but everything in between is missing. If an accurate GPS log were given it would have impeached his testimony and that is why they have kept it hidden all these years. The truth is in the documents.

The court in case 37-2018-0001849544-CU-WM-CTL made it perfectly clear that "There is "statutory presumption that all governmental records are available to any person. "ACLU *v Superior court* (2011) 202 Cal.4th 55, 85. Importantly, the agency bears the burden of justifying nondisclosure of any requested records." §6255(a). In determining whether exemptions apply, courts must follow the California Constitution's directive that the applicability of exemptions must be construed narrowly and that the people's right of access must be construed broadly. Cal. Constitution Art. I, §3(b)(2); see also City of San Jose, 2 Cal.5th at 617. Even if portions of a

document are exempt from disclosure, the agency must disclose the remainder of the document. §6253(a). The California Supreme Court has found that agencies must use "the equivalent of a surgical scalpel to separate" those segregable" portions of a record subject to disclosure from privileged portions." *Los Angeles County Board of Supervisors v Superior Court* (2016) Cal.5th 282, 292 ("LACBOS"). (SC RJN 2)

The Respondents have used a surgical scalpel but only to cut out the GPS coordinates and CAD transcripts which will prove whose version of the story is false. The GPS and CAD that would show his exact location and that he was miles away from the crime scene.

STATEMENT OF THE CASE

This case involves requests of Appellant made pursuant to the CPRA for documents and records relating to San Diego County Sheriff's Department (SDSD) stop and detention and arrest of Appellant on October 15, 2004. A Petition for Writ of Mandate was filed with the court on April 12, 2018 (37-2018-00018104-CU-WM-CTL). The Court ruled in Minute Order dated 11/24/2020 that the records be produced. "Based on the above, the Court finds the District Attorney's Office **must** comply with Section 6254(f)(1_-(2)(A) in **full**". (emphasis added) "The moving papers and supporting declarations discuss petitioner's on-going attempts to obtain records related to this criminal case since the trial. While the information provided is background explaining petitioner's motivation for the record, the issue presented here is requests made under the California Public Records Act." (SC RJC 3)

The Respondents has given every excuse in the book not to produce information. One of their arguments is that the petition is barred by Res Judicata. We may agree with them if they had followed the Judges complete

order. The Judge states "Based on the above, the Court finds that the District Attorney's Office must comply with Section 6254(f)(1)-(2)(A) in full. (SC RJC 3) The Appellant is proclaiming that they have not complied in full, therefore the new petition is to correct their fraudulent attempt to continue to withhold exculpatory evidence and not to relitigate. To allow the Respondents to not follow the court order and then be rewarded for their deed by allowing them to prevail on Demurrer and the doctrine of res judicata is egregious and unjust and does harm to the community.

The Appellant is not attempting to relitigate but to correct a continuous wrong. The attempt to obtain the complete GPS record is to obtain exculpatory evidence. There are three stories. Deputy Sheriff Garcia story, Antwoine Bealer story and the GPS story. Deputy Sheriff Garcia and Antwoine Bealer both have a personal stake, so the Appellant is asking to let the only unbiased party in this story do all the speaking. If Deputy Sheriff Garcia is correct in his story no harm is done by letting the GPS speak. It will collaborate everything that the officer said.

Deputy Sheriff Garcia story concerning the location:

"At the time of the robbery, Deputy Sheriff Efrain Garcia was on patrol in the Lemon Grove area of San Diego. He received a radio call at approximately 1:19 a.m. regarding the robbery. The call stated that the ARCO gas station had "just been robbed"" by a 5'11" 160-pound male wearing a black ski mask. " Garcia, who was approximately three blocks away from the gas station, began driving his patrol car towards the gas station. About five seconds after receiving the initial radio call, he observed a vehicle, driven by Bealer, headed towards him, away from the gas station." (SC RJN Exhibit 1)

Antwoine Bealer story concerning the location:

The Appellant has always said the first time he saw Deputy Sheriff Garcia was when he was driving South on Skyline Dr. He saw him from a distance just sitting at the intersection of Skyline and Alton Drive. As he passed Alton Dr, Deputy Sheriff Garcia put on his lights, and he pulled over. The distance between Alton Drive where the Appellant saw the officer and Dayton Drive where he was pulled over was about a fourth of a block. The distance between the two streets is noticeably short. When they first saw each other was nowhere near Arco. From Broadway where Arco is located and Alton Dr, there are twists, turns, stop signs, traffic lights and slopes.

GPS story concerning the location:

The only information the GPS log provides that is relevant to the Appellant case is where Deputy Sheriff Garcia was located when he received the call and his location where the Appellant was pulled over. All other pertinent information has been omitted. GPS shows 01:22:08 when he was dispatched. (SC ROA 1 Exhibit C) The Event Chronology (ROA 1 Exhibit A) shows the UNIT 61P2B driven by Sheriff Deputy Garcia was dispatched 01:22:06. Both the GPS and Event Chronology collaborate. They differ by 2 seconds. However, Sheriff Garcia stated he received the call at 01:19. That is a 3-minute difference from both the GPS and Event Chronology. The reason the Appellant feels there is a three-minute difference is because he knows, and the GPS log will show Deputy Sheriff Garica was not at Lincoln and Kempf/Skyline Dr. when he observed him but at the intersection of Alton Dr and Skyline Dr. He knows the Appellant was nowhere around the area of the robbery.

So, he made up this whole story about his location and the GPS log was withheld so his testimony could not be challenged. The Event Chronology shows the Emergency Traffic was executed at 01:23:01 not at 1:19. If Deputy Sheriff Garcia first observed the Appellant at Lincoln and Kempf which was .3 miles away from ARCO, why did he wait until He was miles away to stop the vehicle. The GPS notes Deputy Sheriff Garcia was at Deborah Place and not Lincoln and Kempf. (SC ROA 1 Exhibit C). It would take minutes to travel from Deborah Place to Lincoln/Kempf not 3 seconds like Deputy Officer stated.

The Appellant knows they have access to the records being requested. The Respondent cannot say the GPS log concerning the Appellant did not exist because they produced a GPS log that shows where Sheriff Garcia was at 1:22:08 (Deborah Place), around the time he was dispatched and 1:32:08 (Dayton Dr.) around the time the arrest was made. "Although,An,GPS Log Was Produced in the (2018) Suit the Log Does Not Show the Location of Officer Garcias Patrol Unit After 012208 Hours, Until 013208 Hours. That Is An Ten (10) Minute Period of Time, Within, Which-The Stop, Detention and Arrest of Petitioner Took Place. Petitioner Has Been Requesting This Information, Literally, For More Than Eighteen(18) Years And Petitioner Would Like To Pose An Rhetorical Question: If Petitioners Intent Is To Falsely Accuse Officers Of Misconduct For Some Unscrupulous Reason, Why Is Not The Petitioner Accusing (sic) Officers Davis, Willis, Rand Or Bartlett Of Anything, Otherwise-Why So Much Hassle To Receive Records That Petitioner has An Right To Have." (SC ROA 61) Where is the location of Sheriff Garcia patrol unit between 1:22:08 – 1:23:08, 1:23:08 – 1:24:08, 1:24:08 – 1:25:08, 1:25:08 – 1:26:08, 1:26:08 – 1:27:08, 1:27:08 – 1:28:08, 1:28:08 – 1:29:08, 1:29:08 – 1:30:08, 1:30:08 – 1:31:08, 1:31:08 –

1:32:08 etc. None of this information was on the GPS turned over to Mr. Bealer.

Where is the location from the GPS that shows him at Lincoln and Kempf? At 01:22:08. The incomplete GPS log given to Mr. Bealer shows Mr. Garcia at Deborah place at 01:23:44; the chronological log shows his location at Dayton Dr/Skyline (where the Appellant was pulled over). There is nowhere in the log that documents Deputy Sheriff Garcia's movement that would collaborate his testimony at the preliminary hearing. When the appellant's Attorneys agreed to accept the information, it was impossible for them to know this was not the correct GPS record and since the Appellant is incarcerated, he thought they had produced the correct documents until it was mailed to him. Where is the rest of the GPS record that shows Deputy Sheriff Garcia's movements during and after the call concerning the Appellant and why are they keeping it hidden? All the exculpatory evidence is missing. The Appellant believes this GPS log (SC ROA 1 Exhibit C) has been altered or the wrong documents were given to him. The GPS log, the event chronology and Mr. Bealer's statement are in direct conflict with Deputy Sheriff Garcia's testimony.

GPS information has been requested repeatedly. It was requested during the discovery phase through motions, requested through CPRA on numerous occasions over numerous years. The GPS log provided cannot be complete and/or correct. If so, it would have Lincoln/Kempf as the location where Deputy Sheriff Garcia was when he was dispatched instead at Deborah place.

In California, the prosecutors are obligated to provide exculpatory evidence arising from the Federal Due Process Clause of the Fourteenth Amendment. *Brady v. Maryland* (1963) 373 U.S. 83

STATEMENT OF APPEALABILITY

The judgment entered by the Superior Court order granting dismissal after sustaining of demurrer without leave to amend is an appealable final judgment pursuant to Code of Civil Procedure 472c.

STATEMENT OF FACTS

A Verified Petition for Writ of Mandate was filed on April 12, 2018, by Plaintiff and Appellant Antwoine Bealer (SC RJN 2)

Minute order dated November 24, 2020, ruled that the District Attorney office must comply with Section 6254(f)(1-(20(A) in FULL (emphasis added)

Minute order dated November 24, 2020, states that "However, the requests are sufficiently clear: petitioner plainly requested all paper and electronic records related to himself and his criminal case in Respondent's possession."

Minute order dated November 24, 2020, states "the DA and the Sheriff each provided Petitioner with their retention and destruction policies, both refused to provide Petitioner with any other records".

Minute order dated November 24, 2020, states, "To facilitate the public's access to this information, the CPRA mandates, inter alia, that "each state or local agency, upon a request for a copy of records, that reasonably describes an identifiable record or records, shall make the records promptly available."

Minute order dated November 24, 2020, states "The substance of what exactly needs to be produced is not disputed in this case."

Minute order dated November 24, 2020, states "Further, the California Constitution requires interpreting statutory language broadly when furthering the people's right of access, and narrowly when limiting the right of access."

Copy of GPS log was given to Appellant that was incomplete. It did not have any information showing the Officers locations that was related to the Appellant (SC ROA 1 Exhibit C)

Respondents never state the reason the court should take Judicial Notice. Especially Exhibit 1 – Unpublished Opinion People v Bealer.

Appellant filed and requested the Court to take Judicial Notice of certain information and it was granted. (SC ROA 54)

ARGUMENTS

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The Grant of Res Judicata is subject to De Novo Review

"We conduct a de novo review of a trial court's order sustaining a demurrer without leave to amend. (*Kong v. City of Hawaiian Gardens Redevelopment Agency* (2002) 108 Cal.App.4th 1028, 1038). A trial court abuses its discretion if the plaintiff makes a showing the pleading can be amended to overcome the pleading defects." (*City of Stockton v. Superior Court* (2007) 42 Cal.4th 730, 746. "This issue is reviewable on appeal even in the absence of a request for leave to amend." (Code Civ. Proc., § 472c; *Scott v. City of Indian Wells (1972) 6 Cal.3d 541, 550.) Rogers v. Wegman (In re Estate of Wegman)*, No. F071913, 6 (Cal. Ct. App. Jun. 15, 2016)

"Under the first standard of review, "we examine the complaint's factual allegations to determine whether they state a cause of action on any available legal theory. [Citation.] We treat the demurrer as admitting all material facts which were properly pleaded. [Citation.] However, we will not assume the truth of contentions, deductions, or conclusions of fact or law [citation], and we may disregard any allegations that are contrary to the law or to a fact of which judicial notice may be taken. [Citation.]" (Ellenberger *v. Espinosa* (1994) 30 Cal.App.4th 943, 947, 36 Cal.Rptr.2d 360.)

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The trial Court erred in Sustaining the Demurrer

The trial Judge erred in sustaining the demurrer. The new complaint was not relitigating but correction of a continuous wrong. The complaint filed by the Appellant clearly states a cause of action. The Respondent used this same argument in the 2018 case, which the Judge disagreed with about stating a cause of action. The causes of the action are the release of the correct GPS, Computer Aided Dispatch transcripts and all discovery information withheld that were ordered by the court to be released and if any records were purged to show why they were purged in violation of retention policy and the law.

On 02/07/2023 the Demurrer, Judicial Notice and Proof of Service were filed by County of San Diego (SC ROA 49, 51 and 52). On 3/07/2023 a Request for Judicial Notice was filed by Bealer (SC ROA 54). On 05/01/2023 Opposition to Demurrer was filed by Antwoine Bealer (SC ROA 61). On 05/05/2023 Reply was filed by County of San Diego (SC ROA 62). Tentative Ruling for Demurrer on 05/10/2023 (SC ROA 64). In the Tentative ruling the Court says, "The Court notes that Petitioner did not file an opposition, but a request for Judicial Notice." "Petitioner has not shown

that he will be able to amend to avoid res judicata." We disagree with both statements of the Court. First, the appellant filed an opposition and if an amendment was necessary, they should have been given a chance to do amend.

Judicial notice of the Unpublished Opinion of California Court of Appeal *People v Bealer* (SC RJN 1) is irrelevant to the challenge of the case and the notice should have never been allowed to stand. California Rules of Court Evidence Code 8.252 (a)(2)(A) It appears the only reason to make judicial notice of said document was to paint a negative picture of the appellant. The Respondent used this same technique in the 2018 case and was admonished by the Judge. "Courts can take judicial notice of the existence, content and authenticity of public records and other specified documents, *but do not take judicial notice of the truth of the factual matters asserted in those documents.* " (*Glaski v. Bank of America* (2013) 218 Cal.App.4th 1079, 1090, 160 Cal.Rptr.3d 449, italics added (*Glaski*).) *c*, 87 Cal.App.5th 389, 400 (Cal. Ct. App. 2022)

A demurrer is a pleading used to test the legal sufficiency of other pleadings by raising issues of law, not fact. In ruling on a demurrer, a court may consider facts of which it has taken judicial notice. (Code Civ. Proc., § 430.30, subd. (a).) This includes the existence of a document. When judicial notice is taken of a document, however, the truthfulness and proper interpretation of the document are disputable. (*Joslin* v. *H.A.S. Ins. Brokerage* (1986) 184 Cal.App.3d 369, 374.) *Stormedia Incorporated v. Superior Court*, 20 Cal.4th 449, 457 n.9 (Cal. 1999).

"It has consistently been held under this section that, where a complaint is not subject to general demurrer, it is an abuse of discretion to sustain a demurrer without leave to amend even though the complaint may be subject

to special demurrer and that no request to amend is necessary." (*Wennerholm* v. *Stanford Univ. Sch. of Med.*, 20 Cal.2d 713 [128 P.2d 522, 141 A.L.R. 1358]; *Maguire* v. *Hibernia S. L. Soc.*, 23 Cal.2d 719 [146 P.2d 673, 151 A.L.R. 1062]; *Hancock Oil Co.* v. *Hopkins*, 24 Cal.2d 497 [150 P.2d 463]; *Columbia Pictures Corp.* v. *DeToth*, 26 Cal.2d 753 [161 P.2d 217, 162 A.L.R. 747].)*Greninger v. Fischer*, 81 Cal.App 49, 551 (Cal. Ct. App. 1947)

The summon was served to the County on 11/30/2022. The county filed the demur on 02/07/2023 (ROA 49) 69 days (about 2 and a half months) after the summons was served. Code of Civil Procedure Section 430.40 states the time for filing a demurrer to a complaint is 30 days.

On 05/12/2023 Judgment of Dismissal was filed by the County of San Diego. (SC ROA 71)

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Superior Court of San Diego County erroneously applied Res Judicata doctrine

(claim preclusion)

"At issue here is claim preclusion (sometimes called res judicata) which "generally refers to the effect of a prior judgment in foreclosing successive litigation of the very same claim, whether or not relitigation of the claim raises the same issues as the earlier suit." New Hampshire v. Maine, 532 U.S. 742, 748 (2001); Lucky Brand Dungarees, Inc. v. Marcel Fashions Grp., Inc., 140 S.Ct. 1589, 1594 (2020) (noting that claim preclusion is sometimes called res judicata). The purpose of claim preclusion is "[t]o preclude parties from contesting matters that they have had a full and fair opportunity to litigate," which serves to protect against "the expense and

vexation attending multiple lawsuits, conserve[] judicial resources, and foster[] reliance on judicial action by minimizing the possibility of inconsistent decisions." *Montana v. United States, 440 U.S. 147, 153-54 (1979).*

"Claim preclusion, also called res judicata, "prevents relitigation of the same cause of action in a second suit between the same parties or parties in privity with them." *Mycogen Corp. v. Monsanto Co.*. 28 Cal.4th 888, 896 (2002). Claim preclusion has three requirements under California law: (1) the second lawsuit must involve the same "cause of action" as the first lawsuit; (2) the first lawsuit must have resulted in a final judgment on the merits; and (3) the party to be precluded must have been a party, or in privity with a party, to the first lawsuit." *San Diego Police Officers' Ass'n v. Sand Diego City Emples. Ret. Sys.*. 568 F.3d 725, 734 (9th Cir.2008).

(1) The second lawsuit does not involve the same cause of action as the first lawsuit. The first lawsuit was for the respondents to turn over the documentation requested. In which Appellant prevailed on. The second lawsuit is not a relitigating but an enforcement of the first lawsuit.

(2) The Appellant disputes whether the first lawsuit resulted in a final judgment since he never received a signed final judgment. On 5/23/2023 an **UNSIGNED** proposed judgment was filed and mailed (SC ROA 74). On 5/31/2023 a signed Judgment of Dismissal was filed by the County of San Diego (SC ROA 73). The County has filed the Proof of service for the proposed judgment sent on 5/23/2023. If they had filed and sent a signed judgment, there would have been proof of service filed on and after the date of 05/31/2023 - the date the judge signed the order. The Appellant was not informed there was a signed judgment.

(3) The parties are the same.

The Claim preclusion (res judicata) does not apply in this case and should not have been granted. For res judicata to stand it must meet all three requirements. Even if all three requirements were met it would be a grave injustice to allow the County of San Diego to withhold information that the court has ordered them to turn over. They were playing a shell game with the Appellant to make him think all information had been turned over and when he received the documents to find out under the shell were not the documents, he was seeking but incomplete or the wrong documents. The Appellant Attorneys would not have agreed if they knew the exculpatory documents were not in the items turned over. They produced a GPS but not the one that details all of Deputy Sheriff Garcia's movements after he received the call concerning the robbery. Why would the Appellant ever agree to receive documents he has been fighting for almost 20 years if they were not what he needed. The county has been playing this game for a long time while the Appellant has been in prison for almost 20 years over a $172 robbery. He is tired and just wants someone to stop them from playing with his life.

""Preclusion does not apply where the litigant did not have a 'full and fair opportunity' to litigate the issue in the earlier case." *United States Parcel Service, Inc. v. California Public Utilities Com'n.* 77 F.3d 1178, 1185 (9th Cir. 1996) (quoting *Allen.* 449 U.S. at 101)." *Sullivan Equity Partners, LLC v. City of L. A.*, 2:16-cv-07148-CAS(AGRx), 13 (C.D. Cal. Sep. 19, 2023)

The Respondent should not be rewarded for breaking the law. They broke the law when they refused to turn over the evidence the Appellant has been requesting for almost two decades. I do not know of any law, rule or

statute that allows the legal principle of Res Judicata to overrule the disclosure of public records for any reason or circumstance..

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Facts stated in the Petition for Writ of Mandate were sufficient to constitute a cause of action

The facts stated in the current lawsuit were sufficient to constitute a cause of action. (SC ROA 1)

"The court is bound to give plaintiff the benefit of every reasonable inference to be drawn from the "well-pleaded" allegations of the complaint. Retail Clerks Int'l Ass'n v. Schermerhorn, 373 U.S. 746, 753 n. 6 (1963). A plaintiff need not allege "'specific facts' beyond those necessary to state his claim and the grounds showing entitlement to relief." Twombly, 550 U.S. at 570. "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." Iqbal, 129 S. Ct. at 1949. *Schmidt v. County of Nevada*, NO. 2:10-CV-3022 FCD/EFB, 6 (E.D. Cal. Jul. 19, 2011)

"However, it is error for a trial court to sustain a demurrer when the plaintiff has stated a cause of action under any possible legal theory. [Citation.]" [Citation.]'" (*San Mateo Union High School Dist. v. County of San Mateo* (2013) 213 Cal.App.4th 418," Quoting *Metabyte, Inc. v. Technicolor S.A.*, No. B319338, 10 (Cal. Ct. App. Aug. 9, 2023) "Ultimately, the court may not dismiss a complaint in which the plaintiff has alleged "enough facts to state a claim to relief that is plausible on its face." *Iqbal,* 129 S.Ct. at 1949 (citing *Twombly,* 550 U.S. at 570, 127 S.Ct. 1955)." *Schmidt v. County of Nevada*, 808 F. Supp. 2d 1243, 1248 (E.D. Cal. 2011)

The respondents have been playing this game for a long time. In the 2018 complaint the Judge states, "In opposing this petition, Respondent County of San Diego contends that petitioner did not request "any" and "all" records for his case. However, the requests are sufficiently clear: petitioner plainly requested all paper and electronic records related to himself and his criminal case in Respondent's possession. A requester is only required to make a request that "reasonably describes an identifiable record or records" §6253(b).

It appears by the Judge's statement "Respondent also relies on the *so-called* "investigatory exception" (italics added for emphasis) that he felt they knew they had an obligation to supply the documents but was using every excuse they could to not comply. Their noncompliance has kept Mr. Bealer locked up in a prison for almost 20 years.

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Question of law whether than facts

The court in the 2018 case has already spoken and made it perfectly clear that "Based on the above, the Court finds that the District Attorney's Office must comply with Section 6254(f)(1)-(2)(A) in full. The Court in the 2018 case, The Fourteenth Amendment to the Constitution, The Brady doctrine, Penal Code 1054.9 all are in concert with the documents.

The general proposition: Courts may assume "that Congress has legislated with an expectation that [res judicata] will apply except when a statutory purpose to the contrary is evident." *Astoria Fed. Sav. & Loan Ass'n v. Solimino*, 501 U.S. 104, 108, 111 S.Ct. 2166, 115 L.Ed.2d 96 (1991)

CA Civ Proc Code Section 472c (a) states "When any court makes an order sustaining a demurrer without leave to amend the question as to whether or not such court abused its discretion in making such an order is open on appeal even though no request to amend such pleading was made."

["the right to have contractual obligations performed is distinct from the right to be free from tortious behavior preventing collection of a judgment"]; Fujifilm Corp. v. Yang (2014) 223 Cal.App.4th 326, 332 [distinguishing primary rights for breaches of contract and tortious interference]; Sawyer v. First City Financial Corp. (1981) 124 Cal.App.3d 390, 402-403 [subsequent action "highlight[ed] other conduct of the parties alleged to be tortious"]. ". *Stokes v. City of Visalia, Case No. 1:17-cv-01350-SAB (E.D. Cal. Jun 08, 2018)*

". The California Supreme Court has subsequently recognized that public policy considerations may warrant an exception to res judicata where the issue is a question of law, rather than fact. People v. Barragan, 32 Cal.4th 236, 256 (2004)." *Stokes v. City of Visalia, Case No. 1:17-cv-01350-SAB (E.D. Cal. Jun 08, 2018)*

"(holding that two suits were not "based on the same cause of action," because "[t]he conduct presently complained of was all subsequent to" the prior judgment and it "cannot be given the effect of extinguishing claims which did not even then exist and which could not possibly have been sued upon in the previous case"). This is for good reason: Events that occur after the plaintiff files suit often give rise to new "[m]aterial operative facts" that "in themselves, or taken in conjunction with the antecedent facts," create a new claim to relief. Restatement (Second) § 24, Comment f, at 203; 18 J. Moore, D. Coquillette, G. Joseph, G. Vairo, & C. Varner, Federal Practice § 131.22[1], p. 131–55, n. 1 (3d ed. 2019) (citing cases where "[n]ew facts

create[d a] new claim"). *Lucky Brand Dungarees, Inc. v. Marcel Fashions Grp., Inc., 140 S. Ct. 1589, 206 L.Ed.2d 893 (2020)*

"Not only that, but the complained-of conduct in the 2011 Action occurred after the conclusion of the 2005 Action. Claim preclusion generally "does not bar claims that are predicated on events that postdate the filing of the initial complaint." *Whole Woman's Health* v. *Hellerstedt*, 579 U. S. ___, ___ (2016) (slip op., at 12) (internal quotation marks omitted); *Lawlor* v. *National Screen Service Corp.*, 349 U. S. 322, 327–328 (1955) (holding that two suits were not "based on the same cause of action," because "[t]he conduct presently complained of was all subsequent to" the prior judgment and it "cannot be given the effect of extinguishing claims which did not even then exist and which could not possibly have been sued upon in the previous case"). This is for good reason: Events that occur after the plaintiff files suit often give rise to new "[m]aterial operative facts" that "in themselves, or taken in conjunction with the antecedent facts," create a new claim to relief. Restatement (Second) §24, Comment *f*, at 203; 18 J. Moore, D. Coquillette, G. Joseph, G. Vairo, & C. Varner, Federal Practice §131.22[1], p. 131–55, n. 1 (3d ed. 2019) (citing cases where "[n]ew facts create[d a] new claim"). *Lucky Brand Dungarees, Inc. v. Marcel Fashions Grp., Inc.,* 140 S. Ct. 1589, 206 L.Ed.2d 893 (2020)

"Take, for example, cases that involve either judgment enforcement or a collateral attack on a prior judgment. Id., at 26–35. In the former scenario, a party takes action to enforce a prior judgment already issued against another; in the latter, a party seeks to avoid the effect of a prior judgment by bringing a suit to undo it. If, in either situation, a different outcome in the second action "would nullify the initial judgment or would impair rights established in the initial action," preclusion principles would be at play.

Restatement (Second) § 22(b), at 185; Wright & Miller § 4414. In both scenarios, courts simply apply claim preclusion or issue preclusion to prohibit a claim or defense that would attack a previously decided claim.3 But these principles do not preclude defendants from asserting defenses to new claims, which is precisely what Marcel would have us do here." *Lucky Brand Dungarees, Inc. v. Marcel Fashions Grp., Inc.,* 140 S. Ct. 1589, 206 L.Ed.2d 893 (2020)

In *City of Sacramento v. State of California* (1990) 50 Cal.3d 51 [266 Cal.Rptr. 139, 785 P.2d 522], our Supreme Court formulated the public interest exception as follows: " '[W]hen the issue is a question of law rather than of fact, the prior determination is not conclusive either if injustice would result or if the public interest requires that relitigation not be foreclosed. *Myers v. State Bd. of Equalization*

The respondents have continually engaged in a pattern of discovery abuse.

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Continuing Wrong

"As a cause of action is framed by the facts in existence when the underlying complaint is filed, res judicata 'is not a bar to claims that arise after the initial complaint is filed.' (Allied Fire Protection v. Diede Construction, Inc. (2005) 127 Cal.App.4th 150, 155 (Allied Fire Protection); see *Yager v. Yager* (1936) 7 Cal.2d 213, 217

[(Yager)].) For this reason, the doctrine [(res judicata)] may not apply when 'there are changed conditions and new facts which were not in existence at the time the action was filed upon which the prior judgment is

based. *PIH Health Hosp.-Whittier v. Cigna Healthcare of Cal.,* B323726 (Cal. App. Sep 26, 2023)

"'[w]inning a judgment ... does not deprive the plaintiff of the right to sue' for the defendant's 'subsequent similar violations.' Id., at 107." *Lucky Brand Dungarees, Inc. v. Marcel Fashions Grp., Inc.,* 140 S. Ct. 1589, 206 L.Ed.2d 893 (2020)

This principle applies with equal force to successive causes of action for breaches "from a single contract with continuing obligations." (§ 1047; Jenni Rivera Enterprises, LLC v. Latin World Entertainment Holdings, Inc. (2019) 36 Cal.App.5th 766, 784 (Jenni Rivera).) As each breach of a continuing or ongoing obligation "'gives rise to a separate cause of action'" (Jenni Rivera, supra, at p. 784, quoting 31 Williston on Contracts (4th ed. 2004) § 79:23, p. 379), "res judicata is not a bar to [any] claims that arise after the initial complaint was filed." (McCready v. Whorf (2015) 235 Cal.App.4th 478, 482; accord, Lucky Brand Dungarees, Inc. v. Marcel Fashions Group, Inc. (2020) 140 S.Ct. 1589, 1596; Hogar Dulce Hogar v. Community Development Commission (2003) 110 Cal.App.4th 1288, 1295-1296 [citing cases]; Yates v. Kuhl (1955) 130 Cal.App.2d 536, 537-540.)[8]... *PIH Health Hosp.-Whittier v. Cigna Healthcare of Cal.,* B323726 (Cal. App. Sep 26, 2023)

"As the court noted, '[w]inning a judgment ... does not deprive the plaintiff of the right to sue' for the defendant's 'subsequent similar violations.' Id., at 107." *Lucky Brand Dungarees, Inc. v. Marcel Fashions Grp., Inc.*, 140 S. Ct. 1589, 206 L.Ed.2d 893 (2020)

"If the plaintiff wins, the entire claim is merged in the judgment; the plaintiff cannot bring a second independent action for additional relief, and

the defendant cannot avoid the judgment by offering new defenses." Wright & Miller § 4406. But "[i]f the second lawsuit involves a new claim or cause of action, the parties may raise assertions or defenses that were omitted from the first lawsuit even though they were equally relevant to the first cause of action." *Ibid. Lucky Brand Dungarees, Inc. v. Marcel Fashions Group, Inc.*, 140 S. Ct. 1589, 1595 (2020)

The county of San Diego was required to turn over exculpatory evidence before the trial. The evidence was asked for before, during and continually after the trial. They were ordered by the judge during the 2018 case to turn the information over. They knew when they gave the GPS log to the plaintiff's lawyers that it was missing 10 minutes of the Deputy's movements. The very movements that would prove the Deputy perjured himself under oath. This wrong has been continuous and has brought great mental and bodily harm to the Appellant.

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Injustice and harm to public

The actions of the County of San Diego constitute injustice and brings harm to the interest of the public. If they are not held accountable for this blatant act of defiance of a lawful court order, the public will be put at jeopardy of repeated offenses. It is actions such as this that nourish actions like the officers who killed George Floyd. There had to be a pattern of getting away with unlawful behavior that would make anyone with an ounce of decency think it was okay to kill someone by putting their knee on their neck for that long. You may think this is an exaggeration, but behavior starts small and escalate. We must expect the law to follow the law. When even small instances are overlooked, it brings harm to the public. Derek Chauvin

may be at home with his family now if someone would have stopped him when he made his first small act of unlawfulness.

". The California Supreme Court has subsequently recognized that public policy considerations may warrant an exception to res judicata where the issue is a question of law, rather than fact. People v. Barragan, 32 Cal.4th 236, 256 (2004)." S*tokes v. City of Visalia, Case No. 1:17-cv-01350-SAB (E.D. Cal. Jun 08, 2018)*

The court stated that even if the threshold requirements are established, "res judicata will not be applied 'if injustice would result or if the public interest requires that relitigation not be foreclosed.' "4 Id. at 1065 (quoting Consumers Lobby Against Monopolies v. Public Utilities Com., 25 Cal.3d 891, 902 (1979)). *Stokes v. City of Visalia*, Case No. 1:17-cv-01350-SAB (E.D. Cal. Jun 08, 2018)

The Appellant knows the County had access to the records because they provided a GPS log of Sheriff Garcia for the incident immediately before the Bealer incident. They cannot say their system did not have the capability to produce a GPS log. They cannot say they did not have the capability to produce a Computer Aided Dispatch transcript because they produced one for the call from the ARCO clerk that called in to the sheriff's office.

The Sheriff said they purged the information. The judge in the 2018 complaint states "According to Respondent, the Sheriff – not the D.A. - is the agency that arrested Petitioner. Thus, since the District Attorney's Office is not the arresting agency, the District Attorney is not required to provide the documents in the exception." (SC RJN Exhibit 2) This was a clever maneuver. The Sheriff says they purged the records, and the DA says the

Sheriff has the sole responsibility to provide the records. Both are relieved from complying with providing the records if this is true. The Court did not buy this agreement. This is the type of maneuvering the Appellant has had to deal with for almost 20 years. For the sake of justice and the public interest, please put an end to this.

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Applied unduly harsh standards to Appellant as a pro se litigant.

"Pleadings of pro se plaintiffs "must be held to less stringent standards than formal pleadings drafted by lawyers." Hebbe v. Pliler, 627 F.3d 338, 342 (9th Cir. 2010) (holding that pro se complaints should continue to be liberally construed after Iqbal)." *Maestas v. Phillips*, 1:23-cv-00893-EPG, 3 (E.D. Cal. Aug. 14, 2023)

When the Respondent filed demurrer 69 days (about 2 and a half months) after the complaint was filed, the court did not catch this but when Appellant filed interrogatories and admissions, they pointed it out (SC ROA 53). Ever since the Appellant has been in prison his legal paperwork has been tampered with, mixed up and taken. He has filed 602's numerous complaints about this. This happens suspiciously close to the time he is filing complaints and motions. The prison always finds a way to do something that will disrupt the Appellant's concentration when he is working on a case.

Because of all the distractions the Appellant would like to request that the Appeal Court look at the transcript of the preliminary hearing held on January 5, 2004, and look at a map of Lemon Grove CA. Deputy Sheriff Garcia was questioned and answered. "Q. Approximately how far away were you from the location at the time of you first received the call? A. Approximately three blocks. Q. Can you describe that area, how it was at the

time of night or early morning hours that day? A. The area that I was was (sic) Lincoln and Kempf Street in Lemon Grove." p. 6:9-15 Q. "Approximately how long of a time period was it that you saw that vehicle from the time you originally got the call?" "I -- the vehicle probably about five seconds after the initial call I turned onto Kempf and observed the vehicle coming toward me." p. 7:13-18 "What happened once you received this information and during your observation of the vehicle?" "I followed the vehicle until it went to make a right turn onto Dayton Street off of Skyline." p. 8:4-7

The testimony in the transcript will show that Officer Garcia's account of that day was inaccurate and could not have happened the way he stated. There is no way he could have been at Lincoln and Kempf street when he was dispatched and make it down to Dayton Dr. The complete GPS log will prove the Appellant version.

Since this appeal paperwork started being worked on, another incident has occurred that makes the point of the hardship the Appellant is working under. It is uncanny how CDCR always seems to move the Appellant around when he is involved in a case. As of February 12, 2024 he was moved from High Desert State Prison to San Quention. On February 13th (the next day) he was moved from San Quentin to Correctional Training Facility (CTF) in Soledad. Now they are talking about moving him again next week. Appellant would think this was just a coincidence if it had not happened during another case. CDCR moved him 15 days before a case where he sued Officers for assaulting him.

Judge erred in allowing the Demurrer after the 30 days to file a demurrer had expired

The Judge allowing the respondents to file a demurrer 69 days after complaint/summons

was filed in violation of Code of Civil Procedure 430.40(a)

CONCLUSION

For the reasons argued the judgment should be reversed and the County of San Diego ordered to turn over the correct GPS log, Computer Aided Dispatch (CAD) transcript and all discovery materials related to the Bealer case. We respectfully ask the Appeal court to order them to provide complete documentation of any destruction of records. The name of the person(s) who ordered the destruction, date, time, and year. If the Appeal Court has the authority, the Appellant respectfully asks them to release him from prison.

CERTIFICATE OF WORD COUNT

I certify that the text of this brief was counted by WORDS EDITOR and consists of 8,250 words. It includes footnotes and excludes table of contents and authorities.

Antwoine Bealer

3/7/24

Date

Pro Se

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