

1 Plaintiff Joseph Ciampi, in pro se  
2 P.O. Box 1681  
3 Palo Alto, California 94302  
4 Phone (650) 468-3561  
5 Email: t.ciampi@hotmail.com

6 Plaintiff Joseph Ciampi, in pro se

**Filed**

MAR - 7 2011

RICHARD W. WIEKING  
CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE

7 UNITED STATES DISTRICT COURT

8 FOR THE NORTHERN DISTRICT OF CALIFORNIA

9 (SAN JOSE DIVISION)

10 JOSEPH CIAMPI

11 Plaintiff,

12 CITY OF PALO ALTO, a government entity;  
13 LYNNE JOHNSON, an individual; CHIEF  
14 DENNIS BURNS, an individual; OFFICER  
15 KELLY BURGER, an individual; OFFICER  
16 MANUEL TEMORES, an individual; OFFICER  
17 APRIL WAGNER, an individual; AGENT DAN  
18 RYAN; SERGEANT NATASHA POWERS,  
19 an individual.

20 Defendants.

) NO. C09-02655 LHK (PSG)

)  
)  
) **PLAINTIFF'S OPPOSITION**  
) **TO DEFENDANTS' MOTION**  
) **FOR SUMMARY**  
) **JUDGEMENT OR, IN THE**  
) **ALTERNATIVE, SUMMARY**  
) **ADJUDICATION OF ISSUES;**  
) **MEMORANDUM OF LAW IN**  
) **SUPPORT THEREOF**

) **FRCivP 12(f)**  
) **FRCivP 56(f)(1)**

21  
22  
23  
24 **OPPOSITION TO DEFENDANTS' MOTION FOR SUMMARY JUDGMENT**  
25 **BY PLAINTIFF REQUESTING**  
26 **JUDGEMENT INDEPENDENT OF THE MOTION FOR PLAINTIFF**

27 Plaintiff Joseph Ciampi brought the above entitled action against Defendants on the  
28 grounds of civil rights violations and state law claims. Due to several false statements of fact

1 and misrepresentations by Defendants outlined herein, Plaintiff requests that the Court Strike all  
2 or in part Defendants' Motion for Summary Judgment pursuant to FRCiv.P 12(f).

3 Based upon the facts, Defendants' Motion for Summary Judgment fails in each and every  
4 Cause of Action.

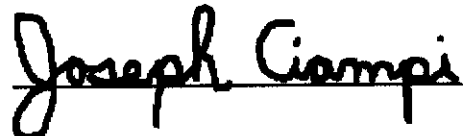
5 Furthermore, based upon the law, facts and evidence presented herein, Plaintiff requests  
6 that the Court deny Defendants' Motion for Summary Judgment in its entirety or in part and  
7 grant Judgment Independent of the Motion for the non-movant, for Plaintiff Ciampi, pursuant to  
8 FRCiv.P 56(f)(1).  
9

10 The motion will be heard on 21 April 2011, at 1:30 p.m. by this Court sitting at its  
11 customary location.

12 Plaintiff seeks a final judgment for Plaintiff on each Cause of Action terminating this  
13 case in its entirety. Plaintiff's request is based upon the overwhelming self-evident, prima facie  
14 evidence sufficient for any jury to rule for Plaintiff on each and every Cause of Action.  
15

16  
17 DATED: March 7, 2011

PLAINTIFF

18   
19  
20

21 Plaintiff JOSEPH CIAMPI, in pro se  
22  
23  
24  
25  
26  
27  
28

**TABLE OF CONTENTS**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

I. INTRODUCTION.....1

II SUMMARY OF THE MATERIAL FACTS.....1

III. FOURTH AMENDMENT.....4

IV. EXCESSIVE FORCE.....12

V. FOURTEENTH AMENDMENT.....13

VI. ASSAULT AND BATTERY.....17

VII. QUALIFIED IMMUNITY.....18

VIII. MUNICIPALITY LIABILITY.....19

IX. NEGLIGENCE.....21

X. MALICIOUS PROSECUTION.....21

XI. FALSE ARREST AND IMPRISONMENT.....24

XII. INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS.....24

XIII. DEFAMATION.....24

XIV. CONCLUSION.....25

**TABLE OF AUTHORITIES**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**CASES**

Brady v. Maryland, 373 U.S. 83 (1963) [Pp. 866-88].....17

Boyd v. United States, 116 U.S. 616 (1886) (630) [Pg. 524] [Pg 532].....12

Brinegar v. United States, 338 U. S. 160 (1949).....11

Bumper v. North Carolina (1968) 391 U.S. 543, 548-550.....11

Carroll v. United States, 267 U. S. 132 (1925)..... 12

Florida v. Royer, 460 U.S. 491 (1983) U.S. 490, 103 S. Ct. 1319, 1324).....11

Henry v. United States, 361 U. S. 98 (1959).....12

In Re Johnny V. (1978) 85 Cal. App. 3d 120, 131..... 10

In Re Tony C. (1978) 21 Cal.3d. 888, 893.....11

Johnson v. United States, 333 U. S. 10 (1948)..... 12

Miller v. United States, 357 U. S. 301 (1958)..... 12

Katz v. United States, 389 U.S. 347, 351 (1967).....10

Mary M. v. City of Los Angeles, 54 Cal.3d 202, 215, 285  
Cal.Rptr. 99, 814 P.2d 1341 (1991)..... 18

Monell v. N.Y. Dep’t of Social Serv., 436 U.S. 658 (1978).....21

Parish v. Civil Service Commission of Alameda County (1967)  
66 Cal. 2d 260, 272-274..... 11

People v. Hernandez (2003) 110 Cal. App 4 th Supp. 1, 5.....10

People v. Reeves (1964) 61 Cal. 2d 268.....10

People v. Reyes (2000) 83 Cal. App. 4<sup>th</sup> 7.....10

Rios v. United States, 364 U.S. 253 (1960) Page 364 U. S. 261,.....11

Scott v. County of Los Angeles, 27 Cal.App.4th 125, 139-40, 32 Cal.Rptr.2d 643 (1994).... 20

Scruggs v. Haynes, 252 Cal.App.2d 256, 264, 60 Cal.Rptr. 355 (1967)..... 18

Terry v. Ohio (1968) 392 U.S. 1, 21, 88 S.Ct. 1868, 20 L.Ed.2d 889.....11

White v. County of Orange, 166 Cal.App.3d 566, 570, 212 Cal. Rptr. 493 (1985).....20

United States v. Di Re, 332 U. S. 581 (1948).....12

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**STATUTES**

**Civil Code**

Section 45.....25  
 Section 52.1(a)(b).....20  
 Section 46.1.....25  
 Section 3294. (a)(b)(c)(1)(2)(3).....20

**Government Code**

Section 815.2.....20  
 Section 815.2 (a).....19, 20  
 Section 820. ....19  
 Section 820.2.....19  
 Section 820.4.,,,,,,,.....18, 19, 24  
 Section 821.6.....21  
 Section 945.....20  
 Section 945.2.....20  
 Section 34090. (d).....17  
 Section 34090.6. (a).....17

**Penal Code**

Section 32.....12, 15  
 Section 118(a).....12  
 Section 118.1.....12  
 Section 132.....12  
 Section 134.....12  
 Section 141(b).....12  
 Section 422.....18

1	Section 182(a)(1)(2)(3)(4)(5).....	12
2	Section 692.....	17
3	Section 693.....	17
4	Section 694.....	17
5	Section 1054. (a).....	16
6	Section 1054.1.....	16
7	Section 1054.5.(a).....	17
8		
9	<u>Health &amp; Safety Code</u>	
10	Section 11550.....	9
11		
12	<u>Palo Alto Municipal Code</u>	
13	Section 9.09.010 (b).....	3, 4
14	Section 9.73.010 (b).....	3
15		
16	<b><u>FEDERAL STATUTES</u></b>	
17	<u>Federal Rules of Civil Procedure</u>	
18	Section 12(f).....	13, 14 16, 25
19	Section 26(a)(1)(A)(ii).....	13, 16,
20	<u>FRCiv.P</u> 56(f)(1).....	25
21		
22	<u>Federal Rules of Evidence</u>	
23	Section 607.....	1, 2, 13, 14, 16, 23
24	Section 608(a).....	1, 2, 13, 14, 16, 23
25	Section 801(c).....	2
26	Section 802.....	2
27		
28		

**MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFF'S OPPOSITION TO**  
**DEFENDANTS' MOTION FOR SUMMARY JUDGEMENT**

**I. INTRODUCTION**

The particulars that give rise to this civil action are well defined at length in Plts.' 2<sup>nd</sup> Amended. Complaint submitted as Exh. 1 of Sherman's Declaration.

**II. SUMMARY OF THE MATERIAL FACTS**

Plaintiff had been persistently and repeatedly harassed by the Palo Alto Police for sleeping in Plaintiff's vehicle, Exhibits 549-2 through 6 and 550-1 through 4 and 503-14. Sleeping in one's vehicle is not a violation of any ordinance or law in Palo Alto. As a result of the Santa Clara County District Attorney's Office prosecuting Palo Alto Police Officers Craig Lee and Michael Kan, Plaintiff believed that he no longer had to speak with officers who were harassing Plaintiff for lawfully existing in a vehicle on a public street, Exhs. 505-2 through 6.

Def. Temores stated that the neighbor, (the reporting party), called several times regarding Plt. Ciampi, Exh. 506-14, lines 12 & 13 of pg. 80 of the Pre-Trial Transcript. The reporting party called only once. Def. Temores knowingly made a false statement under oath as such Def. Temores' statements and testimony regarding this Summary Judgment should stricken according to FRE 607 and FRE 608(a). Def. Temores stated that the reporting party called because Plt. Ciampi was looking the reporting party's wife and daughter from inside the vehicle, Exh. 322-5, lines 19-23 of pg 28 the Pre-Trial Trans. Def. Temores himself determined that it was impossible to see inside the vehicle, Exh. 322-5, lines 9-12 of pg. 10 of the Pre-Trial Trans, as such Def. Temores verified that the reporting party's call for service was a false complaint.

The reporting party never stated to the Palo Alto Dispatcher that Plt. Ciampi was watching his wife and daughter, Exhibits 548-2 & 3 and Exhibit 551. The reporting party stated to the Dispatcher that his wife was away on vacation and his young, (Adult), daughter was away at school, (college), Exhibit 548-3. The reporting party does not state in the police report that Plt. Ciampi was watching his wife and daughter, Exh. 322-10. The reporting party actually states that he, his wife and daughter do not know what Plt. Ciampi is doing inside the van, Exh.

1 322-10. Def. Temores stated that he received the information concerning the call for service  
2 over the radio from the radio dispatcher, Exh. 322-3, lines 9-13 of pg. 8 of the Pre-Trial Trans.,  
3 and Exh. 322-5 lines 13-23 of pg. 28 of the Pre-Trial Trans. The radio dispatcher never states  
4 over the radio that Plt. Ciampi was watching anyone, Exhibits 547-2 & 3 and Exhibit 552. Def.  
5 Temores knowingly made a false statement under oath, as such Def. Temores' statements and  
6 testimony should be stricken pursuant to FRE 607 and FRE 608(a). Additionally, Def. Temores  
7 stated during the Pre-Trial Exam. that he was not dispatched to a call about a man giving  
8 someone else strange looks, Exh. 322-6, lines 20-25 of pg. 32 of the Pre-Trial Trans. Def.  
9 Temores is contradicted by his own testimony.

10 Defs. have produced a document, Exh. 3, pg. 48 of Sherman's Decl, that states that,  
11 "SUBJECT, (Plt. Ciampi),...MAKES HIS WIFE AND YOUNG DAUGHTERS  
12 UNCOMRFORTABLE THEY WAY HE WATCHES THEM." Defs. claim that this  
13 information was passed on to the officers who responded to the scene. Approximately 40  
14 minutes after the information was ostensibly put on the CAD system, Def. Powers is heard  
15 stating at the scene on Def. Burger's MAV recording, "Called in a suspicious guy sleeping in a  
16 van," lines 21 & 22 of pg. 18 of Exh. 50 of Court Doc. 55. Def. Powers conducted a thorough  
17 investigation of the incident and documented in her "Use of Force Report" that the call was  
18 about a male who made the reporting party and his children uncomfortable, Exhibit 503-11.  
19 Under the Type of Incident/Call, Def. Powers documents that the call was about an "Occupied  
20 Suspicious Vehicle/Possible Homesteading," Exhibit 503-14, Defs' Exh. 9. If the call were truly  
21 about Plt. Ciampi watching a woman and her daughters, then Def. Powers would have  
22 documented it in her report. The fact is the call was not about a person watching a woman and  
23 her daughters and Defs' Exh. 3 is a falsified document produced to defeat Plt. Ciampi's  
24 Defamation Cause of Action and justify Defs' unlawful detainment of Plt. Ciampi. Defs. have  
25 not identified the author, Exh. 3, pg. 48 of Sherman's Decl., the document is therefore Hearsay  
26 Evidence according to FRE 801(c) and must be stricken from evidence according to FRE 802.  
27 Should the author of the document come forward and take responsibility for the false statement,  
28 the author could be added as a Defendant to the Defamation and Malicious Prosecution Causes



1 of Action of Plt. Ciampi's Complaint for knowingly submitting a false report to a law  
 2 enforcement agency with the intent to wrongfully incriminate Plt. Ciampi and defame Plt.  
 3 Ciampi's character.

4 Even if the complaint were true about watching someone, it is not against any law to  
 5 watch people for if it were, then the reporting party would be guilty of the same offense for  
 6 watching/leering at Plt. Ciampi, for the reporting party would not know if Plt. Ciampi was  
 7 looking at his wife and daughter unless the reporting party were looking at Plt. Ciampi. So  
 8 the question is, why did Defs. Temores, Wagner and Burger only investigate Plt. Ciampi for  
 9 watching someone and not the reporting party? Defs. make several remarks to Plt. Ciampi's  
 10 physical characteristics as a result of Plt. Ciampi's economic status. Obviously, Defs. view of  
 11 Plt. Ciampi is less than a Citizen than the reporting party, hence the Defs. arbitrarily  
 12 discriminated against Plt. Ciampi by solely focusing on Plt. Ciampi as the object of their  
 13 investigation instead of focusing on the reporting party for committing the same act as Plt.  
 14 Ciampi and or for making a false police complaint.

15 Defs. make no attempt to conceal their bigotry or their attempt to unlawfully accost and  
 16 violate Plt. Ciampi's Constitutional right to freely exist on a public street in violation of Palo  
 17 Alto Muni Code 9.09.010 (b) which states, "it shall be unlawful for any person on any street or  
 18 in any public place within the city to do any of the following: To maliciously disturb any lawful  
 19 assemblage or procession of persons," and City of Palo Alto Code Section 9.73.010 (b) which  
 20 states in part, "It is the policy of the City of Palo Alto to protect and safeguard the right ... of  
 21 every person to be free from arbitrary discrimination on the basis of their...housing status..." It  
 22 is clear that Defs. Johnson, Burns and City of Palo Alto have a policy that not only contradicts  
 23 9.73.010(b) but violates the Fourth Amendment Right of Citizens who are lawfully occupying  
 24 their vehicle verified by Def. Powers' report in that the call for service was about  
 25 "homesteading," Exh. 503-14.

26 The reporting party, Harold (Ken) Alsman, does not want anyone parking near his  
 27 residence as the signs on the trees in front of his house indicate, Exhs. 509-2 through 6. The fact  
 28 is the reporting party wanted Plt. to move Plt's vehicle. Plt. was lawfully parked on a public

1 street. The reporting party had no right to force Plt. to move Plt's. vehicle. The reporting party  
 2 called the City of Palo Alto and requested that the City of Palo Alto send out some police  
 3 officers to force Plt. to move Plt's. vehicle before the reporting party's wife came home from  
 4 vacation and adult daughter from college, Exhs. 548-2, 3 & 551. Def. City of Palo Alto obliged  
 5 the reporting party by sending three officers to accost Plt. Ciampi in violation of City of Palo  
 6 Alto's Municipal Code, 9.09.010 (b) and force Plt. Ciampi to move Plt. Ciampi's vehicle in  
 7 violation of Plt. Ciampi's 4<sup>th</sup> Amend. right to lawfully exist in public, lines 11-12 of ¶3 of pg. 1  
 8 of Def. Burger's Decl. The City of Palo Alto refuses to prosecute the offending officers which  
 9 constitutes a violation of Plt. Ciampi's 14<sup>th</sup> Amend. right to equal protection of the law.

10 The reporting party never states that Plt. Ciampi was watching his wife and daughter,  
 11 because the reporting party's wife and daughter were not occupying the residence at the time the  
 12 call for service was made and it appears the wife and daughter had not been at the residence for  
 13 many days and possibly weeks. Def. Wagner arrived on scene riding a bicycle and would only  
 14 have been informed about the call from the radio dispatcher. At no time during the incident did  
 15 Defs. Wagner, Temores and Burger inform Plt. Ciampi of the neighbor's complaint that Plt.  
 16 Ciampi was making the neighbor's wife and daughter uncomfortable by the way Plt. Ciampi was  
 17 watching them, because Defs. Wagner and Temores had no information at that time about the  
 18 call for service. Defs. Wagner and Temores had already unlawfully forced Plt. Ciampi from the  
 19 vehicle prior to Def. Burger arriving, as such, any information that Def Burger might have had  
 20 prior to making contact with Plt. Ciampi in regards to forcing Plt. Ciampi out of the vehicle is  
 21 not relevant. Additionally, Def. Burger does not state anything about the neighbor's complaint  
 22 upon arriving on the scene, but consents to and supports Def. Wagner's unlawful detainment of  
 23 Plt. Ciampi based upon violating a non-existent ordinance.

### 24 III. FOURTH AMENDMENT

25 A) Defendants claim that they had a lawful right to detain Plaintiff prior to Plaintiff  
 26 ever exiting the vehicle the first time.

27 1. Santa Clara County DDA Peter Waite is quoted as stating, "If the guy says, 'I'm not  
 28 gonna give you an ID,' and they have no reason to suspect a crime, then they should have said,

1 'OK, thank you for your time and I'll see you later,'" Exhibit 505-6. Additionally, Waite states,  
2 "A citizen was doing nothing wrong but didn't cooperate...for some reason the officers tried to  
3 arrest him and beat him, and that's a crime," Exhibit 505-5. DDA Waite continues, "Hopkins'  
4 'detention' by police was illegal and there the use of force—batons and pepper spray—was  
5 illegal, as was the arrest for resisting arrest," Exhibit 505-2. Lastly, Waite states, "sometimes it's  
6 not bad to stand up for your rights," Exhibit 505-4.

7         2. Judge Thang Barrett ruled: that Plt. Ciampi was not accused of criminal activity  
8 when Defs. Wagner, Temores and Burger were dispatched to make contact with Plt. Ciampi; that  
9 Defs. Wagner and Temores' contact was unlawful and therefore the ruse to force Plt. Ciampi  
10 from his vehicle was unlawful, Defs' Exh. 7, (pgs 124 through 132 of the Pre-Trial Tran., (Plt.  
11 Exh. 567-1).

12         3. Santa Clara County District Attorney Javier Alcala who prosecuted Plt. Ciampi  
13 stated that Def. Temores and Wagner never forced Plt. Ciampi to exit the van and that Plt.  
14 Ciampi could have stayed in the van, lines 20-25, pg. 111 of the Pre-Trial Transcript Exhibit  
15 506-10, (Defs' Exh. 6 pg. 164).

16         4. Def. Johnson, Palo Alto Police Chief on the day of the incident, March 15, 2008,  
17 states that citizens who even fit the description of a suspect do not have to engage in contact with  
18 law enforcement officers, Exhibit 506-4.

19         5. On December 4, 2008 Def. Temores testified that Plt. Ciampi was not detained  
20 prior to exiting the vehicle, pg. 77 lines 24-28 and pg. 78 lines 1-5 of the Pre-Trial Trans.,  
21 Exhibit 506-11 and Def. Exh.5, pgs 130 and 131 of Sherman's Decl.. This contradicts Defs.'  
22 current position pgs. 8 through 10 of Def. Mot. for Sum. Judg. This demonstrates that Defs. are  
23 not concerned about truth, justice or Constitutional Law but flip-flopping with the fickle breeze  
24 to that which best fits their current legal needs in order to avoid any accountability. Since Def.  
25 Temores has already testified that Plt. Ciampi was not detained, Defs. cannot now reverse their  
26 position and say that Plt. Ciampi was detained without exposing themselves as liars.

27         6. Defs. Temores and Wagner wanted to talk to Plt. Ciampi. Plt. Ciampi did not  
28 want to talk to Defs. Temores and Wagner. Def. Wagner read Plt. Ciampi his Miranda rights at

1 appx. 1115 hours, Exhibit 506-9. In doing so, Def. Wagner informed Plt. Ciampi that Plt.  
2 Ciampi has the right to remain silent. This right to remain silent exists at all times not only after  
3 a person has been arrested, as such, Plt. was well within his Constitutional right not to talk to  
4 Defs. Wagner and Temores.

5 7. Def. Ryan informed the public that the, (Palo Alto), police department accepts  
6 Judge Thang Barrett's ruling that the ruse to coerce Plt. Ciampi out of the vehicle was unlawful,  
7 Exhibits 321-13 & 14.

8 Page 9 lines 17 through 21 of Defs' Mot. for Summ. Judg., Defs. claim that they had a  
9 right to detain Plt. Ciampi because Plt. Ciampi shut the door to Plt. Ciampi's vehicle. There is no  
10 crime in shutting the door. In fact Plt. Ciampi exercised due care in protecting himself from an  
11 unknown intruder into Plt. Ciampi's private space who was entering Plt. Ciampi's zone of  
12 privacy without Plt. Ciampi's consent. Even if Plt. Ciampi knew who the intruder was, Plt.  
13 Ciampi was well within his right not to be forced to have contact with someone who he did not  
14 want contact with even if it were a law enforcement officer just as a person in residence has the  
15 right to shut their front door on an officer who has no lawful justification to continue to make  
16 contact. Had Plt. Ciampi been standing on the sidewalk when Defs. Temores and Wanger first  
17 approached Plt. Ciampi, Plt. Ciampi would have been free to get in his vehicle and leave  
18 according to DDA Javier Alcala, Exh. 506-10.

19 There is nothing suspicious about having a sunshade in the windshield of a vehicle, Exhs.  
20 509-7 & 8. When Defs. Wagner and Temores made contact with Plt. Ciampi, Defendants were  
21 not investigating a crime or even suspicious circumstances. Defendants cannot produce any  
22 articulable facts that justify detaining Plt. Ciampi prior to Plt. Ciampi exiting the vehicle the first  
23 time. If Defs. had any articulable facts that warranted detaining Plt. Ciampi, Defs. would have  
24 stated those facts to Plt. Ciampi. Defs. did not have any articulable facts to detain Plt. Ciampi,  
25 therefore Defs. asserted to Plt. Ciampi that he was in violation of a non-existent ordinance and  
26 were going to seize Plt. Ciampi's vehicle and belongings. In doing so, Defs. violated Plt.  
27 Ciampi's Fourth Amendment Right to be free from unreasonable, searches and seizures.  
28

1 Defendants claim that the call for the tow-truck was a ruse to get Plt. Ciampi out of the  
2 vehicle to talk to Plt. Ciampi, if that were true, then Defs. Wagner, Temores and Burger would  
3 not have continued to assert to Plt. Ciampi that Plt. Ciampi was violating a non-existent sleeping  
4 ordinance after Plt. Ciampi exited the vehicle. In doing so, Defs. continued their unlawful  
5 detainment of Plt. Ciampi for violating the non-existent sleeping ordinance while Plt. Ciampi  
6 was outside the vehicle prior to falsely detaining Plt. Ciampi for being under the influence of  
7 drugs.

8 Def. Burger arrived on scene and instead of correcting Defs Wagner and Temores, Def.  
9 Burger aided in the unlawful search and seizure. Defs. Temores, Burger and Wagner were  
10 dispatched to Lincoln Ave. not to investigate suspicious circumstances, but to remove Plt.  
11 Ciampi from a public street just as Def. City of Palo Alto had instructed other Palo Alto Officers  
12 to do in the past.

13 Though Plt. Ciampi's vehicle was registered to another individual, the vehicle has been in  
14 possession of Plt. Ciampi since it was first purchased by Plt. Ciampi in 2001. The reporting  
15 party documents that Plt. Ciampi had been using the vehicle for a period of two years, Exhibits  
16 322-10, line 10 of pg. 6 of the police report. Exh. 515 verifies that Plt. Ciampi was the insured  
17 driver from 2001 through 2011.

18 Once outside the vehicle as forced to by Defs. Wagner and Temores, Plt. Ciampi  
19 demanded to know what law he was violating. Instead of informing Plt. Ciampi that he was not  
20 in violation of any law and was free to go, Def. Wagner continued to inform Plt. Ciampi that Plt.  
21 Ciampi was violating a non-existent ordinance and therefore continued the unlawful detainment  
22 prior to making the false assessment that the Plt. Ciampi was under the influence of drugs.

23 B) Defs. Wagner, Temores and Burger then falsely claim that Plt. Ciampi was under  
24 the influence of drugs in order to justify their unlawful detainment of Plt. Ciampi.

25 In order to lawfully detain someone to investigate whether a crime has occurred law  
26 enforcement officers must be able to articulate facts that demonstrate that a crime has occurred is  
27 occurring or may occur to a reasonable person. Defendants provide three facts in order to detain  
28

1 Plt. Ciampi for being under the influence of drugs: abnormal pupils, sores on Plt. Ciampi's skin  
2 and the emotion of anger.

3 **1) Defendants Temores and Burger Claimed Plt. Ciampi's Pupils Were Abnormal:**

4 Pg. 4 lines 4-5 of (Def. Mot. for Summ. Judg.), Defendant Burger states that Plaintiff  
5 Ciampi's pupils were constricted, which means that the pupils are abnormally small. Pg. 4 lines  
6 10-11 (Def. Mot. for Summ. Judg.), Defendant Temores states that Plaintiff Ciampi's pupils  
7 were dilated, which means that the pupils are abnormally large. Defendant Burger's assessment  
8 is contradicted by Def. Temores' assessment and vice versa. Defendant Burger testified during  
9 Plt. Ciampi's Pre-Trial Examination that Plt. Ciampi's pupils were dilated contradicting his own  
10 statement in the police report, Exhibits 514-2 & 3. Both Defs. Burger's and Temores'  
11 assessments are contradicted by the paramedics who determine that Plt. Ciampi's pupils are  
12 normal 10 minutes after Defs. Burger and Temores determined that Plt Ciampi's pupils were  
13 abnormal Exhibits 514-4 & 5. On December 4, 2008 at Plt. Ciampi's Pre-Trial Examination  
14 Palo Alto Paramedic Eric Heller testified Plt. Ciampi's pupils were normal and that that Plt.  
15 Ciampi was not under the influence of drugs or alcohol on March 15, 2008, Exhs. 514-6 & 7.  
16 The assessment of Plt. Ciampi's pupils by Defendants is not an articulable fact that Plt. Ciampi  
17 was under the influence of illegal drugs.

18 **2) Defendants Claim Sores on a Person's Skin are the Result of Illegal Drug Use**

19 Plt. Ciampi's skin condition is not the result of drug use, Exhs. 60-2 through 60-27  
20 from Court Doc. 55. Defs. Temores, Wagner and Burger do not have the training,  
21 education or the medical knowledge to determine what the sores on Plt. Ciampi's skin  
22 were caused from. Additionally, Plt. Ciampi's skin condition does not resemble that of  
23 drug users for Plt. Ciampi did not have any sores or scars over the veins of his skin as  
24 falsely concluded to by Def. Temores, Wagner and Burger, Exhs. 514-9 & 10. The  
25 statement by Def. Temores that Plt. Ciampi's veins had collapsed, lines 9 & 19 of pg. 4  
26 of Def. Mot for Sum. Judg. is a false statement and therefore Def. Temores' statements  
27 and testimony should be stricken according to FRE 607 and FRE 608(a). The sores on  
28

1 Plt. Ciampi's skin are not an articulable fact that Plt. Ciampi was under the influence of  
2 illegal drugs.

3 **3) Defendants Claim Emotion of Anger a Sign of Illegal Drug Use**

4 If anger is a sign of drug use, then Def. Burger was obviously under the influence of  
5 illegal drugs for yelling profanity laced terroristic threats at Plt. Ciampi to exit the vehicle. If  
6 Def. Burger can display anger and profanity without being under the influence of drugs so can  
7 Plt. Ciampi. Def. Johnson seems to justify human anger by one of her own officers who was  
8 lawfully stopped and cited for a traffic violation, Exhs. 506-5 through 506-8. Several United  
9 States Citizens are capable displaying anger who are not under the influence of drugs, Exh. 553,  
10 demonstrating that anger is not attributed to drug use. Plt. Ciampi was in his Constitutional right  
11 to display anger at Def. Wagner, Temores and Burger for unlawfully harassing Plt. Ciampi with  
12 non-existent ordinances as protected by the First Amendment of the U.S. Constitution. If Defs.  
13 want to persist in claiming that Plt. Ciampi did not have a right to demonstrate anger and use  
14 profanity, then Plt. will reintroduce Plt's. First Amendment Right violation.

15 Upon arrival at Plt. Ciampi's location, Defs. discovered Plt. Ciampi lawfully existing in  
16 his vehicle as quiet as a church mouse, disturbing and offending no one, out of sight of everyone.  
17 It was only after Defs. harassed and provoked Plt. Ciampi did Plt. Ciampi exhibit any signs of  
18 emotional anger. Plt. Ciampi's anger and use of profanity were not the result of drug use but the  
19 natural emotional response of a person being provoked, antagonized, harassed and intimidated by  
20 law enforcement officers who had unlawfully detained that person, as such the anger displayed  
21 by Plt. Ciampi was not the result of drug use and therefore cannot be used as an articulable fact  
22 by the Defendants to detain Plt. Ciampi to investigate a H & S §11550 violation. This  
23 conclusion is supported by the paramedics who arrived on the scene and determined that Plt.  
24 Ciampi was not under the influence of drugs or alcohol less than 10 minutes after Defs  
25 wrongfully determined that Plt. Ciampi was, Exhibit Exhs. 514-6 & 7. This conclusion is  
26 supported by the toxicology report which verified that Plt. Ciampi was not under the influence of  
27 drugs or alcohol at the time that Defendants falsely asserted that Plt. Ciampi was, Exhibit 514-8.

1 Defendants did not and do not have one articulable fact to detain Plt. Ciampi for being  
2 under the influence of drugs. Since the Defendants did not have any reason to detain or arrest  
3 Plt. Ciampi for being under the influence of drugs, Defs. unlawfully detained, used forced upon  
4 and arrested Plt. Ciampi in violation of Plt. Ciampi's Fourth and Fourteenth Amendment Rights.  
5 Defendant Burger testified that he never stated to Plt. Ciampi that Plt. Ciampi was detained, lines  
6 27 & 28 of pg. 143 of Sherman's Decl., Defs' Exh. 5. According to DDA Javier Alcala's  
7 position who prosecuted Plt. Ciampi, if Plt. Ciampi was not lawfully detained, then Plt. Ciampi  
8 was free to get back inside of Plt. Ciampi's vehicle, pg. 111 of the Pre-Trial Tran., lines 20-26 of  
9 pg. 3 of Exhibit 511.

10 Judge Thang Barrett correctly applied the constitution and the rulings he cites, People v.  
11 Reeves (1964) 61 Cal. 2d 268 and People v. Reyes (2000) 83 Cal. App. 4<sup>th</sup> 7 for the Fourth  
12 Amendment does not elevate any one position or possession of the people above any other. The  
13 people are afforded equal protection whether they are in their "person" or in their "house" just as  
14 the peoples' "papers" are afforded the equal protection of their "effects." To elevate the status of  
15 one position or possession above another is discriminatory at its core and destroys the Fourth  
16 Amendment, "The right of the people to be secure in their persons, houses, papers, and effects,  
17 against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue,  
18 but upon probable cause, supported by Oath or affirmation, and particularly describing the place  
19 to be searched, and the persons or things to be seized." Defendants did not have one articulable  
20 fact to support their detention of Plt. Ciampi, prior to Plt. Ciampi exiting the vehicle or after,  
21 therefore the detention was unreasonable and violates Plt. Ciampi's 4<sup>th</sup> Amendment Right. "The  
22 Fourth Amendment protects people not places," Katz v. United States, 389 U.S. 347, 351(1967).

23 Since Defendants did not have a warrant, Defendants have the burden to prove that Plt.  
24 Ciampi's detention and arrest fall within an exception to the warrant requirement, People v.  
25 Hernandez (2003) 110 Cal. App 4<sup>th</sup> Supp. 1, 5. This burden must be sustained by a  
26 preponderance-of-the evidence standard. In Re Johnny V. (1978) 85 Cal. App. 3d 120, 131.  
27 The Defendants are unable to carry that burden.  
28



1 It is well established that “it is the right of every person to enjoy the use of public streets  
2 buildings, parks, and other conveniences without unwarranted interference or harassment by  
3 agents of the law.” In Re Tony C. (1978) 21 Cal.3d. 888, 893. When balanced against society’s  
4 general need to prevent crime, the cases have consistently required that in order to justify an  
5 investigative stop, the police officer must have specific articulable facts causing him to suspect  
6 that activity relating to crime has taken place or is occurring or is about to occur and that the  
7 person to be detained is involved in that activity. Terry v. Ohio (1968) 392 U.S. 1, 21, 88 S.Ct.  
8 1868, 20 L.Ed.2d 889; In Re Tony C., supra at 893.

9 In, Florida v. Royer, 460 U.S. 491 (1983) U.S. 490, 103 S. Ct. 1319, 1324), the Supreme  
10 Court stated that, “law enforcement officers do not violate the Fourth Amendment by merely  
11 approaching an individual on the street or in another public place, by asking him if he is willing  
12 to answer some question, [or] by putting questions to him if the person is willing to listen...”  
13 The person approached, “need not answer any question put to him; indeed, he may decline to  
14 listen to the questions at all and may go on his way.” (460 U.S. at 498, 103 S.Ct. at 1324) The  
15 Court further stated: “He may not be detained even momentarily without reasonable objective  
16 grounds for doing so; and his refusal to listen or answer questions does not without more, furnish  
17 those grounds. *Id*

18 Use of coercion to induce waiver of Fourth Amendment right runs counter to well  
19 established jurisprudence. Bumper v. North Carolina (1968) 391 U.S. 543, 548-550  
20 (officers gained “consent” to enter a residence by misrepresenting to the occupant that they had a  
21 warrant); Parish v. Civil Service Commission of Alameda County (1967) 66 Cal. 2d 260, 272-  
22 274 (consent to waive constitutional rights vitiated by threat of official sanction).

23 In a very similar case to that of Ciampi v. Palo Alto et al, is Rios v. United States, 364  
24 U.S. 253 (1960) Page 364 U. S. 261, in which the court decreed, “Here, justification is primarily  
25 sought upon the claim that the search was an incident to a lawful arrest. Yet upon no possible  
26 view of the circumstances revealed in the testimony of the Los Angeles officers could it be said  
27 that there existed probable cause for an arrest at the time the officers decided to alight from their  
28 car and approach the taxi in which the petitioner was riding. Compare Brinegar v. United States,

1 338 U. S. 160; Carroll v. United States, 267 U. S. 132; Henry v. United States, 361 U. S. 98,”  
2 The court continued, “If, therefore, the arrest occurred when the officers took their positions at  
3 the doors of the taxicab, then nothing, (Page 364 U. S. 262), that happened thereafter could make  
4 that arrest lawful, or justify a search as its incident. United States v. Di Re, 332 U. S. 581;  
5 Johnson v. United States, 333 U. S. 10; Miller v. United States, 357 U. S. 301; Henry v. United  
6 States, 361 U. S. 98.”

7 The court emphatically states, “The principles laid down in this opinion affect the very  
8 essence of constitutional liberty and security.” Boyd v. United States, 116 U.S. 616 (1886)  
9 (630) [Pg. 524] [Pg 532]. The court continues, “...any forcible and compulsory extortion of a of  
10 a man's own testimony or of his private papers to be used as evidence to convict him of crime or  
11 to forfeit his goods is within the condemnation of that judgment.” When Defs. forced Plt.  
12 Ciampi to reveal himself to them providing Defs. with their (unfounded), justification, (pupils-  
13 sores-emotion), which on its face is testimony, for detaining Plt. Ciampi, Defs. unlawfully  
14 obtained their (unfounded) justification to detain and arrest Plt. Ciampi. Therefore the  
15 detainment and arrest committed by the Defs is unlawful, as such Defs. Mot. for Sum. Judg. to  
16 dismiss Plt. Ciampi’s complaint and Causes of Action fails therefore the court must deny Defs.  
17 Mot. for Sum. Judg. and find in favor for and judgment for Plaintiff.

#### 18 IV. EXCESSIVE FORCE

19 Defs. did not and do not have any articulable facts to substantiate any belief that Plaintiff  
20 was under the influence of drugs. The detainment of Plt. Ciampi was unlawful whether or not  
21 there was justification to detain Plt. Ciampi on the illegal drug suspicion and therefore any use of  
22 force was unlawful. With that said, the former is not ten percent of the complete offense and  
23 charge of excessive force committed by Defs. Burger Temores and Wagner. The audio/video  
24 footage and taser gun firing data documenting the actual use of force has been removed from the  
25 audio/video recordings and the taser guns’ firing data memory devices, the Data Ports. Defs.  
26 have acknowledged destroying Def. Temores’ taser probes, taser cartridge and taser wires, Exhs.  
27 504-5, 6 & 9. Why would Defs. risk going to prison for violating Cal. Penal Codes § 32, 118 (a),  
28 118.1, 132, 134, 141(b), and 182(a)(1)(2)(3)(4)(5) in order to falsify the recordings of the

1 incident and destroy evidence if they didn't do anything wrong? No rational person would risk  
 2 tampering with evidence and going to prison if they had not done anything wrong. The motive  
 3 for editing and removing this audio/video footage and firing data was and is to conceal the  
 4 unlawful and excessive use of force, **see Section VI Assault and Battery**, which would have  
 5 landed Defs. Burger, Temores and Wagner in prison had the unadulterated recordings been  
 6 provided to the District Attorney and Plt. Ciampi. Defs. violated the law to conceal their  
 7 violation of the law in order not to be held accountable. The Force Employed to Overcome  
 8 Plaintiff's resistance was NOT reasonable or lawful; therefore Defendants' Motion for Summary  
 9 Judgment fails.

10 Had Plt. Ciampi done anything illegal or wrong, it would not have been necessary for the  
 11 Defs. to falsify and destroy the evidence, Exhs. 516 and 527. Defs. have failed in proving their  
 12 **assertion** as such the court must deny Defs.' Mot. for Sum. Judg. and rule for Plt. Ciampi.

#### 13 V. FOURTEENTH AMENDMENT

14 Defendants have failed to provide the original taser cam recordings from the original  
 15 taser cameras, V06-015525, V06-011525 and V06-015020 necessary for Plt. Ciampi to prove  
 16 Plt. Ciampi's case in violation of FRCivP 26(a)(1)(A)(ii), See Court Documents 102, 121 and  
 17 122 and Defs' Exhs. 10 through 12. Defendants have prejudiced Plt Ciampi's ability to defend  
 18 against Defs.' Mot. for Sum. Judg., therefore Defs.' Mot. for Sum. Judg., should be stricken  
 19 according to FRCiv.P 12(f) and FRE 607 and FRE 608(a). At the same time that Taser  
 20 International had the actual taser cameras that recorded the March 15, 2008 incident, the Santa  
 21 Clara County Crime Lab had possession of two cameras containing the edited videos of the  
 22 March 15, 2008 incident, Exh. 26 of Court Doc. 55, this is prima facie evidence of the tampering  
 23 and suppression of the original taser videos in violation of Plt. Ciampi's Fourteenth Amendment  
 24 Right to Due Process. Defs. Expert, Andrew Hinz, has submitted a supplemental  
 25 report/declaration, Court Doc. 129-1 in which he states that taser cameras V06-015525 and V06-  
 26 015020 have been destroyed, ¶ 20 of Court Doc 129-1. Defs. have destroyed the taser cameras  
 27 that recorded the March 15, 2008 incident a violation of Plt. Ciampi's 14<sup>th</sup> Amend right to due  
 28 process, Exh. 528-2 through 7.

1 Def. City of Palo Alto stated that there is no chain of custody of the MAV videos,  
2 Exhibits 500-2 through 500-4. Additionally, Def. City of Palo Alto stated that there is no chain  
3 of custody in their August 28, 2008 letter to Plt. Ciampi's attorney, Exhibit 500-7. According to  
4 City of Palo Alto CMR:462:04, (Exhibits 502-10 through 502-12, Def. do in fact maintain a  
5 "chain of custody" log for the MAV videos. Def. City of Palo Alto knowingly made false  
6 statements and therefore their statements and testimony should be stricken according to FRE 607  
7 and FRE 608(a).

8 Additionally Def. City of Palo Alto asserted that there is only one MAV hard drive per  
9 vehicle, Exhibit 500-6. Defendants would restate this assertion to Plt. Ciampi during the October  
10 19, 2010 inspection. According to City of Palo Alto CMR: 341:05 the MAV system met all of  
11 the specification requirements, Exhibit 502-3, which includes two MAV hard drives per vehicle,  
12 Ex. 502-4. Def. Johnson, Burns and City of Palo Alto have suppressed the second MAV hard  
13 drive in violation of the Fourteenth Amendment and FRCiv.P 12(f) and FRE 607 and FRE  
14 608(a), as such Defs.' Mot. for Sum. Judge. should be stricken.

15 According to Palo Alto Police Policies 446 and 610 the tamper proof "MAV hard  
16 drives" are to be booked into evidence when an arrest is made Exhibits 501-2 through 5 and 502-  
17 13 through 16. Defs. Johnson, Burns and City of Palo Alto violated their own policies by not  
18 securing the MAV hard drive into evidence and knowingly destroyed evidence by erasing the  
19 recordings from Defs. Temores' and Burger's tamper proof MAV hard drives, Exhibit 504-8. In  
20 doing so Def. Johnson, Burns and City of Palo Alto have violated Plt. Ciampi's 14<sup>th</sup> Amend right  
21 to due process. Defs.' Mot. for Sum. Judge. should be stricken according to FRCiv.P 12(f).

22 Defs. City of Palo Alto, Johnson and Burns have created an unwritten policy or custom  
23 allowing for the destruction evidence, taser probes, taser wires, taser cartridge, blast doors and  
24 AFIDS, Exhs. 504-5, 6 & 9, a violation of the 14<sup>th</sup> Amend.

25 Defs. City of Palo Alto, Johnson and Burns have created and unwritten policy or custom  
26 allowing for the destruction of evidence, Def. Wagner's bicycle helmet and Def. Burger's sun-  
27 glasses, Exh. 503-13 a violation of the due process clause of the 14<sup>th</sup> Amend.  
28

1 Defs. Johnson, Burns and City of Palo Alto have knowingly endorsed an unwritten policy  
2 or custom directing its officers to make unlawful searches seizures of Plt. Ciampi, Exhibits, 549-  
3 2 through 6 and 550-1 through 4. These unlawful contacts are supported by the policy to make  
4 unlawful searches and seizures of citizens who are of low economic status that necessitates living  
5 out of their vehicle, Exh. 503-14.

6 Defs. City of Palo Alto, Johnson and Burns knowingly withheld Defs. Temores' and  
7 Burger's taser videos from Plt. Ciampi during Plt. Ciampi's criminal prosecution providing the  
8 time necessary for Def. City of Palo Alto's employees to edit and falsify the videos, Exhs. 503-7  
9 & 503-8, which is a violation of Cal. PC §32 by concealing the crimes of their employees and  
10 fellow officers. (Viol. of 14<sup>th</sup> Amend Equal Protection Clause and Due Process).

11 Defs. Johnson, Burns and City of Palo Alto suppressed the taser gun activation reports  
12 from Plt. during Plt. Ciampi's criminal case Exhibits 503-2 through 503-6. (Viol. of 14<sup>th</sup>  
13 Amend). Defs. Johnson, Burns and City of Palo Alto have suppressed and or destroyed the  
14 actual taser cameras and taser videos for no taser camera can leave the Police Department  
15 without the police chief's approval, Court Docs. 121, 122 and Exh. 503-9, (Viol. of 14<sup>th</sup> Amend).  
16 Defs. Johnson, Burns, and City of Palo Alto suppressed the toxicology report, Sgt. Honiker's  
17 audio recording and Sgt. Powers Use of Force report during Plt. Ciampi's criminal case in Exhs.  
18 503-10, 504-7 and 503-11. (Viol. of 14<sup>th</sup> Amend). Defs. Johnson, Burns and City of Palo Alto  
19 have an unwritten policy which allows for the destruction of evidence, Def. Wagner's bicycle  
20 helmet, Def. Burger's broken sunglasses, Def. Temores' broken taser cartridge, taser probes,  
21 taser wires, blast doors, AFIDS and, Exhibits 503-12 & 1 3, 504-5, 6 & 9. (Viol. of 14<sup>th</sup> Amend).

22 Defs. Burns and City of Palo Alto enabled personnel to tamper with the serial number of  
23 Taser Camera V07-065373, Exhibit 161 of Court Doc. 109, and have not held anyone  
24 accountable for doing so. (Viol. of 14<sup>th</sup> Amend).

25 Defs. Johnson, Burns and City of Palo Alto enabled personnel through their unwritten  
26 policies to tamper with the activation data on Defs. Temores' and Burger's taser guns' Data  
27 Ports, Exhibits 174 through 179 of Court Doc. 109, and have not held anyone accountable for  
28 doing so. (Viol. of 14<sup>th</sup> Amend).

1 Def. Burns has submitted a falsified taser gun firing data report, Exh. 175 and 178 of  
2 Court. Doc. 109 and Defs.' Exhs. 10 and 11.

3 Def. Burger knowingly made a false statement under oath on December 4, 2008, Exhs.  
4 45-7 through 11, as such Def. Burger's statements and testimony should be stricken according to  
5 FRE 607 and FRE 608(a). (Viol. of 14<sup>th</sup> Amend).

6 Def. Wagner knowingly and with the aid of fellow Palo Alto Police Officer, Alex  
7 Afanasiev, fabricated evidence and knowingly made false statements regarding the fabricated  
8 evidence, Exhs. 507-2 through 8. Defendant Wagner knowingly made false statements of facts  
9 in her responses to Admissions, Exhs. 508-2 through 9. As such, Defendants' statements and  
10 testimony regarding Defendants' Motion for Summary Judgment should be stricken according to  
11 FRCiv.P 12(f) and FRE 607 and FRE 608(a). (Viol. of 14<sup>th</sup> Amend).

12 Defendants removed video footage from Def. Temores' MAV video, Exhs. 512 -11  
13 through 13 and refuse to provide that missing video footage to Plt. Ciampi in violation of  
14 FRCiv.P 26(a)(1)(A)(ii). Defs. have prejudiced Plt Ciampi's ability to defend against Defs.'  
15 Mot. for Sum. Judg. and therefore Defs.' Mot. for Sum. Judg., should be stricken according to  
16 FRCivP 12(f) and FRE 607 and FRE 608(a).

17 **Evidence of Tampering**

18 Exh. 529-2 through 4 verifies beyond a reasonable doubt that Defs. have tampered with  
19 and falsified numerous items of evidence in order to conceal their unlawful actions and to  
20 fraudulently, falsely and maliciously prosecute and incriminate Plt. Ciampi.

21 Defendants have edited and removed content from Defs. Temores' and Burger's MAV  
22 and Taser-Cam recordings, Therefore Defs. denied Plt. Ciampi the original, unadulterated and  
23 exculpatory MAV and Taser recordings in violation of Plt. Ciampi's 14<sup>th</sup> Amend. Right to Due  
24 Process. Defendants have edited and fabricated the activation/firing data from Defs. Temores'  
25 and Burger's taser guns. Defs. have denied Plt. Ciampi the original, unadulterated and  
26 exculpatory activation/firing data in violation Plt. Ciampi's Fourteenth Amend Right to Due  
27 Process. Cal PC § 1054. (a) states that, "To promote the ascertainment of truth in trials by  
28 requiring timely pretrial discovery." Cal PC § 1054.1., "The prosecuting attorney shall disclose

1 to the defendant(c) All relevant real evidence seized or obtained as a part of the investigation of  
 2 the offenses charged.” Cal PC § 1054.5. (a) “ ....This chapter shall be the only means by which  
 3 the defendant may compel the disclosure or production of information from..... law  
 4 enforcement agencies which investigated or prepared the case against the defendant.” Cal. GC §  
 5 34090. (d) does not authorize the destruction of records less than two years old. Cal. GC §  
 6 34090.6. (a) “...In the event that the recordings are evidence in any claim filed or any pending  
 7 litigation, they shall be preserved until pending litigation is resolved.” Brady v. Maryland, 373  
 8 U.S. 83 (1963) Pp 8 866-88, “Suppression by the prosecution of evidence favorable to an  
 9 accused who has requested it violates due process where the evidence is material either to guilt  
 10 or to punishment, irrespective of the good faith or bad faith of the prosecution.” Pp.8 866-88.

11 Plt. requested Defs. Temores’ and Burger’s MAV recordings, Taser recordings and taser  
 12 gun activation data, Exhs. 503-2 through 8 & 503-15 through 18. Defs. did not provide Plt.  
 13 Ciampi with the original, unadulterated exculpatory recordings and taser gun activation data,  
 14 therefore Defs. violated Plt. Ciampi’s Fourteenth Amendment Right to Due Process.

#### 15 VI. ASSAULT AND BATTERY

16 Plt. refers to Defs. Exh. 12, Burger’s taser camera recording, that partially recorded the  
 17 terroristic threats, assault and battery of Defs, Burger, Temores and Wagner. The motive for  
 18 editing and falsifying the audio/video recordings and the Taser gun firing data of the incident  
 19 was and is to conceal the unlawful assault and battery which in large part has been removed from  
 20 the recordings. Plt. provides a snippet from Burger’s MAV recording, Defs.’ Exh. 15 of Plt.  
 21 Ciampi’s verbalization of the pain from being shocked, Exh. 556. It would appear that the dialog  
 22 of Plt. Ciampi yelling out in pain and for help is utterly inconsistent with the video footage on  
 23 Def. Temores’ MAV video. Plt. Ciampi asserts that he yelled at Def. Burger to stop shocking  
 24 him at least 5 times and possibly as many as 8 times during the altercation, none of which is  
 25 captured on any of the recordings. Since Defs. Burger, Temores and Wagner unlawfully  
 26 assaulted and battered Plt. Ciampi, Plt. Ciampi was in his right to use self defense according to  
 27 ARTICLE 1 SECTION 1 OF the California Constitution and Cal. PC § 692, PC § 693 and PC §  
 28 694. Additionally Plt. Ciampi provides Exhs. 556-2, 521-6 & 8, and 512-18 through 20

1 indicating how Plt. Ciampi was first shot with a taser gun by Def. Burger which is not captured  
 2 in any of the MAV or Taser recordings. The necessity of the Defendants to remove the use of  
 3 force by Defs. Burger, Temores and Wagner, especially the initial firing of the Taser gun at Plt.  
 4 Ciampi's face while Plt. Ciampi had his hands in the air validates that the use of force was not  
 5 reasonable and was not lawful, see ¶¶ 71. through 60 of Decl. of Joseph Ciampi... The necessity  
 6 of the Defendants to remove the video footage of the actual use of force verifies that the use of  
 7 force was outrageous for the mere fact of editing the videos to cover it up is outrageous, Exh.  
 8 517-2 through 16. Mary M. v. City of Los Angeles, 54 Cal.3d 202, 215, 285 Cal.Rptr. 99,  
 9 814 P.2d 1341 (1991) ("[A] governmental entity can be held vicariously liable when a  
 10 police officer acting in the course and scope of employment uses excessive force or  
 11 engages in assaultive conduct."); Scruggs v. Haynes, 252 Cal.App.2d 256, 264, 60  
 12 Cal.Rptr. 355 (1967) ("California cases have consistently held that a peace officer  
 13 making an arrest is liable to the person arrested for using unreasonable force."). Public  
 14 employees are similarly not entitled to immunity in suits for false arrest or false  
 15 imprisonment. See Cal. GC § 820.4. Accordingly, the officers are not immune from suit  
 16 under California law, and neither is Def. City of Palo Alto.

17 The missing audio video footage of the assault aside, the use of force by the officers was  
 18 unreasonable and unlawful from the start as calling in a tow-truck to seize Plt Ciampi's vehicle  
 19 was a use of force that was unreasonable based upon the circumstances. Defs. argue that it was a  
 20 ruse and therefore not an actual use of force. According to Cal. PC § 422 the law does not  
 21 distinguish between ruses and actual threats for the recipient of the threat whether actual or not  
 22 does not know that the threat was a ruse and the threat made by Defs. to call a tow-truck was  
 23 taken on its face value as a valid threat by Plt. Ciampi. There is absolutely no question that Def.  
 24 Burger then violated Cal. PC § 422 in threatening to, "fucking tase," Plt. Ciampi and as such  
 25 unlawfully assaulted Plt. Ciampi using excessive force in extracting Plt. Ciampi from the vehicle  
 26 for any force was unreasonable due to the fact that Plt. Ciampi was not lawfully detained by  
 27 Defs. Burger, Temores and Wagner.

## 28 VII. QUALIFIED IMMUNITY



1 If Defs. believed that their actions were lawful, then they would not have unlawfully  
 2 detained Plt. by stating to Plt. that Plt. was violating a non-existent sleeping ordinance and would  
 3 have spoken directly and truthfully to Plt. about the false complaint made about Plt., as such  
 4 Defs. knew when they were lying to Plt. that their actions were unlawful. Defs. knew their  
 5 actions were unlawful by the unsubstantiated facts that they generated to justify detaining Plt. for  
 6 being under the influence of drugs. The prima facie fact of Defs. resorting to falsifying and  
 7 destroying the evidence clearly and convincingly demonstrates that Defs. knew and know that  
 8 they did not and do not have any reasonable belief that their actions were lawful. Defs. did not  
 9 exercise due care in the execution of and enforcement of the law and nothing exonerates a public  
 10 employee for false arrest or false imprisonment pursuant to Cal. GC § 820.4.

11 Cal. GC § 820(a) "Except as otherwise provided by statute (including Section 820.2), a public  
 12 employee is liable for injury caused by his act or omission to the same extent as a private person.

13 (b) The liability of a public employee established by this part (commencing with Section 814) is  
 14 subject to any defenses that would be available to the public employee if he were a private  
 15 person." Cal. GC § 820.2. "Except as otherwise provided by statute, a public employee is not  
 16 liable for an injury resulting from his act or omission where the act or omission was the result of  
 17 the exercise of the discretion vested in him, whether or not such discretion be abused."

18 Once the Defs. conspired together to falsify and fabricate the evidence in order to conceal  
 19 their unlawful acts committed upon Plt. Ciampi while simultaneously falsely incriminating Plt.  
 20 Ciampi of a crime, Defs.' acts ceased being of the origin and nature of discretion and are the  
 21 result of a malicious design and intent to fraudulently, maliciously and oppressively convict Plt.  
 22 of a crime. As such Individual Defs. are NOT immune from liability and are therefore liable for  
 23 whatever violations of Plaintiff's civil rights and state claims that have occurred.

#### 24 **VIII. MUNICIPALITY LIABILITY**

25 Cal. GC § 815.2 (a) "A public entity is liable for injury proximately caused by an act or  
 26 omission of an employee of the public entity within the scope of his employment if the act or  
 27 omission would, apart from this section, have given rise to a cause of action against that  
 28 employee or his personal representative."

1           Cal. GC § 815.2 cited by the court in Scott v. County of Los Angeles, 27 Cal.App.4th  
2 125, 139-40, 32 Cal.Rptr.2d 643 (1994) ("Under Government Code section 815.2, subdivision  
3 (a), the County is liable for acts and omissions of its employees under the doctrine of respondeat  
4 superior to the same extent as a private employer. Under subdivision (b), the County is immune  
5 from liability if, and only if, [the employee] is immune.") (emphasis omitted); White v. County  
6 of Orange, 166 Cal.App.3d 566, 570, 212 Cal. Rptr. 493 (1985) ("in governmental tort cases, the  
7 rule is liability, immunity is the exception") (citation and internal quotation marks omitted).  
8 "...the important societal goal of compensating injured parties for damages caused by willful or  
9 negligent acts must prevail." Cal. GC § 945, "A public entity may sue and be sued." Cal. GC §  
10 945.2, "Except as otherwise provided by law, the rules of practice in civil actions apply to  
11 actions brought against public entities." Defendant City of Palo Alto and its officers have made  
12 false statements in an effort to suppress evidence and have actively concealed the suppression,  
13 falsification and destruction of evidence by its employees and thereby has authorized the  
14 malicious and fraudulent injurious acts committed upon Plt. Ciampi with the willful and  
15 conscious disregard for Plt Ciampi's rights and safety; and has through the intentional  
16 misrepresentations, deceit and concealment of material facts deprived Plt. Ciampi of his property  
17 and legal rights. As a result of these aforementioned acts, Defendants are liable for  
18 exemplary/punitive damages pursuant to Cal. Civ. Code § 3294. (a)(b)(c)(1)(2)(3). The courts  
19 have already established that the City of Palo Alto is liable for it police officers violating the  
20 civil rights of citizens and using excessive force, Exh. 525-2 through 4. The courts have  
21 established that municipalities can be held liable when their officers use excessive force while  
22 using taser guns, Exh. 525-5. Def. City of Palo Alto has also acknowledged being liable for the  
23 conduct of its officers when they unlawfully arrest and use excessive force upon citizens, Exh.  
24 525-6 & 7. Def. City of Palo Alto knows that its officers have falsified evidence, destroyed  
25 evidence and submitted falsified evidence during the criminal case and this civil case. Def. City  
26 of Palo knows that Def. Police Chief Dennis Burns has submitted falsified taser gun activation  
27 reports and overseen the destruction of evidence. Def. City of Palo Alto has done nothing to  
28 hold its employees accountable, Exhs. 526-8 through 18, Cal. Civ Code § 52.1.(a)(b). Based

1 upon the foregoing and following facts, Defs. City of Palo Alto, Johnson and Burns are liable,  
2 Monell v. N.Y. Dep't of Social Serv., 436 U.S. 658 (1978).

### 3 IX. NEGLIGENCE

4 Just as Def. City of Palo Alto took responsibility for the liability that resulted due to the  
5 injury sustained to a woman from the negligence of city employees improperly maintaining a  
6 public roadway, Exhs. 525-8 through 10, Def. City of Palo Alto is liable for not holding its  
7 employees accountable for the Constitutional violations and harm caused to Plt. Ciampi. Def.  
8 Burger was negligent in not intervening when Defs. Wagner and Temores unlawfully detained  
9 Plt. Ciampi; Defs. Wagner and Temores were negligent in not intervening when Def. Burger  
10 used excessive force upon Plt Ciampi; Def. Powers was negligent in not intervening and holding  
11 Defs. Temores, Wagner and Burger accountable for the harm they caused to Plt. Ciampi; Defs.  
12 Johnson and Burns were negligent in not holding Defs. Powers, Temores, Wagner, and Burger  
13 accountable for the harm they caused to Plt. Ciampi as such all are liable for the harm caused to  
14 Plt. Ciampi as a result of their omission of intervening and holding their fellow officers  
15 accountable for the harm caused to Plt. Ciampi, Exhs. 525-11 through 24.

### 16 X. MALICIOUS PROSECUTION

17 Cal. GC §821.6. states "A public employee is not liable for injury caused by his  
18 instituting or prosecuting any judicial or administrative proceeding within the scope of his  
19 employment, even if he acts maliciously and without probable cause." This statute does not  
20 provide immunity when the prosecution was generated fraudulently, as such Defs. are not  
21 immune from being liable for the malicious prosecution. The prosecution of plaintiff was  
22 obtained through fraudulent means, the use of falsified evidence, and without the falsified  
23 evidence no prosecution would have occurred. Since no prosecution would have occurred  
24 without the falsified evidence, no prosecution should have occurred. Since no prosecution  
25 should have occurred and the prosecution was obtained through fraud and deceit, Defs. do not  
26 retain any immunity and are therefore liable for damages of Malicious Prosecution.

27 The mere fact that Defs. needed to falsify the videos in order to maintain the charges  
28 against Plt. demonstrates that Defs. did not have probable cause to maintain a prosecution against

1 Plt. Since Defs. did not have probable cause to initiate or maintain the charges against Plt.,  
2 Defs. no longer have qualified immunity. Def. Johnson verifies that no one Defendant could  
3 have tampered with and falsified all of the evidence without the other Defendants being made  
4 aware of it, Exh. 518-2 & 3. As such each and every Def. is complicit in the acts and or  
5 omissions committed by each and every Defendant with the motive to conceal the unlawful acts  
6 of Defs. Temores, Burger and Wagner while simultaneously falsely incriminating Plt. Ciampi.

7 Def. Wagner and Agent Afanasiev fabricated the broken bicycle helmet, Ex. 507. The  
8 fabricated broken bicycle helmet was investigated by Def. Powers and and Lt. Mike Densen, pg.  
9 1 and ¶4 of pg. 3 of Defs.' Exh. 9, pgs. 218 through 221 of Sherman's Decl. The prima facie  
10 evidence of the false statements; tampering, suppression and destruction of evidence; the  
11 deliberate use of falsified evidence by Defs. to charge, prosecute and incriminate Plt. Ciampi of a  
12 crime demonstrates beyond a reasonable doubt that Defs. maliciously prosecuted Plt. Ciampi.

13 The actions of the Defendants are not only outrageous, but antithetical to everything that  
14 the American Justice System is supposed to stand for. The malicious intent of the Defs. is  
15 validated in knowingly submitting Def. Temores' falsified MAV recording to the Santa Clara  
16 County District Attorney with the intent of incriminating Plt. Ciampi with that falsified video  
17 which had the direct affect of increasing the charge to a felony from of a misdemeanor, Exh.  
18 518-4. The malicious intent of the Defs. is validated in knowingly submitting Def. Temores'  
19 falsified MAV recording to the this Court in order to mislead this Court as to the true accounts of  
20 the events of March 15, 2008 and thus prejudice Plt. Ciampi as they did during Plt. Ciampi's  
21 criminal case. Defs. knowingly sent two taser cameras that did not record the incident to the  
22 Santa Clara County Crime Lab containing edited taser videos in order to conceal their unlawful  
23 assault and falsely incriminate Plt. of a crime, which epitomizes malicious prosecution. To  
24 falsify evidence, video footage, to incriminate someone of a crime is not only outrageous it is  
25 morally repugnant.

26 Defs' Exh. 17 is a Declaration from Kustom Signals' expert Warren Page. In ¶6.0 Mr.  
27 Page documents the evidence he has analyzed. Mr. Page specifies analyzing Plt's Exhs. 169 and  
28 173 from Court Doc. 109, (items "f." and "g."), yet Mr. Page conspicuously leaves out Plts.'

1 Exhs. 164, 165 and 170 which demonstrates the illegitimacy of Mr. Page as an expert and the  
 2 contrived Declaration he has submitted to the Court and therefore Mr. Page's statements and  
 3 testimony should be stricken according to FRE 607 and FRE 608(a). The deliberate act of  
 4 excluding these Exhs. from Mr. Page's Declaration verifies the malicious intent of the Defs. to  
 5 wrongfully incriminate Plt. Ciampi through the fraudulent means of using falsified evidence.

6 **COSTS:**

7 Defs. used the position and power of the Santa Clara County District Attorney's Office to  
 8 complete their intent of maliciously prosecuting and falsely incriminating Plt. of a crime. Had  
 9 the Santa Clara County DA been provided the original, unadulterated videos, Plt. would have  
 10 been exonerated of all charges, and Defs. Temores, Wagner and Burger would be facing criminal  
 11 charges for false arrest/imprisonment and assault and battery.

12 Plaintiff was prosecuted for nine months. Plaintiff totaled four days in court being  
 13 prosecuted by the Santa Clara County District Attorney who was provided falsified evidence and  
 14 statements by Defs. to justify the prosecution. Defs. Temores and Burger testified against Plt.  
 15 Ciampi during the Pre-Trial Examination, Defs. Exhs. 5 through 7 of Sherman's Decl. Plt. was  
 16 required to go to court half a dozen times from March 15, 2008 through November 2008  
 17 regarding Defs. malicious prosecution of Plt. Plt. provides exhs. 524-2 through 7 which were the  
 18 direct financial costs incurred by Plt. Ciampi as a result of Defs. maliciously prosecuting Plt.  
 19 Ciampi. These costs total: \$25,740.00. Plt. also incurred another \$1,153.75 in debts owed as a  
 20 result of the assault and battery committed by Defs. Burger, Temores and Wagner, Exh. 524-8.  
 21 This debt could be higher or non-existent due to unknown collection agency activities.

22 The acts of tampering with and destroying the evidence perpetrated by Defs. in order to  
 23 maliciously prosecute Plt. Ciampi are not only outrageous but removes the foundation of "Truth"  
 24 from the Justice System that is dependent upon law enforcement officers providing true and  
 25 accurate reports and evidence so that the courts can render impartial, sound and fair decisions.  
 26 By providing the District Attorney with falsified videos to be used against Plt. Ciampi in a court  
 27 of law, Defs. were perverting justice to a degree that would turn the court into tool of oppression  
 28 and persecution unawares which is exactly what Defs. have done by providing this court Def.

1 Temores' MAV video. In addition to the costs incurred during the criminal prosecution, Plt.  
 2 Ciampi has incurred \$8,320.91 as a direct result of seeking compensation for the damages caused  
 3 by Defs. in Plt. Ciampi's complaint before this court with a potential of another \$45,000.00,  
 4 Exhs. 524-9 through 11.

#### 5 **XI. FALSE ARREST AND IMPRISONMENT**

6 Cal. GC § 820.4. "A public employee is not liable for his act or omission, exercising due  
 7 care, in the execution or enforcement of any law. Nothing in this section exonerates a public  
 8 employee from liability for false arrest or false imprisonment."

9 Plt. was unlawfully detained the moment Defs. Wagner and Temores stated that Plt. was  
 10 violating a non-existent ordinance. Plt. was not free to leave or go out about his business.  
 11 Since Defendants had no articulable facts to detain Plt. Ciampi, the arrest by Defs. was unlawful  
 12 and therefore Defs. had no reasonable cause to believe that the arrest was lawful. In fact the  
 13 prima facie evidence of falsifying and destroying the evidence demonstrates unequivocally that  
 14 Defs. knew and know the arrest of Plt. Ciampi was not lawful. As such, Defs.' position that no  
 15 civil liability based upon Cal. PC § 836.5 (b) fails. Plt. provides Exh. 521-5 & 6 verifying that  
 16 Def. Burger had placed Plt. Ciampi under false arrest for a "5150" violation, not a "550"  
 17 violation. After the altercation, Plt. Ciampi was falsely arrested, hand-cuffed and taken into  
 18 custody by Defs. Plt. Ciampi was then taken to the Santa Clara County jail where Plt. Ciampi  
 19 was cuffed to a chair for appx. four hours and then taken to a general holding cell. Plt. Ciampi  
 20 then bailed out of jail at appx. 10:00 pm after spending 12 hours in custody.

#### 21 **XII. INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS**

22 Plaintiff provides Exhs. 550, 554-1 through 3, Audio's of police contacts, ¶¶63 through  
 23 106 of Plt. Ciampi's Decl. in Supp. of Plt's Opp. To Defs' Mot. for Summ. Judg. Def. City of  
 24 Palo Alto's City Attorney showed Def. Temores' falsified MAV video to the media, an  
 25 outrageous and deliberate act motivated by a malicious intent to cause Plt. Ciampi emotional  
 26 distress to which said act did in fact cause Plt. Ciampi emotional distress.

