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UNITED STATES DISTRICT COURT
 CENTRAL DISTRICT OF CALIFORNIA

ANA PATRICIA FERNANDEZ, an individual)	CASE NO. 2:20-cv-09876-DMG (PD)
)	
	)	[Fee Exempt - Govt. Code §6103]
Plaintiff,)	
	)	DEFENDANTS, COUNTY OF
vs.	)	LOS ANGELES, LOS ANGELES
	)	COUNTY SHERIFF'S DEPARTMENT,
LOS ANGELES COUNTY; THE	)	AND SHERIFF ALEX VILLANUEVA'S
LOS ANGELES COUNTY SHERIFF'S	)	NOTICE OF MOTION AND MOTION
DEPARTMENT; WYATT	)	TO DISMISS PLAINTIFF'S ENTIRE
WALDRON, an individual JOHN	)	COMPLAINT FOR LACK OF
ROTH, an individual; SUSAN	)	SUBJECT MATTER JURISDICTION
O'LEARY BROWN an individual;	)	AND FAILURE TO STATE A CLAIM
ALEX VILLANUEVA, in his official	)	UPON WHICH RELIEF CAN BE
capacity as Sheriff of Los Angeles	)	GRANTED [F.R.C.P. 12(b)(1) and (6)]
County; and DOES 1 through 10,)	
	)	Date: January 15, 2021
Defendants.	)	Time: 9:30 a.m.
	)	Place: Courtroom 8C
	)	Judge: Hon. Dolly M. Gee
)	

TO THE COURT, TO ALL PARTIES HEREIN AND TO THEIR COUNSEL OF
 RECORD:

PLEASE TAKE NOTICE that on January 15, 2021, at 9:30 a.m., or as soon
 thereafter as the matter may be heard in Courtroom 8C of the United States District Court,
 located at 350 West 1st Street, 8th Floor, Los Angeles, CA 90012, the Defendants,
 COUNTY OF LOS ANGELES (also sued and served as the LOS ANGELES COUNTY

1 SHERIFF'S DEPARTMENT), and SHERIFF ALEX VILLANUEVA, will move the Court
2 for an order dismissing the Plaintiff's Complaint pursuant to Federal Rule of Civil
3 Procedure 12(b)(6) for failure to allege sufficient facts to state a claim upon which relief
4 can be granted.

5 This motion shall be supported by this notice, the accompanying Memorandum of
6 Law and upon all pleadings and papers on file herein.

7 **MEET AND CONFER REQUIREMENT**

8 On November 19, 2020, I served an email upon Plaintiff's counsel expressing my
9 intent to file this motion and outlining the grounds therefore. On November 20, 2020,
10 Plaintiff's counsel, Ms. Anna Bravir, and I met and conferred telephonically regarding the
11 grounds for the motion. We were able to resolve some, but not all of the contested issues
12 as a result of that meeting. Also, in said meeting, Ms. Bravir graciously granted me a one-
13 week extension to December 2, 2020, to file this motion.

14 DATED: December 2, 2020

NELSON & FULTON

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17 By: s / Amber A. Logan
HENRY PATRICK NELSON
18 AMBER A. LOGAN
Attorneys for Defendants,
19 County of Los Angeles and
Sheriff Alex Villanueva
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STATEMENT OF THE FACTS

In the year 2009, Plaintiff Ana Patricia Fernandez contends that her husband Manuel Fernandez was a convicted felon prohibited from owning firearms, ammunition, magazines and speed loaders. Special Agent Alvaro Arreola of the California Department of Justice Bureau of Firearms' reported that their database of Armed Prohibited Persons, revealed that Manuel Fernandez purchased 41 firearms prior to becoming prohibited, but failed to transfer them from his possession pursuant to the terms and conditions of his conviction. (*Complaint*, ¶ 31-32)

Special Agent Alvaro's report also provided the Los Angeles County Sheriff's Department (hereafter "LASD") received a tip on or about June 10, 2018, indicating that Manuel Fernandez was in possession of a large collection of firearms. (*Complaint*, ¶ 33).

On June 11, 2018, Los Angeles County Sheriff's Deputy Wyatt Waldron presented a statement of probable cause to Judge Lisa Chung who issued a warrant for the search of the Fernandez residence. The June 14, 2018- search resulted in the seizure of more than 400 firearms. (*Complaint*, ¶ 34-35).

Subsequent seizures of the residence occurred on June 15, June 21, and June 29, 2018. These searches resulted in the seizure of dozens of additional weapons, ammunition magazines and speed loaders. (*Complaint*, ¶ 36). Deputy John Roth reported that a total of 458 firearms were seized from the Fernandez residence. (*Complaint*, ¶ 37). Manuel Fernandez was charged with the unlawful possession of the firearms seized, but he passed away on September 27, 2018, before a trial could begin. (*Complaint*, ¶ 38).

Upon Manuel Fernandez's death, title to the seized firearms transferred to his wife, Plaintiff Ana Fernandez as the trustee of the Fernandez Trust. (*Complaint*, ¶ 39).

California Penal Code § 33880 (formerly § 12021.3), permits the County of Los Angeles to recover its administrative costs related to taking possession, storing, and releasing firearms seized under the circumstances alleged here. The LASD assessed a fee of \$ 54 per firearm for the return of the firearms seized from Manuel Fernandez for a total

1 of \$24,354.00. (*Complaint*, ¶ 39). The Plaintiff attempted to negotiate a reduced fee but
 2 the County would not reduce the fee. (*Complaint*, ¶ 46).

3 On December 9, 2019, the Plaintiff agreed to pay the fee to have the firearms
 4 released to a licensed firearm's dealer to be sold at auction. Upon receipt of the firearms,
 5 the Plaintiff contends that the firearms were poorly stored, resulting in a diminished value
 6 of the firearms. (*Complaint*, ¶ 49-50).

7 The defendants, County of Los Angeles, its Sheriff's Department and Sheriff
 8 Villanueva hereby move to dismiss all claims and causes of action alleged against them.

9 MEMORANDUM OF LAW

10 **I.**

11 **THE COURT SHOULD DISMISS THE PLAINTIFF'S COMPLAINT** 12 **AS IT FAILS TO STATE A CLAIM FOR RELIEF UNDER** 13 **THE FEDERAL CIVIL RIGHTS ACT**

14 In order to comply with the pleading requirements of the Federal Rules of Civil
 15 Procedure, the plaintiff has an "obligation to provide the grounds of his entitlement to
 16 relief" by stating facts as opposed to "labels and conclusions and a formulaic recitation of
 17 the elements of a cause of action." Bell Atlantic Corporation v. Twombly, 550 U.S. 544,
 18 555 (2007). "The factual allegations must be enough to raise a right to relief above the
 19 speculative level" and the plain statement must "possess enough heft to show that the
 20 pleader is entitled to relief." *Id.* at pp. 555-557. "To survive a motion to dismiss, a
 21 complaint must contain sufficient factual matter, accepted as true, to state a claim for relief
 22 that is plausible on its face." Ashcroft v Iqbal, 129 S.Ct. 1937, 1949 (2009).

23 In the instant case, the complaint must be dismissed as the facts alleged state no
 24 cognizable claim under the Federal Civil Rights Act and no claim for declaratory relief
 25 against the County of Los Angeles, its Sheriff's Department or Sheriff Villanueva.

26 /////

27 /////

A. THE COMPLAINT FAILS TO STATE A CLAIM FOR RELIEF AGAINST THE COUNTY OF LOS ANGELES OR THE SHERIFF IN HIS OFFICIAL CAPACITY.

A claim alleging violation of a right guaranteed by the United States Constitution must be brought under Title 42 U.S.C. § 1983, known as the federal civil rights act, as the constitutional amendments themselves, contain no remedial measures. Chapman v. Houston Welfare Rights Organization 441 U.S. 600 (1979). “To state a claim under § 1983, a plaintiff must allege the violation of a right secured by the Constitution and United States and must show that the alleged deprivation was committed by a person acting under color of state law.” West v Atkins, 487 U.S. 42, 48 (1988). In order to allege municipal liability under section 1983, the plaintiff must allege that the constitutional deprivation he suffered was caused by the implementation or execution of “a policy statement, ordinance, regulation, or decision officially adopted and promulgated by that body’s officers.” Monell v. Dep’t of Soc. Serv’s. of City of New York, 436 U.S. 658, 690-691 (1978). It is not enough, however, that the plaintiff identify conduct attributable to the municipality. The plaintiff must also demonstrate that through its deliberate conduct, the municipality was the “moving force” behind the injury alleged. Board of Comm’rs of Bryan County v. Brown, 520 U.S. 397, 404 (1997). In assigning municipal liability under *Monell*, the courts distinguish an act of a municipal agent without independent authority to establish policy from the act of one authorized to set policy under local law. Municipal liability under 42 U.S.C. § 1984, hinges upon the act of the municipality’s authorized policymaker or of an employee following the policymakers lead.’ “The ‘official policy’ requirement was intended to distinguish acts of the municipality from acts of *employees* of the municipality, and thereby make clear that municipal liability is limited to action for which the municipality is actually responsible.” Id. at 417.

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1 There must also be enough factual allegations to establish what the relevant policy
2 is, rather than merely stating that a policy caused the violation in question. *See, AE ex rel.*
3 *Hernandez v. Cnty. of Tulare*, 666 F.3d 631, 637 (9th Cir. 2012) (finding failure to state
4 claim because complaint only asserted that defendant maintained a policy, custom, or
5 practice of knowingly permitting the violation, but did not provide additional facts
6 regarding the nature of the policy, custom, or practice).

7 The same standard applies to the Sheriff of Los Angeles County. Official capacity
8 suits “generally represent only another way of pleading an action against an entity of which
9 an officer is an agent.” *Kentucky v. Graham*, 473 U.S. 159, 165 (1985).

10 In an official-capacity suit under § 1983, the governmental entity's “policy or
11 custom” must have played a part in the violation of federal law. 42 U.S.C. § 1983.
12 *Id.* at 166.

13 The Plaintiff’s complaint must be dismissed as it fails to state a claim for relief
14 against the County its Sheriff’s Department and the Sheriff of Los Angeles County. The
15 Complaint contains no factual allegations to support a claim that an official policy or
16 longstanding custom and practice of the County of Los Angeles lead to a violation of
17 Plaintiff’s Constitutional rights. The Plaintiff alleges that the relevant “policy” was that
18 County of Los Angeles’ personnel refused to reduce the administrative costs “as applied to
19 the Plaintiff.” The Complaint contends that this refusal resulted in the Plaintiff differently
20 from others whose weapons were seized, because of the large number of weapons seized
21 from the Plaintiff’s husband. (*Complaint*, ¶ 45). The Complaint further alleges that the
22 manner of the storage and retention of the firearms was in violation of LASD policies
23 described in the Department's “Manual of Policies and Procedures,” not in compliance with
24 unconstitutional policies created by these defendants. (*Complaint*, ¶ 51). There is no
25 allegation that the policies, themselves were unconstitutional. The Plaintiff alleges that the
26 County’s employees failed to implement policies in place or misapplied California law as it
27 applied to them.

1 These contentions fail to identify any policy created by the County of Los Angeles
 2 or its Sheriff's Department which lead to a violation of the Plaintiff's Constitutional rights.
 3 The Plaintiff is required to plead facts sufficient to show that the municipality, and
 4 municipal officials sued in their official capacities, were the actual constitutional offenders.
 5 The complaint fails to do so and must be dismissed.

6 **B. THE COMPLAINT'S FIRST CLAIM FOR RELIEF FAILS TO ALLEGE**
 7 **AN EIGHT AMENDMENT VIOLATION.**

8 *1. The First Claim for Relief Fails to Allege an Eighth Amendment Violation as*
 9 *the Administrative Costs Challenged are Not Punitive in Nature.*

10 The Eighth Amendment of the United States Constitution provides: "Excessive bail
 11 shall not be required, nor excessive fines imposed, nor cruel and unusual punishments
 12 inflicted." U.S. Const. amend. VIII. Importantly here, the second clause - the Excessive
 13 Fines Clause - "limits the government's power to extract payments, whether in cash or in
 14 kind, as punishment for some offense." Pimentel v. City of Los Angeles, 974 F.3d 917,
 15 921 (9th Cir. 2020), *citing*, Austin v. United States, 509 U.S. 602, 609–610. The Eighth
 16 Amendment's limitations apply to both criminal and civil proceedings, so long as the fines
 17 "can be characterized as punitive...." United States v. Sabhnani, 599 F.3d 215, 263 n. 19
 18 (2d Cir. 2010).

19 The Complaint in this case fails to allege an Eighth Amendment violation as the
 20 administrative costs assessed under Penal Code section 33880 are not punitive in nature.
 21 California Penal Code § 33880 is entitled, "Seizure, impounding, storage, or release of
 22 firearm, ammunition feeding device, or ammunition; imposition of charge to recover
 23 administrative costs; waiver; post storage hearing or appeal," provides, in pertinent part:

24 “(a) City, county or city and county, or a state agency may adopt a regulation,
 25 ordinance, or resolution imposing a charge equal to its administrative costs relating to the
 26 seizure, impounding, storage, or release of any firearm, ammunition feeding device, or
 27 ammunition.

1 (b) The fee under subdivision (a) shall not exceed the actual costs incurred for the
2 expenses directly related to the taking possession of any firearm, ammunition feeding
3 device, or ammunition, storing it, and surrendering possession of it to a licensed firearms
4 dealer to be delivered to the owner.

5 The costs assessed pursuant to this statute are not punitive in nature, but rather are
6 assessed for the purpose of reimbursing the County of Los Angeles for its “*administrative*
7 *costs* relating to the seizure, impounding, storage or release of any firearm, ammunition
8 feeding device, or ammunition.” Cal. Penal Code §33880 (a). The plain language of the
9 statute sets forth its intended purpose.

10 California cases addressing similar administrative costs, have determined that the
11 costs assessed for funding the California Courts were administrative costs and not punitive
12 in nature. *See, People v. Duenas*, 30 Cal.App.5th 1157, 1164–1165 (2019) [Government
13 Code section 70373 and Penal Code section 1465.8, which impose court facilities and court
14 operations assessments on every criminal conviction, each provide that the assessment
15 “shall be imposed on every conviction for a criminal offense” except for parking offenses.
16 (Gov. Code, § 70373, subd. (a)(1); Pen. Code, § 1465.8, subd. (a)(1).) Both were enacted
17 as parts of more comprehensive legislation intended to raise funds for California courts.
18 Neither fee is intended to be punitive in nature. (*People v. Alford* (2007) 42 Cal.4th 749,
19 757 (2007) [Pen. Code, § 1465.8]; *People v. Fleury*, 182 Cal.App.4th 1486, 1492-1494
20 (2010) [Gov. Code, § 70373].)

21 In this same vein, Penal Code § 33880 is intended for the law enforcement agencies
22 to recover the administrative costs incurred by the seizure, impounding, storage and release
23 of firearms seized. The Plaintiff’s quarrel with the amount of the fee in this case, does not
24 change the fee from administrative to punitive. The Complaint alleges that in order to
25 seize the weapons, the Sheriff’s Department had to obtain a warrant and search the
26 premises on four separate dates. During those searches, they seized, cataloged, and
27 impounded 458 firearms. The complaint admits the atypical nature of a seizure of this

1 magnitude, but contends that because the fee was assessed per firearm, the statute changed
2 in character from administrative to punitive. There are no facts supporting such a
3 contention.

4 The administrative cost recovery fee is not punitive in nature. Because the Eighth
5 Amendment only applies to fees that are punitive, the First Claim for Relief in this case
6 states no cause of action under the Eighth Amendment.

7 2. *The Plaintiff's Eighth Amendment Claim is Moot as the Administrative Fees*
8 *Assessed Challenged by the Complaint Have Been Paid.*

9 Federal courts require that there be an actual case or controversy pending at all
10 stages of the litigation in order to maintain an action. The courts have no authority to give
11 advisory opinions regarding what the law ought to be or to render decisions upon questions
12 that are moot. Aetna Life Ins. Co. of Hartford, Conn. v. Haworth, 300 U.S. 227, 240
13 (1937). "A case is moot when the issues presented are no longer 'live' or the parties lack a
14 legally cognizable interest in the outcome." City of Erie v. Pap's A.M., 529 U.S. 277, 287
15 (2000). Unless the prevailing party can obtain effective relief, any opinion as to the
16 legality of the challenged action would be advisory. Id. Where the complaint challenges
17 agency action which has already begun and ended, the challenge is moot based on "the
18 well-established rule that a case is moot if the court cannot 'undo what has already been
19 done,'" Kescoli v. Babbitt, 101 F.3d 1304, 130 (9th Cir. 1996).

20 It appears from the allegations set forth in the complaint that there is no "live" case
21 or controversy pending between the Plaintiff and these defendants. The gravamen of the
22 Plaintiff's complaint is that the LASD applied the \$54 fee for recovery of its administrative
23 costs incurred in recovery, storage and releasing the 451 firearms as a per firearm charge
24 as opposed to a reduced fee at the Plaintiff's request. As set forth above, the fee assessed is
25 not assessed for purposed of punishment as required for Eighth Amendment protection,
26 however if it were deemed to be punitive, the plaintiff's complaint is moot.

1 The Plaintiff has paid the administrative fee assessed by the County and the firearms
 2 have been released to a licensed firearm's dealer. (*Complaint*, 48-49). Upon payment of
 3 the fee, the Plaintiff has mooted the issue of whether the fee was constitutionally applied to
 4 her as opposed to others recovering firearms under the statute. Thus, the Plaintiff's First
 5 Claim for Relief is Moot.

6 **C. THE COMPLAINT'S SECOND CLAIM FOR RELIEF FAILS TO ALLEGE**
 7 **A FOURTH AMENDMENT VIOLATION.**

8 The Plaintiff's Second Claim for Relief is alleged under the Fourth Amendment.
 9 The Fourth Amendment provides that, "[t]he right of the people to be secure in their
 10 persons, houses, papers, and effects, against unreasonable searches and seizures, shall not
 11 be violated, and no warrants shall issue, but upon probable cause, supported by oath or
 12 affirmation, and particularly describing the place to be searched, and the persons or things
 13 to be seized." Camara v. Municipal Court of City and County of San Francisco, 387 U.S.
 14 523, 528 (1967).

15 A search warrant "provides the detached scrutiny of a neutral magistrate, which is a
 16 more reliable safeguard against improper searches than the hurried judgment of a law
 17 enforcement officer 'engaged in the often competitive enterprise of ferreting out crime.'" United States v. Chadwick, 433 U.S. 1, 9, (1977). The preference for warrants is most
 18 appropriately effectuated by according "great deference" to a magistrate's determination.
 19 U.S. v. Leon, 468 U.S. 897, 913-914 (1984). The Supreme Court has held, "[w]here the
 20 alleged Fourth Amendment violation involves a search or seizure pursuant to a warrant, the
 21 fact that a neutral magistrate has issued a warrant is the clearest indication that the officers
 22 acted in an objectively reasonable manner or, as we have sometimes put it, in 'objective
 23 good faith.' " Id. at 922-923.

25 California Penal Code § 29810 (c) (4), entitled: "Persons subject to firearm
 26 possession restrictions...relinquishment of firearms requires that "[i]f the court finds
 27 probable cause that the defendant has failed to relinquish any firearms as required, the

1 court shall order the search for and removal of any firearms at any location where the judge
2 has probable cause to believe the defendant's firearms are located.”

3 The Plaintiff’s Second Claim for Relief fails to state facts sufficient to constitute a
4 viable cause of action against these defendants. The Complaint alleges that the weapons
5 seized from Manuel Fernandez were seized pursuant to a warrant issued by Judge Lisa
6 Chung. The warrant was preceded by an investigation of the California Department of
7 Justice’s Bureau of Firearms, information in the Armed Prohibited Persons database and a
8 “tip” to the Los Angeles County Sheriff’s Department that Manuel Fernandez was a
9 prohibited person in possession of a large collection of firearms. California law mandated
10 that the firearms be seized under these circumstances.

11 The Plaintiff’s contentions that these defendants can be held liable under the Fourth
12 Amendment for damages to the firearms while seized is also untenable.

13 “If plaintiff intends to allege that the officers have failed to return the items seized
14 without due process of law, such a procedural due process claim would be barred by Parratt
15 v. Taylor, 451 U.S. 527, 101 S.Ct. 1908, 68 L.Ed.2d 420 (1981).” Byrd v. Stewart, 811
16 F.2d 554, 554–555 (11th Cir. 1987). An unauthorized deprivation of property, either
17 intentional or negligent, by a government official is not actionable under § 1983 if a
18 meaningful state post-deprivation remedy for the loss is available. *See, Zinermon v. Burch*,
19 494 U.S. 113, 129-32 (1990); Hudson v. Palmer, 468 U.S. 517, 533 (1984). A state's post
20 deprivation remedy may be adequate even though it does not provide relief identical to that
21 available under § 1983. California law provides an adequate post-deprivation remedy for
22 any property damage claims. Barnett v. Centoni, 31 F.3d 813, 816-817 (9th Cir. 1994)
23 (*citing, Cal. Gov't Code* §§ 810-895).

24 Here, whether the Plaintiff’s Fourth Amendment challenge is to the seizure itself, or
25 the alleged damage to the seized property, the claim is not viable. The seizure of the
26 firearms was made pursuant to a warrant as directed by California law, and the plaintiff has
27

adequate post deprivation remedies under California's Government Claim Presentation Act, for the alleged diminution in the value of the firearms.

The Second Claim for Relief must be dismissed.

II.

TO THE EXTENT THAT THE PLAINTIFF CHALLENGES THE CALIFORNIA LAW PERMITTING THE ASSESSMENT OF THE ADMINISTRATIVE COSTS, THE COMPLAINT MUST BE DISMISSED FOR FAILURE TO NOTIFY AND/OR JOIN THE STATE OF CALIFORNIA A PARTY TO THIS ACTION

It is unclear whether the Plaintiffs are challenging the constitutional validity of California Penal Code section 33880 (formerly section 12021.3). To the extent that Plaintiff is challenging the Constitutionality of the statute, the defendants contend that the State of California is required to be noticed per F.R.C.P. section 5.1. Section 5.1 requires that a party who files a pleading drawing into question the constitutionality of state statute, where the state is not included as a party to the action, must promptly serve notice upon the state attorney general either by certified or registered mail or by sending it to an electronic address designated by the attorney general for this purpose. If the Plaintiff challenges the constitutional validity of the statute itself, the State of California must be notified and potentially joined as a party to this action.

III.

THE COMPLAINT FAILS TO STATE A CLAIM FOR DECLARATORY RELIEF

Although not listed as a separate claim for relief, the Complaint contends that the Plaintiff is entitled to a declaratory judgment in this case. The Declaratory Judgment Act, codified as 28 U.S.C. § 2201(a), provides in pertinent part:

In a case of actual controversy within its jurisdiction ... any court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought. Any such declaration shall have the force and effect of a final judgment or decree and shall be reviewable as such.

1 The DJA's operation "is procedural only." Aetna Life Ins. Co. of Hartford, Conn. v.
 2 Haworth, 300 U.S. 227, 240, (1937). A DJA action requires a district court to "inquire
 3 whether there is a case of actual controversy within its jurisdiction." American States Ins.
 4 Co. v. Kearns, 15 F.3d 142, 143–144 (9th Cir.1994). The pleadings must show a
 5 "substantial controversy, between parties having adverse legal rights, or sufficient
 6 immediacy and reality to warrant the issuance of a declaratory judgment." Maryland Cas.
 7 Co. v. Pacific Coal & Oil Co., 312 U.S. 270, 273. The controversy must be a real and
 8 substantial controversy admitting of specific relief through a decree of a conclusive
 9 character, as distinguished from an opinion advising what the law would be upon a
 10 hypothetical state of facts. Haworth, 300 U.S. at 240–241, 57 S.Ct. at 464 (citations
 11 omitted). Furthermore, in order to obtain prospective relief, the Complaint must state a
 12 claim under Monell. Los Angeles County, Cal. v. Humpheries, 562 U.S. 29, 38-39 (2010).

13 Here, the defendants contend that the Plaintiff's Complaint fails to identify an actual
 14 controversy between the County, its Sheriff's Department and Sheriff Villanueva and the
 15 Plaintiff under the Federal Civil Rights Act. The Plaintiff complains that the California
 16 law permitting an assessment of administrative costs was unfairly applied to her after
 17 having paid the costs, and the contention that her property was damaged and suffered a
 18 diminution in value, states no viable claims under the Federal Civil Rights Act. There is
 19 also no factual support for a claim against these defendants under Monell.

20 There is no declaration of rights to be had, as there is no federal controversy between
 21 these parties regarding the issues alleged. As such, this claim must also be dismissed.

22 IV.

23 COURT SHOULD REFUSE TO EXERCISE SUPPLEMENTAL 24 JURISDICTION OVER THE STATE CLAIMS

25 The plaintiff's 3rd Claim (negligence), 4th Claim (Breach of Bailment), 5th (Trespass
 26 to Chattels) and 6th (Failure to Train) are alleged under California law. The complaint
 27 alleges that jurisdiction over these claims is proper under 28 U.S.C. § 1367 because they

1 are supplemental to the federal “causes of action.” As set forth above, there are no federal
2 statutes or law implicated by the facts alleged in this case. Once the conclusory allegations
3 are removed, the bare essence of this case sounds in tort law. Thus, this court should
4 refuse to exercise supplemental jurisdiction over these claims as the state claims
5 predominate. 28 U.S.C. § 1367 (c)(2). This court should also refuse to exercise
6 supplemental jurisdiction where each of the “federal” claims should be dismissed.
7 28 U.S.C. § 1367 (c)(3).

8 **CONCLUSION**

9 For the foregoing reasons, the Defendants, COUNTY OF LOS ANGELES, LOS
10 ANGELES COUNTY SHERIFF’S DEPARTMENT and SHERIFF VILLANUEVA,
11 hereby respectfully request that this Court dismiss Plaintiff’s entire complaint and all
12 claims alleged against them.

13 DATED: December 2, 2020

Respectfully submitted,

14 **NELSON & FULTON**

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