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Attorney for Plaintiff

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA**

CARRIE BANKS,

Plaintiff,

vs.

COUNTY OF SAN MATEO; SAN MATEO  
COUNTY DISTRICT ATTORNEY’S  
OFFICE; SAN MATEO COUNTY  
PROBATION DEPARTMENT; STEPHEN  
WAGSTAFFE, in his individual and official  
capacities; SHIN-MEE CHANG, in her  
individual capacity; SHARRON LEE, in her  
individual capacity; LAURA ADAMS, in her  
individual capacity; JOHN KEENE, in his  
individual and official capacities; ALFONSO  
HERNANDEZ, in his individual capacity;  
SANITH SISAVATH, in his individual  
capacity, ELISA KUHL, in her individual  
capacity; THERESA DAH, in her individual  
capacity; and DOES 1 through 100,  
individually, jointly, and severally,

Defendants.

Case No.: 24-8681

**COMPLAINT FOR DAMAGES AND  
DECLARATORY AND INJUNCTIVE  
RELIEF**

- 1. Fourteenth Amendment Equal Protection**
- 2. Fourteenth Amendment Due Process**
- 3. Supervisory Liability**
- 4. Monell**
- 5. State Anti-Discrimination Law**
- 6. Bane Act**
- 7. Negligent Supervision, Training, and Staffing**
- 8. Negligence**
- 9. Intentional Infliction of Emotional Distress**

**JURY TRIAL DEMANDED**

**I. PRELIMINARY STATEMENT**

1  
2 1. This claim relates to the handling of the criminal case in which Plaintiff Carrie  
3 Banks was a victim of a home invasion sexual assault (see case number 21-SF-009324-A) in  
4 2021 and her treatment during that case by the San Mateo County District Attorney’s Office  
5 (“SMCDA” or “District Attorney’s Office”) and the County Probation Department.  
6

7 2. Defendants discriminated against Plaintiff based on her sex and status as a victim  
8 of sexual violence and gender-based violence, denied her due process, violated her constitutional  
9 rights under the California victims’ bill of rights (Marsy’s Law), Cal. Const., art. I, § 28(a)-(b),  
10 (e), and caused her various harms as a result of these acts and omissions.

11 3. In particular, SMCDA and Probation Department officials excluded and  
12 marginalized Plaintiff at nearly every juncture of her case, and the assigned prosecutor  
13 demonstrated shocking callousness toward Plaintiff, bias against her, and unseriousness  
14 regarding her case.  
15

16 4. When the top SMCDA officials, including the elected District Attorney, were  
17 advised about these failures, they, in turn, failed to intervene to ensure the case was properly  
18 handled or to otherwise support Plaintiff and instead compounded the violations of Plaintiff’s  
19 rights as the victim of a serious crime, revictimizing her in the process.  
20

21 5. Plaintiff’s experience with the County’s mishandling of her case occurred against  
22 a backdrop of a pattern of SMCDA’s minimization of sexual violence and other gender-based  
23 violence, as evidenced by a pattern of questionable outcomes, including plea deals, in other  
24 similar cases. This action is *not* aimed at second-guessing the exercise of prosecutorial  
25 discretion, i.e., decision making about the merits or strength of the case. However, Defendants’  
26

1 handling of sexual violence cases, including the outcome of Plaintiff’s case and of other similar  
2 cases, *evidences* impermissible bias in the way Defendants handled the cases that translated into  
3 the deficient ways in which Defendants’ *engaged* with Plaintiff during the prosecution of her  
4 attacker.

5  
6 6. Defendants’ treatment of Plaintiff and other victims of gender-based violence  
7 drastically departed from national standards and guidelines for district attorney’s offices and law  
8 enforcement agencies about how to respectfully engage, inform, and listen to victims, including  
9 specifically victims of sexual violence. This clear inconsistency with accepted standards further  
10 evidences the discriminatory nature of Defendants’ acts and omissions.

11 7. Defendants’ treatment of Plaintiff and other victims also “erodes public  
12 confidence in the criminal justice system, places women . . . at increased risk of harm, and  
13 reinforces ingrained stereotypes about women. It also undermines sexual assault investigations . .  
14 . from the outset, impairing the ability of both police and prosecutors to uncover the truth in  
15 these cases and hold perpetrators of sexual violence accountable.” (*See* U.S. Dept. of Justice  
16 Civil Rights Division Letter of Findings to Missoula County Attorney’s Office, Feb. 14, 2014.)  
17 In San Mateo County “an institutionalized indifference to crimes of sexual violence, coupled  
18 with bias against the women who represent the overwhelming majority of victims of sexual  
19 assault, handicaps the [County’s] ability to protect victims of crime effectively or handle sexual  
20 assault cases fairly.” *See id.* This institutional failure “perpetuates a culture that tolerates sexual  
21 assault, dissuades victims from reporting crimes, leaves violent criminal activity unaddressed,  
22 and compromises the safety of all women in” the county. *See id.*

23  
24  
25 8. Defendants have failed Plaintiff, others like her, and the broader community.

1 **II. INTRODUCTION**

2 9. This is an action for declaratory and injunctive relief and damages against San  
3 Mateo County (“County”) and officials and supervisors with SMCD A and the Probation  
4 Department. Defendants willfully violated Plaintiff’s rights under the California Victims’ Bill of  
5 Rights and did so in a manner demonstrating discriminatory animus and depriving her of her  
6 right to due process.  
7

8 10. On or about July 17, 2021, Fernando Altuna Mendoza raped Plaintiff while she  
9 was unconscious in her home.

10 11. After Plaintiff left a bar in an Uber after a night out to return home, Mr. Altuna  
11 Mendoza followed her home. He entered Plaintiff’s home uninvited and without permission,  
12 found her unconscious in her bed, and had sex with her without Plaintiff’s consent.  
13

14 12. Mr. Altuna Mendoza was arrested in August 2021. The Sheriff’s Office handed  
15 the case to SMCD A on a silver platter, including a confession and apology from the defendant.  
16 An anonymous law enforcement source with knowledge of the case told a local media outlet that  
17 “we expected a harsher sentence. This was a no-fail case, meaning everything was put together  
18 with a legal confession available in a box and ribbon for them to prosecute accordingly.”  
19

20 13. Despite a thorough investigation and interrogation by law enforcement and strong  
21 evidence of a shockingly brazen and traumatizing crime, including a confession, SMCD A  
22 offered Mr. Altuna Mendoza a sweetheart plea deal on the day of trial – in October 2023, more  
23 than two years after his arrest – without ever consulting Plaintiff and after telling Plaintiff that  
24 the only communication with Mr. Altuna Mendoza that day would be about procedural issues, all  
25 in violation of Plaintiff’s rights under Marsy’s Law.  
26

1 14. In November 2023, the assigned prosecutor presented the plea deal to a superior  
2 court judge whom SMCDA had accused of not taking sex crimes seriously.

3 15. The prosecutor presented the plea deal to the judge without first informing or  
4 consulting with Plaintiff, and without explaining to Plaintiff why she was making a decision that  
5 drastically departed from the decision made by the prosecutor initially assigned to the case, in  
6 violation of her rights under Marsy's Law.

7 16. This wildly unjustified deal followed months of the prosecutor excluding and  
8 marginalizing Plaintiff from the process – and even blaming her – and victims' services failing to  
9 be in contact with Plaintiff to coordinate communication between Plaintiff and the assigned  
10 prosecutor and to ensure the necessary consultation with Plaintiff.

11 17. The deal also allowed the defendant to plead to a single charge, which was a non-  
12 sex crime that was not even among the original charges, and receive only probation with no jail  
13 time beyond the handful of days he had served upon his initial arrest. SMCDA had already  
14 assessed that the case was appropriate for trial and was communicating to Plaintiff that the office  
15 would take it to trial.

16 18. After the plea deal was offered but before the formal sentencing, Plaintiff spoke  
17 with the elected District Attorney and another high-level SMCDA manager to request that they  
18 intervene to prevent the finalization of the inadequate outcome and sentence.

19 19. Instead, the District Attorney had the sentencing scheduled to be conducted by the  
20 same judge whom the SMCDA had admonished for minimizing sex crimes.

21 20. Once the matter was concluded and the County, inevitably, had another chance to  
22 address the danger Mr. Altuna Mendoza posed as a result of a probation violation, the Probation  
23

1 Department failed to consult with Plaintiff, ignored her multiple attempts to get in touch via  
2 voicemail and email, and consequently recommended a wholly inadequate sentence – one month  
3 in jail – which the presiding judge explicitly rejected, imposing a six-month jail term instead.

4 21. The District Attorney himself refused to meet with Plaintiff after the probation  
5 proceedings concluded, despite the fact that the case is ongoing, so that Plaintiff could share her  
6 experience and SMCDA could learn lessons to apply in ongoing and future cases.

7 22. Throughout the criminal prosecution and probation proceedings, Plaintiff never  
8 received notifications from the County regarding the release of Mr. Altuna Mendoza, despite her  
9 repeated inquiries and in violation of Marsy’s Law.

10  
11 **III. JURISDICTION AND VENUE**

12 23. This Complaint seeks damages for violations of the civil rights, privileges, and  
13 immunities guaranteed by the First and Fourteenth Amendments of the United States  
14 Constitution, pursuant to 42 U.S.C. §§ 1983 and 1988, and for violations of California state law.

15 24. This Court has jurisdiction over this lawsuit pursuant to 28 U.S.C. §§ 1331 and  
16 1343. Plaintiff’s state-law claims are within the Court’s supplemental jurisdiction pursuant to 28  
17 U.S.C. § 1367 because the claims form part of the same case or controversy arising under the  
18 United States Constitution and federal law.

19 25. Venue is proper in the Northern District of California pursuant to 28 U.S.C. §  
20 1391, as the underlying acts, omissions, injuries and related facts occurred in San Mateo County,  
21 California. This is an action for damages and such other and further relief as may be consistent  
22 with law pursuant to 42 U.S.C. § 1983, to redress violations of Plaintiff’s rights protected by the  
23 United States Constitution, by persons acting under color of law.  
24  
25  
26

**IV. PARTIES**

1  
2 26. Plaintiff CARRIE BANKS is a mother, was born and raised in San Mateo  
3 County, and is an established member of the community. The daughter of a law enforcement  
4 officer, she had enormous trust in the criminal justice process and has maintained strong contacts  
5 in the law enforcement community. She expected that her rape case would be taken seriously and  
6 prosecuted to the fullest.  
7

8 27. Defendant COUNTY OF SAN MATEO is a municipal corporation located in the  
9 Northern District of California. The County funds and operates the San Mateo County District  
10 Attorney’s Office and Probation Department.

11 28. Defendant SMCDA is the governmental agency responsible for prosecuting  
12 public offenses within their jurisdiction.

13 29. Defendant PROBATION DEPARTMENT is the government agency responsible  
14 for making sentencing recommendations for probation violations.  
15

16 30. Defendant STEPHEN WAGSTAFFE is and was at all times relevant herein the  
17 elected District Attorney of the County of San Mateo. As District Attorney, Defendant Wagstaffe  
18 was the highest-level official at SMCDA and was responsible for administering and overseeing  
19 the operations of SMCDA, including the engagement of, outreach to, consultation with, and  
20 support of victims in cases his office was prosecuting. Defendant Wagstaffe was responsible for  
21 supervision, training, discipline, and retention of agents and employees working within the  
22 SMCDA. He was responsible for promulgation and implementation of policies and procedures in  
23 SMCDA and was responsible for the prosecution of all cases at SMCDA. Upon information and  
24 belief, Defendant Wagstaffe was regularly provided with reports and complaints concerning  
25  
26

1 SMCDA staff interactions with and treatment of victims. Defendant Wagstaffe’s failure to  
2 ensure enforcement of policies, rules, or directives and/or failure to implement appropriate  
3 policies, rules, or directives set in motion a series of acts by others which he knew or reasonably  
4 should have known would cause harm to Plaintiff or other similarly situated victims, i.e., victims  
5 of gender-based violence. Defendant Wagstaffe’s affirmative conduct includes the acquiescence  
6 in the violations alleged herein. Defendant Wagstaffe also directly interacted with Plaintiff  
7 regarding the prosecution of Plaintiff’s attacker and was specifically notified as to Defendant  
8 Lee’s and Defendant Adams’ failures regarding Plaintiff’s case. Defendant Wagstaffe is sued in  
9 his individual and official capacities.  
10

11 31. Defendant SHIN-MEE CHANG was at all times relevant herein the Assistant  
12 District Attorney (“ADA”) at SMCDA. As ADA, Defendant Chang was responsible for  
13 supervising the day-to-day administration of SMCDA and responsible for overseeing and  
14 implementing policies, procedures, and practices related to the engagement and support of  
15 victims. Upon information and belief, Defendant Chang was regularly provided with reports and  
16 complaints concerning SMCDA staff interactions with and treatment of victims. Defendant  
17 Chang knowingly failed to ensure enforcement of policies, rules, or directives and/or failure to  
18 implement appropriate policies, rules, or directives and thereby set in motion a series of acts by  
19 others which she knew or reasonably should have known would cause harm to Plaintiff or other  
20 similarly situated victims, i.e., victims of gender-based violence. Defendant Chang’s affirmative  
21 conduct includes the acquiescence in the violations alleged herein. Defendant Chang also  
22 interacted directly with Plaintiff regarding the prosecution of Plaintiff’s attacker and was  
23 specifically notified as to Defendant Lee’s and Defendant Adams’ failures regarding Plaintiff’s  
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1 case. Defendant Chang is sued in her individual capacity.

2 32. Defendant SHARRON LEE was the Deputy District Attorney assigned to the  
3 prosecution of Plaintiff's attacker and employed with SMCDA. Defendant Lee was responsible  
4 for updating and consulting with the victim, Plaintiff, during the prosecution. Defendant Lee  
5 both took specific actions that violated Plaintiff's rights and failed to act when she was, under  
6 Marsy's Law, required to act. Defendant Lee is sued in her individual capacity.  
7

8 33. Defendant LAURA ADAMS worked for the victims' services office at SMCDA  
9 and was assigned to support Plaintiff during the prosecution of Plaintiff's attacker. Defendant  
10 Adams both took specific actions that violated Plaintiff's rights and failed to act when she was,  
11 under Marsy's Law, required to act. Defendant Adams is sued in her individual capacity.  
12

13 34. Defendant ELISA KUHL was at all times relevant herein Defendant Adams'  
14 supervisor at SMCDA, including as to Defendant Adams' obligations under Marsy's Law.  
15 Defendant Kuhl was also specifically notified as to Defendant Adams' failures regarding  
16 Plaintiff's case. Defendant Kuhl is sued in her individual capacity.  
17

18 35. Defendant JOHN KEENE is and was at all times relevant herein the Chief  
19 Probation Officer for the County of San Mateo. As Chief Probation Officer, Defendant Keene  
20 was the highest-level official at the Probation Department and was responsible for administering  
21 and overseeing the operations of the Probation Department, including the engagement of,  
22 outreach to, consultation with, and support of victims in cases SMCDA was prosecuting.  
23 Defendant Keene was responsible for supervision, training, discipline, and retention of agents  
24 and employees working within the Probation Department. He was responsible for promulgation  
25 and implementation of policies and procedures in the Probation Department. Upon information  
26

1 and belief, Defendant Keene was regularly provided with reports and complaints concerning  
2 Probation Department staff interactions with and treatment of victims. Defendant Keene's failure  
3 to ensure enforcement of policies, rules, or directives and/or his failure to implement appropriate  
4 policies, rules, or directives set in motion a series of acts by others which he knew or reasonably  
5 should have known would cause harm to Plaintiff or other similarly situated victims, i.e., victims  
6 of gender-based violence. Defendant Keene's affirmative conduct includes the acquiescence in  
7 the violations alleged herein. Defendant Keene is sued in his individual and official capacities.

9 36. Defendant ALFONSO HERNANDEZ was at all times relevant herein employed  
10 as a probation officer with the Probation Department. He was assigned to Plaintiff's case and  
11 was responsible for drafting a probation violation report and consulting with the victim in that  
12 process. Defendant Hernandez both took specific actions that violated Plaintiff's rights and failed  
13 to act when he was, under Marsy's Law, required to act. Defendant Hernandez is sued in his  
14 individual capacity.

16 37. Defendant SANITH SISAVATH was at all times relevant herein Defendant  
17 Hernandez's Supervisor and was responsible for training and supervising Defendant Hernandez,  
18 including as to Defendant Hernandez's obligations under Marsy's Law. Defendant Sisavath was  
19 also specifically notified as to Defendant Hernandez's failures regarding Plaintiff's case.  
20 Defendant Sisavath is sued in his individual capacity.

22 38. Defendant THERESA DAH was at all times relevant herein Defendant Sisavath's  
23 supervisor at the Probation Department, including as to Defendant Sisavath's obligations under  
24 Marsy's Law. Defendant Dah was also specifically notified as to Defendant Hernandez's and  
25 Defendant Sisavath's failures regarding Plaintiff's case. Defendant Dah is sued in her individual  
26

1 capacity.

2 39. Defendants DOES 1-100 are additional employees of the District Attorney's  
3 Office or Probation Department, including but not limited to deputy district attorneys, victims'  
4 services personnel, probation officers, executives at either agency, and other County employees  
5 who were responsible for the development, promulgation, and/or implementation of County  
6 policies, procedures, and the support and engagement of victims, including Plaintiff. Plaintiff  
7 alleges that each of the Defendants named as a "DOE" was in some manner responsible for the  
8 acts and omissions alleged herein. DOES 1-100 are sued in their individual capacities.

10 40. At all relevant times, Defendants, and each of them, possessed the power and  
11 authority to adopt policies and prescribe rules, regulations, and practices affecting all facets of  
12 the training, supervision, control, employment, assignment and removal of individual employees  
13 of the County, including those individuals charged with engaging and supporting victims,  
14 including Plaintiff, and to assure that said actions, policies, rules, regulations, customs, practices  
15 and procedures of the County and its employees and agents complied with the laws and  
16 constitutions of the United States and the State of California.

18 41. Plaintiff is informed and believes, and thereupon alleges, that at all times  
19 mentioned herein Defendants worked in San Mateo, State of California. Plaintiff is informed and  
20 believes, and thereupon alleges, that at all times mentioned herein Defendants were employees,  
21 agents, and/or servants of the County, employed at SMCDA or the Probation Department, and  
22 acted within the course and scope of said employment, agency and/or service, and acted under  
23 color of state law.

25 42. Plaintiff is ignorant of the true names and capacities of defendants sued herein as  
26

1 Does 1 through 100, inclusive, and therefore sues these defendants by such fictitious names, in  
2 their individual capacities. Plaintiff is informed, believes, and alleges that each of the fictitiously  
3 named defendants is legally responsible, intentionally, negligently, or in some other actionable  
4 manner, for the events and happenings hereinafter referred to and described, and thereby illegally  
5 caused the injuries, damages, and violations and/or deprivations of rights hereinafter alleged.

6 Plaintiff will seek leave of Court to amend this Complaint and state the true names and/or  
7 capacities of said fictitiously named defendants when the same have been ascertained.  
8

9 43. The reason why Plaintiff is ignorant of the true names and capacities of  
10 Defendants sued herein as Does, inclusive, is that same have been unascertainable as of the date  
11 of filing of this complaint and many of their records may be protected by state statute and can  
12 only reasonably be ascertained through the discovery process. The individual defendants were at  
13 all times mentioned herein duly appointed, qualified, and acting as officers of the County, acting  
14 within the course and scope of such employment with the County, and acted under color of the  
15 statutes, ordinances, regulations, policies, customs and usages of the State of California.  
16

17 44. At all times relevant herein, Defendants engaged in the acts or omissions alleged  
18 herein under color of state law.

19 **V. EXHAUSTION OF ADMINISTRATIVE REMEDIES**

20 45. Pursuant to Government Code § 910, Plaintiff presented a timely appropriate  
21 claim for damages on or around May 21, 2024, less than six months after the incident or after she  
22 became aware of the incident. The County of San Mateo responded to the government tort claim  
23 on July 2, 2024, at which point the claim was denied. This action is timely.  
24

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3 **VI. FACTS**

4 **A. Plaintiff was raped in her home while unconscious.**

5 46. On July 17, 2021, Fernando Altuna Mendoza followed Plaintiff home from a bar,  
6 entered Plaintiff's home without her permission, and then raped Plaintiff while she was  
7 unconscious in her bed.  
8

9 47. Mr. Altuna Mendoza knew that Plaintiff had to be driven home with friends.

10 48. Mr. Altuna Mendoza texted Plaintiff repeatedly and received no response from  
11 her.

12 49. Mr. Altuna Mendoza arrived at Plaintiff's home late at night, opened the door to  
13 her home, walked in, and had sex with her while she was unconscious, incapacitated, and unable  
14 to consent.  
15

16 50. Plaintiff awoke to the sight of Mr. Altuna Mendoza undressed in her bedroom,  
17 and she shouted at him to leave. He left some of his clothing behind as he hurried out.

18 51. The next day, Mr. Altuna Mendoza, in text messages with Plaintiff, essentially  
19 acknowledged having sex with Plaintiff despite knowing she was too drunk to consent.  
20

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	<b>SAN MATEO COUNTY SHERIFF'S OFFICE</b> 400 COUNTY CENTER REDWOOD CITY, CA 94063 650-216-7676 SUPPLEMENT 16 - Photo download data	Page 1 21-05950
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SUPPLEMENTAL REPORT:

On 3/10/23, I reviewed the data from Ferndando Altuna Mendoza's cellphone download using Cellebrite Reader. I located the following chat information below. I have transcribed the chats verbatim.

Chat messages sent on 7/17/21:

[REDACTED] @12:36:30 AM: You started an audio call  
 [REDACTED] @12:36:53 AM: Audio call ended  
 [REDACTED] @12:46:40 AM: You started a video chat  
 [REDACTED] @12:47:17 AM: Hey  
 [REDACTED] @12:47:24 AM: I'm at your place  
 [REDACTED] @12:47:28 AM: Are you ok?  
 [REDACTED] @12:47:36 AM: Video chat ended

Carrie Banks @11:32:11 AM: Last night you came into my home and wanted sex? I was drunk and you knew that. It's not okay so don't do that again. You left me with a very uneasy feeling and I don't appreciate it. I was passed out in my bed, i didn't let you in or answer texts or calls.

[REDACTED] @11:56:33 AM: I did not want sex, idk how I got there, I remember we talked about it on the bench outside

[REDACTED] @11:57:33 AM: I haven't drunked like that in a long time but that's no excuse

**B. The San Mateo County Sheriff's Office investigated the rape and elicited a confession from Plaintiff's rapist.**

52. There was substantial evidence of the rape, including Mr. Altuna Mendoza's confession and apology.

53. In his interview with the police on August 5, 2021, Mr. Altuna Mendoza said, among other things:

- He came into her home on his own, as the door was unlocked.
- He found Plaintiff passed out in her bed.
- Plaintiff was not sober enough to be able to consent to sex.
- Plaintiff was so intoxicated that she was speaking in gibberish.
- That what happened was wrong.
- Mr. Altuna Mendoza had experience working at bars and could assess a person's level of intoxication.

1 54. Mr. Altuna Mendoza was Mirandized prior to the confession.

2 55. Mr. Altuna Mendoza also wrote a note of apology, which was booked into  
3 evidence:

4  
5 Mendoza decided to write an apology note to Confidential Victim, as it would help him process the  
6 situation. I left the interview room and Mendoza wrote an apology note using a blank piece of paper and  
7 pen I provided him.

8  
9 Mendoza began to cry after writing the apology note. The apology note stated the following:

10  
11 *Carrie, I'm at a loss for words right now. My judgment wasn't there, I shouldn't have opened  
12 your door and gone into bed with you. I can't begin to understand how you must be feeling after this, I  
13 have a daughter and I would never want her to go through this or any woman. I just hope you know that  
14 these just aren't words and that from the bottom of my heart, I am sincerely sorry, emotions are running  
15 high right now, so I'm shaking and can't write much but this is my sincerest apology, I'm not this type of  
16 person. I'm a family man and I hope you can recover from this, take care. Sincerely, Fernando Altuna*

17  
18 I later booked the apology note into evidence.

19  
20 56. The Sheriff's Office conducted a thorough investigation, and Mr. Altuna  
21 Mendoza was arrested in August 2021 and charged with multiple serious felonies in San Mateo  
22 County Superior Court, including two counts of rape and two counts of sexual penetration by a  
23 foreign object. The investigation included interviews with witnesses, a recorded "pretext call"  
24 from Plaintiff to Mr. Altuna Mendoza, obtaining warrants for access to Mr. Altuna Mendoza's  
25 social media account and cell phone data, and review of video footage, photographs, and text  
26 messages.

27 **C. The District Attorney's Office was proceeding toward trial, albeit, unprepared.**

28 57. During 2022, SMCDA had advised Plaintiff to prepare to testify at trial.

58. In September 2023, Plaintiff was asked by SMCDA staff if she still wished to  
proceed to trial on October 6, 2023.

59. The assigned prosecutor, Defendant Lee, never met with Plaintiff to prepare for  
trial or ask her questions and instead indicated she read the file and did not have any need for

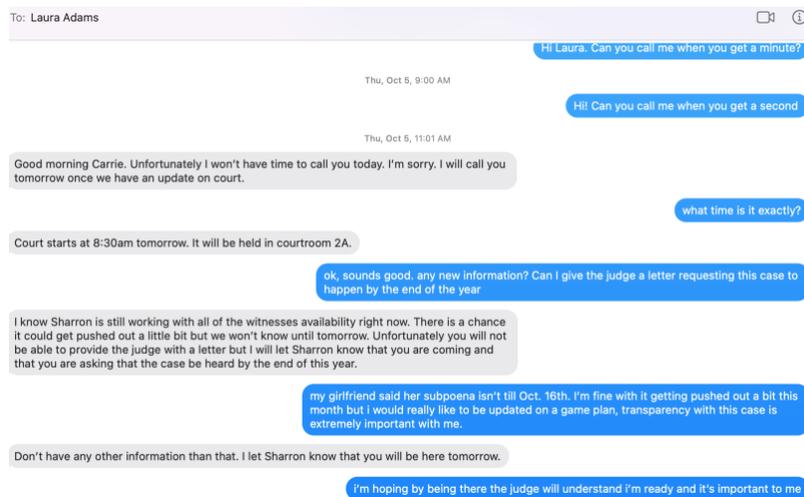
1 follow-up or clarification. She demonstrated only superficial knowledge as to the details of the  
2 case and was unresponsive to witnesses.

3 60. Indeed, Defendant Lee had not prepared adequately for trial. For example,  
4 witnesses were not receiving responses and were not being prepped.

5 61. On or about September 29, 2023, Defendant Lee notified Plaintiff that Plaintiff  
6 did not need to come to court the morning of October 6, 2023, for the scheduled conference with  
7 the court and that the parties would likely be seeking to begin jury selection for the trial.  
8 Defendant Adams also notified Plaintiff that the trial was proceeding and there was no need for  
9 Plaintiff to come on the morning of October 6.  
10

11 62. In the week before the date set for the trial to start – October 6 – Defendant Lee  
12 told Plaintiff that she intended to take the case to trial and that there was no plea deal.

13 63. On October 5, 2023, Defendant Adams indicated witnesses were being scheduled.  
14



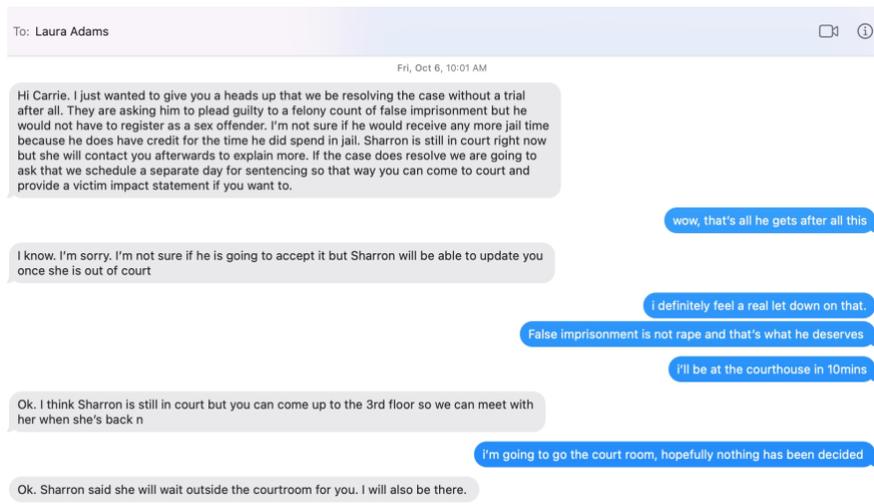
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**D. At the eleventh hour, Defendant Lee ambushed Plaintiff with a sweetheart plea deal for her attacker and then justified it by blaming and shaming Plaintiff, demonstrating clear bias against female victims of sexual violence.**

64. Nonetheless, unbeknownst to Plaintiff, and despite repeated requests for transparency, Defendant Lee presented a plea deal to Mr. Altuna Mendoza on October 6, 2023. The deal would allow him to plead to false imprisonment, which was not among the original charges and did not match the facts of the case.

65. Defendant Lee did not consult with Plaintiff regarding the proposed plea, in violation of Plaintiff’s rights under California law as a victim of a crime, and instead ambushed Plaintiff with a plea deal that represented a drastic downgrading of the case and would result in no jail time for the defendant.

66. Defendant Adams notified Plaintiff that a plea deal was reached and the case would not be going to trial. Shocked by this sudden turn of events and the complete lack of consultation, Plaintiff immediately went to the courthouse to speak with Defendant Lee.



67. In an effort to justify the plea deal after the fact, Defendant Lee made various comments to Plaintiff demonstrating bias against victims of sexual violence, especially female

1 victims of such crimes, including victim blaming, minimizing, invoking harmful and outdated  
2 sex stereotypes, and shaming the victim for her behavior the night of her rape. Specifically,

3 Defendant Lee:

- 4 • Suggested that she show Plaintiff video of Plaintiff kissing the defendant inside the  
5 bar the night of the rape. Defendant Lee thus implied that Plaintiff kissing the  
6 defendant at the bar somehow equated to inviting him for sex at her home, that  
7 Plaintiff was, in the parlance of the persistent stereotype about supposedly “loose”  
8 women, “asking for it.” Defendant Lee’s explicit attitude also indicates a  
9 minimization of sexual violence compared to other types of violence.
- 10 • Taking the stereotype yet further, stated that the jury being shown video of Plaintiff  
11 flirting or talking to the defendant may cause a juror to vote to acquit. By this logic,  
12 SMCDAs would never prosecute a rape that followed flirting or any minimal  
13 consensual physical contact short of sex.
- 14 • Told Plaintiff that the defendant could put on the defense in his case that he was too  
15 drunk to consent to raping Plaintiff. However, this is completely inconsistent with  
16 state law, which does not allow drunkenness as a defense to general intent crimes,  
17 such as rape. Ca. Penal Code § 29.4. Providing this false and misleading information  
18 to Plaintiff demonstrates her unwillingness to engage Plaintiff as a victim and  
19 discouraged her from participating in her own case.
- 20 • Told Plaintiff that “No” does not always mean “no,” in the eyes of the law. However,  
21 this was not a case involving the victim saying, “No.” Rather, it involved an  
22 unconscious victim who could not consent at all.
- 23
- 24
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1 These attitudes and stereotypes evidenced an unwillingness on the part of Defendant Lee to  
2 engage with or hear from victims, including Plaintiff, and also, in this specific meeting with  
3 Plaintiff, directly interfered with Plaintiff's ability to be fully forthcoming with her views or feel  
4 heard by the prosecutor. As the U.S. Department of Justice has observed, "When myths and  
5 misperceptions about sexual assault . . . influence law enforcement's response, [law enforcement  
6 offices] can blame victims and fail to hold offenders accountable."

7  
8 68. Months later, however, in an interview with NBC Bay Area that aired on April  
9 11, 2024, Defendant Chang cited the "tone" of the confession as the barrier to going to trial. No  
10 one at SMCDA ever mentioned such a concern to Plaintiff. Defendant Chang also implied in her  
11 statement to NBC Bay Area that SMCDA later re-assessed the case as weaker than originally  
12 thought and that witness statements may have changed. However, no one at SMCDA  
13 communicated these issues to Plaintiff, and the case was proceeding toward trial when the plea  
14 deal materialized all of a sudden.

15  
16 69. Defendant Lee indicated to Plaintiff on October 6, 2023, that the plea deal was not  
17 final, but this turned out to not be true. Defendant Lee told Plaintiff she was going to go speak  
18 with the defendant and his counsel about the plea, but, upon information and belief, Defendant  
19 Lee in fact went to the courtroom to finalize the plea deal.

20  
21 70. Defendant Adams told Plaintiff that Defendant Lee was probably in the  
22 courtroom. When Plaintiff indicated to Defendant Adams that Plaintiff wished to be in the  
23 courtroom, Defendant Adams discouraged Plaintiff from speaking in court and advised that she  
24 would be removed from the court if she did so. This information was false and inconsistent with  
25 Marsy's Law.

1 71. In fact, the plea deal was presented to Judge Donald Ayoob, of the San Mateo  
2 County Superior Court, and he accepted the plea deal.

3 72. Upon information and belief, Defendant Lee rushed the plea deal that day in part  
4 because Judge Ayoob, rather than the regularly scheduled judge, was presiding.

5 73. SMCDA had previously criticized Judge Ayoob's handling of sex crimes cases,  
6 even filing a motion in a sex crime case arguing that Judge Ayoob was prejudiced and speaking  
7 to the news media about the office's concerns about Judge Ayoob's inability to be impartial. (*See*  
8 Peremptory Challenge, San Mateo County Superior Court Case No. 17-NF-005012-A, Dec. 6,  
9 2017.) The push to have Judge Ayoob preside over Plaintiff's case is therefore evidence that  
10 Defendant Lee was interested in completing the case rather than taking the necessary time to  
11 consult with Plaintiff as required under Marsy's Law.  
12

13  
14 **E. Plaintiff tried unsuccessfully to get Defendants Wagstaffe and Chang to intervene  
before sentencing in light of Defendant Lee's failure to consult with Plaintiff.**

15 74. On October 19, 2023, Plaintiff met with Defendant Wagstaffe and Defendant  
16 Chang. Plaintiff communicated that she believed her Marsy's Law rights had been violated as a  
17 result of Defendant Lee's and Defendant Adams' handling of her case, that the rape trauma crisis  
18 center was unable to timely provide services to her, and that she hoped they would intervene and  
19 prevent the plea deal from going forward. No such intervention or other support occurred,  
20 however.  
21

22 75. Instead, upon information and belief, Defendant Wagstaffe worked to ensure that  
23 the sentencing would be conducted by Judge Ayoob, knowing that Judge Ayoob had previously  
24 conducted himself in a manner that raised concerns for Defendant Wagstaffe and SMCDA about  
25 whether the judge took sex crimes cases seriously. Upon information and belief, in the earlier  
26

1 case in which SMCDA filed a motion accusing Judge Ayoob of being prejudiced in sex crimes  
2 cases, Defendant Wagstaffe was directly involved in the decision to file that motion and  
3 personally held those concerns about Judge Ayoob's ability to be impartial. The push to have  
4 Judge Ayoob preside over Plaintiff's case is evidence that Defendant Wagstaffe was not  
5 concerned about respecting the rights of a victim of gender-based violence.

6  
7 76. Mr. Altuna Mendoza was sentenced on November 27, 2023, receiving only  
8 probation and no jail time beyond the five days of time he had already served. The assigned  
9 prosecutor did not consult with Plaintiff regarding the proposed sentence, in violation of  
10 Plaintiff's rights under California law as a victim of a crime. It was only on this day that Plaintiff  
11 learned that the plea deal was accepted and learned the full details of the plea deal. The outcome  
12 of the plea deal and sentencing are evidence of the failures by SMCDA and Defendants Lee,  
13 Chang, and Wagstaffe to ensure that Plaintiff's Marsy's Law rights were not violated.

14  
15 77. On the same day that Judge Ayoob sentenced Mr. Altuna Mendoza, he later told  
16 Plaintiff that he may not have accepted the plea deal had he known that Plaintiff was not  
17 consulted or that it had originally been a sex crime.

18 **F. Plaintiff's rapist was re-arrested for a probation violation and received jail time;**  
19 **Plaintiff continued to be excluded from the process.**

20 78. Mr. Altuna Mendoza was re-arrested for a probation violation, driving while  
21 intoxicated in neighboring Santa Clara County, in March 2024.

22 79. No one from the County told Plaintiff about this new arrest, and Plaintiff instead  
23 discovered this by happenstance.

24 80. Plaintiff attempted to contact Defendant Adams to inquire as to the process and  
25 her rights but was unable to reach Defendant Adams.  
26

1 81. Plaintiff contacted Defendant Kuhl regarding her concerns about Defendant  
2 Adams' lack of responsiveness and inadequate guidance, but Defendant Kuhl did not intervene  
3 to properly supervise Defendant Adams.

4 82. Mr. Altuna Mendoza's probation officer, Defendant Hernandez, had  
5 recommended only one month in jail for the probation violation and had not considered the  
6 underlying sexual offense.  
7

8 83. Despite Plaintiff leaving voicemails for and sending emails to Defendant  
9 Hernandez, he did not consult with Plaintiff before he issued his sentencing recommendation, in  
10 violation of Marsy's Law.

11 84. During that same period, Plaintiff spoke with Defendants Sisavath and Dah and  
12 advised them of her concerns regarding Defendant Hernandez's handling of her case, and  
13 Defendants Sisavath and Dah did not intervene to properly supervise Defendant Hernandez.  
14

15 85. On March 26, 2024, Mr. Altuna Mendoza was sentenced in San Mateo County  
16 Superior Court for the probation violation, by a different judge than the one involved in the plea  
17 deal and original sentence, to six months in jail for the probation violation, in stark contrast to  
18 the sentence of no jail time Mr. Altuna Mendoza received for the underlying crime against  
19 Plaintiff.  
20

21 86. The prosecutor assigned to the case – no longer Defendant Lee – requested  
22 substantial jail time.

23 87. During the sentencing for the probation violation, the court specifically noted that  
24 the underlying crime and impact on Plaintiff caused him to sentence the defendant to a term that  
25 was six times the duration recommended by the Probation Department.  
26

1 88. On March 27, 2024, the day after sentencing, Defendant Hernandez finally  
2 reached Plaintiff the day after the sentencing, despite multiple attempts by Plaintiff to contact  
3 him.

4 **G. Defendant Wagstaffe continued to refuse to meet with Plaintiff and the County**  
5 **continued to fail to update Plaintiff.**

6 89. Following the probation violation’s resolution, Plaintiff asked, via her attorney, to  
7 meet with the Defendant Wagstaffe to discuss her concerns regarding the developments since the  
8 last time they had spoken. The response was dismissive and disrespectful, agreeing via email to  
9 Plaintiff’s counsel to meet with Plaintiff only if she didn’t “rehash her disagreement” with his  
10 staff’s decisions.  
11

12 90. On May 10, 2024, Defendant Wagstaffe refused to meet with Plaintiff at all –  
13 citing a letter to the U.S. Department of Justice (“DOJ”) that Plaintiff, via her attorney, had sent  
14 – even after Defendant Wagstaffe was informed via email on April 19, 2024, that Plaintiff’s  
15 letter to the DOJ was not an individual complaint, does not make Plaintiff a party to any potential  
16 DOJ investigation, and may not lead to any action by DOJ, and that because the DOJ  
17 investigation would be a “pattern or practice” investigation, the reasons underlying his refusal to  
18 meet with Plaintiff would also mean he cannot meet with *any* victims of sexual violence in San  
19 Mateo County.  
20

21 91. When Mr. Altuna Mendoza was released from jail, no one from the County  
22 notified Plaintiff.

23 **H. Numerous other female victims of sexual violence and other gender-based violence**  
24 **have experienced similar marginalization and institutional betrayal by SMCDA.**

25 92. Data provided by the County to NBC Bay Area shows that SMCDA pleads sexual  
26

1 violence cases down, often to offenses that are not sex crimes. Of the 31 cases between 2018 and  
2 2023 that the Sheriff's Office originated that were charged as sex crimes, eight were pled down  
3 to a non-sex crime conviction. These cases often involved very serious crimes. Approximately  
4 half of those that were charged as non-sex crimes or negotiated down to non-sex crimes resulted,  
5 like Plaintiff's case, in mere probation, with no jail time.

6  
7 93. Data shows that SMCDA rejects sexual violence cases altogether. Of 53 cases  
8 that the Sheriff's Office sent to SMCDA between 2018 and 2023 and for which information was  
9 available, 19 were rejected or later dismissed or suspended. Three others did not receive any sex  
10 crime charges from SMCDA.

11 94. The [rash of five domestic violence-related homicides in 2023](#) in San Mateo  
12 County likewise indicates a potential disregard of gender-based violence. It also placed SMCDA  
13 and its officials on notice that gender-based violence was a serious concern in San Mateo  
14 County, making their conduct towards Plaintiff all the more unjustified.

15  
16 95. Other troubling cases are similarly illustrative of the County's inadequate  
17 handling of gender-based violence cases, which leaves victims vulnerable to further harm or  
18 even death:

- 19 • In a September 2020 case involving a charge of rape of a person who because of a  
20 disability could not give consent, the defendant pled in December 2021 to dissuading  
21 a witness from reporting a crime and false imprisonment. The defendant received a  
22 three-year term of probation.
- 23 • An August 2019 case involving a sexual battery charge (and a charge of false  
24 imprisonment) pled to misdemeanor battery in May 2021, resulting in a probation  
25

1 term of one year.

- 2 • An August 2019 rape charge (involving force or duress) was pled down to domestic  
3 violence, with the defendant receiving three years of probation. The defendant  
4 violated his probation twice, in September 2021 (nine-month jail term) and December  
5 2022, when his probation was finally terminated and he was sent to prison.
- 6 • In one of the homicide cases in 2023, the defendant had previously been arrested and  
7 charged – in April 2021 – for domestic violence and other serious charges. In  
8 December 2022, he received probation after pleading down to false imprisonment and  
9 misdemeanor battery. Seven months later, while still in probation, he killed his ex-  
10 partner, stabbing her to death in front of her teenage daughter, whom he also stabbed  
11 but who survived.
- 12 • In another of the homicide cases, the attacker was arrested regarding domestic  
13 violence in December 2023, just says before he murdered the woman, her boyfriend  
14 and, ultimately, himself. When he was previously arrested for domestic violence, he  
15 was later released on bail and no charges were ultimately filed, according to a media  
16 report.

17  
18  
19 **I. Systemic issues contributed to the County’s poor treatment of Plaintiff.**

20 96. There are numerous underlying systemic issues giving rise to the harms described  
21 *supra*. Plaintiff’s case highlights many of these broader issues that undoubtedly impact many  
22 other victims:  
23

- 24 • Lack of clear policies or guidance to prosecutors regarding proper application of  
25 Marsy’s law and lack of training in trauma-informed practices for interacting with  
26

1 victims of sexual violence or other gender-based violence. In Plaintiff's case, the  
2 assigned prosecutor who offered the plea deal failed to communicate timely and to  
3 provide Plaintiff an opportunity to weigh in on the plea deal or to speak to the court.  
4 The communication with Plaintiff was dismissive and included victim-blaming,  
5 shaming, and harmful stereotypes about women's dating behavior.

- 6
- 7 • Flawed policies and training. The Probation Department apparently does not classify  
8 cases like Plaintiff's as sexual violence cases if they resolve on other charges. This  
9 results in the probation officer not having a sufficient understanding of the  
10 seriousness of the case. The probation officer in Plaintiff's case was not properly  
11 trained on reviewing the police report regarding the original crime before  
12 recommending a sentence for a probation violation.
- 13
- 14 • Lack of internal accountability. Despite Plaintiff bringing her concerns to SMCDA's  
15 leadership, upon information and belief, individual prosecutors' conduct has not been  
16 addressed. Indeed, leadership has defended the assigned prosecutor's actions and has  
17 not meaningfully looked into the concerns.
- 18
- 19 • Lack of resources and understaffing. Both the assigned prosecutor and the probation  
20 officer did not adequately prepare for Plaintiff's case, likely due to caseloads that are  
21 too large because of low staffing. The prosecutor never took Plaintiff up on her offer  
22 to provide additional information and appeared to have only a cursory understanding  
23 of the case. The probation officer did not take the time to understand the contours or  
24 severity of the underlying crime. The prosecution involved lengthy delays.
- 25
- 26 • Lack of supports provided to victims. The victims' services office at SMCDA

1 likewise did not ensure that Plaintiff was fully looped into the process. Outside  
2 providers also lack adequate funding to advocate on behalf of victims whom SMCD  
3 refers out.

- 4 • Lack of oversight and transparency. SMCD does not properly track outcomes of  
5 sexual violence cases to assess the adequacy of the outcomes of such cases and  
6 whether process improvements are needed.  
7

## 8 **VII. DAMAGES**

9 97. As a direct and proximate result of the aforesaid acts and omissions, and the  
10 customs, practices, policies, and decisions of the defendants alleged in this complaint, Plaintiff  
11 suffered and will continue to suffer great emotional, mental and physical pain and injuries,  
12 anguish, fright, nervousness, anxiety, shock, humiliation, indignity, embarrassment, harm to  
13 reputation, and apprehension, which have caused and will continue to cause, Plaintiff to sustain  
14 general damages in a sum to be determined at trial.  
15

16 98. As a direct and proximate result of the aforesaid acts, omissions, customs,  
17 practices, policies, and decisions of the aforementioned defendants, Plaintiff suffered the denial  
18 of her fundamental constitutional rights guaranteed by the Fourteenth Amendments of the United  
19 States Constitution, which have caused Plaintiff to sustain damages in a sum to be determined at  
20 trial.  
21

22 99. As a further direct and proximate result of the aforesaid acts, omissions, customs,  
23 practices, policies, and decisions of the aforementioned defendants, Plaintiff suffered past and  
24 future losses of income that have caused her to sustain economic damages in a sum to be  
25 determined at trial.  
26

1 100. Defendants acted in a manner that was willful, wanton, malicious, and oppressive,  
2 with reckless disregard of or in deliberate indifference to, and with the intent to deprive Plaintiff  
3 of her constitutional rights, and did in fact violate the aforementioned rights, entitling Plaintiff to  
4 exemplary and punitive damages in an amount to be proven at the trial in this matter. Plaintiff  
5 also seeks attorneys' fees.  
6

7 **VIII. CLAIMS FOR RELIEF**

8 **FIRST CLAIM FOR RELIEF**

9 **Violation of Fourteenth Amendment – Equal Protection (42 U.S.C. § 1983)**

10 **(Against All Defendants)**

11 101. Plaintiff realleges all prior paragraphs of this complaint and incorporates the same  
12 herein by this reference.

13 102. The Equal Protection Clause of the Fourteenth Amendment prohibits states from  
14 denying any person the equal protection of the laws. *See* U.S. Const. amend. XIV, § 1.  
15

16 103. Under the Equal Protection Clause if a law or regulation burdens a fundamental  
17 right to some groups but not others, the law or regulation can be upheld only if the government  
18 can justify it under strict scrutiny. *See San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1, 17  
19 (1973). To survive strict scrutiny, the government must demonstrate that the law or regulation is  
20 “‘narrowly tailored’ to serve a ‘compelling’ government interest.” *See e.g., Parents Involved in*  
21 *Cnty. Schs. v. Seattle Sch. Dist.*, 551 U.S. 701, 720 (2007) (quoting *Adarand Constructors, Inc.*  
22 *v. Pena*, 515 U.S. 200, 227 (1995)).  
23  
24  
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28

1 104. As described hereinabove, Defendants applied policies and procedures and the  
2 law of California in a manner that discriminated against Plaintiff based on her sex and on her  
3 status as a victim of gender-based violence because of sex.

4 105. In addition, Marsy's Law provides basic rights for all crime victims in California.  
5 Cal. Const., art. I, § 28. On information and belief, Defendants failed to provide the due process  
6 guaranteed to victims under the California Constitution to Plaintiff on the basis of her sex and  
7 her status as a victim of gender-based violence, including failing to inform and consult with her  
8 at critical stages and failing to allow her opportunities to be heard by courts.

9 106. Upon information and belief, Defendants' level and type of engagement and  
10 consultation with Plaintiff differed from the extent of and manner in which they engaged in other  
11 cases not involving sex crimes, that is, Defendants adhered to their obligations under Marsy's  
12 Law and engaged appropriately with victims in those other, non-sex crimes and therefore  
13 subjected Plaintiff to disparate treatment based on her sex and status.

14 107. Defendant Lee failed to advise Plaintiff about a potential plea deal, failed to keep  
15 Plaintiff informed as to the status of the case, and blamed and shamed Plaintiff by engaging in  
16 gender stereotypes and sexual shaming in an attempt to cover up and excuse Defendant Lee's  
17 own violations of Marsy's Law.

18 108. Defendants Wagstaffe and Chang failed to intervene once they learned of the  
19 Marsy's Law violations by Defendants Lee and Adams and Plaintiff requested their intervention.  
20 They also failed to promulgate, implement, and/or enforce adequate policies, procedures,  
21 practices, and training to ensure that SMCDA staff did not discriminate against and ensured  
22 equal protection of victims of sexual violence, and they did so despite knowing that staff were  
23  
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26

1 not adequately trained and did not receive adequate guidance to ensure equal treatment of  
2 victims of gender-based violence with respect to such victims' rights under Marsy's Law. They  
3 knowingly and deliberately failed to undertake necessary corrective action to remedy these  
4 deficiencies.

5  
6 109. Defendant Keene failed to promulgate, implement, and/or enforce adequate  
7 policies, procedures, practices, and training to ensure that Probation Department staff did not  
8 discriminate against and ensured equal protection of victims of sexual violence, and he did so  
9 despite knowing that staff were not adequately trained and did not receive adequate guidance to  
10 ensure equal treatment of victims of gender-based violence with respect to such victims' rights  
11 under Marsy's Law. He knowingly and deliberately failed to undertake necessary corrective  
12 action to remedy these deficiencies.

13  
14 110. Defendant Adams provided misleading and inaccurate information to Plaintiff  
15 that resulted in excluding Plaintiff from the process, including at a critical juncture, i.e.,  
16 proffering of a plea deal.

17  
18 111. Defendant Hernandez failed to enlist or consider Plaintiff's input as he was  
19 making his sentencing recommendation regarding Mr. Altuna Mendoza's probation violation.

20  
21 112. Defendants Sisavath and Dah failed to properly supervise Defendant Herndandez  
22 despite the fact that Plaintiff advised them of concerns about Defendant Hernandez's handling of  
23 the matter.

24  
25 113. Defendant Kuhl failed to properly supervise Defendant Adams despite the fact  
26 that Plaintiff advised her of concerns about Defendant Adams' handling of the matter.

1 114. Given the frequency of attacks on women in San Mateo County, the data  
2 regarding SMCDA's handling of sex crimes, and Plaintiff's own experience with County  
3 officials' mishandling of her case, Plaintiff reasonably fears that she is likely to be attacked  
4 again, and that her rights will be further violated by SMCDA and the Probation Department, and  
5 that her rights will continue to be violated in the ongoing case involving her attacker, who  
6 remains on probation until November 2025.

8 115. As a direct and proximate result of Defendants' actions, as alleged herein,  
9 Plaintiff was injured as set forth above and is entitled to damages, including compensatory and  
10 punitive damages, in an amount to be proven at trial and in excess of the jurisdictional amount  
11 required by this Court.

12 116. In doing the foregoing wrongful acts, Defendants acted in reckless and callous  
13 disregard for Plaintiff's constitutional rights. The wrongful acts, and each of them, were willful,  
14 oppressive, fraudulent, and malicious, thus warranting the imposition of punitive damages  
15 against each individual Defendant in an amount adequate to punish the wrongdoers and deter  
16 future misconduct.

18 **SECOND CLAIM FOR RELIEF**

19 **Violation Of Fourteenth Amendment — Due Process of Law (42 U.S.C. § 1983)**

20 **(Against All Defendants)**

21  
22 117. Plaintiff realleges all prior paragraphs of this complaint and incorporates the same  
23 herein by this reference.

1 118. The Due Process Clause of the Fourteenth Amendment to the United States  
2 Constitution prohibits states from depriving any person of life, liberty, or property, without due  
3 process of law. *See* U.S. Const. amend. XIV, § 1.

4 119. The Due Process Clause has both procedural and substantive components, which  
5 function to safeguard fundamental liberty interests like the right of access to the courts, and also  
6 mandate that certain procedures be followed before the government deprives someone of such an  
7 interest. *See Washington v. Glucksberg*, 521 U.S. 702, 719–20 (1997) (“The Due Process Clause  
8 guarantees more than fair process . . . [it] also provides heightened protection against  
9 government interference with certain fundamental rights and liberty interests.”).

10 120. California’s Constitution protects fundamental liberty interests of crime victims  
11 by guaranteeing victims certain enumerated *procedural* and *substantive* rights. *In re Vicks*, 56  
12 Cal. 4th 274, 310 (2013).

13 121. In the provision known as Marsy’s Law, the California Constitution, “find[s] and  
14 declare[s]” that:

15  
16  
17 Victims of crime are entitled to have the criminal justice system view criminal  
18 acts as serious threats to the safety and welfare of the people of California. The  
19 enactment of comprehensive provisions and laws ensuring a bill of rights for  
20 victims of crime, including safeguards in the criminal justice system fully  
21 protecting those rights and ensuring that crime victims are treated with respect  
22 and dignity, is a matter of high public importance. California’s victims of crime  
23 are largely dependent upon the proper functioning of government, upon the  
24 criminal justice system and upon the expeditious enforcement of the rights of  
25 victims of crime described herein, in order to protect the public safety and to  
26 secure justice . . . . [¶] The rights of victims pervade the criminal justice system . .

27 Cal. Const., art. I, § 28(a)(2)-(3).

28 122. Marsy’s Law also states:

1 Victims of crime have a collectively shared right to expect that persons convicted  
2 of committing criminal acts are sufficiently punished in both the manner and the  
3 length of the sentences imposed by the courts of the State of California . . . . To  
4 accomplish the goals it is necessary that the laws of California relating to the  
criminal justice process be amended in order to protect the legitimate rights of  
victims of crime.

5 Cal. Const., art. I, § 28(a)(5), (8).

6 123. Marsy’s Law includes the following enumerated rights for victims In order to  
7 preserve and protect a victim’s rights to justice and due process”:

- 8 • “To be treated with fairness and respect for his or her privacy and dignity, and to be  
9 free from intimidation, harassment, and abuse, throughout the criminal or juvenile  
10 justice process.”
- 11 • “To be reasonably protected from the defendant and persons acting on behalf of the  
12 defendant.”
- 13 • “To have the safety of the victim and the victim’s family considered in fixing the  
14 amount of bail and release conditions for the defendant.”
- 15 • “To reasonable notice of and to reasonably confer with the prosecuting agency, upon  
16 request, regarding, the arrest of the defendant if known by the prosecutor, the charges  
17 filed, the determination whether to extradite the defendant, and, upon request, to be  
18 notified of and informed before any pretrial disposition of the case.”
- 19 • “To reasonable notice of all public proceedings, including delinquency proceedings,  
20 upon request, at which the defendant and the prosecutor are entitled to be present and  
21 of all parole or other post-conviction release proceedings, and to be present at all such  
22 proceedings.”  
23  
24  
25

- 1 • “To be heard, upon request, at any proceeding, including any delinquency
- 2 proceeding, involving a post-arrest release decision, plea, sentencing, post-conviction
- 3 release decision, or any proceeding in which a right of the victim is at issue.”
- 4 • “To provide information to a probation department official conducting a pre-sentence
- 5 investigation concerning the impact of the offense on the victim and the victim’s
- 6 family and any sentencing recommendations before the sentencing of the defendant.”
- 7 • “To receive, upon request, the pre-sentence report when available to the defendant,
- 8 except for those portions made confidential by law.”
- 9 • “To be informed, upon request, of the conviction, sentence, place and time of
- 10 incarceration, or other disposition of the defendant, the scheduled release date of the
- 11 defendant, and the release of or the escape by the defendant from custody.”
- 12 • “To have the safety of the victim, the victim’s family, and the general public
- 13 considered before any parole or other post-judgment release decision is made.”
- 14 • “To be informed of the rights enumerated [under Marsy’s Law].”
- 15
- 16

17 Cal. Const., art. I, § 28(b). “These rights” are “personally held and enforceable rights.” Cal.  
18 Const., art. I, § 28(a)(3).

19 124. Plaintiff is a victim within the meaning of the California Constitution. Cal. Const.,  
20 art. I, § 28(e), and thus is entitled to the rights enumerated *supra*.

21 125. Defendants’ policies, practices, customs, supervision, and training as they pertain  
22 to victims’ rights have denied and continue to deny adequate *procedural* and *substantive* due  
23 process protections to Plaintiff.  
24

1           126. Under the *substantive* due process component of the Fourteenth Amendment, if a  
2 law or regulation burdens a fundamental liberty interest, the law or regulation can be upheld only  
3 if the government can justify it under strict scrutiny. *See Glucksberg*, 521 U.S. at 721. To  
4 survive strict scrutiny, the government must demonstrate that the law or regulation is “narrowly  
5 tailored to serve a compelling [government] interest.” *Id.*

6           127. By depriving Plaintiff of her right to be heard and participate in the judicial  
7 process, and by failing to inform her of her rights, provide notice of all proceedings, consider her  
8 safety, treat her with dignity and without harassment, and consult with her at critical junctures,  
9 Defendants’ policies, procedures, and practices, including actions by Defendants Wagstaffe,  
10 Chang, Adams, Sisavath, Dah, Kuhl, and Hernandez, infringed the fundamental liberty interest  
11 of Plaintiff to petition the government for redress of grievances, in violation of substantive due  
12 process. *See Ringgold-Lockhart v. Cnty. Of Los Angeles*, 761 F.3d 1057, 1061 (9th Cir. 2014)  
13 (“[T]he right of access to the courts is a fundamental right protected by the Constitution.”); *see*  
14 *also BE & K Constr. Co. v. N.L.R.B.*, 536 U.S. 516, 524– 25 (2002) (describing right to petition  
15 as “one of the most precious of the liberties safeguarded by the Bill of Rights”). Defendants  
16 Wagstaffe and Chang violated these due process rights by failing to intervene to address the  
17 failings of Defendants Lee and Adams.

18           128. *Procedural* due process requires that the government be constrained before it acts  
19 in a way that deprives a person of liberty interests protected under the Due Process Clause of the  
20 Fourteenth Amendment. *See Matthews v. Eldridge*, 424 U.S. 319, 332 (1976). A procedural due  
21 process claim requires: “(1) a protect[ed] liberty or property interest . . . and (2) a denial of  
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1 adequate procedural protections.” *Foss v. Nat’l Marine Fisheries Serv.*, 161 F.3d 584, 588 (9th  
2 Cir. 1998).

3 129. In violation of her right to procedural due process, Plaintiff was not provided with  
4 notice or an opportunity to be heard before being deprived of her rights by Defendants. *See*  
5 *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306 (1950).

6 130. On information and belief, Defendants repeatedly violated Plaintiff’s due process  
7 rights guaranteed by the California Constitution under Marsy’s Law and will continue to do so in  
8 the absence of adequate policies and procedures.

9 131. Defendant Lee knowingly and deliberately violated Plaintiff’s rights under  
10 Marsy’s Law, including by failing to treat Plaintiff with dignity and respect, misleading Plaintiff  
11 regarding the status of the case and the plea deal, and failing to prepare for trial.

12 132. Defendants Wagstaffe and Chang knowingly and deliberately failed to intervene  
13 once they learned of the Marsy’s Law violations by Defendants Lee and Adams and Plaintiff  
14 requested their intervention. They also failed to promulgate, implement, and/or enforce adequate  
15 policies, procedures, practices, and training to ensure that SMCDA staff engaged with victims in  
16 a manner consistent with Marsy’s Law, and they did so despite knowing that staff were not  
17 adequately trained and did not receive adequate guidance to ensure adherence to Marsy’s Law.  
18 They knowingly and deliberately failed to undertake necessary corrective action to remedy these  
19 deficiencies.  
20  
21

22 133. Defendant Keene failed to promulgate, implement, and/or enforce adequate  
23 policies, procedures, practices, and training to ensure that SMCDA staff engaged with victims in  
24 a manner consistent with Marsy’s Law, and he did so despite knowing that staff were not  
25

1 adequately trained and did not receive adequate guidance to ensure adherence to Marsy’s Law.  
2 He knowingly and deliberately failed to undertake necessary corrective action to remedy these  
3 deficiencies.

4 134. Defendants Hernandez, Adams, Sisavath, Dah, and Kuhl likewise knowingly and  
5 deliberately violated Plaintiff’s rights under Marsy’s Law in the manner enumerated *supra*.

6 135. Given the frequency of attacks on women in San Mateo County, Plaintiff  
7 reasonably fears that she is likely to be attacked again, and that her rights will be further violated  
8 by Defendants.

9 136. Further, Marsy’s Law requires various post-conviction procedures and Plaintiff  
10 reasonably believes, given SMCDA’s and the Probation Department’s repeated past failures, that  
11 her Marsy’s Law rights will continue to be violated in any future interactions with Defendants  
12 regarding her ongoing criminal case.

13 137. Plaintiff is accordingly entitled to an injunction requiring SMCDA and the  
14 Probation Department or any of their employees, or agents to comply fully with Marsy’s Law in  
15 all cases and to institute appropriate training, policies, and procedures to facilitate such  
16 compliance.

17 138. As a direct and proximate result of Defendants’ actions, as alleged herein,  
18 Plaintiff was injured as set forth above and is entitled to damages, including compensatory and  
19 punitive damages, in an amount to be proven at trial and in excess of the jurisdictional amount  
20 required by this Court.

21 139. In doing the foregoing wrongful acts, Defendants acted in reckless and callous  
22 disregard for Plaintiff’s constitutional rights. The wrongful acts, and each of them, were willful,  
23

1 oppressive, fraudulent, and malicious, thus warranting the imposition of punitive damages  
2 against each individual Defendant in an amount adequate to punish the wrongdoers and deter  
3 future misconduct.

4 **THIRD CLAIM FOR RELIEF**

5 **Supervisory Liability**

6 **(42 U.S.C. § 1983; 14th Amendment)**

7 **(Against All Defendants Except Defendants Lee, Adams, and Hernandez)**

8  
9 140. Plaintiff incorporates by reference each and every allegation contained in the  
10 foregoing paragraphs as if re-alleged herein.

11 141. Defendants Wagstaffe, Chang, Keene, Sisavath, Dah, and Kuhl acted in a  
12 supervisory capacity under color of law.

13 142. The acts and failures of Defendants were a cause of the discrimination against and  
14 denial of due process to Plaintiff.

15 143. As supervisors, Defendants disregarded the known or obvious consequences that  
16 deficiencies in policies and training for their subordinates posed to victims, particularly victims  
17 of sexual violence, and those deficiencies would cause their subordinates to violate Plaintiff's  
18 rights.

19 144. The conduct of Defendants, as described above, were so closely related to the  
20 deprivation of Plaintiff's constitutional rights as to be the moving force behind permitting staff to  
21 violate Plaintiff's rights.

22 145. Defendants engaged in conduct that showed a reckless or callous indifference to  
23 the deprivation by their subordinates of the rights of others.

1 146. Plaintiff is accordingly entitled to an injunction requiring SMCDA and the  
2 Probation Department or any of their employees, or agents to comply fully with Marsy’s Law in  
3 all cases and to institute appropriate training, policies, procedures, and supervision to facilitate  
4 such compliance.

5 147. As a direct and proximate result of Defendants’ actions, as alleged herein,  
6 Plaintiff was injured as set forth above and is entitled to damages, including compensatory and  
7 punitive damages, in an amount to be proven at trial and in excess of the jurisdictional amount  
8 required by this Court.

9 148. In doing the foregoing wrongful acts, Defendants acted in reckless and callous  
10 disregard for Plaintiff’s constitutional rights. The wrongful acts, and each of them, were willful,  
11 oppressive, fraudulent, and malicious, thus warranting the imposition of punitive damages  
12 against each individual Defendant in an amount adequate to punish the wrongdoers and deter  
13 future misconduct.  
14

15  
16 **FOURTH CLAIM FOR RELIEF**

17 ***Monell: 42 U.S.C. § 1983***

18 **(Against Defendants County, SMCDA, and Probation Department)**

19 149. Plaintiff realleges all prior paragraphs of this complaint and incorporates the same  
20 herein by this reference.

21 150. Pursuant to 42 U.S.C. § 1983, a local government may be liable for constitutional  
22 torts committed by its officials according to municipal policy, practice, or custom.” *Weiner v.*  
23 *San Diego Cnty.*, 210 F.3d 1025, 1028 (9th Cir. 2000) (citing *Monell v. Dep’t of Soc. Servs.*, 436  
24 U.S. 658, 690–91 (1978)).  
25

1           151. “To hold a local government liable for an official’s conduct, a plaintiff must first  
2 establish that the official (1) had final policymaking authority concerning the action . . . at issue  
3 and (2) was the policymaker for the local governing body for the purposes of the particular act.”  
4 *Id.* at 1028 (citing *McMillian v. Monroe Cnty.*, 520 U.S. 781, 785 (1997)).

5           152. The Ninth Circuit has held that a District Attorney is a policymaker for the local  
6 government in the jurisdiction they serve when the conduct at issue concerns “administrative  
7 oversight of systems used to help prosecutors comply with their constitutional duties” and  
8 therefore in such instances “a cause of action may lie against the County under 42 U.S.C. §  
9 1983.” *Goldstein v. City of Long Beach*, 715 F.3d 750, 762 (9th Cir. 2013).

10           153. As the Ninth Circuit noted in *Goldstein*, by California law:

- 11           • DAs are paid “out of the county treasury,” Cal. Gov’t Code § 28000;
- 12           • the county board of supervisors “shall prescribe the compensation” of the district  
13 attorney, Cal. Gov’t Code § 25300’
- 14           • necessary expenses incurred “in the prosecution of criminal cases” are “county  
15 charges,” Cal. Gov’t Code § 29601;
- 16           • a DA must “account for all money received by him in his official capacity and pay it  
17 over to the treasurer” of the county board of supervisors; and,
- 18           • counties are required to defend and indemnify the district attorney in an action for  
19 damages. Cal. Gov’t Code §§ 815.2, 825.
- 20           • counties are required to defend and indemnify the district attorney in an action for  
21 damages. Cal. Gov’t Code §§ 815.2, 825.
- 22

23           154. Municipal liability exists where a municipality, acting through its relevant  
24 policymaker, fails to properly train, supervise, and discipline its employees amounting to a  
25

1 deliberate indifference to a person’s constitutional rights. *See City of Canton, Ohio v. Harris*,  
2 489 U.S. 378 (1989).

3 155. Plaintiff was deprived by the County, SMCDA, and the Probation Department of  
4 her constitutional rights to equal protection of the law and due process of law under the  
5 Fourteenth Amendment.

6 156. On information and belief, the deprivation of Plaintiff’s rights was part of a  
7 continuing, persistent, and widespread custom and practice by the County, SMCDA, and the  
8 Probation Department of failing to comply with Marsy’s Law when the victim is female and/or a  
9 victim of gender-based violence, including with respect to Plaintiff.

10 157. On information and belief, the County has failed to issue policies and have failed  
11 to train, supervise, and discipline its employees within SMCDA and the Probation Department to  
12 ensure they comply with Marsy’s Law in a manner that (a) protects the due process rights of  
13 female victims and victims of gender-based violence, and (b) does not treat similarly situated  
14 victims differently on the basis of sex and/or status as a victim of gender-based violence. The  
15 actions of Defendants Wagstaffe, Chang, Lee, Adams, Sisavath, Dah, Kuhl, and Hernandez in  
16 Plaintiff’s case alone demonstrate such a lack of training, supervision, and discipline. Defendant  
17 Wagstaffe’s and Defendant Chang’s explicit failure to follow up regarding Plaintiff’s concerns,  
18 which she shared with him directly, demonstrate that the highest levels of leadership and  
19 management at SMCDA create a culture and set a tone regarding the expectations of their  
20 employees and was a direct failure to properly supervise prosecutors in SMCDA. The failure in  
21 Probation Department policy to properly categorize and track sex crimes cases, and to train staff  
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1 on communication with victims and proper review of case files, likewise contributed to the  
2 violations of Plaintiff's rights.

3 158. The County's failure to develop and implement policies and to train, supervise,  
4 and discipline its employees reflects deliberate indifference to the constitutional rights of female  
5 residents and residents who have experienced gender-based violence. The County knows that  
6 SMCDA will be faced with the decision to prosecute crimes perpetrated against such victims and  
7 that the Probation Department will be faced with needing to make sentencing recommendations  
8 and providing supervision of defendants in such cases. The County knows of the history of  
9 discrimination against such victims and that failing to comply with Marsy's Law with respect to  
10 such victims causes a deprivation of those victims' constitutional rights. The County's failure to  
11 issue and implement policies and to train, supervise, and discipline its employees with respect to  
12 their obligations under Marsy's Law has continued despite the County's knowledge that the  
13 constitutional rights of female victims and victims of gender-based crimes are being violated.

14 159. The unconstitutional actions and/or omissions of Defendants and other personnel,  
15 as described above, were known, and were ordered, approved, tolerated, and/or ratified by  
16 policy-making officials for the County, SMCDA, and the Probation Department, including but  
17 not limited to Defendants Wagstaffe, Keene, and Chang.

18 160. Plaintiff is accordingly entitled to a judgment declaring that the County's policies  
19 and procedures have caused violations of her constitutional rights.

20 161. Given the frequency of attacks on women in San Mateo County, Plaintiff  
21 reasonably fears that she is likely to be attacked again, and that her rights will be further violated  
22 by the County, through SMCDA and the Probation Department.

1           162. Further, Marsy’s Law requires various post-conviction procedures and Plaintiff  
2 reasonably believes, given SMCDA’s and the Probation Department’s past failures, that her  
3 Marsy’s Law rights will continue to be violated in any future interactions with SMCDA and the  
4 Probation Department on behalf of the County.

5           163. The aforementioned customs and failures of the COUNTY to provide adequate  
6 policies, training, supervision, and discipline regarding employees’ obligations under Marsy’s  
7 Law and obligations to provide equal protection to female victims and victims of gender-based  
8 violence caused the deprivation of the aforementioned rights of Plaintiff by Defendants; that is,  
9 the COUNTY’s failure to ensure proper customs and policies and to train, supervise, and  
10 discipline is so closely related to the deprivation of the Plaintiff’s rights as to be the moving  
11 force that caused the ultimate injury.

12           164. Therefore, Plaintiff is entitled to an order requiring the County to institute all  
13 necessary and appropriate policies, training, and procedures to ensure an end to such  
14 unconstitutional practices.

15           165. As a direct and proximate result of Defendants’ actions, as alleged herein,  
16 Plaintiff was injured as set forth above and is entitled to damages, including compensatory and  
17 punitive damages, in an amount to be proven at trial and in excess of the jurisdictional amount  
18 required by this Court.

19           166. In conducting themselves as alleged herein, Defendants acted within the course  
20 and scope of their employment with the County. Thus, the County is responsible for their  
21 conduct.



**SIXTH CLAIM FOR RELIEF**

**Violation of Cal. Civ. Code § 52.1 (BANE ACT)**

**(Against Defendants County, SMCDA, Lee, Adams, and DOES)**

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3  
4 172. Plaintiff realleges all prior paragraphs of this complaint and incorporates the same  
5 herein by this reference.

6  
7 173. Defendants interfered by threats, intimidation, or coercion, with the exercise or  
8 enjoyment by Plaintiff of rights secured by the Constitution or laws of the United States and of  
9 the state of California.

10 174. The Fourth and Fourteenth Amendments to the U.S. Constitution guarantee an  
11 individual's rights to equal treatment and due process, the California Constitution's Victims Bill  
12 of Rights guarantees an individual's rights to be consulted as a victim in a criminal prosecution,  
13 and § 11135 guarantee an individual's right to equal treatment.

14  
15 175. By engaging in the acts alleged above, Defendants denied those rights and other  
16 rights to Plaintiff, thus giving rise to claims for damages pursuant to California Civil Code  
17 section 52.1.

18 176. Defendant Lee threatened to show what she believed was embarrassing or  
19 damaging video of Plaintiff, suggested Plaintiff was to blame for her own rape, and misled  
20 Plaintiff about the likely defenses in the prosecution in order to intimidate, coerce, and deter  
21 Plaintiff from providing input about the case, thus interfering with her rights to equal protection  
22 and due process and pursuant to Marsy's Law.

23  
24 177. Defendant Lee deceived Plaintiff about Defendant Lee's plans and actions  
25 regarding the plea deal.

1 178. Defendant Adams actively discouraged Plaintiff from exercising her rights under  
2 Marsy's Law by indicating Plaintiff would upset the court or run afoul of rules or expectations  
3 regarding communication with the court, thus interfering with Plaintiff's rights to equal  
4 protection and due process and pursuant to Marsy's Law.

5 179. As a direct and proximate result of Defendants' actions, as alleged herein,  
6 Plaintiff was injured as set forth above and is entitled to damages, including compensatory and  
7 punitive damages, in an amount to be proven at trial and in excess of the jurisdictional amount  
8 required by this Court.

9 180. In conducting themselves as alleged herein, Defendants were acting within the  
10 course and scope of their employment with Defendant County. Thus, the County is responsible  
11 for Defendants' actions.

12 181. In doing the foregoing wrongful acts, Defendants acted in reckless and callous  
13 disregard for Plaintiff's constitutional rights. The wrongful acts, and each of them, were willful,  
14 oppressive, fraudulent, and malicious, thus warranting the imposition of punitive damages  
15 against each individual Defendant in an amount adequate to punish the wrongdoers and deter  
16 future misconduct.

17  
18  
19 **SEVENTH CLAIM FOR RELIEF**

20 **Negligent Supervision, Training, and Staffing**

21 **Cal. Civil Code 1714, Cal. Gov. Code § 844.6(d)**

22 **(Against All Defendants Except Defendants Lee, Adams, and Hernandez)**

23 182. Plaintiff realleges all prior paragraphs of this complaint and incorporates the same  
24 herein by this reference.  
25

1 183. Defendants acted in a supervisory capacity under color of law.

2 184. Defendants Wagstaffe and Chang knew of Defendant Lee's and Defendant  
3 Adams' violations of Plaintiff's rights under Marsy's Law, had a duty to ensure that Plaintiff, as  
4 a victim, received services and supports, and failed to intervene to provide supervision,  
5 discipline, or training.  
6

7 185. Defendants Sisavath and Dah knew of Defendant Herndandez's violations of  
8 Plaintiff's rights under Marsy's Law and failed to intervene to provide supervision, discipline, or  
9 training.

10 186. Defendant Kuhl knew of Defendant Adams' violations of Plaintiff's rights under  
11 Marsy's Law and failed to intervene to provide supervision, discipline, or training.

12 187. Defendant Keene failed to ensure adequate supervision, discipline, or training of  
13 staff, including of Defendants Hernandez, Dah, and Sisavath, despite knowledge of deficiencies  
14 in policies and practices among staff.  
15

16 188. Defendants disregarded the known or obvious consequences that deficiencies in  
17 training and supervising prosecutors and probation officers regarding compliance with Marsy's  
18 Law and the unique challenges and needs of victims in gender-based violence cases and that  
19 these deficiencies would cause their subordinates to violate Plaintiff's rights.

20 189. The conduct of Defendants, as described *supra*, were so closely related to the  
21 deprivation of Plaintiff's constitutional rights as to be the moving force behind permitting their  
22 subordinates' improper and inadequate interactions with Plaintiff.  
23

24 190. Defendants engaged in conduct that showed a reckless or callous indifference to  
25 the deprivation by their subordinates of the rights of others.  
26

1 191. The aforementioned acts of individual Defendants were conducted with conscious  
2 disregard for rights of Plaintiff and others, and were therefore malicious, wanton, and oppressive.  
3 As a result, Defendants' actions justify an award of exemplary and punitive damages to punish  
4 the wrongful conduct alleged herein and to deter such conduct in the future.

5  
6 192. Since the conduct of Defendants and the injuries to Plaintiff that they inflicted,  
7 occurred in the course and scope of their employment, Defendants County and SMCDA are  
8 therefore liable to Plaintiff pursuant to respondeat superior.

9 **EIGHTH CLAIM FOR RELIEF**

10 **Negligence**

11 **Cal. Civil Code 1714, Cal. Gov. Code § 844.6(d)**

12 **(Against All Defendants Except Keene)**

13  
14 193. Plaintiff realleges all prior paragraphs of this complaint and incorporates the same  
15 herein by this reference.

16 194. Defendants had a duty to Plaintiff to act with ordinary care and prudence so as not  
17 to cause harm or injury to another.

18 195. Defendants improperly, negligently, wrongfully, and recklessly violated  
19 Plaintiff's rights under Marsy's Law.

20 196. By engaging in the acts alleged herein, all Defendants failed to act with ordinary  
21 care and breached their duty of care owed to Plaintiff.

22  
23 197. Defendant Lee failed to properly consult with Plaintiff, as detailed herein,  
24 ambushed Plaintiff at a critical juncture of the criminal case, and engaged with Plaintiff in a  
25 dismissive and insulting manner.

1 198. Defendants Wagstaffe and Chang failed to intervene when Plaintiff notified them  
2 of Defendant Lee's and Defendant Adams' failures.

3 199. Defendant Adams improperly advised Plaintiff as to her rights and failed to  
4 respond to Plaintiff's communications, as detailed herein.

5 200. Defendant Hernandez failed to properly consult with Plaintiff or to properly  
6 prepare for the pre-sentencing report, as detailed herein.

7 201. Defendants Dah and Sasavith failed to intervene with Defendant Hernandez when  
8 Plaintiff advised them of her concerns about Hernandez's handling of the matter.

9 202. Defendant Kuhl failed to intervene with Defendant Adams when Plaintiff advised  
10 her of her concerns about Defendant Adams' handling of the matter.

11 203. As a direct and proximate result of the Defendants' negligent conduct as herein  
12 described, Plaintiff suffered physically and mentally in the amount to be determined at the time  
13 of trial.

14 204. Since the conduct of Defendants and the injuries to Plaintiff that they inflicted,  
15 occurred in the course and scope of their employment, Defendants County, SMCD, and  
16 Probation Department are therefore liable to Plaintiff pursuant to respondeat superior.

17 205. The aforementioned acts of individual Defendants were conducted with conscious  
18 disregard for rights of Plaintiff and others, and were therefore malicious, wanton, and oppressive.  
19 As a result, Defendants' actions justify an award of exemplary and punitive damages to punish  
20 the wrongful conduct alleged herein and to deter such conduct in the future.

21 //

22 //

**NINTH CLAIM FOR RELIEF**

**Intentional Infliction of Emotional Distress**

**(Against All Defendants Except Defendants Keene and DOES)**

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2  
3  
4 206. Plaintiff incorporates by reference each and every allegation contained in the  
5 preceding paragraphs as if set forth fully herein.

6  
7 207. The conduct of Defendants Wagstaffe, Chang, Lee, Adams, Sisavath, Dah, Kuhl,  
8 and Hernandez, as set forth herein, was extreme and outrageous and beyond the scope of conduct  
9 which should be tolerated by citizens in a democratic and civilized society. In order to  
10 deliberately injure, intimidate and harass Plaintiff, Defendants committed the aforementioned  
11 extreme and outrageous acts with the intent to inflict severe mental and emotional distress upon  
12 Plaintiff and convey fear and intimidation to Plaintiff.

13  
14 208. As a proximate result of Defendants' willful, intentional and malicious conduct,  
15 Plaintiff suffered severe and extreme mental and emotional distress.

16  
17 209. As a proximate result of Defendants' wrongful conduct, Plaintiff suffered injuries  
18 and damages as set forth herein.

19  
20 210. The aforementioned acts of individual Defendants were conducted with conscious  
21 disregard for rights of Plaintiff and others, and were therefore malicious, wanton, and oppressive.  
22 As a result, Defendants' actions justify an award of exemplary and punitive damages to punish  
23 the wrongful conduct alleged herein and to deter such conduct in the future.

24  
25 211. Since the conduct of Defendants and the injuries to Plaintiff that they inflicted,  
26 occurred in the course and scope of their employment, Defendants County and SMCDA are  
27 therefore liable to Plaintiff pursuant to respondeat superior.  
28

**IX. PRAYER FOR RELIEF**

WHEREFORE, Plaintiff prays for relief as follows against defendants:

1. For a declaration that the County, SMCDA, and the Probation Department violated Plaintiff's rights under Marsy's Law, in violation of the procedural and substantive due process guarantees of the Fourteenth Amendment to the United States Constitution.
2. For a declaration that the treatment of the cases of gender-based violence violates the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.
3. For an appropriately tailored injunction, after discovery (if necessary) into the current practices of SMCDA and the Probation Department, requiring that Defendants Wagstaffe and Keene, in their official capacities, institute basic constitutionally adequate practices and procedures to comply with Marsy's Law and to ensure that female residents of San Mateo County receive equal protection and equal access to justice. Plaintiff respectfully requests that such injunctive relief include (but not be limited to) the following:
  - Release of complete statistics regarding sex crimes and other gender-based crimes and prosecution/sentencing/plea deal information related to these crimes
  - A requirement that SMCDA advise victims explicitly in writing when they have a right to appear at a hearing;
  - A requirement that SMCDA advise victims of gender-based violence that they

1 are allowed to submit a victim impact statement during a defendant's  
2 sentencing hearing before the court;

- 3 • A requirement that SMCDA advise victims of gender-based violence in  
4 writing prior to offering a plea deal;
- 5 • A requirement that the Probation Department review the full case file prior to  
6 making a sentencing recommendation and notify the victim in writing that  
7 he/she has the right to speak with the probation officer prior to the sentencing  
8 recommendation;
- 9 • A requirement that victims' services, prosecutors, and probation officers  
10 respond timely to victims' communications;
- 11 • Expectations that supervisors audit prosecutors' and probation officers'  
12 compliance with their Marsy's Law obligations and with policies  
13 implemented to ensure such compliance;
- 14 • Expectations that discipline will be issued for an employee's noncompliance  
15 with Marsy's Law and with policies implemented to ensure such compliance;
- 16 • The establishment of a robust referral system where mental health services  
17 and other victim's services are provided for victims of gender-based violence;
- 18 • A requirement that SMCDA and the Probation Department cooperate fully  
19 with victims and their lawyers who seek information about their cases and  
20 access to public filings;
- 21 • A staffing study to review whether staffing shortages contribute to untimely  
22 responses to victims and lack of preparation of cases or of sentencing and  
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**X. DEMAND FOR JURY TRIAL**

Plaintiff hereby demands trial by jury in this action.

Dated this 3rd day of December, 2024

**LAW OFFICE OF AARON ZISSER**

/s/ Aaron Zisser

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Aaron B. Zisser  
Attorney for Plaintiff,  
CARRIE BANKS