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9
10 ATTORNEYS FOR PLAINTIFFS

11
12 **UNITED STATES DISTRICT COURT**
13 **SOUTHERN DISTRICT OF CALIFORNIA**

14 TAMARA McANALLY;
JON McANALLY)
15)
16 Plaintiff)

17 vs.)

18)
19 ERNEST L. MARUGG; COUNTY OF)
SAN DIEGO; SAN COUNTY)
20 DISTRICT ATTORNEY; BONNIE M.)
DUMANIS; ALEXANDER LUTZI)
21 DOMINIC DUGO; DAVID)
LATTUCA; STATE COMPENSATION)
22 INSURANCE FUND; KATHEY)
BRADLEY; and Does 1 to 100 Inclusive)

23)
24 _____ Defendants)

CASE NO:
COMPLAINT FOR DAMAGES
1. Violation of Civil Rights 42 U.S.C. §1983 under First, Fourth and Fourteenth Amendments;
2. Malicious Prosecution under 42 U.S.C. §1983;
3. Monell related claims under 42 U.S.C. §1983;
4. Intentional Interference with Prospective Economic Advantage;
5. Intentional Infliction of Emotional Distress;
6. Violation of State Civil Rights
7. Malicious Prosecution under State Law
8. Abuse of Process Under State Law

JURY TRIAL REQUESTED

1 Plaintiffs TAMARA Mc ANALLY(hereinafter “TAMARA”) and JON
2 McANALLY (hereinafter “JON”)allege as follows:

3 1. Pursuant to this Court’s local Rule 8-1, Plaintiffs assert that the statutory or other
4 basis for the exercise of jurisdiction in this United States Federal District Court is based
5 upon a federal question asserted under 42 U.S.C. 1983 as to violations of Plaintiffs’
6 rights under the U. S. Constitution and laws, including those under the First, Fourth and
7 Fourteenth Amendments, as well as supplemental jurisdiction for Plaintiffs’ state
8 claims asserted pursuant to 28 U.S.C. 1367(a); all of which Plaintiffs request be tried
9 and heard before a jury.

10 2. At all relevant times mentioned in this Complaint, Plaintiffs were residents of
11 San Diego County, California.

12 3. At all times mentioned herein, Defendant ERNEST L. MARUGG (hereinafter
13 “MARUGG”), was an officer, agent, and employee of COUNTY OF SAN DIEGO.

14 4. At all time mentioned herein, the COUNTY OF SAN DIEGO was and is a
15 public entity (hereinafter “COUNTY”).

16 5. At all times mentioned herein, the SAN DIEGO COUNTY DISTRICT
17 ATTORNEYS OFFICE (hereinafter “D.A.”), was and is a subdivision or entity of the
18 COUNTY OF SAN DIEGO.

19 6. At all times mentioned herein, Defendant BONNIE DUMANIS(hereinafter
20 “DUMANIS”), was an officer, agent, and employee of COUNTY OF SAN DIEGO.

21 7. At all times mentioned herein, Defendant ALEXANDER LUTZI (hereinafter
22 “LUTZI”), was and officer, agent, and employee of the COUNTY OF SAN DIEGO.

23 8. At all times mentioned herein, Defendant DOMINIC DUGO (hereinafter
24 “DUGO”), was an officer, agent, and employee of COUNTY OF SAN DIEGO.

25 9. At all times mentioned herein, Defendant DAVID LATTUCA (hereinafter
26 “LATTUCA”), was an officer, agent, and employee of COUNTY OF SAN DIEGO.

27 10. At all times mentioned herein, the STATE COMPENSATION INSURANCE
28 FUND (hereinafter “SCIF”), was and is a California Corporation, licensed to sell

1 insurance in the State of California.

2 11. At all times mentioned herein, Defendant KATHEY BRADLEY (hereinafter
3 “BRADLEY”), was an officer, agent, and employee of SCIF.

4 12. Plaintiff is ignorant of the true names and capacities of those Defendants sued
5 herein as Does 1 through 100, Inclusive, and therefore sue them by such fictitious
6 names. Plaintiffs will amend this Complaint to show the true names and capacities of
7 said DOE Defendants when the same are ascertained.

8 13. Plaintiff is informed and believe and, based upon such information and belief,
9 allege that each of the Defendants is responsible in some manner for the events and
10 happenings referred to herein and was the legal cause of injury and damages to Plaintiff
11 as herein alleged.

12 14. Plaintiff is informed and believe and, based upon such information and belief,
13 allege that, at all times herein mentioned, each and every Defendant was the agent
14 and/or employee of their co-Defendants, and each of them, acting at all relevant times
15 herein under color of the authority of a governmental entity under the statutes,
16 ordinances, regulations, customs and usage of the State of California and/or the United
17 States Constitution and related laws.

18 **COMMON ALLEGATIONS**

19 15. There exists in California a system whereby insurance carriers who sell workers
20 compensation insurance pay County district attorneys for *convictions* of individuals and
21 businesses for allegedly defrauding those insurance companies. In addition, moneys
22 that are collected through fines and restitution are administered by the District
23 Attorneys office, not the County’s normal revenue and recovery programs, and
24 distributed back to the insurance companies with the District attorneys offices getting a
25 “cut” of the proceeds.

26 16. This system creates an inherent incentive that is at odds with our system of
27 criminal justice: Rather than seeking to *prosecute* those that are suspected of criminal
28 behavior as matter of public policy, it instead rewards *convictions*, thus creating an

1 incentive for prosecutors and investigators to misrepresent facts, commit and suborn
2 perjury, and engage in other unethical and illegal behavior.

3 17. Further, the individual Deputy District Attorneys (hereinafter DDA's) and their
4 direct supervisors in Economic Crimes, the section of the DA's office that prosecutes
5 these cases, work with investigators of the insurance companies to decide the targets of
6 the prosecutions with little or no oversight. When illegal and unethical behavior is
7 suspected, County officials are reluctant to investigate and prosecute because of the
8 large amounts of money that is generated by system.¹

9 18. Even when there *is* ultimately an investigation, into the activities of allegedly
10 corrupt county employee's, County officials seek to protect this "cash cow" by
11 withholding results and findings of their investigation from the other law enforcement
12 agencies, regulatory authorities and the public. This policy of deliberate indifference
13 by those charged with the responsibility to train and supervise individual District
14 attorneys, combine with the awesome power to prosecute, can be devastating to
15 innocent citizens who get caught in the system. *That is what happened to Plaintiffs*
16 *TAMARA and JON McANALLY.*

17 19. The Plaintiff TAMARA has submitted a Government tort claim to the COUNTY
18 on or about November 4, 2011. Said claim was denied by COUNTY on November 9,
19 2011. Plaintiff JON has submitted a Government tort claim on November 22, 2011.

20 20. TAMARA and JON McANALLY were married in 1987 and have 2 children.
21 From and early age, JON worked in the construction field, mostly for his father, but
22 ultimately obtained his general contractors license. In 1999 Jon started his own
23 business, JDM Enterprises as a sole proprietor. Plaintiff TAMARA was a stay at home
24 mom and took care of the children and household.

25 21. However, in December of 2002 JON and TAMARA formed a corporation and
26

27 ¹The San Diego District attorneys office reportedly received more then twelve
28 million Dollars from SCIF and other sources in 2010 for these *convictions*. This
constituted approximately ten percent of the DA's budget for the year.

1 transferred his contractors license into the name of the business under McAnally Inc.,
2 DbA JDM Enterprises (hereinafter "JDM"). At the same time TAMARA, became the
3 Secretary of the corporation The company did general contracting work, and also acted
4 as a subcontractor on jobs working for other general contractors. They ran a successful
5 business until 2003 when the their world was destroyed by false allegations of
6 insurance fraud.

7 22. In August of 2001, JDM applied for and received workers compensation
8 insurance through defendant SCIF.

9 23. Beginning in 2001 JDM worked as a framing subcontractor for a general
10 contractor, Landco Construction Inc. A dispute arose between Landco and JDM over
11 payments JDM claimed were owed for work done on the project. This dispute resulted
12 in litigation between these parties.

13 24. In retribution for pursuing these payments, the owner of Landco Construction
14 filed a complaint with the San Diego County District Attorneys office claiming, among
15 other things, that JDM and its officers including TAMARA and her husband were mis
16 characterizing the status of employees for the purpose of defrauding their workers
17 compensation insurance carrier defendant SCIF. These allegations were completely
18 false.

19 25. As a result of these allegations, an audit was conducted by SCIF and its
20 employees, including Defendant BRADLEY in conjunction with the D.A.'s office and
21 its employee's including Defendants MARUGG, a deputy D.A., and LUTZI and
22 investigator who worked directly for MARUGG. The audit was completed on March 6,
23 2003.

24 26. Despite the lack of any evidence whatsoever of intentional wrongdoing
25 BRADLEY reported that JDM and its employees, including TAMARA and JON, had
26 conspired to commit insurance fraud. The audit conducted by BRADLEY falsely
27 showed that JDM owed approximately \$375,000.00. In fact the actual amount owed
28 was approximately \$30,000.00. Documents provided by the Plaintiffs conclusively

1 showed that the amounts actually owed were a result of *mistakes* made by JDM's
2 bookkeeper and not because of fraudulent intent by JDM and its employee's, including
3 the Plaintiffs.

4 27. On March 28, 2003 a search warrant for records was served on JDM. Defendant
5 LUTZI, was present for the search and met with TAMARA. TAMARA told LUTZI
6 that her husband JON was in Hawaii working on a job

7 28. On or about April 1, 2003, at approximately 10:00 AM, TAMARA received a
8 call from LUTZI, requesting that she meet with him and "his partner" at the offices of
9 JDM. Approximately 10 minutes later LUTZI arrived with Defendant MARUGG.
10 TAMARA was never made aware at that meeting that MARUGG was a Deputy
11 District Attorney and that he would be prosecuting the case.

12 29. At that meeting, that lasted approximately 20 minutes, MARUGG, who did all of
13 the talking, never discussed any matter related to the allegations that were the subject of
14 the search warrant and prosecution, and instead talked about personal matters and
15 including her marriage and family. MARUGG also gave TAMARA his cell phone
16 number before he left the office, and told her to contact him "anytime" if she had any
17 questions or concerns.

18 30. MARUGG would later tell TAMARA that "I knew that I had to have you the
19 first time I saw you."

20 31. TAMARA was later told by another female, also prosecuted by MARUGG, that
21 LUTZI was MARUGG'S "pimp" and often tipped MARUGG when LUTZI believed
22 that there were women that MARUGG would find sexually attractive. Plaintiffs also
23 later learned that this had been a pattern of behavior between MARUGG and LUTZI in
24 other cases both before and after the prosecution of the Plaintiffs in this action.

25 32. Despite the fact that TAMARA and JON provided conclusive evidence, by way
26 of documentation and declarations, that they had committed no crime, Defendants, and
27 each of them, asked a grand jury to indict TAMARA, JON and other employees of
28 JDM on evidence that the Defendants and each of them knew to be false, intentionally

1 manufactured and without any basis in fact.

2 33. In May of 2003, Defendants BRADLEY and LUTZI, in concert with Defendant
3 MARUGG, presented knowingly false evidence to the San Diego Grand Jury that
4 JDM Plaintiffs TAMARA and JOHN had undertaken to commit insurance and tax
5 fraud.

6 34. Testimony was taken during the Grand Jury proceeding that JDM and its officers
7 and employee's, including TAMARA, had not paid its employees; had mis classified
8 employees as independent contractors; and had encouraged employees not to file
9 claims for injuries sustained on the job as work related injuries.

10 35. All of these allegations were false and the MARUGG, LUTZI, and BRADLEY
11 knew they were false. Their actions followed a pattern and practice by the defendants,
12 and each of them, as later discovered by the Plaintiffs to present false, manufactured,
13 and perjured testimony in order to

14 36. For instance, BRADLEY testified that TAMARA had personally signed "All"
15 payroll reports. This allegation was false and BRADLEY and MARUGG knew this
16 allegation was false.

17 37. Witnesses were encouraged to falsify testimony regarding these and other
18 allegations by Defendants BRADLEY and MARUGG and LUTZI, including but not
19 limited to, the testimony of Jade Maggio.

20 38. Further MARUGG failed to include known exculpatory information and
21 documentation related to the allegations both to the Grand Jury, the JDM criminal
22 defendants, including TAMARA, and their attorneys.

23 39. This included an allegation of encouraging a worker to not file medical claims
24 for work related injuries. MARUGG and BRADLEY, and LUTZI misled the Grand
25 Jury by withholding documents, including those showing that the employee had been
26 given claim forms, and information that he had thereafter quit JDM and had not
27 followed through on filing the claim.

28 40. MARUGG and BRADLEY and LUTZI knew that these allegations were false

1 and misleading and didn't tell the whole story. They purposely mis stated evidence to
2 gain a conviction even though they knew that there was no evidence of wrongdoing.

3 41. As a result of the false and misleading evidence presented by the COUNTY, DA,
4 SCIF, BRADLEY, MARUGG, and LUTZI the Plaintiffs were indicted and forced to
5 accept a plea agreement.

6 42. Even though Plaintiffs were innocent of the charges alleged in the indictment,
7 Plaintiffs agreed to accept the plea agreement in order avoid the threat of prison if they
8 were convicted. Further, Plaintiffs relied of representations made by the DA's Office,
9 including MARUGG, that they would be allowed to retain their contractors license, and
10 based on those representations agreed to the accept the plea agreement offered by the
11 DA.

12 43. On April 19, 2004 JON plead guilty and was therefore convicted of:

13 Count 1: Conspiracy, Penal Code Section (hereinafter PC) 182(a)(1)
14 {Enhancement: To Commit Uniformed Insurance Code Section
(hereinafter UIC)11880, Fraudulent Payroll Statement) and;
15 Count 16: Conspiracy, PC 182(a)(1) {Enhancement: To commit 2117.5,
Fraudulent Submission of a Company Payroll to EDD}

16 44. TAMARA plead guilty to Count 1 above.

17 45. As part of the plea agreement, Plaintiffs TAMARA and JON were required to
18 pay restitution in the amount of \$334,940.30 to SCIF, and \$87,156.69 to EDD.

19 46. Plaintiffs were required to pay the restitution in installments of : \$300.00 per
20 month to SCIF, and \$100.00 per month to EDD.

21 47. Plaintiffs were told to "pay the restitution through MARUGG", who in turn
22 directed Plaintiffs to make payments directly to SCIF and EDD. Further, MARUGG
23 directed Plaintiffs to send him copies of all of restitution payments made to SCIF and
24 EDD, and on each occasion that Plaintiffs made restitution payments they copied
25 MARUGG on those payments.

26 48. This arraignment to have the Plaintiffs pay restitution through MARUGG
27 allowed MARUGG to manipulate and control Plaintiffs through the use of SCIF, and
28 EDD.

1 49. In addition, JON'S plea agreement read in pertinent part: “ #2. I have not been
2 induced to enter this plea by any promise or representation of any kind,
3 **EXCEPT:....The District Attorney will cooperate with Contractors State License**
4 **Board to allow Mr. McAnally to maintain his Contractors License.”** (Emphasis
5 added).

6 50. Further the agreement read in pertinent part: “ #16 Could lose Contractors
7 License **ONLY** if prison sentence,” and the agreement also included language that “DA
8 will not argue for custody.”

9 51. MARUGG had no intention of fulfilling his obligations under the plea agreement
10 at the time that he signed it. Further he knew that without such intervention Plaintiffs
11 would lose their contractors license, and as a result their livelihoods.

12 52. In fact MARUGG intended to make the Plaintiffs vulnerable in order pursue a
13 sexual relationship with TAMARA, as he had done with other female defendants that
14 he had prosecuted previously, including BUT NOT LIMITED TO Kim Alvarez (aka
15 Kim Marugg). On information and belief, Plaintiffs allege that this pattern and
16 practice repeated itself numerous times from 2001 to 2010. Further, Plaintiffs allege
17 that the County was aware of this pattern and practice of MARUGG and others
18 employee's and agents of the DA's office and continued to allow these illegal activities
19 to occur.

20 53. TAMARA and JON had fulfilled or were fulfilling all of the terms of the plea
21 agreement dated May 25, 2004, and continued through December 1, 2010, including
22 but not limited to making restitution payments as required by the plea agreement,
23 beginning on August 1, 2004.

24 54. However, notwithstanding Plaintiffs payments of restitution as set out in the plea
25 agreement above, almost immediately Plaintiffs began to receive delinquency notices
26 from EDD and a collection agency demanding immediate payment of the fines and
27 restitution.

28 55. On August 15, 2004, in spite of telephone calls and correspondence to EDD, the

1 CSLB (hereinafter CSLB) the collection agency and others, including supplying all
2 interested parties with a copy of the plea agreement, the CSLB suspended and or
3 placed a hold or lien on the contractors license of Plaintiffs. *This was to be the first of*
4 *10 holds or liens placed on the Plaintiffs contractors license over the next 7 year.*

5 56. Sometime thereafter in August of 2004, TAMARA was advised to contact
6 MARUGG by her criminal attorney Roxane Bulowski-Harbin (hereinafter Bukowski)
7 and JON'S attorney, Charles Guthrie (hereinafter Guthrie), and Jason Wallace of EDD.

8 57. TAMARA supplied MARUGG with copies of all of the delinquency notices that
9 Plaintiffs had received, in addition to copies of payments sent directly to the SCIF and
10 EDD.

11 58. MARUGG told TAMARA that he "didn't know why EDD had put a hold on
12 JON'S license", but that he would "help straighten it out." In reality, MARUGG did
13 nothing to "help" with reinstating the Plaintiffs contractors license.

14 59. Over the next 4 months, TAMARA continued to contact numerous individuals at
15 EDD, SCIF, SLCB and other agencies in an attempt to have the contractors licence for
16 JDM reinstated.

17 60. On December 24, 2004 EDD released the lien/hold on the contractors license,
18 however a new lien/ hold was placed on the same day.

19 61. TAMARA again contacted MARUGG, to ask for assistance as was required by
20 the plea agreement. Again, MARUGG claimed that he would help, however he did not
21 intervene with EDD and SCIF to have the license reinstated.

22 62. Again Plaintiffs contacted the agencies involved in a vain attempt to regain the
23 license. They, filled out forms requested by the agencies, and contacted anyone that
24 each agency suggested might resolve the issue.

25 63. At his urging, TAMARA kept MARUGG informed of these attempts. When
26 she sought his direct help MARUGG would either say that he would speak to
27 individuals or agencies on behalf of TAMARA and JON, or direct TAMARA to
28 contact certain individuals or agencies. MARUGG however did nothing to assist in

1 the reinstatement of JDM's contractors license.

2 64. As stated above while MARUGG did nothing to help the plaintiffs regain their
3 contractors licence, he did encourage her to continue to seek redress, and at some time
4 in late 2004, began to inquire about her personal life, including her marriage to JON.

5 65. By the end of 2004, because of the false allegations that led to their unjust
6 conviction, JON and TAMARA's lives were in ruin, and they were beginning to have
7 problems in their marriage. Because she was in such close contact with MARUGG
8 TAMARA confided in MARUGG, believing that he was indeed attempting to help her
9 and her husband.

10 66. It was also at approximately this time that TAMARA confided in MARUGG that
11 she was taking antidepressants and seeing a therapist as a result of the stress caused by
12 the unjust prosecution. MARUGG told TAMARA that he was sorry that he had caused
13 her so much trouble and continued to inquire as to her relationship with JON.

14 67. In January 2005, MARUGG offered to reduce TAMARA'S felony conviction to
15 a misdemeanor. When she went to his office to discuss the matter, he also offered to
16 reduce JON'S conviction to a misdemeanor. *MARUGG later told TAMARA that he*
17 *hoped that this action and the later offer to expunge the convictions of both TAMARA*
18 *and JON would convince TAMARA that he was sincere in his affection for her.*

19 68. At around this time, MARUGG also began to tell TAMARA that he thought she
20 was "a great mother" and "a good person," and that JON was responsible for the
21 problems in their relationship.

22 69. TAMARA began to think of MARUGG as a friend. It was also at about this
23 time that MARUGG began to contact TAMARA on a regular basis, both by phone and
24 email.

25 70. In August of 2005, TAMARA, applied for a real estate license in the State of
26 California. MARUGG *volunteered* to write a letter of recommendation on her behalf .

27 71. In Oct, 2005, TAMARA was told by EDD that the lien/hold would be removed
28 from the contractors license, but on Oct 21, 2005 a new lien/hold was placed on the

1 license. Again, no one would tell the Plaintiffs the reason for the new lien, other than
2 they were required to pay restitution, which was being paid per the court order, and
3 again TAMARA contacted MARUGG to beg him to intervene on Plaintiffs' behalf.

4 72. During the entirety of 2005 and through 2011 , TAMARA and JON were still
5 attempting to have JDM's contractors license reinstated. Until December 30, 2009,
6 MARUGG continued to tell TAMARA that he was "helping" them on every occasion
7 that TAMARA would contact him regarding these lien/holds on the contractors license.

8 73. Through the beginning of 2006, as TAMARA and JON struggled with their
9 financial crisis, brought on by the unlawful actions of the Defendants, and each of
10 them, MARUGG began to contact TAMARA more and more by phone and email
11 offering "advice" and comfort for the problems that he, MARUGG, had been
12 responsible for creating. Because of her vulnerable mental and financial state,
13 TAMARA was taken in by his offers of assistance. She however did not consider their
14 relationship to be anything more than a platonic one.

15 74. In June of 2006, MARUGG again offered to assist TAMARA "in any way that
16 he could" with her attempt to obtain a real estate license which had been compromised
17 by the unlawful prosecution by MARUGG and the other Defendants, and each of them.

18 75. On the morning of June 22, 2006, TAMARA wrote an email to MARUGG to
19 thank him for his help generally with Plaintiffs' "problems," and with the her attempt to
20 obtain a real estate licence specifically. In the email she told MARUGG that she
21 respected him, and could see how much the judge respected him as well. There was no
22 suggestion that TAMARA considered MARUGG anything other than a friend in the
23 email.

24 76. MARUGG contacted TAMARA later that morning and asked TAMARA to
25 come to his office to have coffee, and discuss her case and his assistance in helping her
26 obtain her real estate license. When she arrived, MARUGG was waiting outside, and
27 suggested they take her car to a coffee shop for the meeting.

28 77. On the way back from the coffee shop, MARUGG attempted to take

1 TAMARA'S hand, placed his hand on her thigh, and as she was dropping him off
2 attempted to kiss her. TAMARA told MARUGG, that she did not want to have a
3 romantic relationship with him, partly because she was married and so was he. Later
4 that day MARUGG wrote TAMARA and email from the D.A.'S office and told her that
5 "I can't stop thinking about you."

6 78. By this time TAMARA had developed a dependant relationship with MARUGG,
7 based on his offers to "help" her and JON with the problems that he had caused, and his
8 alleged concern for her. MARUGG knowingly used this dependance in an attempt to
9 start a sexual relationship with TAMARA, as he has done on numerous occasions in the
10 past, and would continue to do until he was forced to retire from the DA's office in
11 September of 2010.

12 79. From June 22, 2006 MARUGG continued to pursue a sexual relationship with
13 TAMARA. MARUGG would email or call her more than 10 times per day. Among
14 other things, MARUGG would tell TAMARA that he felt guilty for prosecuting her,
15 that "I wish I had a time machine" that he knew she was not guilty, and that he loved
16 her.

17 80. At the same time MARUGG was also begging TAMARA to start a sexual affair
18 with him. Again, she refused because she wanted to try and save her marraige, did not
19 want to betray her husband and because MARUGG was still married.

20 81. Finally in September of 2008, TAMARA told MARUGG that she would was
21 going to stay with JON and that she would never have a sexual relationship with
22 MARUGG, but that she wanted to remain a friend.

23 82. From September of 2008, to December of 2009, TAMARA continued to attempt
24 to resolve the issues related to the Plaintiffs' contractors license while seeking
25 MARUGG'S assistance.

26 83. MARUGG continued to pursue TAMARA to have a sexual relationship, and
27 while telling TAMARA that he was attempting to assist the Plaintiffs, in fact continued
28 to either do nothing to assist, as required by the plea agreement, or purposefully to

1 block the reinstatement of the license. As before, Plaintiffs were unaware that
2 MARUGGs true actions.

3 84. In late 2009, MARUGG stopped responding to requests for assistance with EDD
4 and SCLB regarding Plaintiffs' contractors license. When emails and phone calls went
5 unanswered, TAMARA left a voice message on MARUGG'S cell phone requesting
6 that he call her.

7 85. Thereafter, a woman who identified herself as Kim Alvarez (hereinafter Kim)
8 called TAMARA and asked "why is your number on my boyfriend's phone?" As the
9 conversation continued, TAMARA learned for the first time that Kim and her former
10 husband had been prosecuted by MARUGG in 2001, and had there after began to
11 pursue a sexual relationship with Kim. Later, TAMARA realized that the facts and
12 circumstances of the prosecution of Kim and her former husband matched MARUGG'S
13 prosecution of her and JON in almost every regard.

14 86. In subsequent conversations Kim told TAMARA that MARUGG had in fact
15 admitted to her that he had numerous relationships with female defendants, both during
16 and after he had prosecuted them and their husbands for insurance fraud.

17 87. Kim also told TAMARA that MARUGG, LUTZI and BRADLEY had
18 manufactured evidence in Kim and her former husband's case.

19 88. *Kim Alvarez and MARUGG were subsequently married and divorced. (Alvarez*
20 *made these same allegations in documents in her divorce proceedings.)*

21 89. While TAMARA was shocked at the revelations, she continued to seek
22 assistance from MARUGG, through December 30, 2009, when MARUGG indicated he
23 would no longer help with Plaintiffs' licensing issues.

24 90. Starting in 2010, TAMARA began to investigate the circumstances of Plaintiffs'
25 conviction as it related to what Kim had told her about MARUGG'S pattern and
26 practice of filing charges against contractors for suspected workers compensation
27 fraud.

28 91. Beginning in or about 2001, supervisors in the DA's Office were made aware of

1 a complaint by a worker in the office that MARUGG was having an affair with
2 Defendant BRADLEY which compromised the integrity of the investigations being
3 conducted by MARUGG and BRADLEY. They did nothing.

4 92. Further, between 2001 and 2009, MARUGG had taken numerous female
5 defendants that he had prosecuted to functions sponsored by the DA's Office, or where
6 County officials were present, as well as on official business trips where supervisory
7 personal, including DUGO and LATUCCA were present. They did nothing.

8 93. Further, MARUGG was sending emails using his email account provided by the
9 D.A.'S Office. These email were monitored by supervisors in the DA's Office, who
10 were therefore on notice that MARUGG was using the DA's official email for personal
11 contact with numerous female defendants. These emails included pornographic content
12 that clearly should have placed the COUNTY Defendants on notice of MARUGG'S
13 illegal and unethical actions. Again, they did nothing.

14 94. Further MARUGG was using the cell phone provided by the DA's office to make
15 a large number of personal calls, including calls to female criminal defendants that
16 MARUGG prosecuted.

17 95. During their investigations in 2010, Plaintiffs became aware for the first time that
18 numerous other criminal defendants had filed complaints with the D.A.'S Office and
19 other agencies alleging that MARUGG was having inappropriate relationships with
20 female criminal defendants, and falsifying evidence during prosecution. Still
21 COUNTY Defendants DID NOTHING..

22 96. In addition, in 2010 Plaintiffs began for the first time to investigate the system in
23 general, and found that the COUNTY and the D.A. were given grants from SCIF and
24 other agencies, not for prosecutions, *but for convictions*. Plaintiffs became aware for
25 the first time that this system created the conflict whereby the COUNTY and D.A.
26 profited from these convictions.

27 97. Plaintiffs became aware for the first time in 2010, that SAN DIEGO COUNTY,
28 and the SAN DIEGO COUNTY D.A.'S office presently receive, and have received in

1 past years, a disproportionate amount of grant money from these programs. For
2 example in 2010, the SAN DIEGO COUNTY DA. received more than **twice** the
3 amount of grant money as Los Angeles County, even though the population of Los
4 Angeles is nearly twice that of SAN DIEGO COUNTY.

5 98. Plaintiffs became aware for the first time in 2010 that the COUNTY and D.A.
6 were well aware of the conflicts, and the potential for wrongful prosecutions, but
7 ignored the problem for fear that any change in the system would adversely affect the
8 flow of insurance company money to the D.A.'S office.

9 99. At the time of the investigation and prosecution of the Plaintiffs, and to the
10 present, Defendants DUGO and LATUCCA, were and are supervisors of the D.A.'S
11 economic crime unit. They were and are aware of the conflicts of interest involved in
12 the prosecution of these cases and in fact were aware that prosecutions such as the one
13 brought against the plaintiff were being maintained without just cause and for the
14 financial benefit of the D.A.'s office.

15 100. Further, both DUGO and LATUCCA were aware that, in addition to filing false
16 allegations of fraud for financial gain, Defendant MARUGG was using his position to
17 file criminal charges against certain contractors and their wives for the illicit purpose of
18 ultimately pursuing sexual relationships with the women that were charged in the
19 criminal complaints.

20 101. District Attorney DUMANIS is aware and has been aware since 2003, when she
21 took office as San Diego District Attorney, that the system described above creates
22 inherent conflicts of interest that pose a danger to the public in general and the
23 Plaintiffs in this action in particular. DUMANIS failed to take steps to adequately train
24 and or supervise the DDA'S who prosecute workers compensation fraud and protect the
25 public in general and the Plaintiffs in this action in particular from abuse. Further it
26 was foreseeable that the damages suffered by the Plaintiffs would occur. Plaintiffs
27 have suffered and will continue to suffer damages because of the actions of DUMANIS
28 and all other Defendants.

1 102. These allegations of improper, immoral, unethical and illegal actions by
2 MARRUG to pursue female criminal defendants were known to the D.A.'S office
3 generally, and DUGO and LATUCCA specifically beginning in 2001, at the latest, and
4 included as many as 6 or more female criminal defendants prosecuted by the DA's
5 office from 2001 to 2010.

6 103. On August 12, 2010, TAMARA contacted the D.A.'S office on advice from an
7 attorney, regarding the information that the Plaintiffs had learned in their investigation
8 into the circumstances of their prosecution and convictions. TAMARA spoke to DDA
9 Damon Mosler. TAMARA provided all the information outlined above concerning the
10 wrongful prosecution Plaintiffs, including the allegations of fraud, perjury,
11 concealment, and abuse of power, as well as MARRUG'S pursuit of an inappropriate
12 sexual relationship with TAMARA.

13 104. On August 26, 2010 MARUGG received notice of an Administrative
14 Investigation related to allegations lodged by Plaintiffs. The allegations included:
15 "Immorality, Conduct Unbecoming, Failure of Good Behavior, Actions Incompatible
16 or Inimical to the Public Service as well as violations of the San Diego County District
17 Attorney's Office Legal Policy Guide and ethical violations of the California Rules of
18 Professional Conduct and the California District Attorneys Association Professionalism
19 Source book."

20 105. Included on the witness list were the names of more than a half dozen women
21 that had been prosecuted by MARUGG with whom he had, or attempted to have a
22 sexual relationship.

23 106. At the interview in conjunction with the Administrative Investigation by the
24 D.A.'S Office, MARUGG admitted many of the allegations alleged in the letter of
25 Investigation including that he had inappropriate relationships with several former
26 defendants.

27 107. In exchange for an agreement by the D.A.'S Office to forego any further
28 investigation, MARUGG was allowed to retire. No further disciplinary action was

1 taken by the D.A., nor was any report made to the California State Bar. No criminal
2 investigation took place and no charges were filed. Nor was there any public
3 disclosure of the allegations and evidence of abuse of power caused by the conflicts
4 inherent in the system of prosecuting insurance fraud in the manner described herein.

5 108. The actions of the COUNTY, D.A., and other responsible Defendants in failing
6 to properly investigate the serious allegations made by the Plaintiffs and others for
7 more than a decade are outrageous, unethical and illegal.

8 109. The COUNTY, D.A., and other responsible Defendants have purposely
9 concealed the facts as they relate to Plaintiffs' case, as well as the cases of other
10 criminal defendants to protect their financial interest in receiving grants from
11 Defendant SCIF and others.

12 110. Defendant SCIF, was aware of the actions of their employee BRADLEY at the
13 time of the wrongful actions taken against Plaintiffs and has continued to ratify her
14 actions and are a cause of the continuing damages suffered by the Plaintiffs.

15 111. On April 12, 2011, TAMARA filed Points and Authorities in Support of her
16 Petition for Writ of *Coram Nobis* to set aside her plea and conviction, a copy of which
17 is attached hereto as Exhibit "1". In addition, TAMARA also filed a Petition for
18 Factual Finding of Innocence Pursuant to Penal Code Section 851.8(d), a copy of said
19 Petition is attached hereto as Exhibit "2". On May 16, 2011, Superior Court Judge
20 David J. Danielsen granted both Petitions, copies of which are attached hereto as
21 Exhibit "3" and "4".

22 112. JON will file his Petition for Writ of *Coram Nobis* to set aside his please
23 and conviction by December 2, 2011.

24
25 **FIRST CAUSE OF ACTION**
Violation of Civil Rights under 42 U.S.C. 1983
against all Defendants

26 113. Plaintiffs reallege, adopt and incorporate as if set forth at length, and to the
27 extent applicable, the allegations found in paragraphs 1 through 112.
28

1 114. Commencing on November 1, 2002, Defendants MARUGG, DUMANIS
2 LUTZI, DUGO, LATTUCA, SCIF, BRADLEY, and DOES 1 to 100, inclusive, and
3 each of them, were acting under color of state law when they committed the
4 aforementioned actions, doing so without proper reason or authority, without
5 reasonable or probable cause and with deliberate indifference to the rights of said
6 Plaintiffs.

7 115. The aforesaid conduct of Defendants, violated the civil rights of Plaintiffs,
8 including violation of the Plaintiffs' rights found in the Fourth, Fifth and Fourteenth
9 Amendments of the United States Constitution and those under California law and its
10 Constitutions, as herein alleged.

11 116. As a direct result of these Defendants' violation, and in accordance with 42
12 U.S.C. §1983, Plaintiffs's civil rights have been violated in that they have suffered, and
13 will continue to suffer, damages, as herein described, as well as to incur attorneys' fees,
14 costs and expenses in the underlying case and in this matter as authorized by 42 U.S.C.
15 §1988, in an amount not yet ascertained, all of which shall be shown according to proof
16 at trial.

17 117. Defendants' wrongful conduct as herein alleged was intentional, done with
18 malice and recklessness and performed with a conscious disregard for the rights of the
19 Plaintiffs herein, and as a result of this despicable conduct, Plaintiffs are therefore
20 entitled to recover punitive damages from Defendants MARUGG, DUMANIS, LUTZI,
21 DUGO, LATTUCA, SCIF, BRADLEY and DOES 1 to 100, inclusive, in an amount
22 commensurate with the nature of the Defendants' wrongful acts and the amount of the
23 Defendants' wealth.

24 118. Although the State Defendants, and each of them, knew that Plaintiffs would be
25 deprived of equal protection of the laws by the intentional or negligent fabrication of
26 evidence and suppression of exculpatory evidence, and had the power to prevent or aid
27 Plaintiffs from being wrongfully arrested and later convicted of crime they did not
28 commit, neglected or refused to come forward with the truth, and expose the

1 Defendant's conspiracy to deprive Plaintiffs of the equal protection of the laws.

2 **SECOND CAUSE OF ACTION**

3 **(Malicious Prosecution, brought pursuant to 42 U.S.C. §1983)**

4 119. Plaintiffs reallege and incorporates by reference each of the allegations contained
5 in paragraphs 1 through 118 of this Complaint.

6 120. On or about November 1, 2002, and thereafter, the Defendants MARUGG,
7 DUMANIS LUTZI, DUGO, LATTUCA SCIF, BRADLEY, and DOES 1 to 100, acting
8 under color of authority, were the moving force behind the criminal prosecution to be
9 instituted against the Plaintiffs for allegedly violating Penal Code section 182(a)(1), in
10 Case No. SDC 160785 by their acts and omissions stated herein, including, but not
11 limited to, by knowingly or recklessly providing materially false, misleading and
12 incomplete information, and/or omitting material information, for the purposes of
13 having Plaintiffs prosecuted for worker's compensation fraud knowing that it was
14 reasonably foreseeable that their acts and omissions would be relied upon. Plaintiffs
15 were and are factually innocent of the charges.

16 121. The aforesaid Defendants acted with malice, with reckless disregard for the
17 rights of Plaintiffs, and without reasonable or probable cause in their actions and
18 omissions as the moving force in the prosecution of Plaintiffs in that they did not, in
19 good faith, believe Plaintiffs to be guilty of the crime charged.

20 122. The Defendants engaged in this malicious conduct with the purpose of depriving
21 Plaintiffs of their constitutional rights, including those to be free of unlawful seizure,
22 free from unlawful arrest and conviction, and the right to due process under the Fourth
23 and Fourteenth Amendments to the United States Constitution.

24 123. These actions, or inactions, of Defendants were the moving force behind the
25 prosecution and wrongful convictions of Plaintiffs as alleged herein; and as a result
26 thereto, Plaintiffs have sustained, and will sustain, general and special damages as
27 herein alleged, as well as incurring attorneys' fees, costs and expense including those
28 as authorized by 42 U.S.C. §1988, to an extent and in an amount subject to proof at

1 trial.

2 124. The Defendants' acts, as the moving force in instigating and pursuing the criminal
3 prosecution, were willful, wanton, malicious and oppressive, as heretofore alleged, and
4 the resulting prosecution and conviction of Plaintiffs was induced by fraud, perjury
5 and fabricated evidence, and undertaken in bad faith in complete disregard for the
6 rights of Plaintiffs. These acts justify the awarding of punitive damages against
7 Defendants MARUGG, DUMANIS, LUTZI, DUGO, LATTUCA, SCIF, BRADLEY,
8 and DOES 1 to 100.

9 **THIRD CAUSE OF ACTION**

10 ***(Monell cause of action)***

11 125. Plaintiffs realleges and incorporates by reference each of the allegations
12 contained in paragraphs 1 through 124 of this Complaint.

13 126. At all relevant times herein, Defendant COUNTY, established and/or followed
14 policies, procedures, customs and/or practices (hereinafter collectively "policy" or
15 "policies") which were the moving force and cause of violations of Plaintiffs'
16 constitutional rights, including those under the Fourth and Fourteenth Amendments of
17 the United States Constitution, by, but not limited to:

18 a. The policy, practice and/or custom of accepting financial remuneration for
19 prosecuting persons for worker's compensation insurance fraud without true, accurate
20 and substantial evidence that such persons were guilty of the crimes with which they
21 were charged;

22 b. The policy, practice and/or custom of falsely prosecuting persons
23 COUNTY accused of worker's compensation insurance fraud in the Grand Jury and
24 subsequent criminal prosecutions while withholding exculpatory evidence of said
25 persons' actual innocence;

26 c. The policy, practice and/or custom of using trickery, duress, fabrication
27 and/or false testimony or evidence, and/or in failing to provide exculpatory evidence, in
28 preparing and presenting evidence for use in criminal proceedings causing an

1 interference with the Plaintiffs' Constitutional right to be free of false prosecution;

2 d. By acting with deliberate indifference in implementing a policy, practice
3 and/or custom of inadequate training, and/or by failing to train its officers, agents and
4 employees, including deputy district attorneys and their investigators, in providing the
5 Constitutional protections guaranteed to individuals, including those under the Fourth
6 and Fourteenth Amendments, when performing actions related to insurance fraud and
7 criminal proceedings;

8 e. The policy, practice and/or custom of encouraging the prosecuting agency
9 to file criminal charges before the determination of probable cause has been made
10 alleging insurance fraud and then presenting false evidence to conform to the charges
11 filed;

12 f. The policy, practice and/or custom of failing to train and supervise DDAs
13 and other District Attorney employees with regard to inappropriate, illegal and
14 unethical behavior in connection with personal and sexual relationships with criminal
15 defendants who are being or have been prosecuted by the DA's office, and the policy,
16 practice and/or custom of being deliberately indifferent to the Constitutional rights of
17 persons who have been or are being prosecuted by the Economic Crimes Unit of the
18 D.A.'s office;

19 g. The policy, practice and/or custom of concealing and failing to disclose
20 known instances of unethical and illegal prosecutorial misconduct as described herein,
21 which casts doubt on the validity or prosecution and convictions of other criminal
22 defendants in violation of *Brady v. Maryland*, 373 U.S. 83 (1963).

23 (Plaintiff reserves the right to supplement these grounds upon further
24 information and discovery.)

25 127. Defendant COUNTY had a duty to Plaintiffs at all times to establish, implement
26 and follow policies, procedures, customs and/or practices which confirm and provide
27 for the protections guaranteed them under the United States Constitution, including the
28 Fourth and Fourteenth Amendments, to use reasonable care to select, supervise, train,

1 control and review the activities of all agents, officers and employees in their employ,
2 including deputy district attorneys and investigators performing investigations and
3 prosecutions and/or testifying in criminal proceedings, and further, to refrain from
4 acting with deliberate indifference to the constitutional rights of Plaintiffs herein so as
5 to not cause them the injuries and damages alleged herein.

6 128. Defendant COUNTY breached its duties and obligations to Plaintiffs, as stated
7 herein, including but not limited to, failing to establish, implement and follow the
8 correct and proper Constitutional policies, procedures, customs and practices; by
9 failing to properly select, supervise, train, control, and review their agents and
10 employees as to their compliance with Constitutional safeguards; and by permitting
11 Defendants, MARUGG, DUMANIS, LUTZI, DUGO, LATTUCA SCIF, BRADLEY
12 and WILLIAMS, to engage in the unlawful, malicious and unconstitutional conduct as
13 herein alleged.

14 129. Defendant COUNTY knew, or should have known, that by breaching
15 the aforesaid duties and obligations that it was foreseeable that they would, and did,
16 cause Plaintiffs to be injured and damaged by their wrongful policies and acts as
17 alleged herein and that such breaches occurred in contravention of public policy and as
18 to their legal duties and obligations to Plaintiffs.

19 130. At all relevant times Defendant COUNTY acted with deliberate
20 indifference to the rights of, and as to their obligations to, Plaintiffs, and as to
21 established law, including but not limited to, (1) by failing to establish, implement, and
22 follow policies procedures, customs and practices mandated by the U.S. Constitution
23 and laws; (2) by failing to properly supervise, manage, control, and direct the activities
24 of its officers, agents and state actors, including Defendants MARUGG, DUMANIS,
25 LUTZI, DUGO, LATTUCA, SCIF, BRADLEY, and Does 1-100, such that the actions,
26 or inactions of said individuals operated to deprive Plaintiffs of their Constitutional
27 rights, including those under the Fourth and Fourteenth Amendments to the
28 Constitution of the United States, including, but not limited to, (1) failure to establish,

1 meet or follow known and well established requirements for the prosecution of
2 worker's compensation fraud, and (2) the accurate and truthful presentation of evidence
3 and information in criminal proceedings, including exculpatory evidence. (Plaintiffs
4 reserves the right to supplement said grounds based upon further investigation and
5 discovery.)

6 131. These actions, or inactions, of Defendant COUNTY were the moving force
7 behind the arrest, prosecution, and wrongful conviction of Plaintiffs as alleged herein;
8 and as a result thereto, Plaintiffs have sustained, and will continue to sustain, general
9 and special damages as herein alleged, as well as incurring attorneys' fees, costs and
10 expenses, including those as authorized by 42 U.S.C. §1988, to an extent and in an
11 amount subject to proof at trial.

12 FOURTH CAUSE OF ACTION

13 **(Intentional Interference with Prospective Economic Advantage, brought** 14 **pursuant to the Court's supplemental jurisdiction under 28 U.S.C. §1367(a))**

15 132. Plaintiffs reallege and incorporate by reference each of the allegations contained
16 in paragraphs 1 through 131 of this Complaint.

17 133. As a direct and proximate consequence of the acts of Defendants, and each of
18 them, as aforesaid, Plaintiffs was unlawfully and falsely arrested, prosecuted, and
19 convicted for a crime of which they were innocent. At all times applicable herein
20 Defendants, MARUGG, DUMANIS, LUTZI, DUGO, LATTUCA, SCIF, BRADLEY,
21 COUNTY and DOES 1 to 100, and each of them, were aware that Plaintiffs were
22 employed and had a reasonable expectation that they would derive future economic
23 benefits from their efforts working in the construction industry through their business
24 McAnally Inc., dba JDM Enterprises, and the use of JON's contractors license obtained
25 with the California Contractors License Board to conduct contracting business and
26 projects in the State of California.

27 134. Defendants, intentionally disrupted Plaintiffs' use of said contractors license in
28 doing business in the state of California with the express purpose of harming Plaintiffs,

1 engaging in said wrongful conduct knowing that the prosecution and conviction of
2 Plaintiffs would restrict and/or prevent Plaintiffs from working in the construction
3 trade; all of which has resulted in, and has continued to result in, great economic and
4 monetary damages and losses to Plaintiffs, the nature and amount of which will be
5 shown according to proof at time of trial.

6 135. The above described actions of Defendants were one with evil motive and intent
7 and with reckless disregard for the truth and with deliberate indifference to Plaintiffs's
8 rights. Therefore, Plaintiffs are entitled to an award of punitive damages against
9 Defendants MARUGG, DUMANIS, LUTZI, DUGO, LATTUCA, SCIF, BRADLEY
10 and DOES 1 to 100 for the purpose of punishing these Defendants and to deter them
11 and others from such conduct in the future.

12 FIFTH CAUSE OF ACTION

13 **(Intentional Infliction of Emotional Distress brought pursuant to the Court's 14 supplemental jurisdiction under 28 U.S.C. §1367(a))**

15 136. Plaintiffs reallege and incorporate by reference each of the allegations contained
16 in paragraphs 1 through 135 of this Complaint.

17 137. Defendants MARUGG, DUMANIS, LUTZI, DUGO, LATTUCA, SCIF,
18 BRADLEY, COUNTY and DOES 1 to 100 engaged in the aforementioned outrageous,
19 unprivileged conduct including, but not limited to, by causing Plaintiffs to be
20 unlawfully charged, prosecuted, and convicted by, but not limited to, maliciously
21 falsifying evidence, withholding exculpatory evidence and by falsely and maliciously
22 alleging and claiming that Plaintiffs were guilty of the crimes as herein alleged.

23 138. The aforesaid Defendants knew, or reasonably should have known, that their
24 aforesaid conduct would cause, and did in fact cause, Plaintiffs great and severe
25 emotional distress, anxiety, fear, and damages, the full nature and amount of which will
26 be shown according to proof at trial.

27 139. Defendants MARUGG, DUMANIS, LUTZI, DUGO, LATTUCA, SCIF,
28 BRADLEY, and COUNTY knowingly and willfully acted with malice and oppression
and with the intent to harm Plaintiffs in a despicable manner. Therefore, Plaintiffs are

1 entitled to an award of punitive damages against Defendants MARUGG, DUMANIS,
2 LUTZI, DUGO, LATTUCA, SCIF, BRADLEY, and DOES 1 to 100, for the purpose of
3 punishing these Defendants and to deter them and others from such conduct in the
4 future.

5 **SIXTH CAUSE OF ACTION**

6 **(Violation of State Civil Rights brought pursuant to the Court's supplemental
7 jurisdiction under 28 U.S.C. §1367(a))**

8 140. Plaintiffs reallege and incorporate by reference each of the allegations contained
9 in paragraphs 1 through 139 of this Complaint.

10 141. The Defendants COUNTY, MARUGG, DUMANIS, LUTZI, DUGO,
11 LATTUCA, SCIF, BRADLEY, and DOES 1 to 100, inclusive, are individuals and
12 entities who were acting under color of law during the investigation and subsequent
13 prosecution of Plaintiffs as herein before described.

14 142. As a result of the aforementioned actions, conduct, policies and/or omissions of
15 COUNTY, MARUGG, DUMANIS, LUTZI, DUGO, LATTUCA, SCIF, BRADLEY,
16 and DOES 1 to 100, inclusive, as recited and incorporated by paragraphs previously set
17 forth herein, Defendants, and each of them, interfered with the exercise and enjoyment
18 of Plaintiffs' rights secured by the United States Constitution and other Federal laws,
19 and the Constitution and laws of the State of California, including, but not limited to,
20 Plaintiffs' right of privacy and those rights under Civil Code §§43, 45, 46, 51, 52, and
21 52.1 and other applicable state and federal laws.

22 143. These violations of the Plaintiffs's rights by said Defendants and DOES 1 to
23 100, inclusive, and each of them, are guaranteed by Civil Code §§43, 52, 52.1 entitling
24 Plaintiffs to compensatory and punitive damages, injunctive relief, statutory civil
25 penalty (including \$25,000.00 as to each individual Defendant) and attorneys' fees, all
26 of which are provided for by laws and the Constitution of the State of California and
27 are requested herein.

28 144. As a direct and proximate result of the aforementioned conduct of Defendants,
and each of them, Plaintiffs have suffered and will continue to suffer great emotional

1 and psychological distress, humiliation and mental anguish, as heretofore described,
2 the nature and amount of which will be shown according to proof at trial.

3 145. Defendants MARUGG, DUMANIS, LUTZI, DUGO, LATTUCA, SCIF,
4 BRADLEY, COUNTY and DOES 1 to 100 engaged in the aforementioned outrageous,
5 unprivileged conduct including, but not limited to, causing Plaintiffs to be unlawfully
6 and wrongfully charged, prosecuted, and convicted by, but not limited to, maliciously
7 falsifying evidence, withholding exculpatory evidence and by falsely and maliciously
8 alleging and claiming that Plaintiffs were guilty of the charges they had filed against
9 them.

10 146. Defendants MARUGG, DUMANIS, LUTZI, DUGO, LATTUCA, SCIF,
11 BRADLEY, and DOES 1 to 100 knowingly and willfully acted with malice and
12 oppression and with the intent to harm Plaintiffs in a despicable manner and did so
13 with a conscious disregard for Plaintiffs' rights. Therefore, Plaintiffs are entitled to an
14 award of punitive damages against MARUGG, DUMANIS, LUTZI, DUGO,
15 LATTUCA, SCIF, BRADLEY and Does 1-100 for the purpose of punishing these
16 Defendants and to deter them and others from such conduct in the future.

17 **SEVENTH CAUSE OF ACTION**

18 **(Malicious Prosecution under State Law)**

19 147. Plaintiffs reallege and incorporate by reference each of the allegations
20 contained in paragraphs 1 through 146 of this Complaint.

21 148. In prosecuting the Plaintiffs as set forth herein, the Defendants MARUGG,
22 DUMANIS, LUTZI, DUGO, LATTUCA, SCIF, BRADLEY, and DOES 1 to 100,
23 acted under color of authority and were the moving force behind the criminal
24 prosecution instituted against the Plaintiffs for allegedly violating Penal Code
25 §182(a)(1), in Case No. SDC 160785 by their acts and omissions stated herein,
26 including, but not limited to, by knowingly or recklessly providing materially false,
27 misleading and incomplete information, and/or omitting material information, for the
28 purposes of having Plaintiffs prosecuted knowing that it was reasonably foreseeable

1 that their acts and omissions would be relied upon. Plaintiffs were and are factually
2 innocent of the charges.

3 149. The aforesaid Defendants acted with malice, with conscious disregard for the
4 rights of Plaintiffs, and without reasonable or probable cause in their actions and
5 omissions as the moving force in the prosecution of Plaintiffs in that they did not, and
6 could not honestly, reasonably, and in good faith believe Plaintiffs to be guilty of the
7 crime charged.

8 150. The Defendants' acts as the moving force in instigating the criminal prosecution
9 were willful, wanton, malicious and oppressive, as heretofore alleged, and the resulting
10 prosecution, and conviction of Plaintiffs was induced by fraud, perjury and fabricated
11 evidence, and undertaken in bad faith in complete disregard for the rights of Plaintiffs.
12 These acts justify the awarding of punitive damages against Defendants MARUGG,
13 DUMANIS, LUTZI, DUGO, LATTUCA, SCIF, BRADLEY, and DOES 1 to 100.

14 EIGHTH CAUSE OF ACTION

15 **(Abuse of Process, brought pursuant to the Court's supplemental jurisdiction 16 under 28 U.S.C. §1367(a))**

17 151. Plaintiffs reallege and incorporate by reference each of the allegations contained
18 in paragraphs 1 through 150 of this Complaint.

19 152. As a direct and proximate consequence of the acts of Defendants, and each of
20 them, as aforesaid, Plaintiffs was unlawfully and falsely prosecuted and convicted for
21 a crime of which they were innocent. At all times applicable herein the acts of
22 Defendants, MARUGG, DUMANIS, LUTZI, DUGO, LATTUCA, SCIF, BRADLEY,
23 COUNTY and DOES 1 to 100, and each of them, in bringing the aforementioned
24 judicial process and proceeding against Plaintiffs was a willful and malicious act in the
25 use of judicial process for an ulterior purpose not proper in the regular course of such
26 proceedings in that it was intentionally brought for Defendants own personal benefits
27 including for the improper purpose of using the proceedings and the wrongful
28 conviction of Plaintiffs, and the subsequent sentence conditions, to obtain improper

1 personal benefits from Plaintiffs.

2 153. Defendants' conduct in improperly and maliciously using said judicial process
3 and proceedings in pursuing the prosecution and conviction of Plaintiffs for their
4 improper personal benefit has resulted in, and has continued to result in, damages and
5 losses to Plaintiffs, the nature and amount of which will be shown according to proof at
6 time of trial.

7 154. The above recited actions of Defendants were one with evil motive and intent
8 and with conscious disregard for the truth and with reckless indifference to Plaintiffs's
9 rights. Therefore, Plaintiffs are entitled to an award of punitive damages against
10 Defendants MARUGG, DUMANIS, LUTZI, DUGO, LATTUCA, SCIF, BRADLEY
11 and DOES 1 to 100 for the purpose of punishing these Defendants and to deter them
12 and others from such conduct in the future.

13 **PRAYER**

14 WHEREFORE, Plaintiffs prays Judgment against the Defendants as follows:

15 **FIRST CAUSE OF ACTION - VIOLATION OF CIVIL RIGHTS - FOURTH**
16 **AND FOURTEENTH AMENDMENT**

- 17 1. General damages in an amount to be determined by proof at trial.
- 18 2. Punitive damages as against individual Defendants only.
- 19 3. Attorneys' fees, costs and expenses as authorized by 42 U.S.C. §1988 according
20 to proof.
- 21 4. Costs and interest according to law.
- 22 5. Any other and further relief that the Court considers proper.

23 **SECOND CAUSE OF ACTION - VIOLATION OF CIVIL RIGHTS -**
24 **MALICIOUS PROSECUTION UNDER 42 U.S.C. §1983**

- 25 1. General damages in an amount to be determined by proof at trial.
- 26 2. Punitive damages as against individual Defendants only.
- 27 3. Attorneys' fees, costs and expenses as authorized by 42 U.S.C. §1988 according
28 to proof.
4. Costs and interest according to law.

1 5. Any other and further relief that the Court considers proper.

2 **THIRD CAUSE OF ACTION - MONELL RELATED CLAMS**

3 1. General damages in an amount to be determined by proof at trial.

4 2. Costs and interest according to law.

5 3. Injunctive relief.

6 4. Any other and further relief that the Court considers proper.

7 **FOURTH CAUSE OF ACTION**

8 **(Intentional Interference with Prospective Economic Advantage, brought
pursuant to the Court's supplemental jurisdiction under 28 U.S.C. §1367(a))**

9 1. General damages in an amount to be determined by proof at trial.

10 2. Punitive damages as against individual Defendants only.

11 3. Costs and interest according to law.

12 4. Any other and further relief that the Court considers proper.

13 **FIFTH CAUSE OF ACTION -**
14 **INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS**

15 1. General damages in an amount to be determined by proof at trial.

16 2. Punitive damages as against individual Defendants only.

17 3. Costs and interest according to law.

18 4. Any other and further relief that the Court considers proper.

19 **SIXTH CAUSE OF ACTION - VIOLATION OF STATE CIVIL RIGHTS**

20 1. General damages in an amount to be determined by proof at trial.

21 2. Punitive damages as against individual Defendants only.

22 3. Attorneys' fees, sanctions, injunctive relief, civil penalty and expenses as
23 authorized by statute.

24 4. Costs and interest according to law.

25 5. Any other and further relief that the Court considers proper.

26 **SEVENTH CAUSE OF ACTION - MALICIOUS PROSECUTION**

27 **(UNDER STATE LAW)**

28 1. General damages in an amount to be determined by proof at trial.

- 1 2. Punitive damages as against individual Defendants only.,
- 2 4. Costs and interest according to law.
- 3 5. Any other and further relief that the Court considers proper.

4 **EIGHT CAUSE OF ACTION -ABUSE OF PROCESS**

- 5 1. General damages in an amount to be determined by proof at trial.
- 6 2. Punitive damages as against individual Defendants only.
- 7 3. Costs and interest according to law.
- 8 4. Any other and further relief that the Court considers proper.

9 DATED: November 22 , 2011

LAW OFFICE OF DONNIE R. COX


10 
11 _____
12 DONNIE R. COX, Attorney for Plaintiffs
13 TAMARA and JON McANALLY
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Exhibit “1”

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C. Bradley Patton, Esq. (SBN: 67087)
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Attorney for Petitioner:
TAMARA MCANALLY

FILED
Clerk of the Superior Court

APR 12 2011

By: Theresa Cruz, Deputy

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO
CENTRAL DIVISION

THE PEOPLE OF THE STATE
OF CALIFORNIA,

Plaintiff and Respondent,

v.

TAMARA MCANALLY,

Defendant and Petitioner.

CASE NO: SCD160785

POINTS AND AUTHORITIES IN
SUPPORT OF PETITION FOR
WRIT OF CORAM NOBIS
(POSTJUDGMENT MOTION TO
WITHDRAW PLEA AND DISMISS
THE CHARGES)

Date:
Time:
Dept.:

I.

STATEMENT OF THE FACTS

On April 19, 2004 Petitioner plead guilty to one count of Penal Code 182(a)(1). Petitioner told her attorney that she was not guilty of the charges. Petitioner was told by her attorney that if she did not take the deal the District Attorney would make it harder on her husband and he could go to prison. To avoid that threat Petitioner reluctantly plead guilty pursuant to the plea agreement but refused to initial box 13 on the change of plea form.

After the completion of Petitioner's case DDA Marugg pursued a relationship with Petitioner and wrote her emails wherein he stated, "I am sorry you are having so much trouble. It

1 makes me feel guilty for filing charges against you. I wish I had a time machine so I could
2 straighten all of this out.” DDA Marugg sent a letter to an Administrative Law Judge on
3 Petitioner’s behalf stating in part, “had I known then what I now know I would not have included
4 Ms. McAnally in the indictment.”

5 In August of 2010, the San Diego District Attorney’s office conducted an internal
6 investigation into possible misconduct involving San Diego Deputy District Attorney Ernest
7 Marugg. Though the conclusions have not been published, Mr. Marugg resigned in the midst of
8 allegations related to the actual or the appearance of a conflict of interest involving defendants
9 on his cases.

10 Petitioner’s attorney failed to competently represent Petitioner’s interests by failing to
11 properly investigate the evidence and challenge the information presented to the Grand Jury.

12 The Office of the District Attorney has thoroughly reviewed this matter and does not
13 oppose the relief requested based upon the appearance of impropriety by its prosecutor.

14
15
16 POINTS AND AUTHORITIES

17 I.

18 A WRIT OF ERROR CORAM NOBIS IS THE PROPER PROCEDURE FOR A
19 POSTJUDGMENT CHALLENGE TO A GUILTY PLEA

20 After the time of judgment, a petition for writ of error coram nobis is the proper vehicle
21 to vacate a judgment, if no appeal has been taken. *People v. Wadkins* (1965) 63 Cal.2d 110, 113;
22 *People v. Chaklader* (1994) 24 Cal.App.4th 407, 409; *People v. Gordon* (1991) 229 Cal.App.3d
23 1523. The writ is available only where no other remedy exists, or where and other remedy is
24 ineffectual. *People v. Shorts* (1948) 32 Cal.2d 502; *People v. Brady* (1973) 30 Cal.App.3d 81.
25 “a writ of error coram nobis permits the court which recorded the judgment ‘to reconsider it and
26 give relief from errors of fact’ *Witkin, Cal. Crim. Procedure* (1963) Judgment & Attack in Trial
27 Court, §626, p. 616. The writ of coram nobis is only granted when three requirements are met:
28

1 “The petitioner must first show that some fact existed which, without any fault or
2 negligence on his or her part, was not presented to the court at the trial on the
3 merits, and which if presented would have prevented the rendition of the
4 judgment. Second, the petitioner must show that the newly discovered evidence
5 does not go to the merits of issues tried; issues of fact, once adjudicated, even
6 though incorrectly, cannot be reopened except on motion for new trial. This
7 second requirement applies even though the evidence in question is not
8 discovered until after the time for moving for a new trial has elapsed or the
9 motion has been denied. Third, the petitioner must show that the facts upon which
10 he or she relies were not known to him or her and could not in the exercise of due
11 diligence have been discovered at any time substantially earlier than the time of
12 the motion for the writ.” *Mendez v. Superior Court*, 87 Cal. App. 4th 791.

13 The propriety of a petition for error coram nobis relief is measure by an objective
14 standard. “[A] court should grant a coram nobis petition and allow the withdrawal of a plea if the
15 presentation at the hearing establishes that a reasonable person in the defendant’s position, had
16 he been correctly advised by the judge or other responsible public official, would not have
17 entered a guilty plea and forfeited his ‘substantial legal right’ to a trial.” *People v. Goodrum*
18 (1991) 228 Cal.App.3d 397, 401. “The writ of error coram nobis may properly be used to attack
19 the validity of appellants’ pleas of guilty on the grounds of coercion, ignorance, mistake or
20 fraud.” *People v. Tuthill* (1948) 32 Cal.2d 819, 821

21
22 II.

23 THE WRIT OF ERROR CORAM NOBIS SHOULD BE GRANTED BECAUSE THE
24 PROSECUTOR HAD AN INHERENT CONFLICT OF INTEREST.

25 The responsibility of a public prosecutor differs from that of the usual advocate; his duty
26 is to seek justice, not merely to convict. This special duty exists because: (1) the prosecutor
27 represents the sovereign and therefore should use restraint in the discretionary exercise of
28 governmental powers such as in the selection of cases to prosecute; (2) the prosecutor is not only

1 an advocate but he also may make decisions normally made by an individual client, and those
2 affecting the public interest should be fair to all; and (3) in our system of criminal justice the
3 accused is to be given the benefit of all reasonable doubts. *United States v. Singleton*, 144 F.3d
4 1343 (10th Cir. 1998).

5 The conflict in this case violated Petitioner's right to due process under the state and
6 federal constitutions. *Ganger v. Peyton*, 379 F.2d 709, 714 (4th Cir. 1967) (violation of due
7 process clause of Fourteenth Amendment); *Sinclair v. State*, 278 Md. 243, 255 n.8 (1976)
8 (violation of State policy); *People v. Zimmer*, 51 N.Y.2d 390, 395 (1980) (violation of State
9 policy); *Commonwealth v. Eskridge*, 529 Pa. 387, 392 (1992) (violation of State policy); *Cantrell*
10 *v. Commonwealth*, 229 Va. 387, 394 (1985) (State Constitution's due process provision violated).

11 As Judge Friendly put it in *Wright v. United States*, supra, 732 F.2d at page 1056, a
12 prosecutor "is not disinterested if he or she is under the influence of others who have an axe to
13 grind against the defendant." (Italics added.) The tie that binds the prosecutor to an interested
14 person may be compelling though it derives from the prosecutor's institutional objectives or
15 obligations.

16 A criminal defendant has a right to a disinterested prosecutor:

17 "A prosecuting attorney's obligation is to secure a fair and impartial trial for
18 the public and for the defendant. His obligation to the defendant in this regard
19 is as great as is his obligation to the public. The district attorney is
20 vital to the administration of Justice and to the vindication of constitutional
21 rights. In view of his great responsibilities, a district attorney may not
22 compromise his impartiality." *Commonwealth v. Tabor*, 376 Mass. 819-820
23 (1978), *People v Doyle*, 159 Mich App 632, 646; 406 NW2d 893 (1987) (entire
24 prosecutor's office disqualified where supervisory attorney with personal
25 interest in case was not immediately shielded from any involvement).

26 The nature of the impartiality required of the public prosecutor follows from the
27 prosecutor's role as representative of the People as a body, rather than as individuals. "The
28 prosecutor speaks not solely for the victim, or the police, or those who support them, but for all

1 the People that body of “The People” includes the defendant and his family and those who care
2 about him...” (Corrigan, On Prosecutorial Ethics (1986) 13 Hastings Const.L.Q. 537, 538-539.)

3
4 After the completion of Petitioner’s case DDA Marugg pursued a relationship with
5 Petitioner and wrote her emails wherein he stated, “I am sorry you are having so much trouble. It
6 makes me feel guilty for filing charges against you. I wish I had a time machine so I could
7 straighten all of this out.” DDA Marugg sent a letter to an Administrative Law Judge on
8 Petitioner’s behalf stating in part, “had I known then what I now know I would not have included
9 Ms. McAnally in the indictment.” This appearance of a conflict warrants the petitioned relief.
10 In fact the relationship between Marugg and the Petitioner lulled the Petitioner into not taking
11 affirmative steps to clear her name.

12
13 III.

14 INEFFECTIVE ASSISTANCE OF COUNSEL

15 Petitioner’s former defense attorney, Ms. A. Roxanne Bukowski, breached her fiduciary
16 duty and failed to do what she was obligated to do by virtue of the terms laid in the United States
17 Constitution, and set in line with the model rules laid down by the American Bar Association.
18 In order for “equal justice for all” to be more than a hollow promise, people require access to the
19 courts that is meaningful, with representation by qualified counsel, the opportunity to physically
20 enter the court and to understand and to participate in the proceedings, and the assurance that
21 their claims will be heard by a fair and capable decision-maker and decided according to the rule
22 of law.

23 The California Supreme Court has held that a plea of guilty is not knowingly and
24 intelligently made when a defendant does not have knowledge of a potentially meritorious
25 defense prior to entering the plea. *People v. Harvey* (1984) 151 Cal.App.3d 660, 668-671; see
26 also *In re Williams* (1969) 1 Cal.3d 168, 177. “Where the facts establish that counsel was
27 ignorant of the facts or the law and it appears that such ignorance caused the withdrawal of a
28 crucial defense, his client is entitled to relief.” *People v. Stanworth* (1974) 11 Cal.3d 588,611

1 Petitioner's attorney failed to competently investigate and defend Petitioner's interests in
2 the case. Petitioner's attorney failed to file motions to dismiss the Grand Jury indictment. She
3 also failed to investigate and present to the prosecution evidence from the companies book
4 keeper Jenna McAnally-Larsen, which confirmed that she was the person who primarily
5 prepared and signed the State Fund payroll reports not the Petitioner.

6 In *Johnson v. Zerbst*, 304 U.S.458, 58 S. Ct. 1019, 82 L. Ed. 1461 (1938), the U.S.
7 Supreme Court held that the right to competent counsel is "one of the safeguards...deemed
8 necessary to insure fundamental human rights of life and liberty." In making this decision, the
9 Court noted "the obvious truth that the average defendant does not have the professional legal
10 skill to protect himself." In 1970, the right to qualified counsel was explicitly recognized as a
11 part of the Sixth Amendment's guarantee (*McMann v. Richardson*, 397 U.S. 759 (1970)). The
12 Supreme Court has also read the Sixth Amendment to mean that a criminal defendant is entitled
13 to effective legal counsel.

14 Petitioner was entitled to a "competent attorney acting as a diligent, conscientious
15 advocate (*People v. Pope* (1979) 23 Cal.3d 412, 424, 152 Cal.Rptr. 732, 738). Instead, Mrs.
16 Petitioner's attorney failed to investigate the case, file necessary motions and present evidence
17 that it was the bookkeeper's signature on the State Fund reports and that Petitioner did not
18 present false documentation.

19 Petitioner was offered a "take it, or else" plea bargain. Petitioner's attorney explained
20 that, "if she didn't accept the plea, DDA Marugg would inflict a harsher sentence upon her
21 husband". Petitioner has consistently maintained her innocence:

22 In determining whether there is a fair and just reason to grant a motion to withdraw a
23 plea, the district court must review all the circumstances surrounding the original
24 entrance of the plea as well as the motion to withdraw. *Jerry*, 487 F.2d at 611. The court
25 should consider whether the movant asserted a defense or whether he has consistently
26 maintained his innocence, *Barker*, 514 F.2d at 220; *United States v. Joslin*, 434 F.2d 526,
27 530 (D.C.Cir.1970), as well as the reasons that a stated defense was not raised at an
28 earlier time.

1 In *North Carolina v. Alford*, 400 U.S. 25, 31 (1970), the court explained that the standard
2 for the validity of a guilty plea is “whether the plea represents a voluntary and intelligent choice
3 among the alternative courses of action open to the defendant”. In *Brady v. United States*, 397
4 U.S. 742, 748 (1970), a guilty plea case, it explained that “[w]aivers of constitutional rights not
5 only must be voluntary but must be knowing, intelligent acts done with sufficient awareness of
6 the relevant circumstances and likely consequences.”

7 Even though Petitioner refused to initial box #13 on the plea agreement, her attorney told
8 the court that she observed Mrs. McAnally initial each item to acknowledge that she understood,
9 and agreed, to the facts noted on the plea agreement.

10
11 III.

12 CONCLUSION

13 This court is asked to grant Petitioner’s Writ of Error Corum Nobis allowing her to
14 withdraw her plea of guilty and dismiss all charges with the concurrence of the Office of the
15 District Attorney.

16
17
18 Dated: April 4, 2011

LAW OFFICES OF C. BRADLEY PATTON

19
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21 

22 C. Bradley Patton, Attorney for Defendant
23
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25
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27
28

Exhibit “2”

1 C. Bradley Patton, Esq. (SBN: 67087)
2 LAW OFFICES OF C. BRADLEY PATTON
3 1808 Aston Ave, Suite 240
4 Carlsbad, CA 92008-7364
5 Telephone: (760) 438-3636

6 Attorney for Defendant
7 TAMARA MCANALLY

FILED
Clerk of the Superior Court

APR 12 2011

By: Theresa Cruz, Deputy

8 **SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO**
9 **CENTRAL DIVISION**

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11
12 TAMARA MCANALLY)

CASE NO: SCD160785

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v.

PETITION FOR FACTUAL FINDING
OF INNOCENCE PURSUANT TO
PENAL CODE SECTION 851.8(d)

PEOPLE OF THE STATE
OF CALIFORNIA,

Real Party in Interest

I

STATEMENT OF THE CASE

In April of 2004, Petitioner plead guilty to one count of Penal Code 182(a)(1). In April 2011 Petitioner's Writ of Error Corum Nobis was granted by this court and with the concurrence of the Office of the District Attorney at which time the former plea of guilty was withdrawn and all charges were dismissed. Petitioner now files this Petition for Factual Finding of Innocence with the Superior Court pursuant to Penal Code §851.8(c) also with the concurrence of the Office of the District Attorney.

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III

STATEMENT OF FACTS

This court is referred to the factual basis set forth in the Writ of Error Corum Nobis filed in connection with this Petition as the factual basis for this request.

IV

POINTS AND AUTHORITIES

Penal Code §851.8(d) provides that, "In any case where a person has been arrested and an accusatory pleading has been filed, but where no conviction has occurred, the court may, with the concurrence of the prosecuting attorney, grant the relief provided in subdivision (b) at the time of the dismissal of the accusatory pleading." In the present matter the court has granted Petitioner's Writ of Error Coram Nobis authorizing that the previously plea of guilty to be withdrawn and full dismissal of all charges.

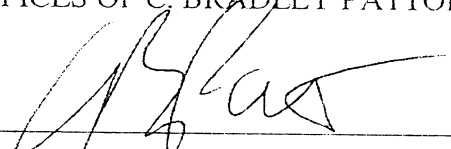
III

CONCLUSION

Accordingly Petitioner, with the concurrence of the Office of the District Attorney, asks this court to grant her motion for a factual finding of innocence and issue appropriate orders sealing and destroying her records of arrest and charges.

Dated: April 4, 2011

LAW OFFICES OF C. BRADLEY PATTON



C. Bradley Patton
Attorney for Defendant

Exhibit “3”

FILED

SAN DIEGO SUPERIOR COURT

MAY 16 2011

CLERK OF THE SUPERIOR COURT
BY R. HERRERA

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**SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO
CENTRAL DIVISION**

TAMARA MCANALLY,

Petitioner,

v.

PEOPLE OF THE STATE
OF CALIFORNIA,

Respondent

CASE NO.: SCD160785

ORDER FOR FACTUAL
FINDING OF INNOCENCE
AND DESTRUCTION OF
RECORDS

This matter came on for noticed motion for a finding of factual innocence pursuant to Penal Code section 851.8(d). The court considered all pleadings and the stipulation by the Office of the District Attorney to the relief requested.

GOOD CAUSE APPEARING, the court finds Tamara McAnally to be factually innocent of the charge of Penal Code §182(a)(1) as pled in the indictment in the above entitled case. Accordingly the court HEREBY ORDERS the San Diego District Attorney's Office, the Department of Justice, any law enforcement agency which arrested the petitioner and/or participated in the arrest of the petitioner for the offense for which Tamara McAnally has been found factually innocent under this section, as well as the San Diego Superior Court to seal their records of the arrest and charges for three years from the date of this Order and thereafter to destroy their records of the arrest and charges. The court further ORDERS the San Diego District Attorney's Office and the Department of Justice to request the destruction of any records of the arrest which they have given to any local, state, or federal agency, person or entity. Each state or

1 local agency, person or entity within the State of California receiving such a request is hereby
2 ordered to destroy its records of the arrest and the request to destroy such records, unless
3 otherwise provided in section 851.8 of the Penal Code. The court shall give to the petitioner a
4 copy of any court order concerning the destruction of the arrest records.

5 Documentation of arrest records hereby ordered to be destroyed shall bear the notation
6 "Exonerated" whenever reference is made to the arrestee.

7 It is further ORDERED that destruction of records of arrest as herein identified shall be
8 accomplished by permanent obliteration of all entries or notations upon such records pertaining
9 to the arrest and the record shall be prepared again so that it appears that the arrest never
10 occurred. However, where (1) the only entries on the record pertain to the arrest and (2) the
11 records can be destroyed without necessarily effecting the destruction of other records, then the
12 document constituting the record shall be physically destroyed.

13 No record shall be destroyed pursuant to this order if Tamara McAnally has filed a civil
14 action against the peace officers or law enforcement jurisdiction which made the arrest or
15 instituted the prosecution and if the agency which is the custodian of such records has received a
16 certified copy of the complaint in such civil action, until the civil action has been resolved. Any
17 records sealed pursuant to this section by the court in the civil actions, upon a showing of good
18 cause, may be opened and submitted in to evidence. The records shall be confidential and shall
19 be available for inspection only by the court, jury, parties and counsel for the parties and any
20 other person authorized by the court. Immediately following the final resolution of the civil
21 action, records subject to this order shall be sealed and destroyed.

22 Date: **MAY 16 2011**

23
24 Approved as to form and content

25 _____
26 Deputy District Attorney

DAVID J. DANIELSEN

Judge of the Superior Court

CLERK'S CERTIFICATE



The foregoing document, consisting of
2 page(s), is a full, true, and correct
copy of the original copy on file in
this office.

5/16/11 Clerk of the Superior Court
Date by R. Hansen
Deputy

Exhibit “4”

FILED

SAN DIEGO SUPERIOR COURT

MAY 16 2011

CLERK OF THE SUPERIOR COURT
BY R. HERRERA

**THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN DIEGO**

11 IN THE MATTER OF THE PETITION OF: SCD 160785
12 TAMARA MCANALLY, ORDER GRANTING PETITION
13 Petitioner. FOR WRIT OF ERROR CORAM NOBIS

16 AFTER REVIEWING THE VERIFIED PETITION FOR WRIT OF ERROR CORAM
17 NOBIS, THE PEOPLE'S RESPONSE AND THE RECORD IN THIS CASE, THE COURT
18 FINDS AND CONCLUDES AS FOLLOWS:

19 In 2004, petitioner pleaded guilty to one felony count of Conspiracy (Penal Code section
20 182 (a)(1)) to commit an insurance fraud (IC section 11880(a)), and the trial court ordered the
21 imposition of sentence suspended and placed her on a 5 year formal probation. Thereafter, on
22 March 6, 2006, the court permitted her early termination of probation and granted relief pursuant
23 to Penal Code section 1203.4(a) dismissing the case.

24 The court concludes that there have been substantial irregularities in the prosecution of
25 this case, of which the court was unaware until this petition, that undermine the lawfulness of
26 defendant's conviction. Petitioner has discovered the assigned prosecutor's undisclosed conflict
27 of interest and established that the prosecutor obtained her conviction as the result of his failure
28

1 to discharge ethical obligations. Based also, in part, on the People's concession that this writ
2 relief sought is the proper remedy, the court now grants the relief requested.

3 Accordingly, the writ of error *coram nobis* issues forthwith directing that the Penal Code
4 section 1203.4(a) relief be set aside, that the defendant's conviction and plea in this matter be
5 vacated, and that the case be dismissed *nunc pro tunc* as of April 19, 2004 as to this petitioner
6 only.

7 It is further ordered that this Order be served on petitioner, through her attorney, C.
8 Bradley Patton and the District Attorney's Office, attn: Damon Mosler.

9
10 IT IS SO ORDERED.

11 DATED: 5/16/11

David J. Danielsen
12 DAVID J. DANIELSEN
13 JUDGE OF THE SUPERIOR COURT



CLERK'S CERTIFICATE

The foregoing document, consisting of
2 pages, is a full, true, and correct
copy of the original copy on file in
this office.

Clerk of the Superior Court

5/16/11 by *R. Nimer*
Date Deputy

CIVIL COVER SHEET

The JS 44 civil coversheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS
 Tamara McAnally; Jon McAnally

(b) County of Residence of First Listed Plaintiff San Diego
 (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)
 Law Office of Donnie R. Cox, See Attached for Additional Attys.)

DEFENDANTS
 Ernest L. Marugg; (see attached for additional defendants)

County of Residence of First Listed Defendant San Diego
 (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

1 U.S. Government Plaintiff
 3 Federal Question (U.S. Government Not a Party)
 2 U.S. Government Defendant
 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

| | | | | | |
|---|---|---|---|---|--------------------------------|
| Citizen of This State | PTF <input checked="" type="checkbox"/> 1 | DEF <input checked="" type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | PTF <input checked="" type="checkbox"/> 4 | DEF <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

| CONTRACT | TORTS | FORFEITURE/PENALTY | BANKRUPTCY | OTHER STATUTES | |
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| <input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise | PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury | PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability | <input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other | <input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark | <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influence and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities Commodities Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes |
| REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property | CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/ Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input checked="" type="checkbox"/> 440 Other Civil Rights | PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition | LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor Mgmt. Relations <input type="checkbox"/> 730 Labor Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act | SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609 | |

V. ORIGIN (Place an "X" in One Box Only)

1 Original Proceeding
 2 Removed from State Court
 3 Remanded from Appellate Court
 4 Reinstated or Reopened
 5 Transferred from another district (specify)
 6 Multidistrict Litigation
 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
42 USC 1983

Brief Description of cause:
Violation of Civil Rights, Monell Based Claims

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

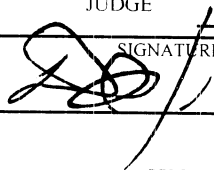
DEMANDS According to Proof

JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY (See instructions):

JUDGE _____ DOCKET NUMBER _____

DATE: 11/22/2011

SIGNATURE OF ATTORNEY OF RECORD: 

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

Attachment to JS. 44 (Rev.12/07)

Civil Case Coversheet Attachment

Plaintiffs' Attorneys

I. (c) Donnie R. Cox, SBN 137950
drcoxlaw@aol.com
Dennis B. Atchley, SBN 70036
dbalaw@yahoo.com
Law Office of Donnie R. Cox
402 North Nevada Street
Oceanside, CA 92054-2025
(760) 400-0263

Paul W. Leehey, SBN 92009
Law Office of Paul W. Leehey
210 E. Fig Street, Ste. 101
Fallbrook, CA 92028
(760) 723-0711
law@leehey.com

DEFENDANTS:

ERNEST L. MARUGG; COUNTY OF SAN DIEGO; SAN COUNTY
DISTRICT ATTORNEY; BONNIE M. DUMANIS; ALEXANDER LUTZI
DOMINIC DUGO; DAVID LATTUCA; STATE COMPENSATION
INSURANCE FUND; KATHEY BRADLEY; and Does 1 to 100 Inclusive