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FILED

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6 Plaintiff Joseph Ciampi, in pro se

RICHARD W. WEKING
CLERK U.S. DISTRICT COURT
SANTA CLARA COUNTY, CALIFORNIA

10 C1944C

8 UNITED STATES DISTRICT COURT
9 FOR THE NORTHERN DISTRICT OF CALIFORNIA
11 (SAN JOSE DIVISION)

12 JOSEPH CIAMPI
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14 Plaintiff,
15 v.
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.
25 Defendants.

Case No. C 09-02655 LHK (PSG)
[SUPPLEMENT TO]
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:
RE: Court Docs. 123 & 132
Civil L.R. 7-9
Judge: The Honorable Judge Koh

26 TO EACH PARTY AND THEIR COUNSEL OF RECORD YOU ARE HEREBY
27 NOTIFIED THAT on April 21, Plaintiff submitted a brief to the court seeking a motion for leave
28 to file a motion for reconsideration regarding Plaintiff's Opposition to Defendants' Motion for

1 Summary Judgment. In Plaintiff's haste to file the document and Exhibit 613, "PLAINTIFF'S
 2 MEMORANDUM OF LAW...[SUPPLEMENTAL], Plaintiff neglected to include the portion of
 3 Plaintiff's argument regarding the unconstitutionality of Cal. Gov. Code § 821.6 which
 4 Defendants cite as justification for immunity to malicious prosecution. Plaintiff hereby provides
 5 the portion of his argument that relates to the unconstitutionality of Cal. Gov. Code § 821.6.

6 Plaintiff would understand the court not hearing it based upon Plaintiff's failure to
 7 provide it in a timely manner, however given the importance of the constitutional violations at
 8 stake for all United States Citizens Plaintiff believes that it is warranted that the court take into
 9 consideration Plaintiff's argument which was unearthed in the process of discovering the case
 10 law Harper v. City of Los Angeles a week ago.

11 **[SUPPLEMENTAL TO EXHIBIT 613]**

12 **MEMORMANDUM OF LAW IN SUPPORT OF PLAINTIFF'S OPPOSITION TO**
 13 **DEFENDANTS' MOTION FOR SUMMARY JUDGMENT [SUPPLEMENTAL**

14 Should this case go to a trial before a jury, a jury will find that the Defendants violated
 15 Plaintiff's 4th and 14th Amendment rights and as well as being liable for the other causes of
 16 action. Should Defendants appeal the jury's decision the case will go before the United States
 17 Court of Appeals of the Ninth Circuit, to which the Ninth Circuit will uphold the jury's verdict as
 18 a matter of law already settled in the Harper v. City of Los Angeles 533 F.3d 1010 (9th Cir.
 19 2008) [pp. 1011-1030].

20 With this knowledge, the court should find for Plaintiff in this matter and award damages
 21 to Plaintiff commensurate to that of similar cases and awards resulting from similar violations.

22 Title 42 Section 1983 of the U.S. Code states in part,

23 "Every person who, under color of any statute, ordinance, regulation, custom, or usage,
 24 of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any
 25 citizen of the United States or other person within the jurisdiction thereof to the deprivation of
 26 any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the
 27 party injured in an action at law, suit in equity, or other proper proceeding for redress..."

1 Section 1983 was enacted on April 20, 1871, a 140 years ago to the day yesterday, as part
2 of the Civil Rights Act of 1871, and is also known as the "Ku Klux Klan Act" because one of its
3 primary purposes was to provide a civil remedy against the abuses that were being committed in
4 the southern states, especially by the Ku Klux Klan. While the existing law protected all citizens
5 in theory, its protection in practice was unavailable to some **because those persons charged**
6 **with the enforcement of the laws were unable or unwilling to do so.** The Act was intended
7 to provide a private remedy for such violations of federal law, and has subsequently been
8 interpreted to create a species of tort liability.

9 Defendants violated several Penal Codes delineated in Plaintiff's Opposition to
10 Defendants' Motion for Summary Judgment. Had the City of Palo Alto and the Prosecutor done
11 a proper investigation, several of the Defendants would have been prosecuted and convicted of
12 those penal codes.

13 Laws are created to ensure that the safety, liberty, rights and well-being of ALL
14 CITIZENS ARE PROTECTED. Those in authority are unable to and or are refusing to hold the
15 Defendants accountable for their crimes jeopardizing Plaintiff's safety to be free from the
16 intimidation, oppression and the other unlawful acts committed by Defendants in the future.

17 With this knowledge, the court should award punitive damages to Plaintiff commensurate
18 to that had Defendants been properly investigated, prosecuted and convicted of the crimes they
19 have committed.

20 The catalyst for the enactment of the 1983 Act was the "campaign of violence and
21 deception in the South, fomented by the Ku Klux Klan, which was denying citizens their civil
22 and political rights." Wilson v. Garcia, 471 U.S. 261, 276 (1985).

23 The following quote from Representative Lowe of the 42nd Congress is illustrative:
24 "While murder is stalking abroad in disguise, while whippings and lynchings and banishing have
25 been visited upon unoffending American citizens, the local administrators have been found
26 inadequate or unwilling to apply the proper corrective. Combinations, darker than the night that
27 hides them, conspiracies, wicked as the worst of felons could devise, have gone unwhipped of
28

1 justice. Immunity is given to crime and the records of public tribunals are searched in vain for
2 any evidence of effective redress.”

3 Defendants’ claim that they have immunity pursuant to Cal. Gov. Code § 821.6., pg. 30
4 of Court Doc. 123 and elsewhere in Defendants’ Mot. for Summ. Judg. Cal. Gov. Code § 821.6
5 states, “A public employee is not liable for injury caused by his instituting or prosecuting any
6 judicial or administrative proceeding within the scope of his employment, even if he acts
7 maliciously and without probable cause.”

8 Under Cal. Gov. Code § 821.6 peace officers can, injure, maim, kill, maliciously
9 prosecute, ruin and defame citizens by robbing citizens of their lives, property and liberty with
10 impunity.

11 Title 42, section 1983 of the U.S. Code was specifically enacted to overcome these
12 abuses of official authority.

13 The Fourteenth Amendment of the United States Constitution states, “No state shall make
14 or enforce any law which shall abridge the privileges or immunities of citizens; nor shall any
15 state deprive any person of life, liberty, or property without due process of law; nor deny to any
16 person within its jurisdiction the equal protection of the laws.

17 Cal. Gov. Code § 812.6 is not only unconstitutional in its intent to abridge the privileges
18 and immunities of United States Citizens but it specifically denies all persons who are not public
19 employees the same and equal protection of the law that public employees are provided by the
20 code which is a clear and direct, a prima facie, violation of the equal protection clause of the
21 Fourteenth Amendment.

22 Article VI, Clause 2 of the United States Constitution states:

23 “This Constitution, and the Laws of the United States which shall be made in pursuance
24 thereof; and all treaties made, or which shall be made, under the authority of the United States,
25 shall be the supreme law of the land; and the judges in every state shall be bound thereby,
26 anything in the constitution or laws of any state to the contrary notwithstanding.”
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Article 6 Clause 2 of the United States Constitution, known as the Supremacy Clause, establishes the U.S. Constitution, Federal Statutes, and U.S. Treaties as "the supreme law of the land."

The text decrees these laws are the highest form of law in the U.S. legal system and are to overrule any and all state constitutions and state laws that contradict or conflict with the Supreme Law. The text mandates that all judges must follow federal law when a conflict arises between federal law and either the state constitution or state law of any state.

Since this court is bound by the Supreme Law which has established that Cal. Gov. Code § 821.6 is contrary to and in opposition to the Supreme Law, this court must deny Defendants' claim of immunity under Cal. Gov. Code § 812.6 due to the unconstitutionality of the State Law.

The Fourteenth Amendment and the 1983 Act were specifically created to address the violations of human decency that Cal. Gov. Code § 821.6 permits. To uphold Defendants' desire for immunity would result in a 150 year regression of our civilization and overturn the very purpose of why our Republic was created, to provide a sanctuary where the People are the King who have the ultimate protection of life, liberty and pursuit of happiness to which the people of all other nation hunger for. This hunger and thirst for liberty from oppression of official authority is demonstrated most recently by the People in Egypt, Syria and Lybia who are requiring that their own governments cease violating the basic human rights that the United States government guarantees its own People. It is the duty of this court to uphold Plaintiff's rights of liberty and deny Defendants' Motion for Summary Judgment on the basis of immunity from Cal. Gov. § 821.6.

Plaintiff

Date: April 25, 2011



Plaintiff JOSEPH CIAMPI in pro se

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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF SANTA CLARA

I, Joseph Ciampi, live in the aforesaid County, State of California; I am over the age of 18 years. My address is: P.O. Box 1681 Palo Alto, CA 94302.

On April 25, 2011 I served [SUPPLEMENT TO] 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: on the interested parties in this action by placing a true copy thereof, enclosed in a sealed envelope/package, addressed as follows:

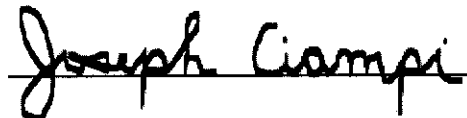
Steven A. Sherman, Esq. Bar No. 113621
FERGUSAN, PRAET & SHERMAN
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1631 East 18th Street
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Ssherman@law4cops.com

Attorney for Defendants

I placed such envelope/package for deposit, sealed, with postage thereon fully paid and the correspondence to be deposited in the United States mail at Palo Alto, California on the same day.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on April 25, 2011, at Palo Alto, California.



Joseph Ciampi in pro se