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12 UNITED STATES DISTRICT COURT
13 CENTRAL DISTRICT OF CALIFORNIA
14

15 Roger Wayne Parker,

16 Plaintiff,

17 v.
18

19 County of Riverside; Paul E. Zellerbach,
20 individually and in his official capacity as
County of Riverside District Attorney;
21 Sean Lafferty, individually and in his
22 official capacity; Tricia Fransdal,
23 individually and in her official capacity;
and Jeff Van Wagenen, individually and
24 in his official capacity,

25 Defendants.
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27
28

Case No.: 5:21-cv-01280-JGB-DTB

**Plaintiff's Opposition to Defendants'
Motion for Judgment on the Pleadings**

Date: August 26, 2024
Time: 9:00 a.m.
Courtroom: 1 [Riverside]
Judge: Hon. Jesus G. Bernal

Complaint filed: July 29, 2021
Trial: None set

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INTRODUCTION

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3 In *Goldstein v. City of Long Beach*, the Ninth Circuit held that a “district attorney
4 represents the county when establishing administrative policies and training related to the
5 general operation of the district attorney’s office.” 715 F.3d 750, 759–60 (9th Cir. 2013)
6 (applying factors set forth in *McMillian v. Monroe Cnty.*, 520 U.S. 781(1997)). As such,
7 the district attorney may be liable under 42 U.S.C. § 1983 for violating an individual’s
8 constitutional rights. *See id*; *see also Monell v Dep’t of Soc. Servs.*, 436 U.S. 658, 690–
9 91 (1978) (requiring policymaker to act in a local, not state, capacity to be held liable).

10 Here, the Riverside County District Attorney’s Office represented the county when
11 it established administrative protocols and personnel practices that frustrated line
12 attorneys’ ability to comply with their constitutional obligation to disclose “compelling
13 exculpatory evidence.” *Tatum v. Moody*, 768 F.3d 806, 816 (9th Cir. 2014). These
14 administrative failures led to an office culture of “total silence” on withholding
15 exculpatory evidence. *See* First Amended Complaint (“FAC”) at ¶ 62 (citing Oral
16 Argument, *Baca v. Adams*, 777 F.3d 1034 (9th Cir. 2015), *available at*
17 <http://www.ca9.uscourts.gov/media/video/:20150108/13-5613/>). It led Chief Judge
18 Kozinski to predict the Riverside District Attorney is “going to keep doing it because they
19 have state judges who are willing to look the other way.” *Id.* And that’s exactly what
20 happened to Plaintiff Roger Parker, causing him to languish in detention despite known
21 evidence *of his innocence*.

22 The District Attorney’s administrative failures are like the administrative functions
23 at issue in *Goldstein*. Thus, under *Goldstein*, Defendants were acting on behalf of the
24 county, not the state. As a result, Defendants are subject to liability under *Monell*.

25 Defendants’ motion for judgment on the pleadings contends that Defendants acted
26 on behalf of the state, but never discusses *Goldstein*’s analysis or applies the *McMillian*
27 factors. Defendants’ failure to engage with the controlling precedent reveals the weakness
28

1 of their argument. This Court should therefore deny Defendants’ motion for judgment on
2 the pleadings.

3 **FACTUAL BACKGROUND**

4 The following facts are from this Court’s order granting in part and denying in part
5 Defendants’ motion to dismiss. *See* Order, Dkt. No. 74, at 3–4 (Nov. 21, 2023).

6 Parker was prosecuted for a murder that the Riverside County District Attorney’s
7 Office knew he did not commit. FAC at ¶¶ 3–8. On March 18, 2010, Brandon Stevenson
8 was murdered in the home of Willie Womack, Parker’s roommate. *Id.* ¶ 4. Parker was
9 not home when the police arrived at the scene. *Id.* at ¶ 5. After returning home, he was
10 detained and questioned by the police. *Id.* ¶ 5. Parker, who is developmentally delayed,
11 eventually confessed to the murder, though he “said he made the whole thing up because
12 they kept pressuring him to say something.” *Id.*; “Ex. A,” Dkt. No. 69-1.

13 The first prosecutor assigned to the case, Deputy District Attorney Lisa DiMaria,
14 recognized Parker’s confession as a sham as it was coerced and inconsistent with the
15 physical evidence. FAC ¶ 6. DiMaria expressed “serious concerns” about Parker’s guilt
16 in a staff meeting in March 2010. *Id.* at ¶ 7. On July 22, 2011, DiMaria wrote a memo to
17 her supervisors requesting authorization to “no file (i.e., dismiss)” the case after the
18 preliminary hearing. *Id.* Instead of dismissing the case, Defendant Sean Lafferty, a
19 supervising assistant district attorney, removed DiMaria from the case and reassigned it
20 to Deputy District Attorney Chris Ross. *Id.* ¶ 8. According to Ross, Lafferty and another
21 supervising district attorney, Defendant Tricia Fransdal, told him that the case was
22 reassigned to him because DiMaria thought Plaintiff was innocent. *Id.* ¶ 9.

23 Between 2011 and 2014, Ross told Defendant Lafferty via memos and
24 conversations that he believed Parker was being held without probable cause. FAC at
25 ¶¶ 10-12. Defendants Zellerbach, Lafferty, Van Wagenen, and Fransdal (“individual
26 Defendants”), and other supervisory assistant district attorneys refused to dismiss the
27 case. *Id.* ¶ 13. Ross also raised his concerns about Parker’s guilt to Riverside Superior
28 Court Judge Jack Ryan and suggested that Judge Ryan could dismiss the case after

1 conducting the preliminary hearing. *Id.* at ¶ 14. Judge Ryan told Ross that he would not
2 dismiss Parker’s case because he wanted to get reelected. *Id.* ¶ 14. Parker was in jail
3 throughout this period. *Id.* ¶ 13.

4 In the fall of 2013, Ross obtained jail phone call recordings in which Womack,
5 Parker’s former roommate, admitted to the murder. FAC at ¶ 15. Ross promptly informed
6 Defendant Lafferty, who told Ross not to disclose the calls to Parker’s attorney;
7 Defendant Lafferty then removed Ross from the case. *Id.* at ¶¶ 16–17. About six months
8 later, Defendant Fransdal moved to dismiss the case without prejudice due to
9 insufficiency of the evidence. *Id.* ¶ 18.

10 Parker was not aware of Womack’s recorded confession or of the internal
11 memoranda written by DiMaria and Ross until October 2020. FAC at ¶ 20. On July 21,
12 2021, Parker filed a petition to seal and destroy arrest records pursuant to California Penal
13 Code Section 851.8. *Id.* at ¶ 21. In that petition, Parker requested relief from the two-year
14 time restriction to file such a petition because he did not learn of the recorded jail calls
15 until October 2020. *Id.* The court granted Parker’s petition during an August 23, 2021
16 hearing without deciding whether the recorded confession had ever been turned over to
17 Plaintiff or his criminal defense attorney. *Id.*

18 LEGAL STANDARD

19 Federal Rule of Civil Procedure 12(c) permits judgment on the pleadings only if
20 “taking all the allegations in the pleadings as true,” *Owens v. Kaiser Found. Health Plan,*
21 *Inc.*, 244 F.3d 708, 713 (9th Cir. 2001) (quotation and citation omitted), “while the
22 allegations of the moving party which have been denied are assumed to be false,” *Hal*
23 *Roach Studios, Inc. v. Richard Feiner & Co.*, 896 F.2d 1542, 1550 (9th Cir. 1989).
24 “Generally, district courts have been unwilling to grant a Rule 12(c) dismissal ‘unless the
25 movant clearly establishes that no material issue of fact remains to be resolved and that
26 he is entitled to judgment as a matter of law.’” *Doleman v. Meiji Mut. Life Ins. Co.*, 727
27 F.2d 1480, 1482 (9th Cir. 1984) (quoting C. Wright & A. Miller, *Federal Practice and*
28 *Procedure: Civil* § 1368, at 690 (1969).

1
2 **ARGUMENT**

3 A local government may be liable under 42 U.S.C. § 1983 for constitutional torts
4 committed by its officials pursuant to municipal policy, practice, or custom. *See Weiner*
5 *v. San Diego Cnty.*, 210 F.3d 1025, 1028 (9th Cir. 2000) (citing *Monell v Dep’t of Soc.*
6 *Servs.*, 436 U.S. 658, 690–91 (1978)). Alternatively, liability may attach “even for an
7 isolated constitutional violation . . . when the person causing the violation has final policy
8 making authority.” *Webb v. Sloan*, 330 F.3d 1158, 1164 (9th Cir. 2003). Under this
9 Court’s previous ruling, the underlying constitutional violation—known as a *Tatum-Lee*
10 claim—arises when a prosecutor fails to turn over compelling exculpatory evidence and
11 it results in “prolonged detention.” Order, Dkt. No. 74, at 10 (Nov. 21, 2023) (citing
12 *Tatum v. Moody*, 768 F.3d 806, 816 (9th Cir. 2014); *Lee v. City of Los Angeles*, 250 F.3d
13 668 (9th Cir. 2001)).

14 As set forth below, the County is liable under *Monell* for a *Tatum-Lee* violation
15 because it was acting in the capacity of a county, not state, when it established
16 administrative protocols and oversight that frustrated its deputy district attorneys’ ability
17 to comply with their constitutional obligation to disclose “compelling exculpatory
18 evidence.” *Tatum*, 768 F.3d at 818. And the individual Defendants should not receive
19 absolute or qualified immunity for a *Tatum-Lee* violation because no reasonable
20 prosecutor would have suppressed the compelling evidence of the true perpetrator’s
21 confession *and* permitted Parker’s prolonged detention to continue. This is the egregious
22 type of misconduct that should trigger accountability, not immunity.

23 This Court should deny Defendants’ motion for judgment on the pleadings.

- 24 **I. Defendant County of Riverside acted on behalf of the county when it failed**
25 **to establish general administrative policy and training on the duty to**
26 **disclose exculpatory evidence and established a custom or practice of**
27 **intimidating and punishing line attorneys who refused to withhold**
28 **exculpatory evidence.**

29 This Court’s previous Order identified the relevant underlying constitutional
30 violation in the present case: “The crux of a *Tatum-Lee* claim is the failure to disclose

1 exculpatory evidence, leading to lengthy detention.” Order, Dkt. No. 74, at 9 (citing
2 *Tatum*, 768 F.3d at 816; *see id.* at 10 (“The right contemplated by *Tatum* and *Lee* is a
3 detainee’s ‘constitutional right to be free from continued detention after it was or should
4 have been known that the detainee was entitled to release,’ not a prosecutor’s right to
5 information.”) (quoting *Lee*, 250 F.3d at 683).

6 Here, as in *Tatum*, Parker alleges his prolonged detention was caused by
7 Defendants’ decision to withhold exculpatory evidence from him with deliberate
8 indifference to his constitutional rights. Accordingly, this Court recognized that “Plaintiff
9 alleges the same harm and violation of constitutional rights contemplated by *Tatum*, and
10 sufficiently alleges that his prolonged detention was caused by the withholding of
11 exculpatory evidence with deliberate indifference to his rights. As the Court understands,
12 these are the key elements of a *Tatum-Lee* claim. *See id.* at 809, 816; *Lee*, 250 F.3d at
13 683-84.” Order, Dkt. No. 74, at 10. This Court therefore previously ruled that Parker “has
14 sufficiently pled a *Tatum-Lee* violation” and denied Defendants’ motion to dismiss his
15 *Tatum-Lee* claim. *Id.*

16 Proving *Monell* liability under these circumstances requires two additional
17 showings. First, a plaintiff must show that the official had final policymaking authority
18 over the action at issue. *See Weiner*, 210 F.3d at 1028. Second, a plaintiff must show that
19 the official was the policymaker for the *local* (not state) governing body for purposes of
20 the particular act. *Id.* (citing *McMillian v. Monroe Cnty.*, 520 U.S. 781, 785 (1997)); *see*
21 *also Goldstein v. City of Long Beach*, 715 F.3d 750, 753 (9th Cir. 2013); *Botello v.*
22 *Gammick*, 413 F.3d 971, 978–79 (9th Cir. 2005).

23 Defendants do not challenge the first element. Rather, their sole argument against
24 *Monell* liability is that District Attorney Zellerbach was acting on behalf of the state,
25 rather than the county, in exercising this policymaking authority in this case. Def. Mot.
26 at 9–12. But District Attorney Zellerbach acted for the county, not the state, in failing to
27 establish policies and training on disclosing exculpatory evidence and in creating a
28

1 custom or practice of intimidating and punishing line attorneys who sought to disclose
2 such evidence. This Court should therefore deny Defendants’ motion.

3 The Ninth Circuit’s decision in *Goldstein* is instructive. In *Goldstein*, the plaintiff
4 was convicted of murder based “almost solely” on the testimony of a jailhouse informant.
5 715 F.3d at 752. The district attorney did not inform Goldstein that it had used the same
6 jailhouse informant as a witness in other cases and had given him a benefit for testifying
7 against Goldstein. *Id.* at 751. Goldstein sued the district attorney under § 1983,
8 contending that it violated his constitutional rights by failing to set an administrative
9 policy or train deputy district attorneys on disclosing information about jailhouse
10 informants. *Id.* at 752. Like Defendants here, the district attorneys in *Goldstein* argued
11 that “the district attorney acts on behalf of the state, rather than the county, in setting
12 policy related to jailhouse informants” *Goldstein*, 715 F.3d at 753 (internal quotation
13 marks and brackets omitted). The district court “reluctantly” agreed and dismissed the
14 action. *Id.*

15 The Ninth Circuit reversed. *See Goldstein*, 715 F.3d at 751. It held that whether a
16 district attorney acts in a local or state capacity turns on the three so-called *McMillian*
17 factors: (1) the district attorney’s place within the structure of government; (2) the
18 constitutional and statutory provisions relevant to the power and the duties of district
19 attorneys within their counties; and (3) the control that the California Attorney General
20 and county boards of supervisors exercise over district attorneys. *Id.* at 753–54
21 (discussing *McMillian*, 520 U.S. at 784–86).

22 Applying these factors, the Ninth Circuit determined that the Los Angeles District
23 Attorney was acting on behalf of the county, not the state, in “establishing administrative
24 policies and training related to the general operation of the district attorney’s office,”
25 including policy on disclosing information about jailhouse informants. *Goldstein*, 715
26 F.3d at 759; *see also id.* at 754–56.

27 Regarding the first *McMillian* factor (the district attorney’s place within the
28 structure of government), the court held that district attorneys operate at the county level

1 within the government structure. *Goldstein*, 715 F.3d at 755. Here, the court recognized
2 that the California Government Code identifies district attorneys as county officers,
3 authorizes funding to district attorneys as an expression of county powers, provides that
4 district attorneys are to be elected by county voters, and requires district attorneys to be
5 registered to vote in the county in which they are elected. *Id.* (citing Cal. Gov’t Code
6 §§ 3703, 24000, 24001, 24009).

7 The court in *Goldstein* considered the second factor (constitutional and statutory
8 delegation of district-attorney powers) and third factor (relative control of district
9 attorneys by the Attorney General and county boards of supervisors) together. *See*
10 *Goldstein*, 715 F.3d at 755–58. The court determined that under the California
11 constitution, “the Attorney General’s control over the district attorney is quite limited”
12 and does not include “dictat[ing] policy.” *Id.* at 756 (citing Cal. Const. art. V, § 13).
13 Subsequent constitutional amendments suggested “the most recent trend in California is
14 to confirm the district attorney’s place as a county officer.” *Id.* at 757. This was
15 underscored by California Government Code provisions stating that the county board of
16 supervisors oversees the official conduct of district attorneys and treats them as
17 ““normal”” county employees. *Id.* (quoting *McMillian*, 520 U.S. at 790 and citing Cal.
18 Gov’t Code § 24303); *see also id.* at 758 (discussing other legislative “provisions
19 indicating that the district attorney here acts on behalf of the county,” including that
20 “counties are required to defend and indemnify the district attorney in an action for
21 damages”).

22 Given these factors, the Ninth Circuit concluded that “the Los Angeles County
23 District Attorney represents the county when establishing administrative policies and
24 training related to the general operation of the district attorney’s office, including the
25 establishment of an index containing information regarding the use of jailhouse
26 informants.” *Goldstein*, 715 F.3d at 759–60.

27 *Goldstein* controls. As in that case, the *McMillian* factors here show that the
28 Riverside County District Attorney acts on behalf of the county in establishing

1 administrative policies relating to the general operation of the district attorney’s office,
2 including the establishment of a protocol for disclosing exculpatory evidence. The
3 California Government Code locates the Riverside County District Attorney within the
4 county level of government, authorizes the county board of supervisors to provide general
5 supervision of the Riverside County District Attorney, and authorizes the county board
6 of supervisors to defend and indemnify the District Attorney in actions for damages. *See*
7 *Goldstein*, 715 F.3d at 755–58 (citing Cal. Gov’t Code §§ 3073, 24000, 24009, 24303).
8 By contrast, the state Constitution grants the Attorney General only limited control over
9 the Riverside County District Attorney, and none over the type of policymaking at issue
10 here. *See id.* at 755–57 (citing Cal. Const. art. V, § 13).

11 Moreover, just as the plaintiff in *Goldstein* “focuse[d] on the failure to create an
12 index that includes information about benefits provided to jailhouse informants and other
13 previous knowledge about the informants’ reliability, and the failure to train prosecutors
14 to use that index,” 715 F.3d at 762, here, Parker focuses on the Riverside County District
15 Attorney’s administrative policies regarding the duty to disclose evidence. Not only did
16 the District Attorney’s Office fail to create a policy regarding the proper dissemination
17 of compelling exculpatory evidence,¹ but it also had an affirmative custom and practice
18 of intimidating and punishing lower-level prosecutors who refused to withhold this
19 significant exculpatory evidence as a means of deterring them from complying with their
20 constitutional obligations. *See* FAC at ¶ 62.

21
22
23 _____
24 ¹ On January 23, 2024, Parker requested that Defendants disclose policies in effect during
25 the relevant period pertaining to the disclosure of exculpatory evidence, current policies
26 pertaining to the disclosure of exculpatory evidence, and documents regarding training
27 provided regarding the disclosure of exculpatory evidence. Defendants stated the
28 responsive documents would be produced. To date, Parker has not received any specific
policies on the topic of disclosing exculpatory evidence. Parker therefore has a good-faith
basis to allege that Defendants lack any policies pertaining to disclosure of exculpatory
evidence.

1 These administrative protocols and practices are similar to the function at issue in
2 *Goldstein*. Thus, as in *Goldstein*, the *McMillian* factors militate a finding that the
3 Riverside County District Attorney’s Office acted as a local policymaker when
4 establishing (or failing to establish) administrative policies and training pertaining to
5 disclosure of compelling exculpatory evidence in the context of a prolonged detention
6 and punishing line attorneys who sought to disclose such evidence.

7 Defendants nonetheless contend that the Riverside County District Attorney is a
8 state, rather than county, official. *See* Def. Mot. at 9–12. Defendants purport to rely on
9 *Weiner*, 210 F.3d 1025, and *Pitts v. County of Kern*, 949 P.2d 920 (1998). *See id.* at 4, 5,
10 10, 12. But as the court in *Goldstein* explained, neither *Weiner* nor *Pitts* is apposite here.
11 *See Goldstein*, 715 F.3d at 760 (stating “contrary to the County’s argument, our decision
12 in *Weiner* has no bearing on this case.”); *see id.* at 760–61 (“Similarly, the County is
13 incorrect that we are bound by the California Supreme Court’s determination in *Pitts*”
14 and in any event *Pitts*’s “determination is not implicated by *Goldstein*’s claims.”).

15 In *Weiner*, the Ninth Circuit concluded that a district attorney’s “*decision to*
16 *prosecute* an individual” is made “by the authority and in the name of the people of the
17 state” and that the district attorney therefore acts as a state rather than the county in
18 making the decision to prosecute someone. *Goldstein*, 715 F.3d at 760 (discussing *Weiner*
19 210 F.3d at 1030) (emphasis added). But as in *Goldstein*, Parker’s *Monell* claim does not
20 arise out of the district attorney’s decision to prosecute him. Rather, as in *Goldstein*, it
21 concerns the District Attorney’s administrative policies and training (or lack thereof)
22 regarding the duty to disclose compelling exculpatory evidence while the criminal
23 defendant endures a prolonged detention, as well the custom and practice of intimidating
24 and punishing line attorneys who sought to disclose such evidence. Thus, here, as in
25 *Goldstein*, *Weiner* “does not resolve the question.” *Id.* Indeed, the court in *Weiner*
26 acknowledged that “California law suggests that a district attorney is a county officer for
27 some purposes.” *Weiner*, 210 F.3d at 1031. As established above, the *McMillian* factors
28

1 show that the Riverside County District Attorney acts as a county officer for purposes of
2 the administrative policymaking decisions at issue here.

3 Defendants' reliance on *Pitts* is also misplaced. As the court in *Goldstein* noted,
4 *Pitts* is a state-court decision that is not binding on the federal question presented to this
5 Court. *See Goldstein*, 715 F.3d at 760–61 (holding that “42 U.S.C. § 1983 is a federal law
6 statutory interpretation question; no deference is due to the ultimate conclusion of the
7 California court” given that “state law does not control our interpretation of a federal
8 statute”) (internal quotation marks and citation omitted) (discussing *Pitts*, 949 P.2d at
9 923).²

10 More persuasive is the case law holding that a district attorney acts in a local
11 capacity in setting administrative policies and customs to conceal exculpatory evidence.
12 For example, in *Bellamy v. City of New York*, the Second Circuit in holding that “where
13 prosecutors, pursuant to policy or custom, conceal exculpatory evidence and commit
14 other wrongs in order to secure a conviction, liability rests with the county (or for New
15 York City’s constituent counties, the City).” 914 F.3d 727, 760–61 (2d Cir. 2019)
16 (cleaned up) (citing *Goldstein*, 715 F.3d 750). Likewise, in *Walker v. City of New York*,
17 the Second Circuit held that the municipality may be liable under *Monell* for “failure to
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21 ² The other cases Defendants purport to rely on are similarly distinguishable because
22 none addressed the administrative and investigatory functions underlying Parker’s claim.
23 *See* Def. Mot. at 11 (citing *Jackson v. Barnes*, 749 F.3d 755 (9th Cir. 2014); *Puckett v.*
24 *Cnty. of Sacramento*, 2023 WL 2432919, at *9 (E.D. Cal. Mar. 9, 2023); *Hanline v. Cnty.*
25 *of Ventura*, 2017 WL 11682912, at *11 (C.D. Cal. Aug. 7, 2017); *Cotton v. Cnty. of San*
26 *Bernardino*, 2016 WL 7187442, at *12 (C.D. Cal. Nov. 9, 2016)). *Lund v. Cowan*, 5
27 F.4th 964 (9th Cir. 2021), is also unpersuasive. There, the court observed that sovereign
28 immunity barred the plaintiff from seeking retrospective relief under § 1983 from a state-
judge defendant, not district attorneys. *See id.* at 969–70. But *Goldstein* clearly
recognizes that district attorneys are, under the right circumstances, subject to § 1983
Monell suits. *See Goldstein*, 715 F.3d at 759–60.

1 train and supervise prosecutors to insure that they meet their constitutional obligation to
2 turn over exculpatory material to the defense.” 974 F.2d 293, 296 (2d Cir.1992).³

3 Those cases are persuasive here. The District Attorney’s conduct at issue does not
4 involve prosecutorial strategy. Instead, it concerns administrative policies and oversight
5

6
7 ³ See also *Myers v. Cnty. of Orange*, 157 F.3d 66, 77 (2d Cir. 1998) (affirming money
8 judgment on a § 1983 claim against the district attorney’s office and other officials “for a
9 DA policy that directed the Port Jervis police and county ADAs to engage in
10 investigative procedures that violated [plaintiffs’] equal protection rights,” emphasizing
11 that the DA was not liable “for the decision to prosecute.”); *Peterson v. Tomaselli*, 469 F.
12 Supp. 2d 146, 157-58 (S.D.N.Y. 2007) (holding that “under New York law, DAs and
13 ADAs are generally presumed to be local county officers, not state officers,” and noting
14 that “the Second Circuit recognizes a narrow exception under New York law when the
15 prosecutor is making an individual decision whether to prosecute”); *Singh v. Bunch*, 2017
16 WL 117857, at *10 (E.D. Cal. Jan. 11, 2017) (declining to dismiss plaintiff’s complaint,
17 recognizing that “the Ninth Circuit has also cautioned that where the allegations of a
18 complaint focus on the establishment of policies and training related to the general
19 operation of the District Attorney’s Office, a District Attorney acts on behalf of the
20 county, not the state, and may be subject to suit under § 1983”) (citing *Goldstein*, 715
21 F.3d at 753–62); *Milke v. City of Phoenix*, 2016 WL 5339693, at *16–18 (D. Ariz. Jan. 8,
22 2016) (citing *Goldstein* to allow *Monell* claim against a county district attorney’s office
23 for “administrative policies such as direct supervision of other prosecutors and office
24 policies, such as the disclosure of evidence” but dismissing for not having sufficiently
25 pled incidents establishing a custom) (citing *Goldstein*, 715 F.3d at 753, 755); accord
26 *Altamirano v. Cnty. of Pima*, 2019 WL 3457696, at *6 (D. Ariz. July 31, 2019), order
27 clarified, 2020 WL 601663 (D. Ariz. Feb. 7, 2020) (“for all purposes other than
28 conducting [individual] prosecutions, the statute clearly indicates that the county attorney
is an officer of the county”); *Briggs v. Montgomery*, 2019 WL 2515950, at *17–19 (D.
Ariz. June 18, 2019) (holding “it is within each county’s discretion whether to establish a
deferred prosecution program” and that county attorney therefore acts on county’s behalf
when establishing such a program) (citing *Goldstein*, 715 F.3d at 753, 755); *Williams
Decl. v. Fedor*, 69 F. Supp.2d 649, 660 (M.D. Penn. 1999) (holding Pennsylvania DA is
agent of the state “when engaged in his or her basic function—enforcement of the
Commonwealth’s penal statutes;” however, regarding the internal “administrative
responsibility to train and supervise his subordinates[,] . . . it has generally been held that
when the focus of the plaintiff’s civil rights claims are on the administration of the
district attorney’s office, the district attorney is regarded as an official of the county”)
(internal quotation marks and citation omitted).

1 of deputy district attorneys that frustrate employees’ ability to comply with their
 2 constitutional obligation to disclose “compelling exculpatory evidence.” *Tatum*, 768 F.3d
 3 at 818. Consequently, Defendants here were acting on behalf of the county. This Court
 4 should therefore deny Defendants’ motion.

5 **II. The individual Defendants—Zellerbach, Lafferty, Fransdal, and Van**
 6 **Wagenen—are not entitled to the defense of absolute or qualified**
 7 **immunity.**

8 Parker has also raised a *Tatum-Lee* claim against individual Defendants Zellerbach,
 9 Lafferty, Fransdal, and Van Wagenen under § 1983. FAC ¶¶ 47–54. Defendants seek to
 10 assert the defenses of absolute and qualified immunity. *See* Def. Mot. at 4–9, 14–18. But
 11 neither defense should apply. Defendants’ motion for judgment as a matter of law on
 12 Parker’s claim against the individual Defendants should thus be denied.

13 **A. The individual Defendants are not entitled to absolute immunity.**

14 The Supreme Court has held that the defense of absolute immunity does not blanket
 15 all “the actions of a prosecutor . . . merely because they are performed by a prosecutor.”
 16 *Buckley v. Fitzsimmons*, 509 U.S. 259, 273 (1993). Instead, the defense applies
 17 selectively depending on “the functional nature of the activities rather than [the
 18 prosecutor’s] status.” *Imbler v. Pachtman*, 424 U.S. 409, 430 (1976); *Burns v. Reed*, 500
 19 U.S. 478, 486 (1991); *see also Fletcher v. Kalina*, 93 F.3d 653, 655 (9th Cir. 1996); *Fogle*
 20 *v. Sokol*, 957 F.3d 148, 159 (3d Cir. 2020); *Houston v. Partee*, 978 F.2d 362, 366 (7th
 21 Cir. 1992); *Carnevale v. DiGiovanni*, 2022 WL 4367333, at *3 (W.D. Pa. Sept. 21, 2022).
 22 Accordingly, if the official can show that their prosecutorial actions were “intimately
 23 associated with the *judicial* phase of the criminal process,” such as initiating a
 24 prosecution, presenting a state’s case at trial, and appearing before a judge to present
 25 evidence, they meet this burden. *Imbler*, 424 U.S. at 430 (emphasis added). But a
 26 prosecutor’s “investigatory functions that do not relate to an advocate’s preparation for
 27 the initiation of a prosecution or for judicial proceedings are not entitled to absolute
 28 immunity.” *Buckley*, 509 U.S. at 273.

1 Defendants have the burden of “showing that overriding considerations of public
2 policy require that they be exempt from personal liability for their alleged unlaw
3 conduct.” *Houston*, 978 F.2d at 368 (7th Cir. 1992) (internal quotation marks and citation
4 omitted); *Burns*, 500 U.S. at 486 (noting “the official seeking absolute immunity bears
5 the burden of showing that such immunity is justified for the function in question”). They
6 have not met that burden here.

7 Parker acknowledges the Ninth Circuit’s statement in *Broam v. Bogan* that “[a]
8 prosecutor’s decision not to preserve or turn over exculpatory material before trial, during
9 trial, or after conviction is . . . an exercise of the prosecutorial function and entitles the
10 prosecutor to absolute immunity from a civil suit for damages.” 320 F.3d 1023, 1028 (9th
11 Cir. 2003). But *Broam* did not involve the sort of especially egregious conduct that
12 occurred in this case, where there was no probable cause to arrest and prosecutors failed
13 to disclose exculpatory evidence prior to a judicial determination of probable cause,
14 resulting in four years of pretrial detention of an innocent person.

15 This Court should recognize an exception to *Broam*’s general rule for egregious
16 *Tatum-Lee* violations like this one. There are few, if any, other safeguards to prevent
17 these violations other than pursuing a *Tatum-Lee* claim. And given the exceptional facts
18 here, permitting the claim will not open the floodgates for future litigation. *See Burns*,
19 500 U.S. at 494 (noting that absolute immunity is intended as a deterrent to vexatious
20 litigation). In short, public policy does not support Defendants’ absolute-immunity claim.

21 **B. The individual Defendants are not entitled to qualified immunity.**

22 Defendants also are not entitled to qualified immunity because no reasonable
23 prosecutor would think it reasonable to continue detaining Parker after discovering
24 Womack’s confession.

25 The defense of qualified immunity is unavailing when “no reasonable officer”
26 would have thought his or her conduct lawful. *Sialoi v. City of San Diego*, 823 F.3d 1223,
27 1234 (9th Cir. 2016). The same rule applies to prosecutors. *See Friedman v. Boucher*,
28 580 F.3d 847, 858 (9th Cir. 2009).

1 Ninth Circuit precedent would have put any reasonable prosecutor on notice that it
2 was not reasonable to continue detaining Parker after discovering Womack’s confession.

3 The controlling cases are *Baker* and *Lee*, which predated the conduct here. In
4 *Baker*, the Supreme Court held that “one in [plaintiff’s] position could not be detained
5 indefinitely in the face of repeated claims of innocence even though the warrant under
6 which he was arrested and detained met the standards of the Fourth Amendment.” 443
7 U.S. at 144. In *Lee*, the Ninth Circuit held that “continued detention after it was or should
8 have been known that the detainee was entitled to release” can violate the Fourteenth
9 Amendment. *See* 250 F.3d at 683 (quotation marks and citation omitted); *see also id.*
10 (holding that “the loss of liberty caused by an individual’s mistaken incarceration after
11 the lapse of a certain amount of time gives rise to a claim under the Due Process Clause
12 of the Fourteenth Amendment.”) (internal quotation marks and citation omitted).

13 Here, under *Baker* and *Lee*, no reasonable prosecutor would have thought it
14 reasonable to continue detaining Parker after discovering Womack’s confession. Indeed,
15 even without Womack’s confession, the first assigned prosecutor almost immediately
16 recognized Parker’s innocence and repeatedly complained there was no probable cause
17 to hold him. Rather than release Parker, individual Defendants chose to replace the
18 prosecutor. But the new assigned prosecutor raised the same concerns before uncovering
19 even more exculpatory evidence, including Womack’s jail calls. Even then, individual
20 Defendants continued to detain Parker, knowing he was entitled to release. This is
21 squarely a due-process violation under *Baker* and *Lee*. Individual Defendants are thus not
22 entitled to qualified immunity.

23 **III. This Court has previously rejected Defendants arguments that Parker**
24 **cannot assert a *Tatum-Lee* claim against prosecutors, and this Court**
25 **should reject these recycled arguments here.**

26 Defendants’ last resort is to recycle arguments that the Ninth Circuit and this Court
27 have already addressed and rejected. Defendants contend that Parker has not asserted a
28 valid *Tatum-Lee* claim. *See* Def. Mot. at 12–13. That’s incorrect. As stated above, this

1 Court already has determined that Parker “alleges that the uncovered exculpatory
2 evidence should have led to dismissal of the charges” and has thus stated a claim under
3 *Tatum*. Order, Dkt. No. 74, at 10.

4 Defendants contend there is “no authority” for bringing a *Tatum-Lee* due-process
5 claim against a prosecutor rather than an investigating officer. Def. Mot. at 13–14. But
6 this Court’s prior order provides just such authority. *See* Order, Dkt. No. 74, at 10. There,
7 this Court “disagree[d]” with Defendants’ identical argument that a *Tatum-Lee* claim
8 cannot be brought against prosecutors. *Id.*

9 This Court has recognized that “it is nonsensical to hold that because prosecutors
10 and not investigating officers allegedly withheld exculpatory evidence, Plaintiff cannot
11 state a claim. The right contemplated by *Tatum* and *Lee* is a detainee’s ‘constitutional
12 right to be free from continued detention after it was or should have been known that the
13 detainee was entitled to release,’ not a prosecutor’s right to information.” Order, Dkt. No.
14 74, at 10 (quoting *Lee*, 250 F.3d at 683). Moreover, as this Court noted, “the prosecutors
15 here, as attorneys experienced in criminal law, were in fact better positioned than police
16 officers to ‘underst[and] the risks to the plaintiff’s rights from withholding the
17 information’—namely, that Plaintiff would remain unjustly detained.” *Id.* (quoting
18 *Tatum*, 768 F.3d at 820).

19 Because Parker “alleges the same harm and violation of constitutional rights
20 contemplated by *Tatum*, and sufficiently alleges that his prolonged detention was caused
21 by the withholding of exculpatory evidence with deliberate indifference to his rights,” he
22 has stated “the key elements of a *Tatum-Lee* claim.” *Id.* (quoting *Tatum*, 768 F.3d at 809,
23 816; *Lee*, 250 F.3d at 683-84). As before, this Court should therefore reject Defendants’
24 argument here.

25 **IV. Parker respectfully respects leave to amend.**

26 Here, Parker has alleged that Defendants had a custom or practice of intimidating
27 and punishing lower-level prosecutors who refused to withhold significant exculpatory
28

1 evidence from criminal defendants whose detention is unusually prolonged. FAC at ¶ 63.
2 But if this Court deems the complaint deficient, Parker requests leave to add allegations
3 that will clearly establish the viability of his exculpatory-evidence and *Monell* claims as
4 well as his request for declaratory relief. *See Gregg v. Dep't of Pub. Safety*, 870 F.3d 883,
5 889 (9th Cir. 2017); *see also Carvalho v. Equifax Info. Servs., LLC*, 629 F.3d 876, 892
6 (9th Cir. 2010) (“leave to amend shall be freely given when justice so requires”) (citing
7 Fed. R. Civ. P. 15(a)). if this Court deems the complaint deficient, Parker requests leave
8 to amend.

9 Moreover, Parker respectfully requests an opportunity to amend his complaint to
10 allege that Defendants are liable for failing to discipline prosecutors who failed to
11 disclose exculpatory evidence, *see Bellamy*, 914 F.3d 727, and failing to establish a policy
12 and training to guide professional discretion, *see Long v. County of Los Angeles*, 442 F.3d
13 1178, 1188–89 (9th Cir. 2006); *Gibson v. County of Washoe*, 290 F.3d 1175, 1195–96
14 (9th Cir. 2002). Parker propounded a request for production to Defendants requesting
15 records reflecting the imposition of discipline by the Riverside County District Attorney’s
16 Office on any employee for failure to sufficiently or timely disclose exculpatory
17 evidence. *See supra* n.1 Defendants did not produce any responsive documents and did
18 not list any responsive document on any privilege log. *See id.* Parker therefore
19 respectfully requests leave to file an amended complaint alleging a *Monell* claim for
20 failure to supervise and discipline. There have been no deficiencies which Parker has
21 previously failed to cure; Defendants will suffer no prejudice if Parker is granted an
22 opportunity to amend his complaint; and amendment will not be futile Parker therefore
23 respectfully asks this Court to exercise its discretion to permit leave to amend. *Carvalho*,
24 629 F.3d at 892.

1 **CONCLUSION**

2 For the foregoing reasons, this Court should deny Defendants’ motion for
3 judgment on the pleadings.
4

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6 Dated: August 5, 2024

SINGLETON SCHREIBER, LLP

7 /s/ Sarah R. Weinman

8 Kimberly S. Trimble
9 Sarah R. Weinman

10 Attorneys for Plaintiff
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CERTIFICATE OF SERVICE

I certify that on August 5, 2024, I electronically filed the foregoing document: **Plaintiff’s Opposition to Defendants’ Motion for Judgment on the Pleadings**, and that it is available for viewing and downloading from the Court’s CM/ECF system, that all participants in the case are registered CM/ECF users, and that service will be accomplished by the CM/ECF system.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on August 5, 2024, at San Diego, California.

/s/ Elena Munoz
Elena Munoz