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7 **UNITED STATES DISTRICT COURT**

8 **DISTRICT OF NEVADA**

9 JEREMIAH WILLIAM BALIK,

10 Plaintiff,

11 vs.

12  
13 COUNTY OF VENTURA, 99<sup>TH</sup> SECURITY  
14 FORCES/NELLIS AFB, BMO HARRIS BANK,  
15 NA,

16 Defendants.

CASE NO.: 2:22-cv-00679-CDS-VCF

**MOTION TO DISMISS PLAINTIFF'S  
COMPLAINT**

Assigned for All Purposes To:  
Hon. Cristina D. Silva

Action Filed: March 23, 2022

17 Defendant County of Ventura ("Ventura County"), by and through its counsel of record, G.  
18 Mark Albright, Esq. and Daniel R. Ormsby, Esq. of the law firm of ALBRIGHT, STODDARD,  
19 WARNICK & ALBRIGHT, and hereby submits its *Motion to Dismiss Plaintiff's Complaint*  
20 (hereinafter "Motion") based upon the United States District Court District of Nevada's Order  
21 declaring Plaintiff JEREMIAH WILLIAM BALIK (hereinafter "Plaintiff" or "Balik") a vexatious  
22 litigant, and which requires Plaintiff to first obtain permission from this court before bringing a civil  
23 rights action under Section 1983 in Nevada Federal District Court. **Exh. A** (Case No. 2:18-cv-  
24 02174-RFB-EJY) (hereinafter "Vexatious Litigant Order" or "Prefiling Order"). Ventura County  
25 also submits this Motion under Fed. R. Civ. P. (12)(b)(2), Fed. R. Civ. P. (12)(b)(5), and Fed. R.  
26 Civ. P. (12)(b)(6). This Motion is made and based upon the following Memorandum of Points and

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28 ///

1 Authorities, the attached exhibits, the pleadings and papers on file herein, and any oral argument  
2 offered at the time of the hearing.

3 DATED this 2<sup>nd</sup> day of May 2022.

4  
5 **ALBRIGHT, STODDARD, WARNICK & ALBRIGHT**

6 /s/ G. Mark Albright

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15 **MEMORANDUM OF POINTS AND AUTHORITIES**

16 **I. INTRODUCTION**

17 *Pro se* Plaintiff, Jeremiah William Balik, was declared a vexatious litigant by the Honorable  
18 Richard F. Boulware II. **Exh. A.** Over the last several years, Plaintiff has repeatedly filed lawsuits  
19 (over two dozen), which most, if not all, revolve around allegations related to encounters with law  
20 enforcement from a variety of different law enforcement agencies, departments, and locations, and  
21 other conspiracy theories. Plaintiff usually alleges that these various incidents resulted in violations  
22 of his Fourth, Fifth, and Fourteenth Amendment rights and asserts causes of actions under 42 U.S.C.  
23 § 1983, Title VII of the Civil Rights Act, 42 U.S.C. § 1985, and 42 U.S.C. § 1986.<sup>1</sup>

24 Balik filed the operative Complaint in Clark County's Eighth Judicial District Court in a  
25 clear attempt to avoid the United States District Court District of Nevada's Prefiling Order, which  
26 not only declared him a vexatious litigant but also required him to first seek and obtain the  
27 permission of a magistrate judge before litigating any civil rights complaints. **Exh. A.** Ventura  
28 County is merely another victim of Plaintiff's harassment through the courts, forcing Ventura  
County to respond to baseless, untrue, and delusional allegations. Because Plaintiff's Complaint

<sup>1</sup> Plaintiff's repetitive lawsuits also usually include bizarre allegations involving Rahm Emanuel, Chicago's former mayor, and Congressman Fred Upton. *See Exh. A.*

1 violates the Prefiling Order, this Court should dismiss Plaintiff’s Complaint for failure to first seek  
2 leave of Court before initiating an action contemplated by the Prefiling Order. **Exh. A.**

3 Furthermore, Ventura County also moves to dismiss Plaintiff’s Complaint against Ventura  
4 County under Fed. R. Civ. P. 12(b)(6) for failure to state a claim because each claim asserted against  
5 Ventura County is stale and barred under the applicable statutes of limitation. Ventura County also  
6 moves to dismiss for lack of personal jurisdiction because Plaintiff fails to sufficiently plead  
7 personal jurisdiction over Ventura County. More important still, Plaintiff also fails to provide any  
8 *prima facie* evidence to justify exercising personal jurisdiction over Ventura County in the State of  
9 Nevada. Lastly, and in the alternative, Ventura County moves to dismiss Plaintiff’s Complaint  
10 against it under Fed. R. Civ. P. 12(b)(5) for insufficient service of process.

11 **II. FACTUAL BACKGROUND AND PROCEDURAL HISTORY**

12 **A. ORDER DECLARING PLAINTIFF A VEXATIOUS LITIGANT**

13 The Honorable Richard F. Boulware II declared Plaintiff a vexatious litigant in the Vexatious  
14 Litigant Order. *See Exh. A.* The Vexatious Litigant Order details many significant facts presented  
15 in Case No. 2:18-cv-02174-RFB-EJY (hereinafter “2018 Action”) which led the Honorable Judge  
16 Boulware to declare Plaintiff a vexatious litigant and further order that Plaintiff must comply with  
17 certain prefiling requirements, including obtaining permission from a magistrate judge to file civil  
18 rights complaints. *Id.*

19 What is more, the 2018 Action Complaint contains striking similarities to the operative  
20 Complaint in this matter. For instance, as the Court noted in its Vexatious Litigant Order, Plaintiff  
21 included “a number of allegations against defendants related to traffic stops and other encounters  
22 throughout the country[,]” which “resulted in violations of his Fourth, Fifth, and Fourteenth  
23 Amendment rights and asserts causes of action under 42 U.S.C. § 1983, . . . 42 U.S.C. § 1985, “false  
24 arrest,” and 42 U.S.C. § 1986.” *Id.* The 2018 Action complaint also includes allegations that various  
25 law enforcement departments engaged in bad acts, including racist acts; unlawful patrolling;  
26 covering up civil rights violations; poisoning Plaintiff; having officers attempt to deter him from  
27 pursuing legal actions, etc. *See Id.* at 3-4. The 2018 Action Complaint also alleged that the City of  
28 San Bernardino via its police officers engaged in bad acts and, the City of San Jose also engaged in

1 bad acts in similar ways. *Id.* at 4. <sup>2</sup>

2 Judge Boulware’s Court also took notice that Plaintiff had filed “at least twenty-three  
3 lawsuits in various state and federal courts. **Exh. A**, at pp. 6-7. This Court cited several instances  
4 where other courts adversely ruled against Plaintiff in similarly pleaded actions, where those other  
5 courts dismissed the actions, deeming these similarly pleaded actions as frivolous, “fanciful, and  
6 lack[ing] an arguable basis in fact.” *Id.* at 10-11.

7 In that 2018 Action, this Court concluded as follows:

8 ...a review of the complaints in many of [the cases cited] indicate[] that the  
9 allegations center around the same theme, and mirror those made here. The fact that  
10 despite these rulings, and indeed despite **twice being deemed a vexatious litigant**  
11 **in the California judicial system**<sup>3</sup>, Plaintiff has continued to file these complaints  
12 for a total number of what is now twenty-four cases, in both state and federal  
13 jurisdictions and now in Nevada as well as California, alleging nearly identical facts  
14 which **appear to have no basis in reality**, is the **very definition of harassment**.  
15 As Defendant notes, **Plaintiff has not succeeded in a single one of these cases**,  
16 and as Defendant has stated and as the Court’s review indicates, he has received an  
17 adverse determination in at least thirteen. Consequently, it is clear that Plaintiff’s  
18 claims are not only numerous, but “**patently without merit.**”

19 *Id.* at p. 12 (internal citation omitted) (emphasis added).

20 After describing Plaintiff’s vexatious litigation history and the frivolous nature of the  
21 complaint in the 2018 Action, the Court instituted:

22 ...a pre-filing order which prevents Plaintiff from filing in the District of Nevada:  
23 1) **civil rights complaints**; 2) **complaints asserting harassment**; and 3)  
24 complaints asserting employment discrimination without first obtaining permission  
25 from the Magistrate Judge assigned to his case. Furthermore, as Plaintiff has  
26 continually sought to file suit against the same defendants for the same allegations,  
27 the Court also institutes a pre-filing order which prevents Plaintiff from filing in  
28 the District of Nevada any suit against: 1) Fred S. Upton Foundation; 2) Rahm  
Emanuel; 3) Valvoline; 4) Next Generation Wireless; 5) City of Cedar Falls, Iowa;  
6) Santa Barbara County Sheriff’s Department; 7) San Diego County Sheriff’s  
Department; and 8) City of San Bernardino without first obtaining permission from  
the Magistrate Judge assigned to his case.

*Id.* at pp. 12-13 (emphasis added).

<sup>2</sup> The 2018 Action also included several allegations of bad acts by and between Congressman Fred Upton and Former Mayor Rahm Emanuel. *Id.* at 4-5.

<sup>3</sup> These vexatious litigant orders from two different California Courts probably are the reason Plaintiff seeks to litigate against Ventura County (an entity which has zero contacts with Nevada related in any way to Plaintiff’s claims) in Nevada courts.

1 In the same Vexatious Litigant Order, this Court dismissed Plaintiff’s complaint in the 2018  
2 Action because “Plaintiff has **failed to plead facts that give rise to claims for relief that are**  
3 **plausible on their face**. The allegations are **frivolous**. This defect is evident as to the allegations  
4 in their entirety, made against all defendants.” **Exh. A**, at p. 13 (emphasis added).

5 Balik challenged the Vexatious Litigant Order which dismissed the 2018 Action in his  
6 appeal to the Ninth Circuit Court of Appeals (Case No. 20-15324). On March 24, 2021, the Ninth  
7 Circuit not only affirmed this Court’s Vexatious Litigant Order, but it affirmed it because “Balik’s  
8 claims [were] too frivolous and unsubstantial to invoke subject matter jurisdiction.” **Exh. B** at p.  
9 2.<sup>4</sup>

10 **B. BALIK CONTINUES TO VIOLATE THIS COURT’S PREFILING ORDER**

11 After he initiated the 2018 Action, Plaintiff filed another civil action, this time in Clark  
12 County’s Eighth Judicial District Court, on June 15, 2021, which was promptly removed to the  
13 Federal District Court of Nevada (Case No. 2:21-cv-01701-RFB-NJK, hereinafter referred to as  
14 “Las Vegas Action”). In the Las Vegas Action, Plaintiff sued the following: (1) City of Las Vegas  
15 [LVMPD][LVFD][Deputy Marshal], City of North Las Vegas, City of Pismo Beach, CA California  
16 Highway Patrol, Verizon Wireless, Inc. dba Cellco Partnership, Wholefoods, Inc., the Blackstone  
17 Group, Inc [Bellagio Hotel & Casino], 7-11, Inc., Maverik, Inc, Smith’s Grocery/Kroger, Inc., US  
18 Vets, Inc., UPS, Inc./UPS Store #4213, and Rahm I. Emanuel. *See* Case No. 2:21-cv-01701-RFB-  
19 NJK. Plaintiff’s complaint in the Las Vegas Action is a cacophony of dubious allegations in which  
20 Plaintiff asserts outlandish claims for relief upon various municipalities, law enforcement agencies,  
21 and parcel delivery servicers which have nothing to do with each other, other than Plaintiff’s belief  
22 that Congressman Upton and Mayor Rahm Emanuel are secretly behind each Defendant’s  
23 purported bad acts against Plaintiff. *See* ECF No. 1 in the Las Vegas Action for a copy of the  
24 complaint therein.

25  
26  
27 <sup>4</sup> The Ninth Circuit relied on *Hagans v. Lavine*, 415 U.S. 528, 536 (1974) (“Over the years this Court has repeatedly  
28 held that the federal courts are without power to entertain claims otherwise within their jurisdiction if they are so  
attenuated and unsubstantial as to be **absolutely devoid of merit** . . . .”) **Exh. B** at p. 2 (emphasis added).

1 Plaintiff's Las Vegas Action has since been stayed by Judge Boulware,<sup>5</sup> pending various  
2 motions to dismiss and motions seeking enforcement of the prefiling order, for reasons similar to  
3 those sought herein.

4 On September 9, 2021, Balik instituted yet another legal action when he filed his motion for  
5 leave to proceed in forma pauperis, seeking to file a complaint against the Department of Veteran  
6 Affairs. *See* Case No. 2:21-cv-01661-APG-NJK (hereinafter "Veteran Affairs Action").  
7 Immediately thereafter the Magistrate Judge issued an order to show cause, directing Balik to show  
8 cause why his case should not be dismissed for violation of the Prefiling Order. **Exh. C.** In his  
9 response, Plaintiff included striking admissions, regarding the Las Vegas Action, namely that he  
10 "[was] well aware of the vexatious litigant pre-filing conditions and deftly avoided being scrutinized  
11 by them by not naming [Fred Upton and Rahm Emanuel] and filing a 42 US Code § 1983 case in  
12 State court." **Exh. D** at p. 2. Plaintiff further admitted that "[a]s noted in the [Las Vegas Action]  
13 complaint, Nevada is a notice pleading state—Plaintiff wanted to avoid higher pleading standards  
14 *Iqbal/Twombly* style. *Balik v. City of Las Vegas et al*, #A-21-835615-C, 8<sup>th</sup> Judicial District  
15 Court[.]" *Id.* at p. 2. Thus, Plaintiff admitted that he was not only aware of the Prefiling Order, but  
16 he chose to file his Las Vegas Action complaint in the Eighth Judicial District Court to avoid the  
17 Prefiling Order. It follows that Plaintiff filed the operative Complaint in this action in the Eighth  
18 Judicial District Court for the same reasons.

19 Unsurprisingly, the Honorable Judge Andrew P. Gordon dismissed the Veterans Affairs  
20 Action, noting that "Judge Boulware's order specifically bars Balik from filing civil rights  
21 complaints in this district without obtaining pre-approval." **Exh. E.** This Court should also dismiss  
22 Plaintiff's operative Complaint in this action for the same reasons, the legal basis for which is  
23 explained below.

#### 24 **C. THE INSTANT ACTION**

25 In Plaintiff's operative Complaint in the instant action, Plaintiff again asserts claims brought  
26 under 42 U.S.C. § 1983, **Exh F** at pp. 1-3, 6-7, 11-13, 17, 53, 54; 42 U.S.C. § 1985, **Exh. F** at pp.

27 \_\_\_\_\_  
28 <sup>5</sup> Judge Boulware's minute order (ECF NO. 119 in that case) expressly forbids Plaintiff from filing any further motions while the court considered the pending dispositive motions, which Plaintiff has not honored.

1 1, 12, 14; 42 U.S.C. § 1986, **Exh. F** at pp. 1, 15. Plaintiff’s instant Complaint also alleges violations  
2 of his civil rights under the Fourth Amendment, **Exh. F** at pp. 2-3, 12, 27, 37, 54; Fifth Amendment,  
3 **Exh. F** at p. 12-13; and Fourteenth Amendment, **Exh. F** at pp. 2-3, 12, 27, 37, 54. Plaintiff’s  
4 operative Complaint bears as its title: “CIVIL RIGHTS COMPLAINT FOR DAMAGES UNDER  
5 42 U.S. CODE §§ 1983, *Monell* Claim, 1985 42 U.S. CODE § 1986 [Failure to Intervene] – CIVIL  
6 ACTION FOR DEPRIVATION OF RIGHTS, NRS 200.571 & NRS §41.130 – BREACH OF  
7 CONTRACT per BMO HARRIS.” *Id.* at p. 1. Although unclear, Plaintiff also appears to be  
8 asserting a cause of action under Nev. R. Stat. § 41.130, for personal injuries or negligence. *Id.* at  
9 55.

10 Plaintiff alleges that, on April 13, 2019, while attempting to purchase stamps at a USPS  
11 location in Thousand Oaks, California, he “tripped up a bit” due to “dusty” floors and ran into a  
12 “plain clothes man.” **Exh. F** at p. 18. Plaintiff alleges that the “plain clothes man” he ran into was a  
13 Ventura County Sheriff’s Deputy who was off-duty at the time Plaintiff ran into him (hereinafter  
14 “Off-duty Deputy”)<sup>6</sup>. *Id.* Plaintiff alleges that the Off-duty Deputy, in response to the physical  
15 contact, “unreasonably and unnecessarily pulled his gun on Plaintiff[.]” *Id.* Plaintiff alleges that the  
16 Off-duty Deputy was a “crazed, racist, [and a] ‘dirty harry’[.]” though no explanation is given for  
17 this allegation. *Id.* After Plaintiff admittedly refused to cooperate with the Off-duty Deputy, the  
18 Ventura County Sheriff’s Department responded to the scene and the encounter ended (hereinafter  
19 referred to as “USPS Encounter”). *Id.*

20 Plaintiff’s next set of perplexing allegations involves Plaintiff’s belief that North Las Vegas  
21 Police Department officers were “engaging in Cell Site Simulator shenanigans”, presumably against  
22 Plaintiff, attempting to deter Plaintiff from filing the instant suit against Ventura County. *Id.* at p.19.  
23 As a basis for this bizarre belief, Plaintiff alleges he discovered a “nexus” that Ventura County  
24 Sheriff Bill Ayub used to be a North Las Vegas Police Officer. *Id.*

25 All of Plaintiff’s allegations concerning Ventura County, and the causes of action asserted  
26

27 <sup>6</sup> Note, Plaintiff later calls into doubt whether the Off-duty Deputy was a Ventura County Sheriff’s Deputy when he  
28 averred that “[d]ue to the proximity of neighboring West Lake Village, CA; **it may have bene a rogue Los Angeles Sheriff’s Department [“LASD”] Deputy.**” **Exh. C** at p. 23.

1 against Ventura County, all stem from the USPS Encounter in California, which Plaintiff alleges  
2 occurred on April 13, 2019. *Id.* at p.18. Based on these allegations, Plaintiff asserts causes of action  
3 under Section 1983 (**Exh. F** at pp.11-14), Section 1985 (**Exh. F** at pp. 14-15), Section 1986 (**Exh.**  
4 **F** at p. 15), NRS 41.130 (**Exh. F** at pp. 15-16), and intentional infliction of emotional distress (**Exh.**  
5 **F** at p. 12) against Ventura County.

6 Plaintiff filed his Complaint on March 23, 2022, nearly three years after the purported USPS  
7 Encounter. On April 25, 2022, Plaintiff filed an “Affidavit of Service 99<sup>th</sup> Security Forces @ Nellis  
8 AFB & County of Ventura, Nev. R. Civ. P. 55 Prep Documents,” attached hereto as **Exh. G**. County  
9 of Ventura is unable to meaningfully decipher the purported Affidavit of Service, much less  
10 determine if there is an affidavit that states that Ventura County was served with process. *See Exh.*  
11 **G**. Although Plaintiff has emailed Ventura County representatives a copy of the Complaint and  
12 Summons, Plaintiff has never satisfactorily or properly served Ventura County with process. *Id.*  
13 Even stranger, Plaintiff includes an email which includes the following statement: “4/13/19 city of  
14 thousand oaks USPS incident implicates racist clown Rep fred upton.” **Exh. F** at p.26

15 Apart from Plaintiff’s allegations concerning Ventura County, Plaintiff also apparently  
16 could not help but include allegations of the involvement of Rahm Emanuel and Congressman Fred  
17 Upton, notwithstanding the fact that neither are named Defendants in this matter. *See Exh. F* at pp.  
18 11, 26, 31, 38-41, 45-46, 48-49, 51. Plaintiff also alleges that Emanuel and Upton are somehow  
19 involved in the claims he asserted against BMO Harris Bank, NA. *Id.* at 49.

20 In short, Plaintiff’s Complaint in this action must be dismissed for a myriad of reasons, which  
21 include his blatant violations of the Prefiling Order, his claims are barred by the statutes of  
22 limitation, and Plaintiff failed to effectuate proper service of process.

### 23 **III. ARGUMENT**

#### 24 **A. PLAINTIFF’S COMPLAINT SHOULD BE DISMISSED FOR VIOLATING THIS** 25 **COURT’S ORDER.**

26 This Court should dismiss Plaintiff’s Complaint because it violates both the plain language  
27 of the Vexatious Litigant Order and its clear purpose. Any forthcoming contentions from Plaintiff  
28 that he has “deftly avoided being scrutinized by” the Vexatious Litigant Order by initially filing the



1 Complaint in State Court, as he argued concerning the Las Vegas Action, are groundless and  
2 demonstrate Plaintiff's bad faith. Indeed, other courts have found that whether the pre-filing order  
3 originated in state or federal court is immaterial to its efficacy once the case is removed or  
4 transferred to the issuing court.

5 In United States District Court, District of Arizona, in *Stone v. Maricopa County*, 2008 WL  
6 4446697 (2008) (not included in the Federal Reporter), attached as **Exh. H**, the plaintiffs were  
7 subject to a pre-filing/vexatious litigant order issued from the Federal District of Arizona. *Id.* at \*2-  
8 6. Thereafter, the vexatious litigants filed a complaint in Arizona Federal Court, which was disposed  
9 of via summary judgment based on *res judicata*. *Id.* at \*6. Subsequently, the vexatious plaintiffs  
10 filed an Amended Complaint in Arizona State Court, which was promptly removed by the  
11 defendants back to the Arizona Federal Court. *Id.* The Arizona Federal Court then dismissed the  
12 vexatious litigant's Amended Complaint with prejudice based on the pre-filing order, holding that  
13 "[t]he fact that the instant case arrived at federal court by virtue of the Defendant's removing the  
14 case from state court is unavailing. It is not relevant that [the Vexatious litigants] did not choose the  
15 federal forum in which to litigate." *Id.* at \*9-10.

16 In the Southern District of New York, in *Sassower v. Abrams*, 833 F.Supp 253, (1993), the  
17 plaintiff had a vexatious litigant/pre-filing order issued against him in both New York State Courts  
18 and the Southern District of New York, Federal Court. In *Sassower*, the vexatious litigant initiated  
19 several lawsuits in the New York State Court, which were subsequently removed to the Southern  
20 District of New York Federal Court and consolidated with other cases the vexatious litigant had  
21 filed in federal court. *Id.* 256-261. Even though two of the complaints originated from the state court,  
22 the Southern District of New York nevertheless determined to dismiss the two complaints which  
23 originated from State Court for failure to abide by the State Court's pre-filing order. *Id.* at 263.

24 Here, similar to the plaintiffs in *Stone*, Plaintiff filed his Complaint in Nevada's Eighth  
25 Judicial District Court, and the Complaint was subsequently removed to this Federal District Court.  
26 Similar to the vexatious litigants in *Stone*, Plaintiff filed his Complaint in state court to circumvent  
27 the Prefiling Order issued by this Court. The clear purpose of the Prefiling Order is to prevent further  
28 frivolous litigation and the Vexatious Litigant Order expressly states that Plaintiff is precluded from

1 filing “civil rights complaints” or “complaints asserting harassment.” **Exh. A** at pp.12-14. As a  
2 consequence of Plaintiff’s clear violation of the Vexatious Litigant Order, this Court should  
3 summarily dismiss Plaintiff’s Complaint.

4 **B. PLAINTIFF’S COMPLAINT AGAINST VENTURA COUNTY SHOULD BE**  
5 **DISMISSED UNDER FED. R. CIV. P. 12(b)(6) AS ALL CLAIMS ASSERTED**  
6 **AGAINST VENTURA COUNTY ARE BARRED BY THE APPLICABLE**  
7 **STATUTES OF LIMITATION.**

8 Under Rule 12(b)(6), this Court has the authority to dismiss claims for relief that are barred  
9 under the applicable statutes of limitation. *See Perez v. Seevers*, 869 F.2d 425 (9th Cir. 1989) (the  
10 Court affirmed a Fed. R. Civ. P. 12(b)(6) dismissal of a §1983 as barred under the applicable statutes  
11 of limitation).

12 ***Plaintiff’s §1983 Claims***

13 “The length of the limitations period for §1983 actions is governed by state law.” *Jones v.*  
14 *Blanas*, 393 F.3d 918, 927 (9th Cir. 2004). The Supreme Court held that “[Section] 1983 claims are  
15 best characterized as personal injury actions.” *Wilson v. Garcia*, 471 U.S. 261, 280, 105 S.Ct. 1938  
16 (1985). Under Nevada law, the statute of limitations for personal injury claims is two years. *See*  
17 *NRS 11.190(4)(e)*. Here, Plaintiff’s Complaint alleges that the wrongdoing occurred on April 13,  
18 2019. **Exh. C** at p.18. Plaintiff filed his Complaint on March 23, 2022, nearly three years after the  
19 USPS Encounter occurred in California. The April 13, 2019, USPS Encounter is the only alleged  
20 wrongdoing of Ventura County. As a result, Plaintiff’s § 1983 claims against Ventura County  
21 expired on April 13, 2021, and are barred by the applicable statute of limitations as a matter of law.

22 ***Plaintiff’s §1985 and 1986 Claims***

23 “Claims brought pursuant to § 1985 are . . . governed by the statute of limitations for personal  
24 injury actions, and as such the statute of limitations for such claims is two years.” *Chachas v. City*  
25 *of Ely, Nev.*, 615 F. Supp. 2d 1193, 1203 (D. Nev. 2009) (citing *McDougal v. County of Imperial*,  
26 942 F.3d 668, 673-74 (9th Cir. 1991). “The statute of limitations for § 1986 claims is one year. *Id.*  
27 Here, Plaintiff’s Complaint alleges that the wrongdoing occurred on April 13, 2019. **Exh. F** at p.18.  
28 Plaintiff filed his Complaint on March 23, 2022, nearly three years after the USPS Encounter  
occurred. The only alleged wrongdoing against Ventura County arises out of the USPS Encounter

1 on April 13, 2019. Plaintiff’s § 1985 claims against Ventura County expired on April 13, 2021.  
2 Plaintiff’s § 1986 claims against Ventura County expired on April 13, 2020. Consequently, both  
3 Plaintiff’s § 1985 claims and § 1986 claims are barred by the applicable statutes of limitations.

4 ***Plaintiff’s NRS 41.130 and IIED Claims***

5 Both of Plaintiff’s claims under NRS 41.130 and the intentional infliction of emotional  
6 distress claims are subject to a two-year statute of limitations under NRS 11.190(4)(e). The  
7 limitations period for tort claims runs “when the wrong occurs and a party sustains injuries for which  
8 relief could be sought.” *Petersen v. Bruen*, 106 Nev. 271, 273, 792 P.2d 18, 20 (1990).

9 Here, Plaintiff’s Complaint alleges that the wrongdoing occurred on April 13, 2019. **Exh. F**  
10 at p.18. Plaintiff filed his Complaint on March 23, 2022, nearly three years after the USPS Encounter  
11 occurred. The only alleged wrongdoing against Ventura County arises out of the USPS Encounter  
12 on April 13, 2019. Plaintiff’s intentional infliction of emotional distress and NRS 41.130 claims  
13 against Ventura County expired on April 13, 2021. Consequently, both the intentional infliction of  
14 emotional distress and NRS 41.130 claims are barred by the applicable statutes of limitations.

15 **C. PLAINTIFF’S COMPLAINT SHOULD BE DISMISSED UNDER FED. R. CIV. P. P. 12(b)(2) FOR LACK OF PERSONAL JURISDICTION.**

16 **1. *Standard of Review***

17 Under Fed. R. Civ. P. 12(b)(2), a claim for relief may be dismissed if the court does not have  
18 personal jurisdiction over a defendant. The plaintiff bears the burden of establishing that jurisdiction  
19 is proper. *Boschetto v. Hansing*, 539 F.3d 1011, 1015 (9th Cir. 2008). “A plaintiff can carry this  
20 burden *only by* presenting sufficient evidence to establish that (1) personal jurisdiction is proper  
21 under the laws of the state where it is asserted; and (2) the exercise of jurisdiction does not violate  
22 the defendant’s right to due process secured by the United States Constitution.” *Prescott v. Slide*  
23 *Fire Sols., LP*, 341 F. Supp. 3d 1175, 1180 (D. Nev. 2018) (emphasis added); *see Ziegler v. Indian*  
24 *River Cnty.*, 64 F.3d 470, 473 (9th Cir. 1995); *Chan v. Soc’y Expeditions, Inc.*, 39 F.3d 1398, 1404–  
25 05 (9th Cir. 1994). When there is no federal statute governing personal jurisdiction, the district court  
26 must apply the law of the forum state. *Prescott*, 341 F. Supp. 3d at 1180.

27  
28 ///

1 Under Nevada’s long-arm statute, jurisdiction may be asserted over a party to a civil action  
2 “on any basis not inconsistent with the Constitution of this state or the Constitution of the United  
3 States.” Nev. Rev. Stat. Ann. § 14.065. “Thus, the Due Process Clause of the Fourteenth  
4 Amendment is the relevant constraint on Nevada's authority to bind a nonresident defendant to a  
5 judgment of its courts.” *Prescott*, 341 F. Supp. 3d at 1180–81; *see World-Wide Volkswagen*  
6 *Corp. v. Woodson*, 444 U.S. 286, 291 (1980). Personal jurisdiction over a nonresident defendant  
7 may be founded on either general or specific jurisdiction. *Panavision Int'l, L.P. v. Toepfen*, 141  
8 F.3d 1316, 1320 (9th Cir. 1998).

9 It is the plaintiff’s burden to “make a *prima facie* showing of personal jurisdiction before  
10 trial and then prove jurisdiction by a preponderance of the evidence at trial.” *Trump v. Eighth*  
11 *Judicial Dist. Court*, 109 Nev. 687, 857 P.2d 740, 743 (1993). To make a *prima facie* showing, pre-  
12 trial, a plaintiff must “introduc[e] competent evidence of essential facts which establish . . . that  
13 personal jurisdiction exists.” *Id.* “In determining whether a *prima facie* showing has been made, the  
14 district court is not acting as a fact finder. It accepts properly supported proffers of evidence by a  
15 plaintiff as true.” *Id.* at 744.

16 “The contacts of an agent are attributable to the principal in determining whether personal  
17 jurisdiction exists.” *Trump*, 109 Nev. at 694, 857 P.2d at 745 (citing *Sher v. Johnson*, 911 F.2d 1357,  
18 1362 (9th Cir. 1990)). Pre-trial, a plaintiff seeking to establish personal jurisdiction over a defendant  
19 through contacts of its agent must “be established by *prima facie* evidence.” *Id.* (citing *First Chicago*  
20 *Intern. v. United Exchange Co., Ltd.*, 836 F.2d 1375, 1378-79 (D.C.Cir 1988); *Green v. McCall*,  
21 710 F.2d 29, 33 (2d Cir. 1983); *Grove Press, Inc. v. Angleton*, 649 F.2d 121, 123 (2d Cir. 1981);  
22 *Walker v. Newgent*, 583 F.2d 163, 167 (5th Cir. 1978), *cert. denied*, 441 U.S. 906, 99 S.Ct. 1994,  
23 60 L.Ed.2d 374 (1979)).

## 24 **2. General Jurisdiction**

25 When a defendant is not domiciled in the forum state, general jurisdiction exists when the  
26 defendant’s “activities there are ‘substantial’ or ‘continuous and systematic.’” *Panavision*, 141 F.3d  
27 at 1320 (quoting *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 414–16 (1984)).  
28 If the defendant’s activities in the forum state are neither substantial nor continuous and systematic,

1 the court must evaluate “the nature and quality of the defendant’s contacts in relation to the cause  
2 of action” to determine whether specific jurisdiction exists. *Data Disc, Inc. v. Sys. Tech. Assocs.,*  
3 *Inc.*, 557 F.2d 1280, 1287 (9th Cir. 1977).

4 **3. Specific Jurisdiction**

5 The Due Process Clause requires that for a court to have personal jurisdiction over a  
6 defendant, the defendant must have “certain minimum contacts with it such that the maintenance of  
7 the suit does not offend ‘traditional notions of fair play and substantial justice.’” *Int’l Shoe Co. v.*  
8 *State of Wash., Office of Unemployment Comp. & Placement*, 326 U.S. 310, 316 (1945) (quoting  
9 *Milliken v. Meyer*, 311 U.S. 457, 463 (1940)). Courts in the Ninth Circuit Court of Appeal employ  
10 the following three-prong test to determine whether a defendant is subject to specific jurisdiction:

11 (1) The nonresident defendant must do some act or consummate some transaction  
12 with the forum or perform some act by which he purposefully avails himself of the  
13 privilege of conducting activities in the forum, thereby invoking the benefits and  
14 protections of its laws. (2) The claim must be one which arises out of or results from  
the defendant’s forum-related activities. (3) Exercise of jurisdiction must be  
reasonable.

15 *Data Disc*, 557 F.2d at 1287.

16 The three-prong *Data Disc* test is used to analyze “the single question of whether the  
17 ‘constitutional touchstone’ of ‘minimum contacts’ necessary for due process are satisfied.” *Omeluk*  
18 *v. Langsten Slip & Batbyggeri A/S*, 52 F.3d 267, 270 (9th Cir. 1995) (quoting *Burger King Corp. v.*  
19 *Rudzewicz*, 471 U.S. 462, 474 (1985)). The plaintiff bears the burden of satisfying the first two  
20 prongs of the *Data Disc* test. *Schwarzenegger v. Fred Martin Motor Co.*, 374 F.3d 797, 802 (9th  
21 Cir. 2004) (“If the plaintiff fails to satisfy either of these prongs, personal jurisdiction is not  
22 established in the forum state.”).

23 **D. PLAINTIFF’S COMPLAINT FAILS TO SHOW THAT THIS COURT HAS**  
24 **PERSONAL JURISDICTION OVER VENTURA COUNTY.**

25 Plaintiff’s Complaint fails to show that this Court has either general jurisdiction or specific  
26 jurisdiction over Ventura County. Indeed, Plaintiff’s only assertions which could be interpreted to  
27 even remotely relate to jurisdiction are either blatant falsehoods or dubious conspiracy theories. *See*  
28 Complaint at p.3 (“Venue is proper in the Eighth District in that the events and conduct complained

1 of herein all occurred in the Eighth District), p.4 (“Venue is proper pursuant to 28 U.S.C. § 1391  
2 because defendants reside in this district.”), p. 17 (“Statement on Jurisdiction: County of Ventura  
3 meets thresh hold, jurisdiction is property. County of Ventura has minimum contacts in forum state  
4 and Court has jurisdiction under section 1983 subject matter.”), and p. 19 (Plaintiff’s bizarre belief  
5 that because a former North Las Vegas police officer now works in the Ventura County Sheriff’s  
6 Department, it somehow equates to something significant).

7 As shown below, nothing in Plaintiff’s Complaint even remotely demonstrates or justifies  
8 this Court’s exercise of jurisdiction over Ventura County, a political subdivision of California.  
9 Accordingly, this Court should dismiss Plaintiff’s Complaint against Ventura County for lack of  
10 personal jurisdiction.

11 **1. General Jurisdiction**

12 Ventura County is duly organized and exists as a county under the Constitution and laws of  
13 the State of California. Cal. Civ. Proc. Code § 416.50. Ventura County has no contacts or activities  
14 in Nevada that are either substantial or continuous and systematic. *Id.* at ¶ 8. Plaintiff’s Complaint  
15 does not allege otherwise. Because this Court does not have general jurisdiction over Ventura  
16 County, it must evaluate the “nature and quality” of Ventura County’s contacts with the allegations  
17 and causes of action alleged in the Complaint. *Data Disc*, 557 F.2d at 1287.

18 **2. Specific Jurisdiction**

19 To satisfy the first prong of the *Data Disc* test, Plaintiff must allege that Ventura County has  
20 either (a) done some act or consummated some transaction with Nevada or (b) performed some act  
21 by which Ventura County has purposefully availed itself of the privilege of conducting activities in  
22 Nevada, thereby invoking the benefits and protections of its laws. *Data Disc*, 557 F.2d at 1287.

23 The proper purposeful availment inquiry is whether the defendant individually targeted his  
24 conduct towards the forum state, not whether the plaintiff is a citizen of the forum state. See *Calder*  
25 *v. Jones*, 104 S. Ct. 1482, 1484 (1984); *Bancroft & Masters, Inc. v. Augusta Nat. Inc.*, 223 F.3d  
26 1082, 1087 (9th Cir. 2000). A showing that a defendant knew that the plaintiff was a citizen or  
27 resident of the forum state would automatically satisfy this prong, but it is not required to prove  
28 express aiming or targeting. See *Id*; *Dole Food Co., Inc. v. Watts*, 303 F.3d 1104, 1112 (9th Cir.

1 2002).

2 For example, in *Dole Food Co., Inc. v. Watts*, the Ninth Circuit held that the express aiming  
3 standard was satisfied because the defendant individually targeted the plaintiff in the forum state.  
4 *Id.* There, the defendant knew that plaintiff's the principal place of business was located in the forum  
5 state and knew that the decision-makers were located in the forum state. The Court never addressed  
6 the issue of whether the Plaintiff was an actual citizen of the forum state. Similarly, in *Bancroft &*  
7 *Master, Inc.*, the court held that the defendant expressly aimed his conduct toward California  
8 because the defendant sent a letter to an entity located in Virginia challenging Plaintiff's use of the  
9 entity's domain. 223 F.3d at 1087. There, the court noted that the express aiming standard was met  
10 because Defendant knew that Plaintiff primarily conducted business in California. *Id.* Moreover, the  
11 express aiming inquiry in *Bancroft & Masters* (citations omitted) and *Calder* (citations omitted) did  
12 not even remotely consider whether the plaintiffs were actual citizens of the forum state.

13 Plaintiff's Complaint fails to show that Ventura County has done any act or consummated  
14 any transaction with Nevada. It is undisputed that the USPS Encounter occurred in Thousand Oaks,  
15 California, not in Nevada. Plaintiff does not even attempt to allege any contact, action, or  
16 wrongdoing attributable to Ventura County which has anything to do with Nevada whatsoever.  
17 Plaintiff's bizarre conspiracy theory that North Las Vegas Police were "engaging in Cell Site  
18 Simulator shenanigans" in an effort to prevent Plaintiff from suing Ventura County, apparently out  
19 of some loyalty to Sheriff Bill Ayub is also not attributed to Ventura County, but rather the North  
20 Las Vegas police officers supposedly engaging in said "shenanigans." Accordingly, Plaintiff has  
21 not alleged that Ventura County purposefully availed itself of the privilege of conducting any  
22 activities in Nevada.

23 Because Plaintiff fails to satisfy the first prong of the *Data Disc* test, he fails to establish this  
24 Court's jurisdiction over Ventura County. *Schwarzenegger*, 374 F.3d at 802.

25 Even if Plaintiff could satisfy the first prong, which Ventura County contends he cannot, the  
26 second prong requires that his claims arise out of, or result from Ventura County's "forum-related  
27 activities." *Data Disc*, 557 F.2d at 1287.

28 ///

1 Plaintiff altogether fails to allege that his claims against Ventura County are those which  
2 arise out of, or result from, Ventura County’s activities in Nevada or those acts were directed at  
3 Nevada. *Data Disc*, 557 F.2d at 1287. Nothing in Plaintiff’s Complaint even alleges that Ventura  
4 County or its agents had any activity in Nevada. Because Plaintiff fails to satisfy either the first or  
5 second prong of the *Data Disc* test, he fails to establish this Court’s personal jurisdiction over  
6 Ventura County. *Schwarzenegger*, 374 F.3d at 802.<sup>7</sup>

7 For the reasons argued above, the Complaint fails to allege that this Court has personal  
8 jurisdiction over Ventura County in this case. Therefore, the Complaint should be dismissed under  
9 Rule 12(b)(2).

10 **E. PLAINTIFF’S COMPLAINT SHOULD BE DISMISSED UNDER RULE 12(b)(5)**  
11 **FOR INSUFFICIENT SERVICE OF PROCESS.**

12 **1. Standard of Review**

13 “Service of process, under longstanding tradition in our system of justice, is fundamental to  
14 any procedural imposition on a named defendant.” *Murphy Bros. v. Michetti Pipe Stringing, Inc.*,  
15 526 U.S. 344, 350 (1999). When a defendant is not sufficiently served (and does not waive service),  
16 “a court ordinarily may not exercise power over a party the complaint names as defendant.” *Id.*

17 Under Fed. R. Civ. P. 12(b)(5), a court may dismiss a claim for relief based on insufficient  
18 service of process. Under Local Rule 4-1(c)(1), “a summons, complaint, petition, or other document  
19 initiating a civil case ... must be served under applicable Federal Rules of Civil Procedure or court  
20 orders.” According to Rule 4(j), a state or municipal corporation must be served either by “delivering  
21 a copy of the summons and of the complaint to its chief executive officer” or by “serving a copy of  
22 each in the manner prescribed by that state’s law for serving a summons or like process on such a  
23 defendant.”

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27 <sup>7</sup> The third prong of the *Data Disc* test—that “the exercise of jurisdiction must comport with fair play and substantial  
28 justice, i.e. it must be reasonable”—need not be discussed further given Plaintiff’s failure to satisfy either of the first  
two prongs. *Lake v. Lake*, 817 F.2d 1416, 1421 (9th Cir. 1987); *Schwarzenegger*, 374 F.3d at 802.



1 California law states that “[a] summons may be served on a public entity<sup>8</sup> by delivering a  
2 copy of the summons and of the complaint to the clerk, secretary, president, presiding officer, or  
3 other head of its governing body.” Cal. Civ. Proc. Code § 416.50. A summons may be served (1)  
4 personally, (2) by substitute service, or (3) by mail. *Id.* §§ 415.10, 415.20, 415.30. “A summons  
5 may be served by any person who is at least 18 years of age **and not a party to the action.**” Cal.  
6 Civ. Proc. Code § 414.10 (West) (Emphasis added).

7 Personal service on a public entity requires delivering copies of the summons and complaint  
8 to the clerk, secretary, president, presiding officer, or other head of its governing body. Cal. Civ.  
9 Proc. Code § 415.10. Substitute service on a public entity requires (a) leaving copies of the summons  
10 and complaint in the office of the person to be served, during usual office hours, with the person  
11 who is apparently in charge thereof, and (b) thereafter mailing copies of the summons and complaint  
12 by first-class mail, postage prepaid to the person to be served at the place where the copies of the  
13 summons and complaint were left. *Id.* § 415.20. Alternatively, a summons may be served on a public  
14 entity by mailing copies of the summons and complaint (by first-class mail or airmail, postage  
15 prepaid) “to the person to be served, together with two copies of the notice and acknowledgment ...  
16 and a return envelope, postage prepaid, addressed to the sender.” *Id.* § 415.30.

17 Where service of process is insufficient, district courts can either dismiss the action or quash  
18 service. *S.J. v. Issaquah Sch. Dist. No. 411*, 470 F.3d 1288, 1293 (9th Cir. 2006); *see Stevens v. Sec.*  
19 *Pac. Nat. Bank*, 538 F.2d 1387, 1389 (9th Cir. 1976) (“The choice between dismissal and quashing  
20 service of process is in the district court’s discretion.”).

21 **2. Plaintiff’s Service of Process on Ventura County Was Insufficient.**

22 Ventura County is a California municipal corporation under California law. Cal. Civ. Proc.  
23 Code § 416.50. Therefore, under Rule 4(j), Ventura County must be served by either “delivering a  
24 copy of the summons and of the complaint to its chief executive officer” or “serving a copy of each  
25 in the manner prescribed” by California law. Ventura County is also a “public entity” as the term is  
26

27 <sup>8</sup> As used in this section the term “public entity” includes “the state and any office, department, division, bureau, board,  
28 commission, or agency of the state, the Regents of the University of California, a county, city, district, public authority,  
public agency, and any other political subdivision or public corporation in this state.” Cal. Civ. Proc. Code § 416.50.

1 defined by section 416.50 of the California Code of Civil Procedure. Therefore, Ventura County  
2 must be served by delivering copies of the summons and Complaint to the clerk, secretary, president,  
3 presiding officer, or other head of its governing body. Cal. Civ. Proc. Code § 416.50.

4 Plaintiff failed to serve Ventura County by personal or substitute service. Plaintiff also failed  
5 to mail copies of the summons and Complaint by first-class mail or airmail, postage prepaid to the  
6 Ventura County clerk, secretary, president, presiding officer, or other head of its governing body.  
7 Cal. Civ. Proc. Code §§ 415.30, 416.50. Further, Plaintiff failed to mail two copies of the notice and  
8 acknowledgment and a return envelope, postage prepaid, addressed to the sender. On April 29, 2022,  
9 Plaintiff filed his *Notice of Interested Parties & Affidavit of Service, County of Ventura* (ECF No.  
10 4), which purports to be Plaintiff's proof that he effectuated service on Ventura County. *See* ECF  
11 No.4 at pp. 5-6. Plaintiff's purported proof of service of process, even if his representation is true  
12 that he complied with California laws and mailed his summons and complaint and acknowledgment,  
13 Plaintiff's service would still be insufficient because there is nothing to show that the purported  
14 mailing was accomplished by someone other than the Plaintiff himself. *Id.* In addition, the proof of  
15 service does not provide any declaration or affidavit that service by mail was actually accomplished.  
16 Therefore, Plaintiff's service of process on Ventura County was insufficient.

17 For the reasons argued above, Plaintiff's service of process on Ventura County was  
18 insufficient under Local Rule 4-1(c)(1); Rule 4(j); and California Code of Procedure section 416.50.  
19 Therefore, the Complaint should be dismissed under Fed. R. Civ. P. 12(b)(5). In the alternative,  
20 Plaintiff's service of process should be quashed under this Court's discretion. *Stevens v. Sec. Pac.*  
21 *Nat. Bank*, 538 F.2d 1387, 1389 (9th Cir. 1976).

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**IV. CONCLUSION**

Based on the arguments above, Plaintiff’s Complaint should be dismissed for failure to state a claim upon which relief can be granted under Rule 12(b)(6), lack of personal jurisdiction, and insufficient service of process under Rule 12(b)(2), and Rule 12(b)(5). In the alternative, if this Court declines to dismiss Plaintiff’s Complaint for insufficient service of process under Rule 12(b)(5), Ventura County moves this Court to quash Plaintiff’s service of process.

DATED this 2<sup>nd</sup> day of May 2022.

**ALBRIGHT, STODDARD, WARNICK & ALBRIGHT**

/s/ G. Mark Albright

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**CERTIFICATE OF SERVICE**

I hereby certify that I am an employee of ALBRIGHT, STODDARD, WARNICK & ALBRIGHT, and that on this 2<sup>nd</sup> day of May 2022, service was made by the Court’s ECF system to all of the registered recipients on the electronic service list, of a true and correct copy of the foregoing **MOTION TO DISMISS PLAINTIFF’S COMPLAINT.**

99<sup>th</sup> Security Forces  
Nellis Air Force Base  
5503 Pease Drive, Suite 101  
Nellis AFB, NV 89191

BMW Harris Bank, NA  
111 W Monroe Street  
Chicago, IL 60603

/s/ Isis Crosby  
An employee of Albright, Stoddard, Warnick & Albright