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 Leon, Moreno IV, Roach, Roth, Saylor, Waldron

UNITED STATES DISTRICT COURT
 CENTRAL DISTRICT OF CALIFORNIA

ANA PATRICIA FERNANDEZ, an
 individual

Plaintiff,

vs.

LOS ANGELES COUNTY; THE
 LOS ANGELES COUNTY SHERIFF'S
 DEPARTMENT; WYATT WALDRON,
 an individual; JOHN ROTH, an
 individual; SUSAN O'LEARY BROWN
 an individual; ALEX VILLANUEVA, in
 his official capacity as Sheriff of
 Los Angeles County; RICHARD LEON,
 an individual; MURRAY JACOB an
 individual; DAVID ROACH, an
 individual; SALVADOR MORENO IV,
 an individual; JASON AMES, an
 individual; KYLE DINGMAN, an
 individual; NICHOLAS SAYLOR, an
 individual; and DOES 8 through 20,

Defendants.

CASE NO. 2:20-cv-09876-DMG (PD)

[Fee Exempt - Govt. Code §6103]

**DEFENDANTS, COUNTY OF
 LOS ANGELES EMPLOYEES AMES,
 O'LEARY BROWN, DINGMAN,
 JACOB, LEON, MORENO IV,
 ROACH, ROTH, SAYLOR AND
 WALDRON'S NOTICE OF MOTION
 AND MOTION TO DISMISS
 PLAINTIFF'S ENTIRE FIRST
 AMENDED COMPLAINT
 FOR LACK OF SUBJECT MATTER
 JURISDICTION AND FAILURE TO
 STATE A CLAIM UPON WHICH
 RELIEF CAN BE GRANTED**

[F.R.C.P. 12(b)(1) and (6)]

Date: January 14, 2022

Time: 9:30 a.m.

Place: Courtroom 8C

Judge: Hon. Dolly M. Gee

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

PLEASE TAKE NOTICE that on January 14, 2022, 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,

1 JASON AMES, SUSAN O'LEARY BROWN, KYLE DINGMAN, MURRAY JACOB,
2 RICHARD LEON, SALVADOR MORENO IV, DAVID ROACH, JOHN ROTH,
3 NICHOLAS SAYLOR, and WYATT WALDRON (sued in their individual capacities as
4 employees of the COUNTY OF LOS ANGELES), will move the Court for an order
5 dismissing the Plaintiff's Complaint pursuant to Federal Rule of Civil Procedure 12(b)(6)
6 for failure to allege sufficient facts to state a claim upon which relief can be granted.

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

9 **MEET AND CONFER REQUIREMENT**

10 On October 27, 2021, I met and conferred telephonically with Plaintiff's counsel, Ms.
11 Anna Barvir, regarding the grounds for the motion. As many of the issues are duplicative of
12 issues raised in the defendant's first Motion to Dismiss, the parties were unable to resolve any
13 of the contested issues during that meeting. Ms. Barvir stipulated to a continuance for the
14 defendants to respond to the First Amended Complaint by November 22, 2021.

15 DATED: November 22, 2021

NELSON & FULTON

17
18 By: s / Amber A. Logan
19 AMBER A. LOGAN
Attorneys for Defendants,
County Employees Jason Ames, et al.

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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. (*FAC*, ¶¶ 41-45).

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. (*FAC*, ¶ 46)

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. (*FAC*, ¶¶ 47-49).

Subsequent seizures of the residence occurred pursuant to subsequent warrants 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. (*FAC*, ¶ 51).

The FAC alleges on information and belief that Deputies Roth and Waldron damaged the seized firearms either when executing the warrant or when transporting them to their first storage location believed to be the Palmdale Sheriff's Station. (*FAC*, ¶ 51).

The FAC further alleges on information and belief that between June 14 and June 18, 2018, the firearms arrived at the Palmdale Sheriff's Station where Defendants Ames, Dingman, Jacob, Leon, Moreno, O'Leary-Brown, Roach, Roth and Saylor booked them into custody. (*FAC*, ¶ 53-54). It is alleged that the firearms were in March 2019, all of the seized firearms were transferred to the LASD warehouse in Whittier for Storage where defendants O'Leary-Brown and "Doe 8" were responsible for the storage, handling and

1 safeguarding the firearms, but failed to do so. (*FAC*, ¶ 56-57). It is alleged that despite
2 written LASD policies regarding the proper storage of the firearms the plaintiffs contend
3 that each of these defendants failed to properly and safely store the firearms. (*FAC*, ¶ 55).
4 It is further alleged that in determining whether the firearms were legal to own, Deputy
5 Roth and/or “Doe 9” examined the firearms and in the course of handling them, damaged
6 them. (*FAC*, ¶ 60).

7 California Penal Code § 33880 (formerly § 12021.3), permits the County of Los
8 Angeles to recover its administrative costs related to taking possession, storing, and
9 releasing of any firearm, ammunition feeding device, or ammunition seized under the
10 circumstances alleged here. Under the California Penal Code, any fee set by local
11 authorities to recover these costs, shall not exceed the actual costs incurred for the
12 expenses directly related to the taking possession of a firearm, storing a firearm, and
13 surrendering the firearm to a licensed firearms dealer or to the owner. (*FAC*, ¶ 29-30)

14 On November 22, 2005, the Los Angeles County Board of Supervisors adopted a
15 \$54 per firearm administrative fee to recover the costs of seizure, storage and return of a
16 firearm. (*FAC*, ¶ 31). In a letter to the Board, then-Sheriff Leroy D. Baca stated that
17 several different classifications of LASD personnel are involved in the processing of
18 firearms. According to the then-Sheriff’s cost breakdown, this work added up to 90
19 minutes of LASD staff time per firearm, or \$54.45 per firearm when taking the hourly pay
20 of each employee into account. (*FAC*, ¶ 32-37).

21 In passing the fee, the Board of Supervisors expected that about 500 firearms in
22 total would be subject to the fee annually. (*FAC*, ¶ 38). The Plaintiff contends that it is
23 thus clear that the County’s administrative fee, as calculated, was never intended to apply
24 to a firearm collection if hundreds of firearms seized from a single owner. Plaintiffs
25 conclude that the LASD mainly contemplated the seizure of either individual firearms or
26 small collections from many different sources. (*FAC*, ¶ 39).

On September 27, 2018, Manuel Fernandez passed away after his firearms were seized, but before his trial began. (*FAC*, ¶ 74). Title to the firearms passed to the Plaintiff, Ana Fernandez as the trustee off the Fernandez Trust. (*FAC*, ¶ 76).

The LASD assessed a fee of \$ 54 per firearm for the return of the firearms seized from Manuel Fernandez for a total of \$24,354.00. (*FAC*, ¶ 77). The Plaintiff attempted to negotiate a reduced fee, but the County would not reduce the fee. (*FAC*, ¶ 78).

On December 9, 2019, the Plaintiff agreed to pay the fee to have the firearms released to a licensed firearms dealer to be sold at auction. (*FAC*, ¶ 88). Upon receipt of the firearms, the Plaintiff contends that the firearms were poorly stored, resulting in a diminished value of the firearms. (*FAC*, ¶ 61-63).

The County of Los Angeles’ employees sued in this action hereby bring this Motion to Dismiss the First Amended Complaint for failure to state a claim upon which relief can be granted.

MEMORANDUM OF LAW

I.

THE PLAINTIFF’S FIRST AMENDED COMPLAINT FAILS TO STATE A CLAIM FOR RELIEF UNDER THE FEDERAL CIVIL RIGHTS ACT AGAINST THESE DEFENDANTS

A dismissal under Rule12(b)(6) of the *Federal Rules of Civil Procedure* is appropriate in either of the following cases: 1) where the facts alleged in the complaint are insufficient under a cognizable legal theory; or 2) where there is no cognizable legal theory alleged. *Balistreri v. Pacifica Police Dept.*, 901 F.2d 695, 699 (9th Cir. 1990).

In order to comply with the pleading requirements of the Federal Rules of Civil Procedure, the plaintiff has an “obligation to provide the grounds of his entitlement to relief” by stating facts as opposed to “labels and conclusions and a formulaic recitation of the elements of a cause of action.” *Bell Atlantic Corporation v. Twombly*, 550 U.S. 544, 555 (2007). “The factual allegations must be enough to raise a right to relief above the

1 speculative level” and the plain statement must “possess enough heft to show that the
2 pleader is entitled to relief.” *Id.* at pp. 555-557. “To survive a motion to dismiss, a
3 complaint must contain sufficient factual matter, accepted as true, to state a claim for relief
4 that is plausible on its face.” *Ashcroft v Iqbal*, 556 U.S. 662, 679 (2009).

5 “In keeping with these principles, a court considering a motion to dismiss can
6 choose to begin by identifying pleadings that, because they are no more than conclusions,
7 are not entitled to the assumption of truth. While legal conclusions can provide the
8 framework of a complaint, they must be supported by factual allegations.” *Id.*
9 Plaintiff’s claims are alleged under the Federal Civil Rights Act, Title 42 U.S.C. Section
10 1983. Section 1983 is a method for “vindicating violations of federal constitutional and
11 federal statutory rights conferred elsewhere.” *Maine v Thiboutot*, 448 U.S. 1 (1980). In
12 order to state a claim under the federal civil rights act, the Plaintiff must allege that a
13 specific defendant, while acting under color of state law, deprived the Plaintiff of a right
14 guaranteed by the Constitution or federal law. *West v Atkins*, 487 U.S. 42, 48 (1988).
15 Liability pursuant to section 1983 hinges upon proof that: (1) the defendant, acting under
16 color of state law committed the conduct at issue, and (2) that the defendant’s conduct
17 deprived the plaintiff of a right, privilege or immunity protected by the Constitution or
18 laws of the United States. *Leer v. Murphy*, 844 F.2d 628, 632-33 (9th Cir. 1988).

19 **A. THE DEFENDANTS ARE ENTITLED TO QUALIFIED IMMUNITY**
20 **FROM SUIT IN THIS CASE.**

21 Qualified immunity shields federal and state officials from money damages unless
22 the Plaintiff pleads facts showing (1) that the official violated a constitutional right, and (2)
23 that the right was “clearly established” at the time of the challenged conduct.” *Kirkpatrick*
24 *v. City of Washoe*, 792 F.3d 1184, 1193 (9th Cir. 2015). The Plaintiff “bears the burden of
25 showing that the rights alleged were clearly established.” *Shafer v City of Santa Barbara*,
26 868 F.3d 1110, 1118 (9th Cir. 2017).

1 The Supreme Court has mandated a two-step process resolving government officials'
2 qualified immunity claims. The court must decide whether the facts that a plaintiff has
3 alleged or shown make out a violation of a constitutional right, and the court must decide
4 whether the right at issue was “clearly established” at the time of defendant's alleged
5 misconduct. Qualified immunity is applicable unless the official's conduct violated a
6 clearly established constitutional right. *Pearson v. Callahan*, (2009) 555 U.S. 223, 232.
7 The court has the discretion to determine the sequence in which these two steps are
8 analyzed. *Id.* at p. 236.

9 “Clearly established” for qualified immunity purposes means that the contours of
10 the right must be sufficiently clear that a reasonable official would understand that what he
11 is doing violates that right. His very action need not previously have been held unlawful,
12 but in the light of per-existing law its unlawfulness must be apparent. *Anderson v.*
13 *Creighton*, 483 U.S. 635, 640 (1987). “Because qualified immunity is ‘an immunity from
14 suit rather than a mere defense to liability ... it is effectively lost if a case is erroneously
15 permitted to go to trial.’” *Mitchell v. Forsyth*, 472 U.S. 511, 526 (1985). “Indeed, we
16 have made clear that the ‘driving force’ behind creation of the qualified immunity doctrine
17 was a desire to ensure that ‘insubstantial claims’ against government officials [will] be
18 resolved prior to discovery.” *Anderson*, at p. 640, n.2. “Accordingly, ‘we repeatedly have
19 stressed the importance of resolving immunity questions at the earliest possible stage in
20 litigation.’” *Hunter v. Bryant*, 502 U.S. 224, 227 (1991).

21 The FAC alleges a sole federal claim against these defendants – Violation of the
22 Fourth Amendment. The defendants contend that the First Amended Complaint fails to
23 allege a Fourth Amendment violation, and if one is alleged, these defendants are entitled to
24 qualified immunity.

25 **B. THE DEFENDANTS ARE ENTITLED TO QUALIFIED IMMUNITY**
26 **ON PLAINTIFF’S CLAIM FOR A VIOLATION OF THE FOURTH**
27 **AMENDMENT FOR UNLAWFUL RETENTION OF PROPERTY.**

1 1. The Defendants Did Not Violate the Fourth Amendment by Retaining the
 2 Firearms Until the Fee Had Been Paid.

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

10 The Plaintiff does not challenge the LASD’s seizures of the firearms and other
 11 items from her husband, Miguel Fernandez, which were made pursuant to several warrants
 12 offer a period of four days in June 2018. Instead, the Plaintiff alleges that the LASD
 13 continued retention of the weapons from the dismissal of the criminal case to until the
 14 payment of the fee pursuant to California’s Law Enforcement Gun Retention law (Penal
 15 Code ¶ 33880), violated the Fourth Amendment. The County employees allege no Fourth
 16 Amendment violation for the retention of the seized firearms.

17 The Fourth Amendment prohibits “unreasonable searches and seizures,” thus protecting
 18 citizens against government seizures of property without legal process. U.S. Const. amend.
 19 IV; Soldal v. Cook Cty., Ill., 506 U.S. 56, 61 (1992). A “seizure of property ... occurs when
 20 there is some meaningful interference with an individual’s possessory interests in that
 21 property.” Id. (quoting, United States v. Jacobsen, 466 U.S. 109 (1984)). When assessing
 22 whether a Fourth Amendment violation has occurred, “the ultimate touchstone” of the inquiry
 23 “is ‘reasonableness.’” Brigham City v. Stuart, 547 U.S. 398, 403, (2006).

24 A reasonable seizure of property does not violate the Fourth Amendment. The
 25 defendants concede that a lawful seizure of property may violate the Fourth Amendment if
 26 the justification for the seizure ends. “A seizure is justified under the Fourth Amendment
 27 only to the extent that the government’s justification holds force. Thereafter, the

1 government must cease the seizure or secure a new justification.” Brewster v Beck, 859
2 F.3d 1194, 1197 (9th Cir. 2017).

3 The retention of the lawfully seized firearms until the Plaintiff paid the fee for their
4 transfer to a licensed firearms dealer was not unreasonable under the Fourth Amendment.
5 In the First Amendment context, the Supreme Court has held that governmental entities
6 may impose licensing fees relating to the exercise of constitutional rights when the fees are
7 designed “to meet the expense incident to the administration of the [licensing statute] and
8 to the maintenance of public order in the matter licensed.” Cox v. New Hampshire, 312
9 U.S. 569, 577 (1941) (quotation marks omitted). Imposing fees on the exercise of
10 constitutional rights is permissible when the fees are designed to defray (and do not
11 exceed) the administrative costs of regulating the protected activity. E. Conn. Citizens
12 Action Grp. v. Powers, 723 F.2d 1050, 1056 (2d Cir.1983).

13 In Bauer v Becerra, 858 F.3d 1216 (9th Cir. 2017), the Ninth Circuit applied First
14 Amendment “fee jurisprudence” analysis to a claim that California’s use of a portion of
15 firearm transfer fees to fund enforcement efforts against illegal firearm purchasers violated
16 the Second Amendment. Id. at 1218. The court recognized that public safety is advanced
17 by keeping guns out of the hands of people who are most likely to misuse them and that the
18 State has “a significant, substantial, or important interest in” in laws designed for those
19 purposes. Id. at 1223. The court held that there was a “reasonable fit” between the State’s
20 important interest in promoting public safety and disarming prohibited persons and the fees
21 intended to fund “costs associated with funding Department of Justice firearms-related
22 regulatory and enforcement activities related to the sale, purchase, possession, loan or
23 transfer of firearms” under Cal. Penal Code § 28225 (b)(11).

24 In this same vein, California Penal Code § 33880 (formerly § 12021.3), permits the
25 County of Los Angeles to recover its administrative costs related to taking possession,
26 storing, and releasing of any firearm, ammunition feeding device, or ammunition seized
27 under the circumstances alleged here.

1 The objective of California’s Law Enforcement Gun Release (“LEGR”) process “is
 2 one of public safety: keeping firearms out of the hands of those who – under California
 3 law – are not eligible to possess them.” *Cupp v Harris*, 2021 WL 4443099 *4, slip copy
 4 filed September 28, 2021, (E.D. Cal. 2021) , citing, *Wilson v Lynch*, 835 F.3d 1083, 1097
 5 (9th Cir. 2016). The government has a “long-recognized ability to impose fees relating to
 6 the exercise of constitutional rights when those fees are designed to defray the
 7 administrative costs of regulating protected activity.” *Id.*, citing, *Kwong v Bloomberg*, 723
 8 F.3d 160, 165 (2nd Cir. 2013).

9 Here, the Plaintiff does not contend that Penal Code § 33880 is itself,
 10 unconstitutional or that the statute permitting an assessment for the seizure, storage,
 11 retention and return of firearms is itself unreasonable. The Plaintiff’s contention is that the
 12 fee as applied to her was unreasonable.

13 There can be no Fourth Amendment violation where the justification for the
 14 retention of the seized property is reasonable. While the justification for the seizure of
 15 Miguel Fernandez’s firearms under the warrants had ended with his death and the
 16 dismissal of the criminal case, California Penal Code § 33880 provided a new justification
 17 for the LASD’s retention of the firearms until the payment of the fee had been paid. The
 18 law permits the LASD to recover its administrative costs before the transfer of the firearms
 19 from its custody.

20 As there is a reasonable justification for the retention of the firearms after Miguel
 21 Fernandez’s death, the Plaintiff’s First Amended Complaint fails to state a claim under the
 22 Fourth Amendment.

23 2. *There is No Allegation of a Deprivation Based on Clearly Established Law.*

24 Even if the retention of the firearms is found to have violated the Fourth
 25 Amendment, the County’s employees are entitled to qualified immunity because no clearly
 26 established law precluded the County’s employees from retaining the Plaintiff’s firearms
 27 until the fee had been paid. The clearly established law in this case permitted the Sheriff’s

1 Department to assess a fee for the costs incurred with the seizure, impound, storage and
2 release of the firearms in question, (Cal. Penal Code § 33880). The FAC alleges that in
3 2005, the Sheriff of Los Angeles County determined the amount of \$54 to be the
4 reasonable value associated with the seizure, impound, storage and release of the firearms
5 seized under the facts of this case. There is no showing that County's employees had any
6 discretion with regard to assessing the fee, or authority to negotiate a lower fee as
7 requested by the Plaintiff. There are simply no facts alleged to support a contention that
8 while acting as property custodians over weapons seized pursuant to a warrant, and for
9 which an administrative fee was assessed for their return, the County's employees could
10 reasonably have understood that they acted in violation of the Fourth Amendment.

11 Thus, the County's employees are entitled to qualified immunity for the alleged
12 unlawful retention of property in violation of the Fourth Amendment.

13 **C. THE DEFENDANTS ARE ENTITLED TO QUALIFIED IMMUNITY**
14 **UNDER THE FOURTH AMENDMENT CLAIM FOR PROPERTY DAMAGE.**

15 Whether a law enforcement official entitled to the protection of qualified
16 immunity may be held personally liable for the alleged unlawful action will depend on the
17 "objective legal reasonableness" of the action, which must be assessed in light of the laws
18 or "legal rules" that were "clearly established" at the time the action occurred. *Anderson*,
19 483 U.S. at 639–40. The Court specifically held that "[t]he contours of the right must be
20 sufficiently clear that a reasonable official would understand that what he is doing violates
21 that right." *Id.* A defendant violates an individual's clearly established rights only when
22 "'the state of the law' at the time of an incident provided 'fair warning'" to the defendant
23 that his or her conduct was unconstitutional. *Tolan v. Cotton*, 572 U.S. 650, 656, (2014)
24 (quoting *Hope v. Pelzer*, 536 U.S. 730, 741, (2002))

25 The Fourth Amendment "right" of which this the Plaintiff complains is the alleged
26 retention and damage to her personal property that occurred after the lawful seizure under
27 the Fourth Amendment. There is no support for the Plaintiff's contention that the retention

1 and alleged “grossly negligent” damage to personal property following a lawful seizure,
2 violates the Fourth Amendment. As such, there are no facts alleged which show that
3 Deputies Waldron or Roth violated any clearly established law in this case.

4 In the matter of *Jessop v City of Fresno*, 936 F.3d 937 (9th Cir., 2019), Plaintiff’s
5 sought to hold the defendant law enforcement officers liable under the Fourth Amendment
6 for stealing personal property which had been seized under a lawful warrant. Plaintiffs
7 argued that “[a]lthough the City Officers seized Appellants’ money and coins pursuant to a
8 lawful warrant, their continued retention—and alleged theft—of the property was a
9 violation of the Fourth Amendment. *Id.* at 941.

10 The Ninth Circuit found that the officers were entitled to qualified immunity as
11 there was no clearly established law which provided that property, once lawfully seized,
12 and later stolen, violates the Fourth Amendment. “The lack of ‘any cases of controlling
13 authority’ or a ‘consensus of cases of persuasive authority’ on the constitutional question
14 compels the conclusion that the law was not clearly established at the time of the incident.
15 *Id.* at 942, citing, *Wilson v. Layne*, 526 U.S. 603, 617 (1999). “Although the City Officers
16 ought to have recognized that the alleged theft of Appellants’ money and rare coins was
17 morally wrong, they did not have clear notice that it violated the Fourth Amendment —
18 which, as noted, is a different question.” *Id.*

19 The concurring opinion in *Jessop* provides that Supreme Court jurisprudence does
20 not include a retention of property in the definition of a Fourth Amendment seizure. “The
21 Court has defined a seizure as ‘a single act, and not a continuous fact.’” *Jessop*, at 943;
22 citing, *Thompson v. Whitman*, 85 U.S. (18 Wall.) 457, 471, 21 L.Ed. 897 (1873). “From
23 the time of the founding to the present, the word ‘seizure’ has meant a ‘taking possession.’
24 ” *Id.*, citing, *California v. Hodari D.*, 499 U.S. 621, 624 (1991). The concurring opinion
25 held that the Supreme Court cases suggest that, once the government has taken possession
26 of property, a seizure is complete. *Jessop*, at 943.

1 Here the Plaintiffs contend that the County's employees are liable to them under the
2 Fourth Amendment for the damage to the firearms which occurred as a result of the seizure
3 and storage of the firearms. Assuming the Plaintiffs to be factually correct – that County's
4 employees damaged the firearms – there is no clearly established law which provides that
5 they violated the Fourth Amendment in doing so. As set forth above, the seizure occurred
6 pursuant to a valid warrant under California law, issued by a Superior Court Judge. Nor is
7 there support for the contention that the alleged damages to the seized firearms violated the
8 clearly established law which would have put the County's employees on notice that they
9 violated the Fourth Amendment.

10 The County's employees are entitled to qualified immunity for the acts alleged in
11 the FAC, and this action against them must be dismissed.

12 II.

13 COURT SHOULD REFUSE TO EXERCISE SUPPLEMENTAL 14 JURISDICTION OVER THE STATE CLAIMS

15 The plaintiff's 3rd Claim (negligence), 4th Claim (Breach of Bailment), 5th (Trespass
16 to Chattels) and 6th (Failure to Train) are alleged under California law. The FAC alleges
17 that jurisdiction over these claims is proper under 28 U.S.C. § 1367 because they are
18 supplemental to the federal "causes of action." As set forth above, there are no federal
19 statutes or law implicated by the facts alleged in this case. Once the conclusory allegations
20 are removed, the bare essence of this case sounds in tort law. Thus, this court should
21 refuse to exercise supplemental jurisdiction over these claims as the state claims
22 predominate. 28 U.S.C. § 1367 (c)(2). This court should also refuse to exercise
23 supplemental jurisdiction where each of the "federal" claims should be dismissed.
24 28 U.S.C. § 1367 (c)(3).

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CONCLUSION

For the foregoing reasons, Defendants, County of Los Angeles employees JASON AMES, SUSAN O'LEARY BROWN, KYLE DINGMAN, MURRAY JACOB, RICHARD LEON, SALVADOR MORENO IV, DAVID ROACH, JOHN ROTH, NICHOLAS SAYLOR and WYATT WALDRON, hereby respectfully request that this Court dismiss Plaintiff's entire FAC, and all claims alleged against them.

DATED: November 22, 2021

Respectfully submitted,

NELSON & FULTON

By: s / Amber A. Logan
AMBER A. LOGAN
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County Employees Jason Ames, et al.