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8 **UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**

10 ANA PATRICIA FERNANDEZ, an
11 individual,

12 Plaintiff,

13 v.

14 LOS ANGELES COUNTY, THE LOS
15 ANGELES COUNTY SHERIFF'S
16 DEPARTMENT, WYATT WALDRON,
17 An Individual, JOHN ROTH, An
18 Individual, SUSAN O'LEARY BROWN,
19 An Individual, ALEX VILLANUEVA, In
20 His Official Capacity As Sheriff Of Los
21 Angeles County; And DOES 1-10,

22 Defendants.

Case No.: 2:20-cv-09876-DMG (PD)

**[PROPOSED] ORDER DENYING
DEFENDANT SUSAN O'LEARY
BROWN'S MOTION TO DISMISS
PLAINTIFF'S COMPLAINT**

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25 Defendant Susan O'Leary Brown's Motion to Dismiss Plaintiff's Complaint came
26 on for hearing before this Court on January 29, 2021. Having reviewed Defendant's
27 motion, the parties' memoranda, and all papers on file, and having heard the argument of
28 counsel, the Court hereby finds the following:

1 1. Plaintiff has sufficiently pleaded that her firearms were left in the care of
2 Defendant in her role as property custodian and that the property damage occurred during
3 that bailment.

4 2. Qualified immunity does not shield Defendant O’Leary Brown because she
5 was acting in a purely ministerial duty in her role as a property custodian for the Los
6 Angeles Sheriff’s Department (LASD) and because LASD maintains established policies
7 that she should have followed for storing firearms in her custody. The Supreme Court’s
8 doctrine “grants qualified immunity to officials in the performance of discretionary, but
9 not ministerial, functions.” *Davis v. Scherer*, 468 U.S. 183, 196 n.14 (1984). What’s more,
10 the Fourth Amendment rights at issue here are clearly established rights. “The doctrine of
11 qualified immunity protects government officials ‘from liability for civil damages insofar
12 as their conduct does not violate clearly established statutory or constitutional rights of
13 which a reasonable person would have known.’ ” *Pearson v. Callahan*, 555 U.S. 223, 231
14 (2009) (quoting *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982)). Here, Defendant
15 O’Leary Brown knew or should have known that allowing Plaintiff’s property to be
16 significantly damaged and withholding the release of the firearms without justification
17 violated the Fourth Amendment.

18 3. Regardless of whether FRCP Rule 5.1 is applicable to this case, Plaintiff filed
19 a Notice of Constitutional Challenge and served it on the Attorney General of California
20 on December 9, 2020. As this litigation is still in its early stages, the state of California
21 still has ample time to intervene if it so chooses. The notice given was thus prompt as
22 required by Rule 5.1. Even if it were not, Rule 5.1(d) provides that a party’s failure to file
23 and serve the notice does not forfeit a constitutional claim or defense that is otherwise
24 timely asserted.

25 4. Lastly, because Plaintiff has sufficiently pleaded her constitutional claims,
26 this court has supplemental jurisdiction over her state-law claims and can issue
27 declaratory relief.

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1 THEREFORE, IT IS HEREBY ORDERED that Defendant O’Leary Brown’s
2 Motion to Dismiss Plaintiff’s Complaint is DENIED in its entirety. Defendant shall file a
3 responsive pleading within seven (7) days of this Order.

4 **IT IS SO ORDERED.**

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6 Dated: _____

7 HON. DOLLY M. GEE
8 United States District Court Judge
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