UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

JS-6

CIVIL MINUTES—GENERAL

Case No. CV 18-1148-MWF (PLAx) **Date: May 22, 2018**
Title: Maricela Long v. County of Los Angeles, et al.

Present: The Honorable MICHAEL W. FITZGERALD, U.S. District Judge

Deputy Clerk:	Court Reporter:
Rita Sanchez	Not Reported
Attorneys Present for Plaintiff:	**Attorneys Present for Defendant:**
None Present	None Present

Proceedings (In Chambers): ORDER RE: DEFENDANT COUNTY OF LOS ANGELES' MOTION TO DISMISS, AND MOTION FOR A MORE DEFINITE STATEMENT AS TO PLAINTIFF'S COMPLAINT [14]; MOTION TO DISMISS BY DEFENDANT LEROY BACA PURSUANT TO FEDERAL RULES OF CIVIL PROCEDURE RULE 12(B)(6), OR IN THE ALTERNATIVE FOR A MORE DEFINITE STATEMENT PURSUANT TO RULE 12(E) [21]; PLAINTIFF'S EX PARTE REQUEST THAT THE COURT STRIKE OR NOT CONSIDER NEW ARGUMENT AND AUTHORITIES RAISED FOR THE FIRST TIME IN DEFENDANT BACA'S REPLY BRIEF [34]; PLAINTIFF'S AMENDED EX PARTE REQUEST THAT THE COURT STRIKE OR NOT CONSIDER NEW ARGUMENT AND AUTHORITIES RAISED FOR THE FIRST TIME IN DEFENDANT BACA'S REPLY BRIEF [35]

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Before the Court are two motions:

First, there is the Motion to Dismiss, and Motion for a More Definite Statement as to Plaintiff's Complaint (the "County Motion"), filed by Defendant County of Los Angeles on March 20, 2018. (Docket No. 14). On April 16, 2018, Plaintiff filed an Opposition (the "County Motion") to the County Motion. (Docket No. 27). On April 23, 2018, the County filed a Reply. (Docket No. 28).

Second, there is the Motion to Dismiss Pursuant to Federal Rules of Civil Procedure Rule 12(b)(6), or in the Alternative for a More Definite Statement Pursuant to Rule 12(e) (the "Baca Motion"), filed by Defendant Leroy Baca on March 29, 2018. (Docket No. 21). On April 23, 2018, Plaintiff filed an Opposition (the "Baca Motion") to the Baca Motion. (Docket No. 29). On April 30, 2018, Baca filed a Reply. (Docket No. 31).

Also before the Court are Plaintiff's Ex Parte Request that the Court Strike or Not Consider New Argument and Authorities Raised for the First Time in Defendant Baca's Reply Brief, and Plaintiff's Amended Ex Parte Request that the Court Strike or Not Consider New Argument and Authorities Raised for the First Time in Defendant Baca's Reply Brief (together, the "Ex Parte Applications"), filed on May 11 and 15, 2018. (Docket Nos. 34, 35).

The Court held a hearing on May 18, 2018.

For the reasons discussed below, the County Motion and the Baca Motion are both **GRANTED *without leave to amend***. If Plaintiff were to succeed in this section 1983 lawsuit it would necessarily imply the invalidity of her prior, Ninth-Circuit-affirmed, criminal conviction on obstruction of justice, false statement, and conspiracy charges, and is thus barred by *Heck v. Humphrey* and its progeny. No amount of tinkering with the Complaint (absent filing an entirely different lawsuit) could change that, so leave to amend is unwarranted.

The Ex Parte Applications are **DENIED *as moot***, as the Court does not rely upon the challenged portions of the Baca Reply to reach its decision.

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I. BACKGROUND

Plaintiff was employed for more than 23 years as a Deputy with the Los Angeles County Sheriff's Department ("LASD"). (Complaint ¶ 1). Defendant Baca was the County Sheriff until January 7, 2014, when he resigned. (*Id.*).

During the summer of 2011, the FBI, in conjunction with a federal grand jury, was investigating "incidents of abuse" inside the Men's Central Jail ("MCJ") in downtown Los Angeles. (*Id.* ¶ 15). In connection with its investigation, the FBI, via a cooperating LASD deputy named Gilbert Michel, provided a cell phone to Anthony Brown, an inmate at MCJ, for the purpose of recording incidents of inmate abuse and communicating with the FBI. (*Id.* ¶¶ 15-16). On August 8, 2011, LASD staff found and seized the cell phone from Brown. (*Id.* ¶ 16).

Soon after seizing the cell phone from Brown, the LASD commenced an investigation, which revealed that Brown had received the cell phone from the FBI. (*Id.* ¶ 17). On August 20, 2011, Baca, "angry that the FBI had smuggled a phone into MCJ," ordered that Brown be segregated and not allowed to meet with anyone, including anyone from the FBI, without authorization from Undersheriff Paul Tanaka. (*Id.* ¶ 18). Baca also ordered the Internal Criminal Investigations Bureau ("ICIB"), a department tasked with investigating misconduct within the LASD to which Plaintiff had recently been assigned, to conduct "a criminal investigation to identify corrupt or criminal behavior on the part of LASD employees, as well as potential criminal behavior by the FBI agent or agents who smuggled cellphones … into MCJ." (*Id.*).

In August and September 2011, Plaintiff and other LASD members participated in the following activities in furtherance of Baca's orders:

- On August 23, 2011, after LASD deputies had inadvertently allowed three FBI agents to interview Brown at the MCJ, "a LASD Sergeant confronted FBI agents who were interviewing" Brown and terminated the interview. (*Id.* ¶¶ 19, 22).

- On August 24, 2011, Plaintiff and Sergeant Scott Craig interviewed Brown, "asking [him] about his contacts with the FBI, what they were interested in, and who Brown's FBI contacts were." (*Id.* ¶ 25).

- On August 25 and 26, 2011, after the United States District Court had issued a writ requiring Brown to testify before a grand jury on September 7, LASD officials rebooked Brown "under a series of different aliases," rendering it impossible "for the FBI, the Marshals, or anyone in LASD's Warrants and Detainers section to find Brown," and then relocated Brown from the MCJ to another jail in San Dimas, California. (*Id.* ¶¶ 25-26).

- On August 26, 2011, Plaintiff and Craig again interviewed Brown "regarding his contacts with the FBI." (*Id.* ¶ 27).

- On August 30, 2011, Plaintiff, Craig, and LASD Lieutenant Stephen Leavins interviewed Deputy Michel regarding his cooperation with the FBI. On the same day, this same trio interviewed LASD Deputy William Courson, who had been contacted by FBI agent Leah Marx regarding his potential cooperation in the FBI/grand jury investigation. (*Id.* ¶¶ 28-29).

- On September 13, 2016, Craig instructed LASD personnel "to conduct surveillance on [FBI] Agent Marx's residence. They tracked her to her apartment, identified her car, and followed her to work." (*Id.* ¶ 30).

- On the evening of September 26, 2011, allegedly pursuant to Baca's orders during a meeting earlier that day (which Plaintiff did not attend) and with the blessing of the LASD's chief counsel, Plaintiff and Craig confronted FBI agent Marx outside of her home. Craig "told Marx that she was a named suspect in a felony complaint, that he was in the process of swearing out a declaration for an arrest warrant for Agent Marx, and that LASD was arranging for her arrest." (*Id.* ¶¶ 31-33).

- Later that same evening (September 26), FBI agent Narro, Marx's supervisor, called Plaintiff and Craig to ask if there would in fact be a warrant for agent Marx's arrest. Plaintiff – allegedly under the belief that Baca intended to have Marx arrested – responded that "there's going to be." (*Id.* ¶¶ 34-35).

As a result of these and other activities, in 2013 Plaintiff, Craig, Leavins, and other LASD employees were arrested and indicted on obstruction of justice, conspiracy to obstruct justice, and (in the case of Plaintiff and Craig) false statement charges. (*Id.* ¶ 40); *U.S. v. Thompson et al.*, Case No. 2:13-cr-00819-PA; *U.S. v. Smith*, 831 F.3d 1207, 1214 (9th Cir. 2016).

Following her arrest, Plaintiff was suspended from the LASD without pay. (Complaint ¶ 42).

Plaintiff was ultimately tried and, on September 23, 2014, convicted of obstruction of justice, in violation of 18 U.S.C. § 1503(a); conspiracy to obstruct justice, in violation of 18 U.S.C. § 371; and making false statements in connection with a federal investigation, in violation of 18 U.S.C. § 1001(a)(2). *U.S. v. Thompson et al.*, Case No. 2:13-cr-00819-PA, Docket No. 612.

Plaintiff was sentenced to two years imprisonment and, after the Ninth Circuit affirmed her conviction, began serving her sentence in April 2017. *Id.* Docket Nos. 612, 932; *U.S. v. Smith*, 831 F.3d at 1222 (affirming convictions of Plaintiff and other LASD employees); (Complaint ¶ 49).

Following her conviction, the LASD terminated Plaintiff's employment. (Complaint ¶ 58).

Through this action, Plaintiff alleges, pursuant to 42 U.S.C. § 1983, that Baca violated her substantive due process rights (with the ultimate impacted interests apparently being liberty and continued employment) and also seeks to impose liability on the County under a municipal liability theory. (*See* Complaint ¶¶ 59-80). Plaintiff alleges that Baca and his subordinates "failed to tell Plaintiff that the actions she and her partner were instructed to take, in furtherance of what they were told was the

Sheriff Department's investigation, would be construed and prosecuted as interference with an FBI investigation and a violation of Federal law." (*Id.* ¶ 61). "By directing LASD to conduct an investigation and to contact Marx, setting in motion a series of acts by his subordinates in furtherance of the investigation and contact with Marx, knowingly refusing to stop the investigation or contact with Marx, Baca … knew or reasonably should have known that he and his subordinates would cause Plaintiff to be deprived of her constitutional rights." (*Id.* ¶ 63).

Plaintiff seeks compensatory damages of at least $250,000 to account for "the loss of her job and livelihood …, loss of liberty in connection with her conviction, as well as a decrease in retirement benefits she might otherwise have been entitled to upon retirement." (*Id.* ¶¶ 68, 79, 80).

II. PLEADING STANDARD

"Dismissal under Rule 12(b)(6) is proper when the complaint either (1) lacks a cognizable legal theory or (2) fails to allege sufficient facts to support a cognizable legal theory." *Somers v. Apple, Inc.*, 729 F.3d 953, 959 (9th Cir. 2013). "Federal Rule of Civil Procedure 8(a)(2) requires only 'a short and plain statement of the claim showing that the pleader is entitled to relief,' in order to 'give the defendant fair notice of what the . . . claim is and the grounds upon which it rests . . . ." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (quoting *Conley v. Gibson*, 355 U.S. 41, 47 (1957)).

In ruling on the Motion under Rule 12(b)(6), the Court follows *Twombly* and *Ashcroft v. Iqbal*, 556 U.S. 662 (2009). "To survive a motion to dismiss, a complaint must contain sufficient factual matter . . . to 'state a claim to relief that is plausible on its face.'" *Iqbal*, 556 U.S. at 678 (quoting *Twombly*, 550 U.S. at 570). The Court must disregard allegations that are legal conclusions, even when disguised as facts. *See id.* at 681 ("It is the conclusory nature of respondent's allegations, rather than their extravagantly fanciful nature, that disentitles them to the presumption of truth."); *Eclectic Properties E., LLC v. Marcus & Millichap Co.*, 751 F.3d 990, 996 (9th Cir. 2014). "Although 'a well-pleaded complaint may proceed even if it strikes a savvy

judge that actual proof is improbable,' plaintiffs must include sufficient 'factual enhancement' to cross 'the line between possibility and plausibility.'" *Eclectic Properties*, 751 F.3d at 995 (quoting *Twombly*, 550 U.S. at 556–57) (internal citations omitted).

The Court must then determine whether, based on the allegations that remain and all reasonable inferences that may be drawn therefrom, the complaint alleges a plausible claim for relief. *See Iqbal*, 556 U.S. at 679; *Cafasso, U.S. ex rel. v. Gen. Dynamics C4 Sys., Inc.*, 637 F.3d 1047, 1054 (9th Cir. 2011). "Determining whether a complaint states a plausible claim for relief is 'a context-specific task that requires the reviewing court to draw on its judicial experience and common sense.'" *Ebner v. Fresh, Inc.*, 838 F.3d 958, 963 (9th Cir. 2016) (quoting *Iqbal*, 556 U.S. at 679). Where the facts as pleaded in the complaint indicate that there are two alternative explanations, only one of which would result in liability, "plaintiffs cannot offer allegations that are merely consistent with their favored explanation but are also consistent with the alternative explanation. Something more is needed, such as facts tending to exclude the possibility that the alternative explanation is true, in order to render plaintiffs' allegations plausible." *Eclectic Properties*, 751 F.3d at 996–97; *see also Somers*, 729 F.3d at 960.

III. DISCUSSION

Both the County and Baca argue, among other things, that this action is barred by *Heck v. Humphrey*, 512 U.S. 477 (1994) and its progeny. (*See* County Mot. at 2-3; Baca Mot. at 18-20). The Court agrees.

In *Heck* the Supreme Court held that a state prisoner may not pursue a section 1983 action if victory in that action would cast doubt upon the propriety of the prisoner's prior criminal conviction:

> [W]hen a state prisoner seeks damages in a § 1983 suit, the district court must consider whether a judgment in favor of the plaintiff would ***necessarily imply*** the invalidity of his conviction or sentence; if it would, the complaint must be

> dismissed unless the plaintiff can demonstrate that the conviction or sentence has already been invalidated.

Heck, 512 U.S. at 486-87 (emphasis added).

As explained by the Ninth Circuit, "*Heck* says that 'if a criminal conviction arising out of the same facts stands and is ***fundamentally inconsistent*** with the unlawful behavior for which section 1983 damages are sought, the 1983 action must be dismissed.'" *Smith v. City of Hemet*, 394 F.3d 689, 695 (9th Cir. 2005) (quoting *Smithart v. Towery*, 79 F.3d 951, 952 (9th Cir. 1996) (emphasis added).

In determining whether a section 1983 suit is fundamentally inconsistent with a prior criminal conviction, and thus barred, the Ninth Circuit has focused on an instructive footnote from the *Heck* opinion: "[A]n important touchstone is whether a § 1983 plaintiff could prevail only by ***negating 'an element of the offense*** of which he has been convicted.'" *Cunningham v. Gates*, 312 F.3d 1148, 1154 (9th Cir. 2002) (quoting *Heck*, 512 U.S. at 487 n. 6) (emphasis added).

The Court will assume for present purposes that Plaintiff's Complaint actually implicates any recognized due process interests -- peeling back the layers of grievances, Plaintiff appears to be asserting a right not to be subject to ill-conceived or criminal instructions from public sector supervisors. Even so assuming, she cannot ultimately succeed in this case without undermining her criminal conviction.

Because the primary focus of Plaintiff's appeal was the propriety of the jury instructions, the Ninth Circuit helpfully laid out the district court's pertinent intent-related instructions in its opinion affirming Plaintiff's conviction:

> ***Obstruction of justice.*** With respect to the obstruction of justice charge, the district court instructed the jury that the government was required to prove beyond a reasonable doubt that Plaintiff, *inter alia*, "***acted corruptly*** with knowledge of a pending federal grand jury investigation and with the ***intent to obstruct*** the federal grand jury investigation." *Smith*, 831 F.3d at 1215 n. 7. The district court instructed

the jury that "'corruptly' means that the act must be done with the ***purpose of obstructing justice***." *Id.*

Conspiracy. While the Ninth Circuit did not address the district court's conspiracy-related instructions (because Plaintiff must have made no arguments about them), in order to obtain a conviction for conspiracy under 18 U.S.C. § 371, the government must prove: "(1) an ***agreement to engage in criminal activity***, (2) one or more overt acts taken to implement the agreement, and (3) the ***requisite intent to commit the substantive crime***." *U.S. v. Kaplan*, 836 F.3d 1199, 1212 (9th Cir. 2016) (emphasis added; internal quotation marks and citations omitted).

False statement. With respect to the false statement charge, the district court instructed the jury that the government was required to prove that Plaintiff, *inter alia*, "made a false statement in a matter within the jurisdiction of the Federal Bureau of Investigation," "***knew the statement was false***," and "***acted willfully***." *Smith*, 831 F.3d at 1222 n. 27 (emphasis added). The district court instructed the jury that "'willfully' means that the defendant [*i.e.*, Plaintiff] ***made the statement voluntarily and purposely and with knowledge that the defendants' making of the statement was unlawful***. That is, the defendant must have made the statement with a ***purpose to disobey or disregard the law***." *Id.* (emphasis added).

"Good faith" instruction. The district court also provided the jury with this separate "good faith" instruction:

> Evidence that a defendant relied in good faith on the orders the defendant received from the defendants' superior officers and that the defendant reasonably and objectively believed that those orders to be lawful is inconsistent with an unlawful intent and is evidence you may consider in determining if the Government has proven beyond a reasonable doubt that a defendant had the required unlawful intent.
>
> If you find, however, that a defendant carried out those orders with an unlawful intent to obstruct a grand jury investigation

> or that a defendant did not reasonably and objectively believe the superiors' orders to be lawful, the defendants' conduct is not excused by a claim or evidence that the defendant might have been following orders of his or her superiors.

Id. at 1219 n. 18.

The crux of this lawsuit is that Plaintiff was an innocent LASD employee who was unwittingly roped into obstructing an FBI investigation by Baca and his underlings. The Complaint is replete with such allegations. (*See, e.g.*, Complaint ¶¶ 24 ("Plaintiff had never been counseled, trained, or advised regarding when it is appropriate to investigate federal law enforcement agencies for potential violations of state law."), 33 ("Adhering to the Sheriff's Department protocol and policy of following orders given by superiors, Plaintiff accompanied Craig to Agent Marx's home on the evening of September 26, 2011."); *see also id.* ¶¶ 34, 35, 42, 48, 61, 63, 65, 74, 78, 79).

In order to prevail in this action, Plaintiff must ultimately convince a jury that she was an innocent/unwitting actor in connection with the underlying legally problematic interactions between the LASD and the FBI. (If she fails to convince a jury of this, she is simply a former LASD employee who willfully violated federal law and who was duly tried, convicted, imprisoned, and fired as a result.) Such a finding would be in direct conflict with what the jurors – who are presumed to have understood the district court's jury instructions, *see Smith*, 831 F.3d at 1215 – in Plaintiff's criminal case concluded: that Plaintiff acted with the purpose of obstructing justice and disobeying the law and was not simply "following orders" in good faith.

During the hearing, Plaintiff's counsel focused on the Ninth Circuit's rejection of Plaintiff's challenge to the district court's instruction "that the Government did not need to prove that the defendant's sole or primary purpose was to obstruct justice." *Smith*, 831 F.3d at 1217. The Ninth Circuit rejected Plaintiff's argument "that a defendant's unlawful purpose to obstruct justice must be sole or primary," as a "defendant's unlawful purpose to obstruct justice is not negated by the simultaneous presence of another motive for his overall conduct." *Id.* Because she could have been

properly convicted even though her motives were mixed (*i.e.*, obstructing justice and following the orders of her LASD superiors), Plaintiff argues that there is still room for a civil jury to find that Baca, by directing LASD personnel to initiate contact with Marx and so forth, was "the 'moving force' behind [Plaintiff's] constitutional injuries." (County Opp. at 11). In other words, Plaintiff's motives and actions were sufficient for a criminal conviction but not necessarily so dominant as to crowd out Baca's putative civil liability, based on the different criminal and civil standards.

Plaintiff's "moving force"/causation argument, while clever, is unconvincing. First and foremost, it does not solve Plaintiff's *Heck* problem. The ultimate injuries for which Plaintiff seeks redress in this lawsuit are her loss of liberty and her loss of employment. She lost both of these things as a result of her criminal conviction. Plaintiff was convicted because the jury in her criminal trial concluded that she was sufficiently personally culpable to warrant a conviction. In essence, giving due consideration to the criminal jury's conclusions, Plaintiff caused her own loss of liberty and employment. Through this action, Plaintiff wants to have another jury reapportion blame for her conviction – and her resulting incarceration and termination – between herself, Baca, and the County. Allowing a different jury to engage in such reapportionment unquestionably risks undermining the criminal jury's determination that Plaintiff was, in her own right, sufficiently culpable to warrant a guilty verdict on obstruction, false statement, and conspiracy charges.

Moreover, Plaintiff's argument that her own "conduct, even if criminal, did not break the chain of causation" (County Opp. at 11), defies commonsense and is not supported by the case law Plaintiff cites in support of that argument. For example, Plaintiff cites *Van Ort v. Estate of Stanevich* for the proposition that, in section 1983 cases, "[t]raditional tort law defines intervening causes that break the chain of proximate causation." 92 F.3d 831, 837 (9th Cir. 1996). *Van Ort* involved the question of whether San Diego County might be liable to the victims of a violent robbery perpetrated by a deputy of the San Diego County Sheriff's department while he was off duty but after he learned of the existence of a safe containing cash, jewelry, and coins during the course of a Sheriff's Department-sanctioned narcotics search. *See id.* at 833-35.

The Ninth Circuit held that the deputy's "unforeseeable private acts broke the chain of proximate cause connecting the County's alleged negligence to the Van Orts' injuries." *Id.* at 837. That specific ruling favors Baca and the County, not Plaintiff, in that it requires tort law to recognize Plaintiff's arguments. Of course Plaintiff's own criminal acts broke the chain of causation – she could have chosen to obey the law. Plaintiff has not cited, and the Court has not located, any cases where a plaintiff herself committed a criminal act, was convicted and suffered the consequences of a conviction, and then turned around and sued some governmental actor (be it an employer or otherwise) for setting the stage for her to commit her criminal acts. Plaintiff cannot be both the victim and the perpetrator of the intervening criminal activity.

In sum, because Plaintiff cannot prevail in this action without convincing a jury to reach a conclusion that clashes with the conclusion reached by the jury in Plaintiff's criminal case, this action is barred by *Heck*.

In light of the fact that this action is barred by *Heck*, Plaintiff cannot, through any amount of re-pleading, assert a viable section 1983 claim against Baca or the County that is premised upon her criminal conviction and the resulting loss of liberty and employment. *Beets v. County of Los Angeles*, 669 F.3d 1038, 1041-42 (9th Cir. 2012) (explaining that amendment would be futile where claims are barred by *Heck*). It is thus appropriate to grant the County Motion and the Baca Motion without leave to amend.

IV. CONCLUSION

For the reasons set forth above, the County Motion and the Baca Motion are both **GRANTED *without leave to amend***, the Ex Parte Applications are **DENIED *as moot***, and the action is **DISMISSED *with prejudice***.

This Order shall constitute notice of entry of judgment pursuant to Federal Rule of Civil Procedure 58. The Court **ORDERS** the Clerk to treat this Order, and its entry on the docket, as an entry of judgment. Local Rule 58-6.

IT IS SO ORDERED.