

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

**FILED**

APR 21 2011

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

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7 **RECEIVED**

8 APR 21 2011

UNITED STATES DISTRICT COURT

9 Richard W. Wiekling  
10 Clerk, U.S. District Court  
Northern District of California  
San Jose

FOR THE NORTHERN DISTRICT OF CALIFORNIA

(SAN JOSE DIVISION)

11  
12 JOSEPH CIAMPI

Case No. C 09-02655 LHK (PSG)

13  
14 Plaintiff,

**PLAINTIFF'S MOTION FOR LEAVE  
TO FILE A MOTION FOR  
RECONSIDERATION;  
RE: PLAINTIFF'S OPPOSITION TO  
DEFENDANT'S MOTION FOR  
SUMMARY JUDGMENT AND  
DECLARATION OF PLAINTIFF JOSEPH  
CIAMPI IN SUPPORT THERE OF:**

15 v.

RE: Court Docs. 123 & 132

16 CITY OF PALO ALTO, a government  
17 entity; LYNNE JOHNSON, an individual;  
18 CHIEF DENNIS BURNS, an individual;  
19 OFFICER KELLY BURGER, an  
20 individual; OFFICER MANUEL  
21 TEMORES, an individual; OFFICER  
22 APRIL WAGNER, an individual; AGENT  
23 DAN RYAN; SERGEANT NATASHA  
24 POWERS, an individual.

Civil L.R. 7-9

Judge: The Honorable Judge Koh

25 Defendants.

26 TO EACH PARTY AND THEIR COUNSEL OF RECORD YOU ARE HEREBY  
27 NOTIFIED THAT Plaintiff Joseph Ciampi seeks to move the court to allow Plaintiff to  
28 supplement Plaintiff's Opposition to Defendants' Motion For Summary Judgment.

1 Plaintiff recently became aware of substantial case law, (Exhibit 613), which could have  
2 a direct and significant bearing on the court's decision regarding Defendants' Motion For  
3 Summary Judgment to be heard before Judge Koh on April 21, 2011. As can be seen from the  
4 content of the case law had Plaintiff known of the existence of the case law recently discovered  
5 Plaintiff would have included it in Plaintiff's Opposition to Def. Mot. for Summ. Judg.  
6

7 With the understanding that in order not to inadvertently render an inconsistent judgment  
8 resulting in a miscarriage of justice courts rely on the decisions of other courts to ensure that fair  
9 and sound judgments are rendered to maintain a consistent application of the law. Should the  
10 court be unaware of the case law cited in Exh. 613 the court could make an inconsistent decision  
11 on all or part of its decision regarding Defendants' Motion For Summary Judgment. Therefore  
12 Plaintiff believes that he should be granted leave to file a Motion for Reconsideration.  
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16 Plaintiff

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18 Date: April 21, 2011

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21 Plaintiff JOSEPH CIAMPI in pro se  
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**DECLARATION OF PLAINTIFF JOSEPH CIAMPI**

I, Joseph Ciampi, declare as follows:


Attached hereto as Exhibit 613 is a true and correct copy of the case law that I recently discovered to which I request Motion for Leave and Motion for Reconsideration to supplement the MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFF'S OPPOSITION TO DEFENDANTS' MOTION FOR SUMMARY JUDGMENT, Court Document 132.

I have been beside myself for the last two months trying to figure out why my former attorney would include several causes of action in my initial complaint which Defendants are immune to liability. I have to assume that my former attorney was aware of the Harper v. City of Los Angeles decision rendered by the United States Court of Appeals of the Ninth Circuit and the case law cited therein.

In the process of diligently searching for the reasons why Defendants have immunity I discovered the Harper v. City of Los Angeles 533 F.3d 1010 (9<sup>th</sup> Cir. 2008) case. I first became aware of the Harper v. City of Los Angeles verdict about a week ago. I first became aware of the Ninth Circuit's ruling a few days ago on or about April 17/18, 2011.

I declare under penalty of perjury that the foregoing is true and correct executed this 22<sup>nd</sup> day of November 2010, at Palo Alto, California.

Plaintiff



Plaintiff Joseph Ciampi in pro se

Dated: April 21, 2011

Exhibit 613

1 **MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFF'S OPPOSITION TO**  
2 **DEFENDANTS' MOTION FOR SUMMARY JUDGEMENT [SUPPLEMENTAL]**

3 **XV. SUPPLEMENTAL:**

4 In *People v. Ramey* 16 Cal. 3d 263, 269 (1976), the court found, "[I]t may be stated as a  
5 general proposition that private citizens who are witnesses to or victims of a criminal act, absent  
6 some circumstance that would cast doubt upon their information, should be considered reliable."

7 When factoring in the numerous false and contradictory statements made by Defendants  
8 it is clear that Plaintiff has established beyond a reasonable doubt that Defendants violated  
9 Plaintiff's constitutional rights to be free from unreasonable searches and seizures.

10 "In determining whether there is reason to disbelieve an accuser, the courts will consider,  
11 among other things, whether the accusers give inconsistent statements, whether accusers are  
12 unable to provide specific and detailed information, and whether the accusers have a motive to  
13 lie," *Harper v. City of Los Angeles* 533 F.3d 1010 (9th Cir. 2008) at 1011 #5.

14 Defendants falsified what detailed information is available, the technical data and the  
15 audio/video recordings and Defendants have a motive to lie, to avoid accountability for their  
16 unlawful actions.

17 The information known to the officers when they arrested Plaintiff is not sufficiently  
18 consistent, specific, or reliable to cause a reasonable person to believe the Defendants' accounts  
19 of the events that occurred. There is substantial evidence from which the court can conclude that  
20 the arrest was without probable cause. "An arrest without probable cause violates the Fourth  
21 Amendment and gives rise to a claim for damages under a 42 U.S.C § 1983 civil action," *Harper*  
22 *v. City of Los Angeles* 533 F.3d 1010 (9th Cir. 2008) at 1022 citing *McKenzie v. Lamb*, 738  
23 F.2d 1005, 1007 (9<sup>th</sup> Cir. 1984)

24 Quoting *Harper v. City of Los Angeles* 533 F.3d 1010 (9th Cir. 2008) at 1022:  
25 QUOTE: "Under the collective knowledge doctrine, in determining whether probable cause  
26 exists for arrest, courts look to "the collective knowledge of all the officers involved in the  
27 criminal investigation." *Unites States v. Ramirez*, 473 F.3d 1026, 1032 (9<sup>th</sup> Cir. 2007) (citation  
28

1 and quotation marks omitted). Where the facts or circumstances surrounding an individual's  
2 arrest are disputed, the existence of probable cause is a question for the jury, McKenzie, 738  
3 F.2d at 1008." That is the case herse." END QUOTE

4 Defendants violated Plaintiff's 14<sup>th</sup> Amendment right to due process when they made  
5 false statements in the police report, in the use of force report, and under oath during the Pre-trial  
6 Examination, Plaintiff's Exhibits 45, 52, 500, 507, 508, 516, and 529 just to name a few. An  
7 example would be lines 15 and 16 of pg. 53 and lines 1 through 6 of pg. 4 of the Pre-Trial  
8 Transcript, Plaintiff's exhibit 567-1, in which Defendant Temores' states that he tasered Plaintiff  
9 Ciampi two separate times and then states he tasered Plaintiff Ciampi three times yet Defendant  
10 Temores' taser gun activation report states that he only discharged electricity one time during the  
11 incident, Exhibits 22 and 23 of court document 55 and Plaintiff's exhibit 179 of court document  
12 109.

13 Additionally Defendants violated Plaintiff's 14<sup>th</sup> Amendment right to due process when  
14 they suppressed the original unadulterated audio/video recordings and taser gun activation data.  
15 Defendants further violated Plaintiff's 14<sup>th</sup> Amendment right to due process when they submitted  
16 the falsified audio/video recordings and taser gun activation data to the prosecutor in order to  
17 wrongfully incriminate Plaintiff of a crime, see Plaintiff's Exhibits 46, 47, 500, 501, 510, 511,  
18 512, 513, 519, 522, 528, and 529.

19 1. The original MAV hard drives containing the unadulterated recordings have been  
20 destroyed;

21 2. Video footage has been removed from Defendant Temores' MAV and taser  
22 recordings;

23 3. Defendant Temores' MAV recording is not in chronological order;  
24 Audio dialog has been removed from Defendant Burger's MAV recording;

25 4. Defendant Burger's Taser camera recording is missing video footage and is not in  
26 chronological order;

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1           5. Two taser gun firngs occurred during the incident, only one is captured on the  
2 recordings;

3           6. Four taser probes were discharged during the incident, the PAPD destroyed two of the  
4 taser probes;

5           7. Defendant Burger discharged electricity for a much longer period of time than his  
6 taser gun activation reports and taser gun data port states that he did corroborated by the fact that  
7 both Defendants Temores' and Burger's taser gun activation reports have been falsified;

8           8. The taser cameras that recorded the incident were sent to Taser International while at  
9 the same time two taser cameras that did not record the incident yet containing the edited and  
10 falsified recordings were sent to the Santa Clara County Crime Lab;

11           9. The taser cameras that recorded the incident were destroyed by Taser International.

12           10. And Defendants and their attorney tampered with taser camera's V07-065373 serial  
13 number.

14           The evidence establishing that the audio/video recordings and taser gun activation data  
15 have been tampered with is so overwhelming Defendants and their experts cannot refute it and  
16 therefore resort to objecting to it. Yet most of the incriminating evidence that Defendants object  
17 to is the very evidence that Defendants themselves have submitted to this court: the police report,  
18 the use of force report, the MAV recordings, the Taser recordings and the taser gun activation  
19 data.

20           "Suppression by the prosecution of evidence favorable to an accused who has requested it  
21 violates due process where the evidence is material either to guilt or to punishment, irrespective  
22 of the good faith or bad faith of the prosecution," Brady v. Maryland, 373 U.S. 83 (1963) [Pp.  
23 866-88]

24           Quoting the STATE BAR COURT OF CALIFORNIA HEARING DEPARTMENT-  
25 SAN FRANCISCO: In the Matter of BENJAMIN T. FIELD, Case Nos. 05-00815-PEM (06-O-  
26 11153; 06-O-12344(Cons.), DECISION, Paragraph 4 of page 18:

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1            “In every criminal prosecution there exists an entity which the courts call the  
2 ‘prosecution team.’ ‘Courts have thus consistently ‘decline[d] to draw a distinction between  
3 different agencies under the same government, focusing instead upon the ‘prosecution team’  
4 which includes both investigative and prosecutorial personnel.” (In re Brown (19198) 17 Cal. 4<sup>th</sup>  
5 873, 879.) The prosecution team has four component parts: The prosecutor’s office; The  
6 investigating agency or agencies; Assisting agencies and persons ; and Agencies closely tied to  
7 the prosecution. (See Penal Code, 1054.5.)”

8            Defendants deceived the prosecutor’s office by providing the prosecutor’s office with the  
9 falsified videos and therefore wrongfully manipulated the District Attorney’s office into  
10 prosecuting Plaintiff Ciampi.

11            Had Defendants provided the prosecutor’s office and Plaintiff with the original,  
12 unadulterated audio/video recordings and taser gun activation data Plaintiff would not have been  
13 prosecuted and instead Defendants Burger, Temores and Wagner would have been prosecuted  
14 for the assault and battery under color of authority and false arrest.

15            Quoting and paraphrasing Harper v. City of Los Angeles 533 F.3d 1010 (9th Cir. 2008) at  
16 1027:

17 QUOTE: “It is a well-settled principle that the “[f]iling of a criminal complaint immunizes  
18 investigating officers from damages suffered thereafter because it is presumed that the prosecutor  
19 filing complaint exercised independent judgment in determining that probable cause for an  
20 accused’s arrest exists at that time.” Smiddy v. Varney, 665 F.2d 261, 266 (9<sup>th</sup> Cir. 1981)  
21 (Smiddy I).” A § 1983 Plaintiff may rebut this presumption, however, by “showing that the  
22 district attorney was pressured or caused by the investigating officers to act contrary to his  
23 independent judgment.” Id. At 266.” Such evidence must be substantial, see Newman v.  
24 County of Orange, 457 F. 3d 991, 994-95 (9<sup>th</sup> Cir. 2006) (rebuttal evidence cannot consist merely  
25 of a Plaintiff’s own account of events), [but here the jury has ample support for the proposition  
26 that, “the prosecutor who caused the complaint to be filed almost entirely on the police  
27 investigation adjudged to be deficient by the jury].” Smiddy v. Varney, 803 F2d 1469, 1472  
28



1 (Smiddy II); see also Barlow v. Ground, 943 F.2d 1132, 1136 (9 th Cir. 1991)) (citing Smiddy I  
2 and finding that “police officers can be liable if they made false reports to the prosecutor,  
3 omitted material information for the reports, or otherwise prevented the prosecutor from  
4 exercising his independent judgment.”). END QUOTE

5 “The presumption of prosecutorial independence protects investigative officers unless  
6 the evidence shows that the officers interfered with the prosecutor’s judgment by omitting  
7 relevant information or by pressuring the prosecutor to file charges.” Harper v. City of Los  
8 Angeles 533 F.3d 1010 (9th Cir. 2008) at 1028 citing Newman v. Orange County, 457 F.3d at  
9 995.

10 Had Defendants provided Plaintiff the original unadulterated recordings and taser gun  
11 activation data, Plaintiff would not have incurred \$20,000.00 in legal fees and \$4,716.25 in video  
12 forensic expert fees, Exhibits 524-2 and 524-4.

13 Had Defendants provided Plaintiff the original unadulterated recordings and taser gun  
14 activation data Plaintiff would not have been forced to go to court several times from March 15,  
15 2008 through December 17, 2008 denying Plaintiff’s right to be free from unlawful detainment.  
16 Plaintiff would not have suffered from extreme emotional distress of being prosecuted had  
17 Defendants provided Plaintiff the original, unadulterated recordings.

18 Plaintiff would not be living in fear for his safety suffering from emotional distress of be  
19 being persecuted and falsely incriminated by Defendants in the future by using falsified evidence  
20 had Defendants not suppressed the original, unadulterated videos and provided falsified  
21 recordings, falsified police reports and testimony in order to wrongfully incriminate Plaintiff.

22 The damages Plaintiff suffered were of the direct result and causation of the 14<sup>th</sup>  
23 Amendment violations committed by Defendants.

24 Not only did the employees of the city of Palo Alto violate Plaintiff Ciampi’s  
25 constitutional rights, but the evidence demonstrates that the policymakers of the City of Palo  
26 Alto ratified the violations committed by its employees by actively aiding its employees in their  
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1 efforts to violate Plaintiff Ciampi's constitutional rights while simultaneously refusing to hold  
2 their employees accountable for the violations of Federal and State Laws they committed.

3 Quoting and paraphrasing Harper v. City of Los Angeles 533 F.3d 1010 (9th Cir. 2008)  
4 at 1024-25:

5 QUOTE: "A municipality may be held liable under section § 1983 only where an 'action to  
6 official municipal policy of some nature causes a constitutional violation.' Monell v. Dept. of  
7 Soc. Servs., 436 U.S. 658, 691 98 S.Ct. 2018, 56 L. Ed.2d 611 (1978). Municipal liability under  
8 Monell is established where 'the appropriate officer or entity promulgates a generally applicable  
9 statement of policy and the subsequent act complained of is simply an implementation of that  
10 policy.' Bd. Of County Comm'rs v. Brown, 520 U.S. 397, 417, 117 S.Ct 1382, 137 L.Ed 2d 626  
11 (1997). Such a policy may either be 'explicitly adopted' or 'tacitly authorized,' Gibson v. United  
12 States, 781 F.2d 1334, 1337, (9<sup>th</sup> Cir.1986) (citing Monell, 436 U.S. at 690091, 98 S.Ct 2018),  
13 but the 'decision to adopt [a] particular course of action by th[e] government's authorized  
14 decisionmakers surely represents an act of official government policy,' Pembaur v. City of  
15 Cincinnati, 475 U.S. 469, 481, 106.S.Ct. 1292, 89 L.Ed.2d 452 (1986)." END QUOTE.

16 Because former Chief Johnson and current Chief Burns were and are authorized  
17 policymakers on police matters, Chiefs Johnson's and Burns' decision to make or ratify a  
18 decision that deprived Plaintiff of his constitutional rights would suffice for official liability  
19 under Pembaur. Harper v. City of Los Angeles 533 F.3d 1010 (9<sup>th</sup> Cir. 2008) at 1025 citing  
20 Larez v. City of Los Angeles, 946 F.2d 630, 646 (9<sup>th</sup> Cir. 1991).

21 "The act of the municipality is the act not only of an authorized policymaker, but of  
22 employees following the policymaker's lead," Harper v. City of Los Angeles 533 F.3d 1010 (9<sup>th</sup>  
23 Cir. 2008) at 1025 quoting Bd of County Somm'rs, 520 U.S. at 417, 117 S.Ct. 1382.

24 "(A Policy or custom may be inferred if, after [constitutional violations occurred],  
25 officials took no steps to reprimand or discharge their [subordinates] or if they otherwise failed  
26 to admit the [subordinates'] conduct was in error.)," Harper v. City of Los Angeles 533 F.3d  
27 1010 (9<sup>th</sup> Cir. 2008) at 1026 quoting McRoie v. Shimoda, 795 F.2d 780, 784 (9<sup>th</sup> Cir. 1986)

1 Judge Thang Barrett ruled that Defendants violated Plaintiff's constitutional rights, yet  
2 Police Chief's Johnson and Burns have not disciplined their subordinates nor have they admitted  
3 that their subordinates conduct was in error. In the case before the court today, the policymaker  
4 has not only not held the subordinate officers accountable, but Police Chief's Johnson and Burns  
5 along with the City Attorney's office, another official policymaker, have actively suppressed,  
6 destroyed and falsified evidence, Plaintiff's Exhibits 500 through 506, 522, 526 and 528, which  
7 creates a situation where the municipality is liable not only for the actions of its employees but  
8 its own actions as well.

9 Quoting Harper v. City of Los Angeles 533 F.3d 1010 (9th Cir. 2008) at 1026:

10 QUOTE: "In a § 1983 action, the plaintiff must also demonstrate that the defendants conduct  
11 was the actionable cause of the claimed injury. See, e.g., Arnold v. IBM Corp. , 637 F.2d 1350,  
12 1355 (9th Cir. 1981). To meet this causation requirement, the plaintiff must establish both  
13 causation-in-fact and proximate causation. See Van Ort v. Estate of Stanewich, 92 F.3d 831, 837  
14 (9th Cir. 1996); Arnold, 637 F.2d at 1355. "Where the action taken or directed by the  
15 municipality or its authorized decisionmaker itself violates federal law, resolving issues of fault  
16 and causation is straightforward because proof of such violation "establishes that the municipal  
17 action was the moving force behind the injury of which the plaintiff complains." Bd. Of County  
18 Comm'rs, 520 U.S. at 404-05, 117 S.Ct. 1382." END QUOTE

19 "The unconstitutional policy at issue and the particular injury alleged are not only  
20 'closely related,' City of Canton v. Harris, 489 U.S., 391, 109 S.Ct. 1197, 103 L.Ed. 2d 412  
21 (1989), they are cause and effect," Harper v. City of Los Angeles 533 F.3d 1010 (9th Cir. 2008)  
22 at 1027.

23 Cal. Gov. Code § 815.2. (a) states, "A public entity is liable for injury proximately  
24 caused by an act or omission of an employee of the public entity within the scope of his  
25 employment if the act or omission would, apart from this section, have given rise to a cause of  
26 action against that employee or his personal representative." Cal. Gov Code. § 820. (a) states,  
27

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1 “Except as otherwise provided by statute (including Section 820.2), a public employee is liable  
2 for injury caused by his act or omission to the same extent as a private person.”

3 Quoting Harper v. City of Los Angeles 533 F.3d 1010 (9th Cir. 2008) at 1029 and 1030:

4 QUOTE: “Compensable injuries under section § 1983 include “**impairment of reputation,**  
5 **personal humiliation, and mental anguish and suffering.**” Memphis Cmty. Sch. Dist. v.  
6 Stachura, 477 U.S. 299, 307, 106 S.Ct. 2537, 91 L.Ed2d 249 (1986); see also Johnson v. Hale, 13  
7 F.3d 1351, 1353, 1353 (9<sup>th</sup> Cir. 1994) (discussing compensatory damages under 42 U.S. C. §  
8 1982). The testimony of the plaintiff alone can substantiate a jury’s award of **emotional distress**  
9 **damages.** See Zhang v. Am. Gem Seafoods, Inc., 339 F.3d at 1040 (9<sup>th</sup> Cir. 2003); see also  
10 Passantino v. Johnson and Johnson Consumer Prod., Inc., 212 F.3d 493, 513 (9<sup>th</sup> Cir. 200).”  
11 “...This court does not require that damage awards must be supported by “objective” evidence.  
12 See Zhang, 339 F.3d at 1040 (concluding that Zhang’s testimony alone was enough to  
13 substantiate the jury’s award); Chalmers v. City of Los Angeles, 762 F.2d 753, 761 (9th  
14 Cir.1985) (upholding damages based solely on testimony); Johnson, 13 F.3d at 1352 (noting that  
15 **emotional damages may be awarded based on testimony alone or appropriate inference**  
16 **from circumstances.**” END QUOTE.

17 **XVI. CONCLUSION:**

18 The court in Harper v. City of Los Angeles upheld a verdict and a jury award of damages  
19 for negligence; defamation, (impairment of reputation); and emotional distress, (personal  
20 humiliations, and mental anguish and suffering), under the violation of the Fourteenth  
21 Amendment right to due process due to the negligent and malicious prosecution by the City of  
22 Los Angeles and its employees.. Quoting Harper v. City of Los Angeles 533 F.3d 1010 (9<sup>th</sup> Cir.  
23 2008) at 1015:

24 QUOTE: “The criminal charges against these officers resulted in acquittals. Harper, Liddy, and  
25 Ortiz (the “Officers”) subsequently brought suit against a number of actors, including Perez, the  
26 district attorneys, the City of Los Angeles, and former Chief of Police Bernard Parks for  
27 violations of their constitutional civil rights under 42 U.S. C. 1983, contending among other  
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1 claims that the defendants had conducted an improper and negligent investigation, and that  
2 they had been arrested without probable cause for falsifying a police report and conspiring to file  
3 such a report.” After and eleven-day trial, the jury returned a special verdict in favor of the  
4 Officers, finding that the Officers’ constitutional rights were violated by the City and by Chief  
5 Parks n his official capacity. The jury awarded each officer compensatory damages in the  
6 amount of \$5,000,001.” END QUOTE.

7 Should this case go to a trial before a jury, a jury will find that the Defendants violated  
8 Plaintiff’s 4<sup>th</sup> and 14<sup>th</sup> Amendment rights and as well as being liable for the other causes of  
9 action. Plaintiff’s complaint Should Defendants appeal the jury’s decision the case will go  
10 before the United States Court of Appeals of the Ninth Circuit, to which the Ninth Circuit will  
11 uphold the jury’s verdict as a matter of law already settled in the Harper v. City of Los Angeles  
12 533 F.3d 1010 (9 th Cir. 2008) [pp. 1011-1030].

13  
14 Plaintiff

15  
16 Dated: April 21, 2011



17 Plaintiff JOSEPH CIAMPI in pro se