

1 held the position of Special Agent Supervisor when he left Cal-DOJ. Id. Chinn was assigned to
2 the Cal-DOJ Firearm Division (now Bureau) from approximately February 2000, until his
3 departure in March 2008. DUMF 3. He was involved in at least 200 firearms investigations
4 involving illegal transactions, illegal machine gun conversions, and assault weapons sales and
5 possession violations. Id.

6 Zak's is a business owned and operated by Zacharia, in Madera, California. DUMF 5.
7 Guns are sold at Zak's. See id. In 2002, Zacharia had a manager working for him named
8 Andrea, who continues to work with him. DUMF 6.

9 In January 2002, Chinn learned that Zacharia was a gun dealer when he was asked to
10 investigate Zacharia's involvement in drop shipping machine guns for purchase by the Madera
11 Police Department. DUMF 7. On January 24, 2002, Chinn was informed by Commander Steve
12 Frazier and Chief of Police Jerry Noblett, both of the Madera City Police Department, that
13 Zacharia had a felony conviction in Arkansas that could not be confirmed, but was well known in
14 literary circles and the press. DUMF 8. Chief Noblett stated they had tried to get a certified copy
15 of Zacharia's conviction, but the Arkansas authorities had not complied with the request. Id.
16 The purchase and sale of the machine guns did not materialize and the investigation was stopped.
17 See DUMF 7. A memorandum from Chinn dated May 2002 stated that Madera County District
18 Attorney Ernie LiCalsi and Cal-DOJ Deputy Attorney General Nancy Palmieri had informed
19 Chinn that there was a conflict in the law regarding who could sell to law enforcement agencies
20 and who had to obtain a Cal-DOJ permit prior to selling machine guns to law enforcement
21 agencies. See Plaintiff's Ex. 1. The memo eventually concluded, "I request that this case be
22 closed pending further information of [sic] evidence." Id.

23 In June 2002, Chinn conducted a further investigation into Zak's for possessing and
24 selling unpermitted and unregistered assault weapons. DUMF 9.² On June 16, 2002, Chinn

25
26 ²Plaintiff disputes DUMF 9 by arguing that Chinn conducted no investigation, but instead directed Madera
27 police officers to attempt to entrap Zacharia. Plaintiff cites Exhibit 1, but that exhibit is an investigative report
28 authored by Chinn. The report is dated May 3, 2002, and requests that the case/investigation against Zacharia be
closed. See Plaintiff's Ex. 1. Exhibit 1 does not contradict DUMF 9. As for Zacharia's argument that Chinn set in
motion a plan to entrap Zacharia, there is no evidence cited in support of such a contention. Mere unsupported
assertions do not create genuine disputes. See Bryant v. Adventist Health System/West, 289 F.3d 1162, 1167 (9th
Cir. 2002); Tarin v. County of Los Angeles, 123 F.3d 1259, 1265 (9th Cir. 1997). DUMF 9 is undisputed.

1 learned from Nathaniel Barrell (who is now deceased, see DUMF 14), an analyst with Cal-DOJ,
2 that Barrell had received a phone call from a female named Andrea who identified herself as the
3 sales manager for Zak's. DUMF 10.³ Andrea purportedly called Barrell and told him that a
4 police officer asked if Zak's could sell the officer an AR-15,⁴ which is a legally restricted assault
5 weapon that requires a gun dealer to have a special assault weapons permit in order to sell.
6 See DUMF's 11, 12.⁵ Barrell informed Chinn that Zak's California firearm dealer number did
7 not have the requisite permit to sell assault weapons. See DUMF 13; PRDUMF 13. In June
8 2000, Zacharia had applied for a state permit to allow him to sell assault weapons. See DUMF
9 15.

10 On June 21, 2002, Chinn conferred with Mike Small⁶ of the Cal-DOJ Firearms Licensing
11 and Permits Unit (FLPU). DUMF 16. Small told Chinn that Zacharia had applied for an assault
12 weapons sales permit in 2000 (dangerous weapons permit). Id. Zacharia applied for the
13 dangerous weapons permit so he could sell assault weapons. See DUMF 17; PRDUMF 17.
14 Small reviewed the administrative file held by Cal-DOJ and confirmed that Zacharia submitted
15 applications for Certificates of Eligibility ("COE") to Cal-DOJ to obtain a license as a firearms
16 dealer in the State of California, and succeeded in obtaining the COE's.⁷ DUMF 19. Having
17

18 ³Plaintiff disputes DUMF 10 by referencing his arguments against DUMF 9. For the same reasons that
19 DUMF 9 is not sufficiently disputed, DUMF 10 is also not sufficiently disputed.

20 ⁴Although there is no further explanation, the wording of the DUMF suggests that Andrea was checking on
the ability of Zak's to lawfully sell firearms to the police officer.

21 ⁵Plaintiff disputes the precise wording of DUMF 12, which deals with permits and AR-15's. However,
22 there does not appear to be a dispute that a special permit was required in order to sell an AR-15.

23 ⁶Between February 1995 and October 2007, Small was the Manager of the FLPU. See DUMF 18. In that
24 position, he supervised and managed firearms licensing and permitting. Id. He was responsible for processing,
25 issuing, denying, revocation of, and keeping records of the following: Assault Weapons Registrations; Basic
Firearms Safety Certificates; Carry Concealed Weapon Eligibility Clearances; Centralized List of Firearms Dealers;
Certificate of Eligibility; Dangerous Weapons Licensing and Permits; Firearms Manufacturers License and
Centralized List of Firearms Manufacturers. Id.

26 ⁷A full background check is not done when an applicant seeks a COE to obtain a California gun sales
27 license. DUMF 20. For a COE applicant, at the time Zacharia was applying, Cal-DOJ policy was to issue the COE
when a history of arrest lacked a disposition. DUMF 21. The assigned Cal-DOJ analyst was to continue to monitor
28 the criminal history record for an ultimate disposition and, if the disposition was a prohibiting offense, revoke the
COE at that time. Id.

1 complied with the additional required licenses and permits, Zacharia became a licensed gun
2 dealer in California. Id. Small's review of the administrative file indicated that Zacharia
3 submitted an "Applicant/Business History for Dangerous Weapons Permit And/Or License"
4 application in 2000, i.e. a dangerous weapons permit application, wherein he referenced
5 obtaining an assault weapons sales permit.⁸ DUMF 23. Zacharia did not complete the process to
6 obtain the "dangerous weapons permit" that would have enabled him to obtain an assault
7 weapons sales permit. Zacharia did not respond to a request for additional information and
8 effectively abandoned the dangerous weapons permit application. Id. Specifically, Small told
9 Chinn that during the dangerous weapons permit background investigation,⁹ Cal-DOJ agents had
10 found information that Zacharia had a felony conviction in Little Rock Arkansas, Pulsaski
11 County.¹⁰ DUMF 24. A request for confirmation of this conviction and a request for
12 certification were made to the Pulaski County Criminal Clerks' office, but that office did not
13 respond. Id. Small told Chinn that Zacharia was informed of the existence of a felony
14 conviction, and that Zacharia had said he was aware that this information was expunged from his
15 record. DUMF 25. Small informed Chinn that Zacharia was asked to produce these expunged
16 documents before the permit process for the assault weapons could proceed. DUMF 26. Small
17 informed Chinn that Zacharia never supplied the information and abandoned the dangerous
18 weapons permit process, but continued to be a regular California licensed firearms dealer. Id.
19 Chinn's investigation into the lack of an assault weapons permit and the possession of
20 unregistered assault weapons led to the issuance of search warrants in June 2002.¹¹ DUMF 28.

21
22 ⁸Small is also familiar with Zacharia's application since Small supervised this matter. Strictly speaking,
23 there is no "dangerous weapons permit" per se. The submission of the "Applicant/Business History for Dangerous
24 Weapons Permit And/Or License," application, once processed, and a finding of good cause made, allows for the
25 issuance, for example, of an assault weapons permit. DUMF 23.

26 ⁹A full background check is performed on an applicant seeking an assault weapons permit. Also, good
27 cause is required to issue an assault weapons permit. DUMF 22. Cal-DOJ policy during Small's tenure was that
28 good cause could not be shown until there was a disposition on an arrest record. Id.

¹⁰Zacharia disputes whether he actually had a felony conviction. However, whether Zacharia actually had a
felony conviction does not change the fact that Small told Chinn that such a conviction existed.

¹¹Chinn did not initiate his own investigation into the felony conviction; instead he pursued the investigation
on the lack of an assault weapons permit and the possession of unregistered assault weapons. See DUMF 27.

1 On or about June 21, 2002, Zacharia's place of business was searched for assault weapons, and
2 approximately twenty-five (25) assault weapons were found. See DUMF 29. The search warrant
3 of June 2002, and the discovered unpermitted and unregistered assault weapons, led to criminal
4 charges against Zacharia in the Madera County Superior Court. See DUMF 30. These criminal
5 charges were resolved in May 2008 when Zacharia pled no contest to misdemeanor counts under
6 California Penal Code § 12280(b). DUMF 31.

7 While the June 2002 charges were pending, on June 6, 2006, Commander Steve Frazier
8 of the Madera City Police Department told Chinn that he now had a certified copy of Zacharia's
9 felony conviction from Pulaski County, Arkansas. DUMF 32.¹² On June 7, 2006, Chinn
10 received certified copies of court records pertaining to the alleged Pulaski County felony
11 conviction ("Pulaski Documents"). See DUMF 33. Zacharia had been charged with a felony for
12 an alleged violation of Arkansas Statutes Annotated § 41-707, Criminal Conspiracy, in the matter
13 *State of Arkansas v. Issa Zacharia*, Pulaski County Circuit Court, Case No. CR-832623
14 (hereinafter, "the Pulaski Crime"). See DUMF 34. Zacharia had pled guilty to a felony charge of
15 conspiracy on December 7, 1984, in the Circuit Court of Pulaski County, Arkansas. See DUMF
16 35.¹³ The Pulaski Documents indicate that the Pulaski County Circuit Court suspended
17 Zacharia's sentence the same day, December 7, 1984. See Plaintiff's Ex. 8; Defendant's Ex. G.

18 Chinn provided a copy of the certified records of the Pulaski Crime to Cal-DOJ Deputy
19 Attorney General Alison Merrilees¹⁴ ("Merrilees") for her review.¹⁵ DUMF 42. As part of

20
21 ¹²Zacharia disputes whether he actually had a felony conviction. Again, whether Zacharia actually had a
22 felony conviction does not change the fact that Small told Chinn that such a conviction existed.

23 ¹³Plaintiff disputes DUMF 35 in part by arguing that the guilty plea was a product of the unavailability of a
24 *nolo contendere* plea. However, insufficient evidence has been cited in support of this assertion. DUMF 35 is
25 undisputed.

26 ¹⁴Merrilees is an attorney at law admitted to practice before all courts of the State of California and is an
27 active member of the State Bar of California. DUMF 43. She has been Deputy Attorney General since July 2005.
28 See id. She is assigned to represent the Bureau of Firearms (formerly Firearms Division), and has been so assigned
since throughout her tenure with the Attorney General's Office. Id.

¹⁵Chinn gave the following documents regarding the Pulaski Crime to Merrilees to review: a Clerk's
Certificate, see DUMF 37, a Register of Actions, see DUMF 38, a Felony Information, see DUMF 39, a Condition
of Release Upon Suspension of Imposition of Sentence, see DUMF 40, and a Plea Statement. See DUMF 41. These
are the "Pulaski Documents."

1 Merrilees' duties, she provides legal advice to both sworn and non-sworn staff of the Bureau of
2 Firearms regarding the interpretation of state and federal firearm laws. DUMF 44. Because of
3 the variety of the statutory duties of the Bureau of Firearms relating to firearms, it is a routine
4 part of Merrilees's job as the Bureau of Firearms' legal counsel to analyze whether a person who
5 applies to purchase a firearm is eligible to do so under both state and federal law. DUMF 47. It
6 is also a routine part of Merrilees's job to analyze whether a person selling firearms in California
7 is properly licensed, whether a person who is licensed as a federal and state firearms "dealer" is
8 acting within the scope of state and federal law, and whether any person who has a permit or
9 license issued by the Bureau of Firearms is acting pursuant to the terms and conditions of the
10 permit or license. Id. The sworn peace officers assigned to the Bureau of Firearms routinely
11 consult with Merrilees when they have legal questions about state and federal law, and
12 applications in their criminal investigations of the violation of state firearms laws. DUMF 48.
13 Merrilees reviewed the copies of the certified records of the Pulaski Crime and informed Chinn
14 that there were no expungements or pardons reflected in the records. DUMF 49. Merrilees
15 recalls telling Chinn that she was not an expert on Arkansas law. DUMF 50.¹⁶ She advised him
16 that it would be prudent to check with such an expert about whether Arkansas law restored
17 Zacharia's right to possess firearms in Arkansas. Id.

18 On June 7, 2006, Chinn contacted the Arkansas State Attorney General's Office by
19 telephone and spoke with Kent G. Holt ("Holt"), who identified himself as an Assistant Attorney
20 General. DUMF 51. Holt is an attorney licensed in the state of Arkansas and is an Assistant
21 Attorney General with the Attorney General's Office in Arkansas.¹⁷ DUMF 53. Chinn asked
22 Holt to review Zacharia's Pulaski County court file to see if the felony conviction had been

23 _____
24 ¹⁶Plaintiff states that DUMF 50 is undisputed, subject to the clarification that it has been his position that
25 Merrilees did not assure Chinn that the Pulaski Crime was a felony. See PRDUMF 50. However, the "clarification"
does nothing to call into question the substance of DUMF 50. DUMF 50 is undisputed.

26 ¹⁷Holt has been an Assistant Attorney General in the Criminal Division of the Arkansas Attorney General's
27 Office since August 1991. DUMF 54. Holt's primary job responsibilities as an Assistant Attorney General include
28 serving as a special prosecutor in cases against the State in both state and federal cases, including appellate work.
DUMF 55. Holt was licensed to practice law in 1986 and went to work with the Office of the Prosecutor in Pulaski
County in 1988. DUMF 56. In 1990, Holt was the Division Chief for the Pulaski County - 4th Division Circuit
Court, before joining the Arkansas Attorney General's Office in 1991. DUMF 57.

1 expunged, pardoned, or reduced. DUMF 52.¹⁸ Chinn asked Holt to determine whether there was
2 a finding of guilty or some sort of conviction based on the certified Pulaski County court file
3 provided by Chinn, regarding the Pulaski Crime. DUMF 58.

4 Holt recognized the court records provided by Chinn, based on Holt's practice in the
5 Circuit Court in Pulaski County, and the records seemed regular on their face in that they
6 appeared to be what they were. DUMF 59. Holt went to the library and looked in the newspaper
7 to see what some of the facts of the case were, because he noticed that in the court documents,
8 one of the names of the defendants had been whited-out. DUMF 60. Holt examined the court
9 documents, including the plea statement. DUMF 61. Based on Holt's experience and
10 understanding, a plea statement is what a defendant fills out when they withdraw a plea of not
11 guilty and enters a plea of guilty and there is some disposition of the case. Id. The plea
12 statement in the court documents for the Zacharia matter indicated that Zacharia had entered a
13 guilty plea to a conspiracy charge, with signatures appearing on the defendant's signature line
14 and attorney's signature line. DUMF 62.¹⁹ In reviewing the court documents in the Zacharia
15 matter, there was no indication known to Holt that Zacharia's conviction had been expunged.
16 DUMF 63. Holt determined from the documents that it appeared Zacharia had pleaded guilty
17 and received a suspended imposition of sentence.²⁰ DUMF 64. Holt concluded that, absent any
18 indication in the documentation provided to him, Zacharia had, under Arkansas law, the status of
19 a felon. DUMF 65.

20 On or about June 12, 2006, Holt informed Chinn and Merrilees of his findings,
21

22 ¹⁸ Plaintiff disputes DUMF 52 by stating that Chinn's inquiry was not to determine whether there was a
23 felony conviction, but was to determine whether what Chinn believed to be felony had been expunged, pardoned, or
24 reduced. First, DUMF 52 by its terms states that Chinn asked whether there was a pardon, expungement, or pardon.
25 Second, DUMF 58 states that Chinn asked whether there was a finding of guilt "or some sort of conviction." DUMF
26 58. Thus, Chinn did ask whether there was a conviction. DUMF 52 is not disputed.

27 ¹⁹ Plaintiff disputes DUMF 62 by referencing his dispute to DUMF 35. For the same reasons that the
28 DUMF 35 is not actually disputed, DUMF 62 is not actually disputed.

²⁰ In a declaration, Holt explained that there was no indication that the felony had been reduced, nor was
there any indication that entry of a guilty plea had been deferred under Act 346 of 1975, which contained provisions
for first offenders. DUMF 64. Additionally, Holt declared that the Emergency Clause accompanying Act 346
describes its application as to "youthful offenders." Id.

1 determinations, and conclusion, that Zacharia’s sentence was suspended but that his conviction
2 was a felony that had not been reduced, and there were no indications that Zacharia’s conviction
3 had been expunged nor a governor’s pardon entered. DUMF 66; Chinn Dec. ¶ 29; Holt Dec. ¶
4 16; Merrilees Dec. ¶ 10. Holt had spoken to Merrilees and Chinn on the telephone. See
5 Merrilees Dec. ¶ 10. Holt later provided Chinn with a letter confirming that the suspended
6 sentence was still a felony. See DUMF 67; Holt Dec. ¶ 17. Specifically, the letter read, “The fax
7 . . . regarding Issa Zacharia may clear up some of the questions you posed last week. The
8 suspended sentence is just the sentence. To paraphrase Shakespeare, ‘a felony, is a felony, is a
9 felony.’ Let me know if you need anything else” Plaintiff’s Ex. 2.

10 Based on Chinn and Merrilees’s discussion with Holt, the letter from Holt, Merrilees’s
11 review of Zacharia’s criminal history in Chinn’s investigative file, and Merrilees’s knowledge of
12 California law and the effect of an out-of-state conviction on a person’s eligibility to lawfully
13 possess firearms in California,²¹ Merrilees informed Chinn that Zacharia had been convicted of a
14 felony in Arkansas. DUMF 68.²² Based on all of this information, Merrilees informed Chinn
15 that Zacharia was ineligible for a COE issued by Cal-DOJ, and therefore ineligible to be a
16 licensed firearms “dealer” in California. Id. Furthermore, Merrilees informed Chinn that
17 Zacharia was prohibited from purchasing or even possessing firearms in California because he
18 was “convicted of a felony under the laws of . . . the State of California, or any other state,” and
19 that doing so would be a felony in California. Id. In light of the information from Holt and
20 Merrilees, and aware that Zacharia was a California gun dealer, Chinn initiated an investigation
21 of Zacharia for violation of California gun licensing and sales laws. See DUMF 70.

22 Based upon earlier investigations regarding Zacharia’s gun sales business, Chinn was
23

24 ²¹In a declaration, Merrilees explained that California considers a person to be “convicted of a felony” based
25 upon an out-of-state conviction and therefore prohibited from possessing or purchasing a firearm in California
26 pursuant to section 12021(a)(1), even after the underlying conviction has been dismissed and the person’s right to
27 possess firearms has been restored in that state. DUMF 50. California can carry out “its own public policy of
prohibiting convicted felons within its borders from possessing firearms merely because defendant could lawfully
possess firearms in [another state].” Nevertheless, in her opinion and practice, it is always helpful to understand the
law of the other state in order to understand how that law applies in California. Id.

28 ²²Plaintiff disputes this DUMF by making an argument against summary judgment. That is, Plaintiff does
not dispute the substance of the DUMF, rather he disputes the conclusions that flow from the DUMF. The legal
significance of the DUMF is separate from the issue of whether the DUMF is disputed. DUMF 68 is undisputed.

1 aware Zacharia possessed weapons both for personal use and for sale, which would be prohibited
2 if Zacharia was a convicted felon. DUMF 72. On June 13, 2006, Chinn confirmed Zacharia's
3 Centralized Dealer Information and that he was still doing business under the name "Zak's" in
4 Madera, California. See DUMF 74. Chinn confirmed that, since July 12, 1995, Zacharia was the
5 sole licensee and operator of his licensed firearms sale location. See DUMF 75. Chinn
6 confirmed gun sale activity that showed that from June 14, 2005 to June 8, 2006, Zacharia had
7 sold one hundred and two (102) firearms. DUMF 76. A review of state databases indicated that
8 Zacharia may have transferred six handguns from inventory to his personal possession and use,
9 which is a violation of concealed weapon permit laws. See DUMF's 77-83. Chinn knew from
10 serving the previous search warrant that Zacharia had the only key to the firearm storage room at
11 Zak's, which suggested to Chinn that Zacharia had control over firearms and could constitute a
12 felon in possession. See DUMF 84. Chinn also found that twelve handguns had been purchased
13 by Zacharia after December 7, 1984 (the date Zacharia pled guilty in the Pulaski Crime). See
14 DUMF 85. Chinn reviewed Zacharia's 2000 application for a dangerous weapons permit and
15 saw that Zacharia had answered "no" to the question, "Have you ever been convicted, cited, or
16 charged with an offense, including traffic violations and juvenile arrest?" See DUMF's 86-89.

17 Based on Chinn's investigation of Zacharia, Chinn sought a search warrant for evidence
18 that Zacharia owned, possessed, or controlled firearms and for unlawfully possessed firearms,
19 among other things, to be served at Zacharia's residence and at Zak's. See DUMF 91. On June
20 21, 2006, the Madera County Superior Court authorized and issued a search warrant to search the
21 person of Zacharia, the premises of Zak's, and Zacharia's residence. DUMF 92. On June 21,
22 2006, Chinn participated in the execution of the search warrant at Zak's. DUMF 93. Zacharia
23 was handcuffed, but not arrested. See id.; see also DUMF 94.

24 On September 14, 2006, following grand jury testimony from Chinn, an indictment was
25 filed in the U.S. District Court, Eastern District of California, charging Zacharia with, among
26 other things, a violation of 18 U.S.C. § 922(g)(1), commonly referred to as felon in possession of
27 a firearm. DUMF 103. The indictment alleged that Zacharia was convicted on December 7,
28 1984, in the Circuit Court of Pulaski County and Perry Counties, State of Arkansas, Case No. 83-

1 2623, for the crime of conspiracy. DUMF 104. Zacharia acknowledged in his federal criminal
2 trial that he was arrested on November 21, 1983, charged with criminal conspiracy, was found
3 guilty of criminal conspiracy on the December 7, 1984, and received a suspended imposition of
4 sentence, ten years probation and court costs. See DUMF 69. Zacharia was acquitted on March
5 23, 2007, of the charges brought on the federal indictment.²³ See DUMF 107.

6 At Zacharia's deposition in this case, when asked, "Why do you believe Mr. Chinn
7 discriminated against you?", Zacharia stated that Chinn used the term, "Lebanese. Not just
8 Lebanese, because I was – it was even worse than being Lebanese. I was a terrorist, because I'm
9 a Lebanese gun dealer and a pilot." DUMF 95. As to whether Chinn called Zacharia a terrorist,
10 Zacharia asserted: "All these things. Not specifically that word or that word. I mean he didn't
11 say one word 'terrorist.'" DUMF 96. Zacharia asserted: "After the handcuffs, and after he
12 [Chinn] threw the papers, and after [Chinn] said, "You're out of business I finally got you I
13 should have got you four or five years ago ... I knew all along you're a terrorist, something
14 Lebanese." DUMF 97. At no time during the execution of the search warrant on June 21, 2006,
15 nor at any other time whatsoever, did Chinn refer to Zacharia as "terrorist," "Lebanese terrorist,"
16 or in any other manner connoting terrorist or ethnic ties. DUMF 98.²⁴

17 18 **SUMMARY JUDGMENT STANDARD**

19 Summary judgment is appropriate when it is demonstrated that there exists no genuine
20 issue as to any material fact, and that the moving party is entitled to judgment as a matter of law.
21 Fed. R. Civ. P. 56(c); Adickes v. S.H. Kress & Co., 398 U.S. 144, 157 (1970); Fortyone v.
22 American Multi-Cinema, Inc., 364 F.3d 1075, 1080 (9th Cir. 2004). The party seeking summary
23 judgment bears the initial burden of informing the court of the basis for its motion and of
24 identifying the portions of the declarations (if any), pleadings, and discovery that demonstrate an

25 _____
26 ²³ Zacharia did not file a petition to seal for expungement of his guilty plea in the Pulaski Crime until the
27 previous Monday before his testimony in federal court. See DUMF 106. Additionally, Zacharia moved in limine for
28 a determination of the existence of the alleged underlying conspiracy, i.e. the Pulaski Crime. See DUMF 107.
Apparently the motion was denied because a jury acquitted Zacharia. See Document 32 in 1:06-CR-310 OWW.

²⁴ Zacharia disputes DUMF 98 by stating, "Undisputed in as much as to the exact quoted language.
However, it was implied to the Plaintiff." PRDUMF 98.

1 absence of a genuine issue of material fact. Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986);
2 Soremekun v. Thrifty Payless, Inc., 509 F.3d 978, 984 (9th Cir. 2007). A fact is “material” if it
3 might affect the outcome of the suit under the governing law. See Anderson v. Liberty Lobby,
4 Inc., 477 U.S. 242, 248-49 (1986); Thrifty Oil Co. v. Bank of America Nat’l Trust & Savings
5 Assn, 322 F.3d 1039, 1046 (9th Cir. 2002). A dispute is “genuine” as to a material fact if there is
6 sufficient evidence for a reasonable jury to return a verdict for the non-moving party. Anderson,
7 477 U.S. at 248; Long v. County of Los Angeles, 442 F.3d 1178, 1185 (9th Cir. 2006).

8 Where the moving party will have the burden of proof on an issue at trial, the movant
9 must affirmatively demonstrate that no reasonable trier of fact could find other than for the
10 movant. Soremekun, 509 F.3d at 984. Where the non-moving party will have the burden of
11 proof on an issue at trial, the movant may prevail by presenting evidence that negates an essential
12 element of the non-moving party’s claim or by merely pointing out that there is an absence of
13 evidence to support an essential element of the non-moving party’s claim. See James River Ins.
14 Co. v. Schenk, P.C., 519 F.3d 917, 925 (9th Cir. 2008); Soremekun, 509 F.3d at 984; Nissan Fire
15 & Marine Ins. Co. v. Fritz Cos., 210 F.3d 1099, 1105-06 (9th Cir. 2000). If a moving party fails
16 to carry its burden of production, then “the non-moving party has no obligation to produce
17 anything, even if the non-moving party would have the ultimate burden of persuasion.” Nissan
18 Fire & Marine Ins. Co. v. Fritz Companies, 210 F.3d 1099, 1102-03 (9th Cir. 2000). If the
19 moving party meets its initial burden, the burden then shifts to the opposing party to establish
20 that a genuine issue as to any material fact actually exists. See Matsushita Elec. Indus. Co. v.
21 Zenith Radio Corp., 475 U.S. 574, 586 (1986); Nissan Fire & Marine, 210 F.3d at 1103. The
22 opposing party cannot “rest upon the mere allegations or denials of [its] pleading’ but must
23 instead produce evidence that ‘sets forth specific facts showing that there is a genuine issue for
24 trial.’” Estate of Tucker v. Interscope Records, 515 F.3d 1019, 1030 (9th Cir. 2008) (quoting
25 Fed. R. Civ. Pro. 56(e)).

26 The evidence of the opposing party is to be believed, and all reasonable inferences that
27 may be drawn from the facts placed before the court must be drawn in favor of the opposing
28 party. See Anderson, 477 U.S. at 255; Matsushita, 475 U.S. at 587; Stegall v. Citadel Broad,

1 Inc., 350 F.3d 1061, 1065 (9th Cir. 2003). Nevertheless, inferences are not drawn out of the air,
2 and it is the opposing party's obligation to produce a factual predicate from which the inference
3 may be drawn. See Sanders v. City of Fresno, 551 F.Supp.2d 1149, 1163 (E.D. Cal. 2008);
4 UMG Recordings, Inc. v. Sinnott, 300 F.Supp.2d 993, 997 (E.D. Cal. 2004). "A genuine issue of
5 material fact does not spring into being simply because a litigant claims that one exists or
6 promises to produce admissible evidence at trial." Del Carmen Guadalupe v. Agosto, 299 F.3d
7 15, 23 (1st Cir. 2002); see Galen v. County of Los Angeles, 477 F.3d 652, 658 (9th Cir. 2007);
8 Bryant v. Adventist Health System/West, 289 F.3d 1162, 1167 (9th Cir. 2002). Further, a
9 "motion for summary judgment may not be defeated . . . by evidence that is 'merely colorable' or
10 'is not significantly probative.'" Anderson, 477 U.S. at 249-50; Hardage v. CBS Broad. Inc., 427
11 F.3d 1177, 1183 (9th Cir. 2006). Additionally, the court has the discretion in appropriate
12 circumstances to consider materials that are not properly brought to its attention, but the court is
13 not required to examine the entire file for evidence establishing a genuine issue of material fact
14 where the evidence is not set forth in the opposing papers with adequate references. See
15 Southern Cal. Gas Co. v. City of Santa Ana, 336 F.3d 885, 889 (9th Cir. 2003); Carmen v. San
16 Francisco Unified Sch. Dist., 237 F.3d 1026, 1031 (9th Cir. 2001). If the nonmoving party fails
17 to produce evidence sufficient to create a genuine issue of material fact, the moving party is
18 entitled to summary judgment. See Nissan Fire & Marine, 210 F.3d at 1103.

19
20 **I. SECOND CAUSE OF ACTION – FOURTH AMENDMENT**

21 **1. Probable Cause**

22 **Defendant's Argument**

23 Chinn argues that probable cause existed. While charges were pending from the 2002
24 warrant, Chinn was informed through Frazier that copies of the Arkansas felony documents had
25 been obtained. Chinn received the documents, had Merrilees review them, and then contacted
26 the Arkansas Attorney General's office. After several days, Holt informed Chinn and Merrilees
27 of his findings and conclusion. Holt concluded that Zacharia had the status of a felon. Based on
28 discussions with Chinn and Holt, Holt's letter, Chinn's investigative file, and her knowledge of

1 how California law treats out-of-state convictions, Merrilees informed Chinn that Zacharia had
2 been convicted of a felon in Arkansas. Merilees told Chinn that Zacharia: (1) would be ineligible
3 for a COE; (2) would be ineligible to be a firearms dealer; (3) could not possess a firearm; and
4 (4) would be in violation of Penal Code § 12021(a)(1) (felon in possession of a firearm) if he
5 possessed firearms. From his investigation, Chinn knew that Zacharia had the only key to the
6 firearms locker at Zak's, and that Zak's had sold 102 firearms between June 2005 and June 2006.

7 Further, a review of licences and records indicated that six handguns had not been listed
8 under Zacharia's concealed weapons permits. The evidence suggested that the six handguns had
9 been moved from Zak's inventory into Zacharia's personal possession. This is a violation of the
10 concealed weapons permit laws, irrespective of Zacharia's felony status.

11 Finally, Chinn's review of Zacharia's 2000 assault weapons permit indicated that
12 Zacharia lied when he answered that he had not been convicted, cited or charged with an offense.
13 In light of the felony documents, Zacharia's answer is false.

14 The totality of this information provided probable cause for criminal activity.

15 *Plaintiff's Opposition*

16 Zacharia argues that the crux of the case is that Chinn recklessly and indifferently failed
17 to investigate and corroborate loose legal conclusions prior to representing to a judge that he had
18 proof that Zacharia was a felon in possession of a firearm. Chinn's investigation was inadequate
19 in that he made no independent inquiries into the effect that Zacharia's 1984 record would have
20 had in Arkansas. Chinn simply parroted the conclusions of two attorneys without considering the
21 fact that Zacharia had passed previous background checks. Further, reliance on Merrilees is
22 unreasonable as she knows nothing about Arkansas law, and reliance on Holt's letter is
23 unreasonable because the letter is ambiguous and Chinn never sought clarification. Had Chinn
24 inquired as to what Holt's letter really meant, he would have learned about many Arkansas case
25 law and attorney general opinions that conclude that Zacharia had the right to possess firearms
26 under the Arkansas codes. Arkansas law does not regard persons treated as Zacharia was treated
27 in 1984 as being "felons." See State v. Warren, 345 Ark. 508 (2001); State v. Ross, 344 Ark.
28 364 (2001).

1 Legal Standard

2 “The warrant clause of the Fourth Amendment requires ‘probable cause, supported by
3 Oath or affirmation’ to justify the issuance of a search warrant.” United States v. Meek, 366 F.3d
4 705, 712 (9th Cir. 2004). Specifically, a police officer must establish “by sworn evidence
5 presented to a magistrate that probable cause exists to believe that an offense has been committed
6 and that items related to that offense, such as fruits of the crime, will be found on the premises
7 sought to be searched at the time the warrant is issued.” United States v. Rabe, 848 F.2d 994,
8 997 (9th Cir. 1988). Probable cause for a search warrant “means a fair probability that
9 contraband or evidence of a crime will be found in a particular place based on the totality of the
10 circumstances.” United States v. SDI Future Health, Inc., 568 F.3d 684, 703 (9th Cir. 2009).
11 “Probable cause to arrest exists when officers have knowledge or reasonably trustworthy
12 information sufficient to lead a person of reasonable caution to believe that an offense has been
13 or is being committed by the person being arrested.” Rodis v. City & County of San Francisco,
14 558 F.3d 964, 969 (9th Cir. 2009); John v. City of El Monte, 515 F.3d 936, 940 (9th Cir. 2008).
15 Courts look to “the totality of the circumstances known to the arresting officers, to determine if a
16 prudent person would have concluded there was a fair probability that the defendant had
17 committed a crime.” John, 515 F.3d at 940; see Hart v. Parks, 450 F.3d 1059, 1066 (9th Cir.
18 2006).

19 “The probable cause standard is incapable of precise definition or quantification” and is
20 “a fluid concept - turning on the assessment of probabilities in particular factual contexts - not
21 readily, or even usefully, reduced to a neat set of legal rules.” Rodis, 558 F.3d at 969. “While
22 conclusive evidence of guilt is not necessary to establish probable cause, mere suspicion,
23 common rumor, or even strong reason to suspect are not enough.” Ramirez v. City of Buena
24 Park, 560 F.3d 1012, 1023 (9th Cir. 2009). Except for the element of specific intent, “probable
25 cause does not require the same type of specific evidence of each element of the offense as would
26 be needed to support a conviction.” Rodis, 558 F.3d at 969. That is, “probable cause” does not
27 require “certainty,” does not require a “preponderance of the evidence,” and does not require a
28 *prima facie* showing, it simply requires a “fair probability.” See United States v. Gourde, 440

1 F.3d 1065, 1069, 1073 (9th Cir. 2006) (en banc).

2 “Police may rely on hearsay and other evidence that would not be admissible in a court to
3 determine probable cause.” Hart, 450 F.3d at 1067. Further, officers may “draw on their own
4 experience and specialized training to make inferences from and deductions about the cumulative
5 information available to them that might well elude an untrained person.” John, 515 F.3d at 940;
6 Hart, 450 F.3d at 1067. “As a corollary . . . of the rule that the police may rely on the totality of
7 facts available to them in establishing probable cause, they also may not disregard facts tending
8 to dissipate probable cause.” Ramirez, 560 F.3d at 1023-24. Nevertheless, the “fact that other
9 inferences are possible does not mean that there is a triable issue of fact as to whether there was
10 probable cause;” Hart, 450 F.3d at 1067, “law enforcement officers do not have to rule out the
11 possibility of innocent behavior.” Ramirez, 560 F.3d at 1024. Additionally, “an arresting
12 officer’s state of mind (except for the facts that he knows) is irrelevant to the existence of
13 probable cause.” Devenpeck v. Alford, 543 U.S. 146, 153 (2004); see also John, 515 F.3d at
14 940.

15 Discussion

16 The principle dispute is whether there was probable cause that Zacharia was a felon in
17 possession of firearms, a violation of California Penal Code § 12021. The penal code reads in
18 relevant part: “Any person who has been convicted of a felony under the laws of the United
19 States, the State of California, or any other state, government, or country . . . and who owns,
20 purchases, receives, or has in his or her possession or under his or her custody or control any
21 firearm is guilty of a felony.” Cal. Pen. Code § 12021(a)(1). Both parties agree that Zacharia
22 possessed or was in possession of firearms. The disagreement is whether probable cause existed
23 that Zacharia was a felon, due to the Pulaski Crime, in possession of firearms.

24 In 2002, Chinn was informed by Small that Zacharia had acknowledged a conviction in
25 Arkansas. See DUMF 25. Zacharia had apparently abandoned his dangerous weapons permit
26 application when Small asked Zacharia to send a copy of a pardon or expungement. See DUMF
27 26. In 2006, Chinn received certified copies of criminal documents from Pulaski County. The
28 Pulaski Documents indicated a guilty plea to felony conspiracy, but also indicated a suspended

1 sentence. See Plaintiff's Exs 7, 8. There is nothing on the face of the Pulaski Documents that
 2 expressly indicates that Zacharia is not a felon.²⁵ Chinn consulted with Merrilees, whose job
 3 duties include advising Bureau of Firearms officers, like Chinn, in the course of firearms and
 4 licensing investigations about state and federal firearms laws. See DUMF's 44-48. Upon
 5 Merrilees's advice, Chinn then contacted Holt. See DUMF's 50, 51. As a deputy attorney
 6 general for the state of Arkansas, Holt clearly had an expertise in Arkansas law that Merrilees
 7 lacked. See DUMF's 50, 54-57. Holt examined the records, did his own investigation, and then
 8 spoke to Chinn and Merrilees on the telephone. See DUMF's 59-64; Merrilees Dec. ¶ 10. Holt's
 9 conclusion was that Zacharia was a felon based on the Pulaski conviction, and he related that
 10 conclusion to both Chinn and Merrilees.²⁶ See DUMF 65; Chinn Dec. ¶ 29; Holt Dec. ¶ 16;
 11 Merrilees Dec. ¶ 10. Merrilees then told Chinn that, considering the investigative file, the
 12 information and conclusions of Holt, and California law, Zacharia was a felon and could not
 13 possess or sell weapons. See DUMF's 68, 70.

14 Probable cause does not require certainty, or even a prima facie case – it requires only a
 15 fair probability. See Gourde, 440 F.3d at 1069, 1073. The Pulaski Documents, combined with
 16 the information from Small, the opinions of Holt, and the opinions of Merrilees are sufficient to
 17 establish probable cause, that is a “fair probability,” Gourde, 440 F.3d at 1073, that Zacharia was
 18 a felon based on the Pulaski Crime. See id.; Cal. Pen. Code § 12021(a)(1);²⁷ DUMF's 49, 50,
 19 66-68; Plaintiff's Exs. 7, 8. This information was relayed by Chinn in his warrant application.
 20 See Defense Ex. J. In examining the warrant application, which included copies of the Pulaski
 21

22 ²⁵Recently, a California appellate court stated that California is not required to apply another state's law in
 23 determining whether a person is a felon for purposes of Penal Code § 12021(a)(1). See People v. Lewis, 164
 24 Cal.App.4th 533, 537 (2008). Further, a person may be considered a felon under Penal Code § 1201(a)(1) based on
 25 an out of state conviction, even if the person has had his right to possess firearms restored in that state. See id.;
People v. Shear, 71 Cal.App.4th 278, 288-89 (1999). Thus, how Arkansas may view Zacharia does not necessarily
 determine how California may view him.

26 ²⁶Holt also concluded that there was no indication of a deferred sentence under Arkansas Act 346 of 1975.
 27 See DUMF 64. The Arkansas Supreme Court in State v. Warren, 345 Ark. 508 (2001) relied on the application of
 28 Act 346 of 1975 to reverse convictions for the crime of felon in possession of a firearm. In State v. Ross, 344 Ark.
 364 (2001), the Arkansas Supreme Court discussed a later version of Act 346 of 1975. Ross and Warren are both
 cited by Zacharia.

²⁷ Again, no party challenges the “possession” aspect of Penal Code § 12021(a)(1).

1 Documents and Holt's correspondence, the Madera Superior Court correctly concluded that there
2 was probable cause, i.e. a "fair probability," Gourde, 440 F.3d at 1073, that an offense under
3 Penal Code § 12021(a)(1) "has been committed and that items related to that offense, such as
4 fruits of the crime, will be found on the premises sought to be searched at the time the warrant is
5 issued." Rabe, 848 F.2d at 997. Chinn had probable cause, and his search warrant application
6 established probable cause.

7 Zacharia contends that Chinn failed to properly consider the fact that Zacharia had passed
8 background checks and was a licensed firearms dealer. It is true that an officer cannot disregard
9 evidence that tends to dissipate probable cause. Ramirez, 560 F.3d at 1023-24. However,
10 Zacharia does not point to which of his passed background investigations should have dissipated
11 probable cause. Zacharia's unsupported assertions are not sufficient evidence. See Bryant, 289
12 F.3d at 1167; Tarin v. County of Los Angeles, 123 F.3d 1259, 1265 (9th Cir. 1997). What has
13 been presented to the Court is that Zacharia had obtained a COE, but did not obtain a dangerous
14 weapons permit. See DUMF's 19, 26. Small has declared that full background checks were not
15 done with respect to COE's, but that they were done with respect to dangerous weapons permits.
16 See Small Dec. ¶¶ 4, 6; DUMF's 20, 22. Small also declared that, when confronted with the
17 Pulaski Crime as part of the dangerous weapons permit process, Zacharia acknowledged the
18 crime as expunged, but did not send additional requested information and dropped the
19 application process. See Small Dec. ¶¶ 9, 10; DUMF's 25, 26. Zacharia has not sufficiently
20 explained how, or produced evidence that shows that, probable cause was dissipated by obtaining
21 a COE, given the limited background checks associated with COE's.²⁸

22 Zacharia criticizes Chinn's reliance on the letter from Holt and argues that Chinn should
23 have sought clarification. The evidence indicates that Chinn, Holt, and Merrilees spoke on the
24 telephone and that Holt explained his conclusion that Zacharia was a felon and that the Pulaski
25 Crime was a felony. See Merrilees Dec. ¶ 10; see also Chinn Dec. ¶ 29; Holt Dec. ¶ 16. The
26 letter was sent at Merrilees's request and was meant to be a confirmation of their telephone
27

28 ²⁸The Court notes that the warrant application described Small's information and stated that Zacharia
remained a licensed gun dealer. See Defense Ex. J.

1 conversation. See Merrilees Dec. ¶ 10; Holt Dec. ¶ 17. Thus, the letter was not coming out of a
2 vacuum or without context. It was coming as a follow through or memorialization of the
3 telephone conversation. However, even assuming that Chinn should have sought clarification
4 about Holt's letter, Holt confirmed that the letter meant that the Pulaski Crime was a felony.
5 Holt declared, "I provided SAS Chinn with a letter confirming that the suspended sentence was
6 still a felony; paraphrasing Shakespeare, "a felony is a felony is a felony." Holt Dec. ¶ 17; see
7 also Holt Dec. ¶¶ 15, 16. Thus, had Chinn sought clarification from Holt about what was meant
8 by the letter, Holt would have simply reiterated his prior conclusion – that the Pulaski Crime was
9 a felony and that Zacharia was a felon. See Holt Dec. ¶¶ 15-17; see also Chinn Dec. ¶¶ 29-31;
10 Merrilees Dec. ¶ 10. This was already Chinn's understanding of the letter. See DUMF 67;
11 Chinn Dec. ¶¶ 29, 30; see also Merrilees Dec. ¶ 10. Chinn's failure to clarify Holt's letter is not
12 material.

13 Zacharia also criticizes Chinn's reliance on the opinions of Holt and Merrilees. It is not
14 improper, but is in fact advisable, to seek the opinions of district attorneys or deputy attorney
15 generals. See Ewing v. City of Stockton, 588 F.3d 1218, 1231 (9th Cir. 2009). With respect to
16 Merrilees, she acknowledged that she is not an expert on Arkansas law. See DUMF 50.
17 Merrilees, whose job duties included advising officers like Chinn, initially gave Chinn an
18 opinion about what the Pulaski Documents indicated, and then advised Chinn to obtain the
19 opinion of an expert on Arkansas law. Chinn then contacted the Arkansas Attorney General's
20 office and obtained the opinions of Holt, who has expertise in Arkansas law. See DUMF's 53-
21 57. Once Holt's opinion was obtained concerning the Pulaski Documents, Merrilees rendered
22 her opinion that Zacharia was in violation of Penal Code § 12021. There is nothing unreasonable
23 about Chinn's conduct in obtaining the opinions of Merrilees and Holt. It is true that the advise
24 of an attorney will not *per se* insulate a police officer from 42 U.S.C. § 1983 liability.
25 See Ewing, 588 F.3d at 1231. However, Zacharia has failed to show how Chinn's reliance was
26 unreasonable, or why Holt's and Merrilees's respective opinions should not have been
27 considered in determining whether probable cause existed. The Pulaski Documents showed a
28 guilty plea to a felony, which strongly indicated that Zacharia was a felon, and Holt's opinion

1 was meant to ensure the Pulaski Documents accurately reflected that a felony existed. Holt's
2 opinion strengthened the probative force of the Pulaski Documents.

3 Finally, Zacharia contends that Chinn should have conducted an independent
4 investigation into the legal effect of the Pulaski Crime. The Court takes Zacharia to mean that
5 Chinn should have done more research into the Pulaski Crime and the Pulaski Documents.
6 Perhaps additional research would have revealed that the Pulaski Crime was not a felony
7 conviction. This is far from certain considering that a motion in limine to determine this very
8 issue was denied by District Judge Wanger in the federal prosecution. See Doc. Nos. 18 & 32 in
9 case 1:06-CR-310 OWW. Nevertheless, as advisable as further research and investigation may
10 have been, it was not required. As discussed, the Pulaski Documents reflect a guilty plea to a
11 felony. Further clarification was sought and obtained from the Arkansas Attorney General's
12 office about whether the Pulaski Documents reflect "some sort of conviction" or whether there
13 had been a pardon or expungement. See DUMF's 52, 58. When Holt confirmed that there was
14 no pardon or expungement, that there was a felony conviction, and that Zacharia was a felon, no
15 further clarification was needed because there was a fair probability that Zacharia was in
16 violation of Penal Code § 12021(a)(1). It is unnecessary to "provide more facts than necessary to
17 show a 'fair probability' that [Zacharia] had committed a crime." Gourde, 440 F.3d at 1073. In
18 addressing an argument that law enforcement officers should have done more in their
19 investigation of a computer related crime, the Ninth Circuit stated:

20 Whether the FBI could have obtained verification of Gourde's downloads through
21 a digital examination of the computer is the wrong question to answer. In any
22 event, the benchmark is not what the FBI "could have" done. An affidavit may
23 support probable cause even if the government fails to obtain potentially
24 dispositive information. See United States v. Miller, 753 F.2d 1475, 1481 (9th
25 Cir. 1985) (holding that an affidavit supported probable cause even though
26 "independent verification could have been easily accomplished in this case" and
27 the "officers failed to take these simple steps"); United States v. Ozar, 50 F.3d
28 1440, 1446 (8th Cir. 1995) ("The magistrate judge erred in focusing his *Franks v.*
Delaware analysis on what the FBI could have learned with more investigation . .
. . ."); United States v. Dale, 991 F.2d 819, 844 (D.C. Cir. 1993) (noting that
"failure to investigate fully is not evidence of an affiant's reckless disregard for
the truth" and that "probable cause does not require an officer to . . . accumulate
overwhelming corroborative evidence.")

Gourde, 440 F.3d at 1073 n.5. As *Gourde* and the cases it cites makes clear, it was not necessary
for Chinn to continue to investigate and accumulate evidence.

1 In summary, the Pulaski Documents and the information and opinions from Small, Holt,
2 and Merrilees created a fair probability that Zacharia was in violation of Penal Code § 12021.
3 This information was relayed by Chinn in his warrant application. Chinn had probable cause,
4 and the search warrant application established probable cause. Summary judgment in favor of
5 Chinn on this theory is appropriate.

6 2. Judicial Deception

7 Defendant's Argument

8 Chinn argues that there was no judicial deception since there was no known falsehood
9 included in the warrant application. Chinn argues that he conducted his investigation in good
10 faith and relied on the opinions of Merrilees and Holt. The opinions of Merrilees and Holt are
11 the type of opinions that officers reasonably rely upon in obtaining warrants.

12 Plaintiff's Opposition

13 Zacharia argues that the search warrant was based on Chinn's declaration. In that
14 declaration, Chinn swore that he received certified copies of the "felony conspiracy conviction."
15 The warrant also states that Chinn received a letter from Holt "confirming" that Zacharia's
16 sentence was suspended but that his "conviction" was still a felony. However, under Arkansas
17 law, Zacharia was not convicted of a felony and Holt's letter is ambiguous (and only two
18 sentences long). Thus, the warrant contained false representations.

19 Leal Standard

20 A warrant obtained through 'judicial deception' violates the Fourth Amendment. See
21 Franks v. Delaware, 438 U.S. 154, 170-71 (1978); Butler v. Elle, 281 F.3d 1014, 1024 (9th Cir.
22 2002). "To support a § 1983 claim of judicial deception, a plaintiff must show that the defendant
23 deliberately or recklessly made false statements or omissions that were material to the finding of
24 probable cause." Greene v. Camreta, 588 F.3d 1011, 1035 (9th Cir. 2009); KRL v. Moore, 384
25 F.3d 1105, 1117 (9th Cir. 2004). A plaintiff's showing of a deliberate falsehood or reckless
26 disregard for the truth must be substantial. Ewing v. City of Stockton, 588 F.3d 1218, 1224 (9th
27 Cir. 2009); Butler, 281 F.3d at 1024. "Omissions or misstatements resulting from negligence or
28 good faith mistakes will not invalidate an affidavit which on its face establishes probable cause."

1 Ewing, 588 F.3d at 1224; United States v. Smith, 588 F.2d 737, 740 (9th Cir. 1978). “Nor may a
2 claim of judicial deception be based on an officer’s erroneous assumptions about the evidence he
3 has received.” Ewing, 588 F.3d at 1224; Smith, 588 F.2d at 739-40. “The court determines the
4 materiality of alleged false statements or omissions.” KRL, 384 F.3d at 1117; Butler, 281 F.3d at
5 1024. In the case of false statements, “the court purges those statements and determines whether
6 what is left justifies issuance of the warrant.” Ewing, 588 F.3d at 1224; see also Greene, 588
7 F.3d at 1035; Butler, 281 F.3d at 1024. In the case of omissions, “the court determines whether
8 the affidavit, once corrected and supplemented [with the omitted facts], establishes probable
9 cause.” Ewing, 588 F.3d at 1224; see Liston v. County of Riverside, 120 F.3d 965, 973 (9th Cir.
10 1997).

11 Discussion

12 There is insufficient evidence of actionable judicial deception. Chinn’s search warrant
13 application, which is Defendant’s Exhibit J, accurately relates the investigation. Chinn
14 explained the reasons for his conclusion that Zacharia had a felony conviction, which included a
15 description of Chinn’s conversations with Small, Merrilees, and Holt. Importantly, Chinn
16 attached copies of the Pulaski Documents, as well as Holt’s complete correspondence. Since
17 Holt’s entire correspondence was included as part of the warrant application, the Madera Court
18 was able to completely review and interpret Holt’s correspondence. Even if the Pulaski Crime is
19 not a felony conviction, as discussed above, there was nothing unreasonable or reckless about
20 Chinn relying on the opinions of Merrilees and Holt regarding the Pulaski Documents. Once
21 Chinn had probable cause, he was not required to investigate further. See Gourde, 440 F.3d at
22 1073 n.5. Chinn’s conduct, conclusions, and bases for his conclusions were disclosed and
23 provided to the Madera County Superior Court in the search warrant application. There has been
24 no “substantial showing” that Chinn made a deliberate falsehood or acted in reckless disregard
25 for the truth in his search warrant application. See Ewing, 588 F.3d at 1224; Butler, 281 F.3d at
26 1024. Summary judgment in favor of Chinn on this theory is appropriate.

27 3. Unreasonable Handcuffing

28 In his opposition, Zacharia cites from Meredith v. Erath, 342 F.3d 1057, 1061-62 (9th

1 Cir. 2003). See Court’s Docket Doc. No. 80 at 3-14. The cited section of *Meredith* deals with
 2 handcuffing as a violation of the Fourth Amendment. However, as Chinn correctly points out,
 3 the Second Amended Complaint (“SAC”) does not allege that handcuffing violated Zacharia’s
 4 Fourth Amendment rights. Instead, the SAC alleges that defendants deprived Zacharia “of his
 5 liberty by unlawfully and maliciously arresting him without probable cause in violation of the
 6 [4th] and [14th] Amendments to the United States Constitution.”²⁹ SAC ¶ 36. The SAC does
 7 not mention handcuffing. “A plaintiff cannot raise a new theory of liability in [his] opposition to
 8 a motion for summary judgment or summary adjudication.” Torres v. City of Madera, 655 F.
 9 Supp. 2d 1109 (E.D. Cal. 2009) (citing *inter alia* Coleman v. Quaker Oats Co., 232 F.3d 1271,
 10 1292-93 (9th Cir. 2000)); Tenet Healthsystem Desert, Inc. v. Fortis Ins. Co., 520 F.Supp.2d 1184,
 11 1193 n.9 (C.D. 2007). To the extent Zacharia complains about being handcuffed, that complaint
 12 or theory cannot stop summary judgment. See id.

13
 14 **II. THIRD CAUSE OF ACTION – Monell “POLICY & CUSTOM”**

15 Chinn argues that he cannot be held liable for improper policies and customs because
 16 these are *Monell* theories that are applicable to municipalities. Zacharia has not responded to this
 17 argument or challenged Chinn’s characterization of the third cause of action. In the absence of
 18 clarification and citation to authority from Zacharia, or evidence to support some form of
 19 supervisory liability theory, summary judgment on the third cause of action is appropriate. See
 20 Preschooler II v. Clark County Sch. Bd. of Trs., 479 F.3d 1175, 1183 (9th Cir. 2007) (discussing
 21 supervisor liability); McGrath v. Scott, 250 F.Supp.2d 1218, 1222-23 (D. Ariz. 2003) (discussing
 22 supervisor liability and *Monell* liability).

23
 24 **III. FIRST CAUSE OF ACTION – EQUAL PROTECTION**

25 *Defendant’s Argument*

26 Chinn argues that the only evidence of racial animus is deposition testimony from
 27 Zacharia. After consulting with counsel, Zacharia asserted that Chinn, while executing the 2006

28

²⁹The Court notes that Plaintiff agrees that he was not arrested in 2006, just detained. See DUMF’s 93, 94.

1 search warrant, used the term “Lebanese.” Zacharia testified that Chinn indicated that Zacharia
2 was a terrorist and a Lebanese gun dealer. However, Chinn did not call Zacharia a terrorist or
3 mention heritage. Further, as the facts demonstrate, Chinn engaged in a legitimate and
4 significant investigation and that investigation indicated that Zacharia was violating California
5 gun laws. The single alleged statement is not sufficient to show discriminatory animus.

6 Plaintiff’s Opposition

7 Zacharia’s opposition does not expressly address his equal protection claim. However, in
8 a footnote addressing conspiracy, Zacharia identifies as a relevant consideration “[Chinn’s]
9 allusions during the complained of false arrest to Plaintiff’s national origin (and being out of
10 business).” Doc. No. 80 at p. 12 n.10. In other words, for his equal protection claim, Zacharia
11 essentially relies on his own testimony regarding Chinn’s statements during the 2006 search.

12 Relevant Deposition & Declaratory Testimony

13 In his deposition, Zacharia testified:

14 Q: Okay. Why do you believe that Mr. Chinn discriminated against you?

15 A: **I think it was brought up that Mr. Zacharia is of Lebanese descent, that’s one thing,
16 so I believe that the Lebanese thing was brought up more than once.**

17 Q: How was that brought up? Tell me the context.

18 A: **Other than the fact that the way he treated me all along led me to believe that it’s a
19 big case of discrimination, because he never treated me fair. I - - I didn’t kill, I
20 didn’t shoot, I didn’t do anything wrong. Never did, never have. And I feel the
21 whole thing was - - day after day he took me as a project to just continuously push
22 and harass, and throw me out of business as his words were.**

23 Q: Did he ever say an words that used the word “Lebanese?”

24 A: **The words were used, yes. I remember that. I remember - - if you’re going to ask
25 me where and when, what, which case it was, or what day it was, whether it was in
26 ‘02 or ‘06, I don’t remember exactly.**

27 Q: Okay. What was said that related to Lebanese?

28 A: **You’re going to have to give me a few minutes not to think about it exactly.**

.....³⁰

³⁰The transcript indicates that Zacharia conferred with his counsel, and Chinn’s counsel noted that consultation on the record. See Zacharia Depo. at 88:22-89:4.

1 **A: The term I believe was not just Lebanese, because I was - - it was even worse than**
2 **being Lebanese. I was a terrorist, because I'm a Lebanese gun dealer and a pilot.**

3 Q: Did Mr. Chinn call you a terrorist?

4 **A: All these things. Not specifically that word or that word. I mean he didn't say one**
5 **word "terrorist." He just - - I am trying to remember that, because I remember now**
6 **exactly that I was . . . after the handcuffs, and after he threw the appares, and after**
7 **he said, "You're out of business."**

8 Q: And that was in 2006?

9 **A: Yes.**

10 Q: What did he say?

11 **A: "I finally got you. I should have got you four or five years ago." And he would**
12 **leave, came back, and referred to me, "I should have got you four years ago. I knew**
13 **all along. You're a terrorist," something "Lebanese."**

14 Zacharia Depo. at 87:21-90:3; DUMF's 95, 96, 97.

15 In relation to the above quoted deposition testimony, Chinn offered the following
16 undisputed fact: "At no time during the execution of the search warrant on June 21, 2006, nor at
17 any other time whatsoever, did SAS Chinn refer to Zacharia as 'terrorist,' 'Lebanese terrorist,' or
18 in any other manner connoting terrorist or ethnic ties." DUMF 98. Zacharia responded to
19 DUMF 98 as follows: "Undisputed in as much as to the exact quoted language. However, it was
20 implied to the Plaintiff." PRDUMF 98.

21 Finally, Chinn has declared that he: (1) abhors the unequal treatment of people on account
22 of their race, ethnicity, national origin, or any other protected status; (2) did not act because of
23 Zacharia's race, ethnicity, national origin, or any other protected status; and (3) never entered
24 into any agreement or acted in concert with anyone to violate the rights of Zacharia. See Chinn
25 Dec. ¶¶ 53, 54, 55.

26 Legal Standard

27 "The Equal Protection Clause of the Fourteenth Amendment commands that no State
28 shall 'deny to any person within its jurisdiction the equal protection of the laws,' which is
essentially a direction that all persons similarly situated should be treated alike." Serrano v.
Francis, 345 F.3d 1071, 1082 (9th Cir. 2003); Lee v. City of Los Angeles, 250 F.3d 668, 686 (9th
Cir. 2001). A plaintiff must show that the "defendants acted with an intent or purpose to

1 discriminate against the plaintiff based upon membership in a protected class.” Byrd v. Maricopa
2 County Sheriff’s Dept., 565 F.3d 1205, 1212 (9th Cir. 2009); Serrano, 345 F.3d at 1082. That is,
3 a plaintiff must show that the defendant “acted in a discriminatory manner and that the
4 discrimination was intentional.” Bingham v. City of Manhattan Beach, 341 F.3d 939, 948 (9th
5 Cir. 2003);³¹ Reese v. Jefferson Sch. Dist. No. 14J, 208 F.3d 736, 740 (9th Cir. 2000).
6 “Intentional discrimination means that a defendant acted at least in part because of a plaintiff’s
7 protected status.” Serrano, 345 F.3d at 1082; Maynard v. City of San Jose, 37 F.3d 1396, 1404
8 (9th Cir. 1994). In order to avoid summary judgment, a plaintiff “must produce evidence
9 sufficient to permit a reasonable trier of fact to find by a preponderance of the evidence that the
10 decision was racially motivated.” Serrano, 345 F.3d at 1082; Bingham, 341 F.3d at 949.
11 However, evidence that the plaintiff and the defendant are of a different race/ethnicity combined
12 with a disagreement as to the reasonableness of the defendant’s conduct toward the plaintiff is
13 alone insufficient to show a violation of the Equal Protection Clause. Bingham, 341 F.3d at 949;
14 see also Thornton v. City of St. Helens, 425 F.3d 1158, 1167 (9th Cir. 2005).

15 Discussion

16 Zacharia’s testimony is not particularly clear. Zacharia initially testified that he did not
17 know when or where Chinn used the term Lebanese, but then testified that in 2006 Chinn told
18 Zacharia that he was out of business and then said “something, ‘Lebanese.’” See Zacharia Depo.
19 at 90:2-3. Further, Zacharia at one point indicated that Chinn used the term “terrorist,” but at
20 another point Zacharia testified that the word “terrorist” was not used. Cf. Zacharia Depo. at
21 90:1-3 with Zacharia Depo. at 89:14-16. In response to Chinn’s proposed fact that he did not use
22 the terms “terrorist” or “Lebanese terrorist,” or say anything connoting terrorism or ethnic ties,
23 see DUMF 98, Zacharia did not flatly dispute the contention. Instead, Zacharia stated that there
24 was no dispute as to the quoted language, but that Chinn gave an impression. See PRDUMF 98.
25 Piecing together Zacharia’s testimony, DUMF 98, and PRDUMF 98, the Court concludes that
26 there is no genuine dispute regarding Chinn’s use of the word “terrorist” – Chinn did not use that

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28 ³¹Overruled on other grounds, Edgerly v. City & County of San Francisco, 599 F.3d 946, 956 n.14 (9th Cir. 2010).

1 word. See DUMF 98; PRDUMF 98; Zacharia Depo. 89:14-16. PRDUMF 98 indicates that
2 Chinn did not use the terms “terrorist” or “Lebanese terrorist” because those terms are in
3 quotation marks in DUMF 98. There is also no genuine dispute regarding whether Chinn gave
4 the “impression” of terrorism. Zacharia’s testimony regarding terrorism or terrorist at best
5 indicates that Zacharia simply had a subjective feeling that Chinn thought that Zacharia was a
6 terrorist. Such a subjective feeling is insufficient. See Collins v. Perez, 2008 U.S. Dist. LEXIS
7 11079, *18 (E.D. Cal. Feb. 14, 2008); Berg v. California Horse Racing Bd., 419 F.Supp.2d 1219,
8 1231 (E.D. Cal. 2006); see also Anthoine v. North Cent. Counties Consortium, 605 F.3d 740,
9 753 (9th Cir. 2010); Edington v. Yavapai County, 357 Fed. Appx. 888, 890 (9th Cir. 2009); cf.
10 Cerrillo v. West Park Elem. Sch. Dist., 2009 U.S. Dist. LEXIS 118223, *47-*49 (E.D. Cal. Dec.
11 17, 2009) (and cases cited therein). However, Zacharia testified that Chinn used the word
12 “Lebanese.” See Zacharia Depo. 88:15-17. Further, DUMF 98’s contention regarding Chinn’s
13 use of words connoting ethnic ties is not in quotation marks. See DUMF 98; cf. PRDUMF 98.
14 Viewing the testimony in the light most favorably to Zacharia, the Court will analyze Zacharia’s
15 equal protection argument with the understanding that Chinn said that he should have had
16 Zacharia four years ago, that Zacharia “knew all along,” and in some unknown way used the term
17 “Lebanese.” See Zacharia Depo. 90:1-3.

18 Chinn argues that, even accepting Zacharia’s testimony, that testimony is insufficient
19 evidence under *Federal Deposit Ins. Corp. v. Henderson*, 940 F.2d 465 (9th Cir. 1991). In
20 *Henderson*, the former president of a minority-owned bank contended that the actions of bank
21 regulators caused his removal from the bank’s board of directors. The Ninth Circuit found
22 insufficient evidence of racial animus and thus, no equal protection claim. After finding
23 insufficient indirect evidence of discrimination, the Ninth Circuit explained:

24 Lastly, we consider [the regulator] Oldfield’s refusal to authorize Liberty to open
25 a branch office in downtown Seattle. Unlike [president] Wood’s other allegations,
26 this contention is accompanied by direct evidence that Wood argues establishes a
27 genuine factual question as to Oldfield’s motivations. While we agree that
28 Oldfield’s statement - “Who’s going to bank with you downtown? After all,
you’re a minority bank.” - might support an inference of discriminatory intent,
that does not end our inquiry. In order to defeat Oldfield’s motion for summary
judgment, Wood had the burden of producing evidence sufficient to create a
genuine factual question as to Oldfield’s motivations. A factual dispute is genuine
only “if the evidence is such that a reasonable jury could return a verdict for the

1 nonmoving party.” In the context of this case, Wood must produce evidence
2 sufficient to permit a reasonable trier of fact to find by a preponderance of the
3 evidence that Oldfield’s decision not to authorize the branch opening was racially
4 motivated. Especially given the context in which the statement was made, we find
5 that Wood has failed to meet that burden.

6 Oldfield had a legitimate reason for refusing to authorize the opening of a branch
7 office downtown. Examinations dating from before his tenure as Supervisor
8 indicated that the Bank had serious liquidity and managerial problems. It was
9 entirely reasonable for Oldfield to demand that those problems be addressed
10 before permitting the Bank to expand its operations. In light of this fact, we do not
11 find the statement attributed to Oldfield to be sufficient evidence to create a
12 genuine issue of fact as to his motivations in refusing to approve the branch
13 application.

14 To hold otherwise would be to make summary judgment unavailable in all cases
15 where the plaintiff has alleged direct evidence of discriminatory intent. Aside
16 from the troubling practical implications of such a holding, we find no authority
17 for creating a presumption whereby a plaintiff is held to have established a
18 genuine factual issue merely by alleging direct evidence. In analyzing a motion
19 for summary judgment, the district court reviews the evidence to determine not
20 merely whether there is a factual dispute between the parties, but whether there is
21 a genuine factual dispute. An allegation of direct evidence will almost always
22 assist a plaintiff in meeting this burden, but such an allegation does not eliminate
23 the genuineness requirement.

24 In short, the evidence offered by Wood does not support an inference that
25 Oldfield’s actions toward Liberty were racially motivated, and indeed his actions
26 were eminently reasonable in light of the increasingly negative reports on the
27 Bank’s condition. There being no genuine issue of material fact, the district judge
28 properly granted Oldfield’s motion for summary judgment on the equal protection
claim.

Henderson, 940 F.3d at 473-74. Zacharia does not discuss or distinguish *Henderson*.

Although not cited by the parties, in a subsequent case, the Ninth Circuit relied on similar
reasoning to deny an equal protection claim. *Kawaoka v. City of Arroyo Grande*, 17 F.3d 1227
(9th Cir. 1994) involved land use ordinances and development plans that affected land owned by
individuals of Japanese/Asian decent. In finding no equal protection violation, the Ninth Circuit
in part explained:

The strongest evidence of discriminatory intent consists of two statements made
by Doris Olsen, a member of the City Council, to Stephanie Forrest, the
Kawaokas’ real estate agent, and Cheryl Christner, Ms. Forrest’s assistant. Forrest
contends that when informed that the City’s designation of the Kawaokas’
property had decreased its value, Olsen stated “Why should these Japanese people
make all that money?” and “Why should these people make so much money?”
These deplorable remarks are insensitive and disturbing and are evidence of
prejudice. However, they are insufficient to raise a claim that the governmental
action was on account of racial discrimination.

The district court analogized this situation to *Federal Deposit Ins. Corp. v.*

1 *Henderson*, 940 F.2d at 465. See *Kawaoka*, 796 F. Supp. at 1330-31. In
2 *Henderson*, a president of a minority-owned bank sued a federal bank regulator
3 who encouraged the bank's board of directors to fire the president. 940 F.2d at
4 465. To support his claim of racial discrimination, the plaintiff pointed to a
5 statement by the bank regulator from which one might infer discriminatory intent.
6 Because we found rational reasons for the regulator's actions, including a federal
7 report on the bank that stated that the president's "unsatisfactory management has
8 resulted in the bank's current insolvent condition," we ruled that one statement
9 without additional evidence of racial discrimination was insufficient to state a
10 claim. *Id.* at 469, 473 & n.16. In the present case, given the many reasons
11 articulated by the City to support its decisions, including the desire to preserve
12 agriculture and the City's small-town character, its concern that infrastructure
13 might not support immediate development, and its concerns about the water
14 adequacy and increase in traffic, Olsen's repugnant statements are insufficient to
15 demonstrate that she acted with discriminatory intent.

16 *Kawaoka*, 17 F.3d at 1239.

17 The Court cannot conclude that Chinn's single use of the term "Lebanese" is sufficient
18 evidence of racial animus in this case. First, Chinn has declared that he harbored no racial
19 animus and abhors racial discrimination. Second, Chinn's precise statement is less than clear,
20 and the single use of the term "Lebanese" seems to be similar to the statements in *Henderson* and
21 *Kawaoka*. Third, *Henderson* and *Kawaoka* suggest that direct evidence of racial animus may be
22 insufficient to defeat summary judgment in light of significant evidence of a non-discriminatory
23 reasons for challenged conduct. Here, as discussed above, there was sufficient evidence of
24 probable cause that Zacharia was guilty of being a felon in possession of a firearm. In 2002,
25 Chinn received information from Small that indicated that Zacharia acknowledged a conviction
26 in Arkansas. Also in 2002, Chinn's investigations led to the seizure of assault weapons and the
27 filing of criminal charges. In June 2006, Chinn received a copy of the Pulaski Documents which
28 indicated a guilty plea to a felony. Chinn consulted with a Cal-DOJ attorney. Chinn consulted
29 with an Arkansas DOJ attorney. Chinn investigated representations made by Zacharia in the
30 various weapons permitting processes. Chinn submitted the Pulaski Documents, submitted his
31 correspondence from Holt, and accurately described his investigation to the Madera County
32 Superior Court. Chinn believed that probable cause existed that Zacharia was in violation of
33 Penal Code § 12021(a)(1), Merrilees believed that Zacharia was in violation of Penal Code §
34 12021(a), Holt believed that Zacharia had the status of a felon because of the Pulaski Crime, the
35 Madera County Superior Court found that there was probable cause, and there is no dispute that

1 Penal Code § 12021(a)(1) raises significant public safety concerns. See People v. Shear, 71
2 Cal.App.4th 278, 288 (1999); cf. District of Columbia v. Heller, 128 S.Ct. 2783, 2816-17 (2008).
3 The evidence shows that there was probable cause to obtain a search warrant.

4 In light of the facts establishing probable cause, the nature of the search warrant
5 application (which included copies of the pertinent documents and correspondences), Chinn’s
6 declaration, Zacharia’s ambiguous testimony as to Chinn’s use of the term “Lebanese,” and
7 Zacharia’s failure to distinguish or address *Henderson*, Zacharia’s testimony is insufficient to
8 create a genuine triable issue. Summary judgment in favor of Chinn is appropriate. See
9 Kawaoka, 17 F.3d at 1239; Henderson, 940 F.3d at 473-74.

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11 **IV. FOURTH & FIFTH CAUSE OF ACTION – 42 U.S.C. §§ 1985(2), 1985(3)**³²

12 42 U.S.C. § 1985 prohibits conspiracies to interfere with civil rights. See Karim-Panahi
13 v. Los Angeles Police Dep’t, 839 F.2d 621, 626 (9th Cir. 1988). However, the Court has found
14 no violation of 42 U.S.C. § 1983. “The absence of a [42 U.S. C. §] 1983 deprivation of rights
15 precludes a [42 U.S.C. §] 1985 conspiracy claim predicated on the same allegations.” Thornton
16 v. City of St. Helens, 425 F.3d 1158 (9th Cir. 2005); Caldeira v. County of Kauai, 866 F.2d 1175,
17 1182 (9th Cir. 1989); see also Olsen v. Idaho State Bd. of Med., 363 F.3d 916, 930 (9th Cir.
18 2004). Also, the Court has found insufficient evidence of discriminatory animus and thus, no
19 equal protection violation. Without class based discriminatory animus, there can be no violation
20 of 42 U.S.C. § 1985. See Portman v. County of Santa Clara, 995 F.2d 898, 908-09 (9th Cir.
21 1993); Caldeira, 866 F.2d at 1182. Additionally, 42 U.S.C. §§ 1985(2) and 1985(3) require the
22 existence of a conspiracy, that is an “an agreement or meeting of the minds,” Franklin v. Fox,
23 312 F.3d 423, 441 (9th Cir. 2002), to deprive a person of equal protection. Addisu v. Fred
24 Meyer, Inc., 198 F.3d 1130, 1141 (9th Cir. 2000). However, Chinn has declared that he did not
25 conspire with anyone, see Chinn Dec. ¶ 55, and Chinn’s interactions with Madera police officers,
26 Merrilees, and Holt appear to be nothing more than typical aspects of an investigation. There is

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28 ³²Zacharia’s claim under 42 U.S.C. § 1985(2) is based on the second clause, denial of equal protection. See
SAC at pp. 13-15. As such, the Court’s discussion does not apply to the first clause of 42 U.S.C. § 1985(2), which
concerns access to federal courts. See Portman v. County of Santa Clara, 995 F.2d 898, 908-09 (9th Cir. 1993).

1 insufficient evidence of an agreement or a meeting of the minds between Chinn and any other
2 person to deprive Zacharia of equal protection. Summary judgment in favor of Chinn on
3 Zacharia's 42 U.S.C. § 1985 conspiracy claims is appropriate.

4
5 **CONCLUSION**

6 Chinn moves for summary judgment on the claims alleged against him. With respect to
7 Zacharia's Fourth Amendment claims, the evidence establishes that, based on the Pulaski
8 Documents, the information from Small, and the opinions of Holt and Merrilees, Chinn had
9 probable cause to believe that Zacharia was in violation of Penal Code § 12021(a)(1). Chinn was
10 not required to conduct further investigation. Also, the warrant application and the attached
11 documents establish probable cause, and Zacharia has not presented substantial evidence that
12 Chinn intentionally or recklessly disregarded the truth in the search warrant application. Also,
13 the complaint does not include a claim for unreasonable handcuffing. Finally, the
14 *Monell* allegations are not applicable to Chinn. Accordingly, summary judgment in favor of
15 Chinn on Zacharia's Fourth Amendment claims is appropriate.

16 With respect to the Equal Protection claim, the evidence does not create a genuine dispute
17 because the only evidence of racial animus is isolated and ambiguous at best, the evidence
18 established probable cause that Zacharia was in violation of Penal Code § 12021(a)(1), and
19 Chinn has declared that race did not affect his decisions. Summary judgment in favor of Chinn
20 on Zacharia's Fourteenth Amendment claim is appropriate.

21 With respect to the 42 U.S.C. § 1985 claims, because there is insufficient evidence of
22 racial animus, insufficient evidence of a conspiracy, and no violation of 42 U.S.C. § 1983, there
23 can be no liability under 42 U.S.C. § 1985. Summary judgment in favor of Chinn on Zacharia's
24 42 U.S.C. § 1985 claim is appropriate.

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1 Accordingly, IT IS HEREBY ORDERED that:

- 2 1. Defendant Ignatious Chinn's motion for summary judgment is GRANTED;
- 3 2. All currently scheduled dates, including the pre-trial and trial dates, are VACATED;
- 4 3. The Clerk shall enter judgment in favor of Defendant Chinn; and
- 5 4. The Clerk shall CLOSE this case.

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7 IT IS SO ORDERED.

8 Dated: September 10, 2010


9 CHIEF UNITED STATES DISTRICT JUDGE

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