

United States Court  
Eastern District of California

Pro Se, Patrick Michael Hamer and Donna Lee  
Hamer and Does 6-10,  
Plaintiffs,  
vs.

EDC and Does 6-10 in individual and official  
capacity: D.A. Vern Pierson in individual and  
official capacity: D.D.A. Dick Jones in  
individual and official capacity: Worth Dikeman  
in individual and official capacity:  
B.O.S.(Dist.2) Helen Bauman in individual and  
official capacity: Brenda Bailey in individual  
and official capacity: B.O.S (Dist 2) Ray  
Nutting in individual and official capacity [per  
Fed. R. Proc. 25d]: Sheriff JEFF NEVES in  
individual and official capacity: Under Sheriff  
FRED KOLLAR in individual and official capacity:  
AND Deputy DAN JOHNSON in individual and  
official capacity: Assemblyman Ted Gaines in  
individual and official capacity: Steve Davey in  
individual and official capacity:: Judge James  
Wagoner in individual and official capacity: Bob  
Anderson and David Randall Private State Actors  
and Individual Capacity: California Attorney  
General Edmond G. Brown Jr Official Capacity  
Defendants

Case No. CIV S-08-2269-MCE-EFB-PS

MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT OF MOTION  
TO STRIKE AND OBJECTIONS BY  
PLAINTIFFS PATRICK AND DONNA HAMER  
AND TO VACATE SEPTEMBER 2, 2009  
HEARING AND IN OPPOSITION TO  
DEFENDANTS COUNTY OF EL DORADO,  
VERN PIERSON, DICK JONES, WORTH  
DIKEMAN, RAY NUTTING, HELEN  
BAUMAN, BRENDA BAILEY, JEFF NEVES,  
FRED KOLLAR AND DAN JOHNSON TO  
DISMISS SECOND AMENDED COMPLAINT  
WITHOUT FURTHER LEAVE TO AMEND  
JURY TRIAL DEMANDED

Plaintiffs Patrick Hamer and Donna Hamer, object to defendants El Dorado County  
et al. Motion to strike the motion to dismiss without leave "document 44 filed  
7-16-2009" and Move to the court to vacate this hearing and order the Defendants  
to answer the complaint, and further prevent defendants from misleading the  
court by falsely alleging facts they cannot support by proper sanctions on the  
following grounds:

STATEMENT OF FACTS FOR GROUNDS TO OBJECT AND TO STRIKE DEFENDANTS CLAIMS IN  
THEIR MOTION TO DISMISS WITH PREJUDICE.

1. Plaintiffs, who are crime victims<sup>1</sup> in El Dorado County, after "reasonable  
inquiry," filed this lawsuit because "cognizable legal theory"<sup>2</sup> is alleged that  
plaintiffs have continually been denied due process in violation of the 14<sup>th</sup>  
amendment equal protection clause as Class of one citizens who were

discriminated against for "no rational basis" [see ¶¶ 15, 26] when they were  
1 retaliated against by the local government, which violated First Amendment and  
2 Fourth, Amendment, Fourteenth amendment rights chilling their speech, depriving  
3 them of their property. Plaintiffs have alleged that this was substantial  
4 motivating factor [see count 3,6, and ¶¶ 27, 30, 41, 72, 76, 88, 103, 114, 125]  
5 for publically and officially redressing grievances and speaking freely about  
6 matters regarding public safety issues in their community. See the following  
7 controlling authorities for "retaliation claims."

8 Hydrick v. Hunter 466 F.3d 676, (9th Cir.2006)

9 Similarly, punishment in retaliation for exercising one's right to access the  
10 courts may constitute a First Amendment violation. Rizzo v. Dawson, [778 F.2d](#)  
11 [527](#), 531-32 (9th Cir. 1985). We have held that the prohibition against  
12 retaliatory punishment is " `clearly established law' in the Ninth Circuit,  
13 for qualified immunity purposes." Pratt v. Rowland, [65 F.3d 802](#), 806 & n.4  
14 (9th Cir. 1995). Given the facts alleged,10 10 We note that Plaintiffs'  
15 original pro se complaint contains particularly persuasive narratives on this  
16 issue.

17 we believe Plaintiffs may be able to prove that they have been punished in  
18 retaliation for the exercise of their First and Fourteenth Amendment rights  
19 to file grievances about the conditions of their confinement. Accordingly,  
20 their claims should not be dismissed at the Rule 12(b)(6) stage.

21 Plaintiffs' Fourth Amendment Rights Plaintiffs allege that Defendants'  
22 policies and practices subject Plaintiffs to unreasonable searches, seizures,  
23 and unnecessary use of force [emphasis added]. According to Plaintiffs, ... to  
24 retaliatory searches of their possessions...

25 As this court held in Thompson v. Souza, [111 F.3d 694](#) (9th Cir. 1997), "the  
26 Fourth Amendment right to be secure against unreasonable searches and  
27 seizures `extends to incarcerated prisoners.'" Id. at 699. Thus, this  
28 protection certainly extends to SVPs.

29 Rayford v. Omaru 400 fed supp 2nd series page 1223. (Hawaii dist ct 2005).  
30 As an initial matter, whether Rayford has separate claims for relief based on  
31 retaliation and chilling, or whether these two terms ("retaliation" and  
32 "chilling") are simply two different ways of proving a § 1983 claim for a  
33 First Amendment violation more generally, is not entirely clear. To succeed  
34 on his claim that a government official chilled his First Amendment rights,  
35 Rayford "must provide evidence showing that {the defendant} `deterred or  
36 chilled [the plaintiff's] political speech and such deterrence was a  
37 substantial or motivating factor in [the defendant's] conduct.'" *Menotti v.*  
38 *City of Seattle*, [409 F.3d 1113](#), 1155 (9th Cir.2005) (quoting *Sloman v.*  
*Tadlock*, [21 F.3d 1462](#), 1469 (9th Cir.1994)). Rayford need not provide  
evidence that his speech was chilled, however: "In making their First  
Amendment claim, the plaintiffs were obligated to prove only that the  
officials' actions would have chilled or silenced 'a person of ordinary  
firmness from future First Amendment activities,' not that their speech and

petitioning were 'actually inhibited or suppressed.'" *White v. Lee*, 227 F.3d 1214, 1241 (9th Cir. 2000) (quoting *Celotex*, 477 U.S. at 322, 106 S.Ct. 2548).

1  
2 2. Plaintiffs filed a criminal complaint on Nov. 22, 2008 resulting in the arrest  
3 of David D. Randall, who was already released on a high bond of "\$230,000.00"  
4 bail. [See ¶¶ 56, 91, of complaint] Plaintiffs then became targets of David D.  
5 Randall and more vandalism occurred, and threats of violence including that they  
6 would be shot by Dave Randall, which plaintiffs. This fear was reasonable based  
7 upon David D. Randall's prior arrests for acts of violence with firearms and  
8 threats and attempts to assault or murder other individuals, while mentally ill,  
9 see exhibit B. Plaintiffs believed he was able to carry out that threat to  
10 shoot them, as he openly stalked them and other crime victims threatening to  
11 murder other crime victims for several years. Plaintiffs attempted to stop the  
12 cyberstalking from this restrained individual by an injunction in this court but  
13 the Eastern District court is ratifying cyberstalking by inaction. [see ¶ 58,]

14 3. Plaintiffs filed a restraining order hearing on March 12, 2007 [see ¶60]

15 4. Plaintiffs have alleged sufficient facts that they were discriminated against  
16 for no rationale basis as class-of-one citizen [see ¶¶ 15, 26]. In the U.S.  
17 Supreme Court, a 2008 decision, makes it unlawful to interfere with this right.  
18 Not applicable in employment discrimination cases, and this case defined the  
19 circumstances where it could be applied:

20 *Olech* did recognize that a class-of-one equal protection claim can in some  
21 circumstances be sustained. Its recognition of that theory, however, was not so  
22 much a departure from the principle that the Equal Protection Clause is  
23 concerned with arbitrary government classification, as it was an application of  
24 that principle to the facts in that case: The government singled Olech out  
25 [emphasis added] with regard to its regulation of property, and the cases upon  
26 which the Court relied concerned property assessment and taxation schemes that  
27 were applied in a singular way to particular citizens. What seems to have been  
28 significant [emphasis added] in *Olech* and the cited cases was the existence of a  
clear standard [emphasis added] against which departures, even for a single  
plaintiff, could be readily assessed [emphasis added]. This differential  
treatment raised a concern of arbitrary classification, and therefore required  
that the State provide a rational basis for it. *ENGQUIST v. OREGON DEPT. OF*  
*AGRICULTURE* (No. 07-474) 478 F. 3d 985, affirmed No. 07-474. Argued April 21,  
2008—Decided June 9, 2008

5. Defendants have not provided any rationale basis for this discrimination.

6. Plaintiffs were singled out for punishment for complaining about not receiving the right to "honest tangible services" [see counts 1-5 and ¶¶ 40, 41, 44, 49, 53, 54, 103, 158] in violation of Title 18 U.S.C 1346. In the U.S. Supreme Court, a 2006 decision, UNITED STATES of America, Plaintiff-Appellee, v. John Anthony WILLIAMS, Defendant-Appellant 441 F.3d 716 No. 05-30071, makes it unlawful to interfere with this right.

Section 1346 thus codifies an "intangible rights" theory of fraud. Under this theory, the object of the fraudulent scheme is the victim's intangible right to receive honest services.

We follow our sister circuits and hold that the "intangible rights" theory of fraud, as codified by § 1346, can apply to private individuals as well as to public figures.

The elements of "direct" mail and wire fraud are (1) engaging in a scheme or artifice to defraud and (2) using or causing the use of the mails or wires in order to further the fraudulent scheme or artifice. *United States v. Manion*, 339 F.3d 1153, 1156 (9th Cir.2003) (per curiam)

For the purposes of this chapter, the term "scheme or artifice to defraud" includes a scheme or artifice to deprive another of the intangible right of honest services.

"[a]lthough the honest services theory of mail fraud is directed primarily at the deterrence and punishment of corruption among public officials, [emphasis added] the courts have consistently recognized the statute's province to encompass dishonest acts perpetrated in private commercial settings"); *United States v. deVegter*, 198 F.3d 1324, 1330 (11th Cir.1999)

USA v. Williams

7. As a matter fact, these following officials are in prison for violating this very act, "Congressman Randy "Duke" Cunningham along with Washington defense contractor Mitchell Wade were recently convicted under the "honest services" statute, but they are not alone. Former Illinois Governor George Ryan joined the ranks of judges and attorneys who have been prosecuted for violations of the publics' trust"<sup>3</sup>

8. Plaintiffs alleged with sufficient facts defendants worked out of an enterprise an conspired a deicietful fraudulent scheme with deception [see ¶¶ 2, 3, 7, 24, 40, 41, 120, 121, 135, oe counts 1-5] to violate plaintiffs federal right 18 U.S.C. § 1346.

9. Plaintiffs alleged with sufficient facts overt instances during a two year period is evidence of a "pattern of practice" to deprive rights [see ¶¶ 39, 41, 152, 165] where defendants hid witness testimony and ratified criminal acts by their willing inaction. [see ¶¶ 4, 10, 21, 27, 33, 34, 44, 45, 58, 61, 63, 64, 66, 71, 73, 74, 75, 76, 79, 81, 87, 88, 89, 97, 98, 99, 105, 116, 126, 148,
10. Plaintiffs alleged with sufficient facts an unlawful policy to deprive rights which abrogates immunity [see page 2 line 18; ¶¶ 29, 45, 76, 98, 107]
11. Plaintiffs alleged with sufficient facts that these unlawful policies were done with malicious wanton willful disregard showing all defendants acted with bad motive [see page 2 line 19 ¶¶ 3, 23, 24, 25, 27, 28, 44, 45, 49, 51, 57, 61, 86, 87, 89, 94, 105, 108, 116, 136, 168.
12. Page 17 line 17 and 18, "...Jeff Neves, D.A. Vern Pierson, BOSD2 Helen Bauman had final policymaking authority [emphasis added] from defendant EDC concerning these act[s];..."
13. Plaintiffs alleged that this policy was to a "particular course of action" these defendants made a deliberate choice to follow that course of action made from among various alternatives to help Plaintiffs and obey and enforce laws. [see ¶¶ 3, 106, 136] See the following controlling authorities.

Mary Sanders Lee v. City of Los Angeles 250 F.3d 668 (9th Cir. 2001)  
A heightened pleading standard, however, does apply in this circuit in "§ 1983 cases where the defendant is entitled to assert the qualified immunity defense and where her or his knowledge or intent is an element of the plaintiff's constitutional tort." Branch , 14 F.3d at 452. The distinction between pleading standards for municipalities and public officials in their individual capacities for constitutional torts springs from the fact "that municipalities - - unlike individuals sued under § 1983 -- do not have immunity (either absolute or qualified) from suit. " Id. at 456 (citing Leatherman, 507 U.S. at 113).[emphasis added] Thus, when plaintiffs sue public officials in their individual capacity under § 1983, to survive a [Rule 12(b)(6)] motion to dismiss, plaintiffs must state in their complaint nonconclusory allegations setting forth evidence of unlawful intent. The allegations of facts must be specific and concrete enough to enable the defendants to prepare a response, and where appropriate, a motion for summary judgment based on qualified immunity. *Id.* at 452. The Rule 12(b)(6) motion to dismiss at issue in this appeal was brought by the City. Therefore, the modest requirements of notice pleading under *Leatherman* govern our review of the legal sufficiency of plaintiffs' § 1983 claims in this case.

**Leatherman v. Tarrant County Narcotics Intelligence & Coordination Unit (91-1657), 508 U.S. 223 (1993).** Compare, e. g., *Karim Panahi v. Los Angeles*

1 *Police Dept.*, 839 F. 2d 621, 624 (CA9 1988) ("a claim of municipal liability  
2 under section 1983 is sufficient to withstand a motion to dismiss even if the  
claim is based on nothing more than a bare allegation that the individual  
3 officers' conduct conformed to official policy, custom, or practice")  
4 (internal quotation marks omitted). We now reverse.

5 First, respondents claim that municipalities' freedom from *respondeat*  
6 *superior* liability, see *Monell, supra*, necessarily includes immunity from  
7 suit. In this sense, respondents assert, municipalities are no different from  
8 state or local officials sued in their individual capacity.

9 This argument wrongly equates freedom from liability with immunity from suit.  
10 To be sure, we reaffirmed in *Monell* that "a municipality cannot be held  
11 liable under § 1983 on a *respondeat superior* theory." 436 U. S., at 691. But,  
12 contrary to respondents' assertions, this protection against liability does  
13 not encompass immunity from suit. Indeed, this argument is flatly  
contradicted by *Monell* and our later decisions involving municipal liability  
under § 1983.

14 Yet, when we took that issue up again in *Owen v. City of Independence*, 445  
15 U.S. 622, 650 (1980), we rejected a claim that municipalities should be  
16 afforded qualified immunity, much like that afforded individual officials,  
17 based on the good faith of their agents. These decisions make it quite clear  
18 that, unlike various government officials, municipalities do not enjoy  
19 immunity from suit--either absolute or qualified--under § 1983. In short, a  
20 municipality can be sued under § 1983, but it cannot be held liable unless a  
21 municipal policy or custom caused the constitutional injury.

22 *PEMBAUR v. CINCINNATI*, 475 U.S. 469 (1986)

23 JUSTICE BRENNAN delivered the opinion of the Court with respect to Parts I,  
24 II-A, and II-C, concluding that: 1. The "official policy" requirement of  
25 *Monell* was intended to distinguish acts of the municipality from acts of the  
26 municipality's employees, and thereby make clear that municipal liability is  
27 limited to actions for which the municipality is actually responsible.  
28 *Monell* held that recovery from a municipality is limited to acts that are,  
properly speaking, "of the municipality," i. e., acts that the municipality  
has officially sanctioned or ordered. With this understanding, it is plain  
that municipal liability may be imposed for a single decision by municipal  
policymakers under appropriate circumstances. If the decision to adopt a  
particular course of action is directed by those who establish governmental  
policy, the municipality is equally responsible whether that action is to be  
taken only once or to be taken repeatedly. Pp. 477-481. Municipal liability  
under 1983 attaches where - and only where - a deliberate choice to follow a  
course of action is made from among various alternatives by the official or  
officials responsible for establishing final policy with respect to the  
subject matter in question. Pp. 481-484.

As we explained last Term in *Oklahoma City v. Tuttle*, 471 U.S. 808 (1985),  
once a municipal policy is established, "it requires only one application .  
. . . to satisfy fully *Monell*'s requirement that a municipal corporation be  
held liable only for constitutional violations resulting from the  
municipality's official policy." *Id.*, at 822 (plurality opinion); see also,  
*id.*, at 831- 832 (BRENNAN, J., concurring in part and concurring in  
judgment.). The only issue before us, then, is whether petitioner satisfied  
*Monell*'s requirement that the tortious conduct be pursuant to "official  
municipal policy."

1 Section 1983 also refers to deprivations under color of a state "custom or  
usage," and the Court in Monell noted accordingly that "local governments,  
2 like every other 1983 'person,' . . . may be sued for constitutional  
deprivations visited pursuant to governmental 'custom' even though such a  
3 custom has not received formal approval through the body's official  
decisionmaking channels." 436 U.S., at 690-691. A 1983 plaintiff thus may be  
4 able to recover from a municipality without adducing evidence of an  
affirmative decision by policymakers if able to prove that the challenged  
5 action was pursuant to a state "custom or usage." Because there is no  
allegation that the action challenged here was pursuant to a local "custom,"  
this aspect of Monell is not at issue in this case.

6 MONELL V. DEPARTMENT OF SOC. SVCS., 436 U. S. 658 (1978)

7 Local governing bodies (and local officials sued in their official  
capacities) can, therefore, be sued directly under § 1983 for monetary,  
8 declaratory, and injunctive relief in those situations where, as here, the  
action that is alleged to be unconstitutional implements or executes a  
9 policy statement, ordinance, regulation, or decision officially adopted or  
promulgated by those whose edicts or acts may fairly be said to represent  
10 official policy. In addition, local governments, like every other § 1983  
"person," may be sued for constitutional deprivations visited pursuant to  
11 governmental "custom" even though such custom has not received formal  
approval through the government's official decision making channels. Pp. 436  
12 U. S. 690-691.

13 14. Plaintiffs alleged with sufficient facts that they were retaliated against for  
14 1<sup>st</sup> amendment violations and have controlling authorities [see ¶¶ 4, 25, 30, 44,  
15 53, 103, 114]

16 15. Plaintiffs alleged that defendants were acting with deliberate indifference due  
17 to lack of training [see ¶¶ 3, 27, 87, 101, 108, 124, See Hydrick V. Hunter:

18 [7] Plaintiffs proceed on both of these theories: (a) that Defendants created  
policies and procedures that violated Plaintiffs' constitutional rights; and  
19 (b) that Defendants were willfully blind to constitutional violations  
committed by their subordinates. Because Defendants were directors and policy  
20 makers for Atascadero State Hospital, we believe Plaintiffs have sufficiently  
alleged that the constitutional violations they suffered were "set in motion"  
21 by Defendants' policy decisions or, at the very least, that Defendants knew  
of these abuses and demonstrated a deliberate indifference to the SVPs'  
22 plight. [8]

23 16. Plaintiffs alleged with sufficient facts that all defendants directly  
24 participated and showed specific facts to be taken as true, with the ability to  
25 corroborate allegations with minimal discovery [see ¶¶ 47, 55, 72, 99, 104].  
26 There is no respondeat superior liability alleged without a factual basis to  
27 show liability for each supervisor by their direct participation.  
28

17. Plaintiffs and an employee and his mother and others unrelated to the Plaintiffs  
1 in any relationship, secured "5" valid protection / restraining orders, that  
2 were continually violated [see ¶¶ 20, 21, 22, 25, 50, 60, 62, 64, 67, 68, 69,  
3 71, 74, 76, 80, 85, 87, 152, 162] from being threatened with murder and other  
4 criminal acts, that the defendants allowed to occur as punishment in retaliation  
5 to plaintiffs, and also to keep off record any evidence to substantiate  
6 plaintiffs and other crime victims allegations.

7 18. As a direct result, one of the punishments was to the denial of access to local  
8 remedies and the courts to have an opportunity for a hearing for evidence of  
9 wrong doing by defendants, other than defendant accused criminal David Douglas  
10 Randall. See exhibit A1, A2, and Q, among others attached in compliance to the  
11 court order.

12 19. So far, it is shown that even counsel for the defendants have prior existing  
13 relationships in the local government in El Dorado County as Judges or advisors  
14 to defendants that represent a conflict of interest. In fact, Counsel for Judge  
15 Wagoner, is also a defendant in this case, which seems remarkable that the  
16 counsel would not recues themselves.

17 20. Counsel Gumpert, upon information and good faith belief has acted as "Pro Tem  
18 Judge for El Dorado county" and would receive contributions of paychecks from  
19 the county for his role in administering justice. This may be a violation of  
20 State Bar Rules of Professional Conduct 3-310  
21 (B)(1)(2)(a)(b)(3)(4)(C)(1)(2)(F)(1)(3)(b); and 5-210 when he states on record  
22 of facts which he cannot substantiate but given in the capacity as if he was a  
23 and had personal knowledge of witness testimony.

24 21. Plaintiffs have provided factual evidence from witnesses that can be easily be  
25 relied upon by questioning named witnesses and with minimal discovery procedures  
26 i.e. authenticating document etc. [see 2<sup>nd</sup> amended complaint attached exhibits].  
27 See Hydrick v. Hunter:

28 [7] Plaintiffs proceed on both of these theories: (a) that Defendants created  
policies and procedures that violated Plaintiffs' constitutional rights; and

1 (b) that Defendants were willfully blind to constitutional violations  
2 committed by their subordinates. Because Defendants were directors and policy  
3 makers for Atascadero State Hospital, we believe Plaintiffs have sufficiently  
4 alleged that the constitutional violations they suffered were "set in motion"  
5 by Defendants' policy decisions or, at the very least, that Defendants knew  
6 of these abuses and demonstrated a deliberate indifference to the SVPs'  
7 plight.

8 22. Plaintiffs found law that their actions in this proceeding are barred  
9 unconstitutionally by defendants who are attempting to foreclose discovery and  
10 the answering of the complaint by means of impropriety, and lack of factual  
11 substance in their motions.

12 23. Plaintiffs have provided clear and convincing evidence contained in exhibits and  
13 declarations, and a "verified second amended complaint" as "allegations of  
14 material fact" that if viewed in the light most favorable to the non-moving  
15 party, that this court must decide whether there are any genuine issues of  
16 material fact.

17 24. However, plaintiffs believe they have established a Prima facie case by the  
18 preponderance incontrovertible facts, barring any successful dilatory tactict  
19 attempts, contained in exhibits and allegations of material fact this court must  
20 accept as true and should be construed in the light most favorable to the  
21 plaintiffs. Furthermore, this complaint should not be dismissed under Rule  
22 12(b)(6)

23 "unless it a appears beyond doubt that the plaintiff can prove no set of  
24 facts in support of the claim that would entitle the plaintiff to relief."  
25 See Resnick v. Hayes, [213 F.3d 443](#), 447 (9th Cir. 2000). The "complaint  
26 should not be dismissed [under Rule 12(b)(6)] unless it appears beyond doubt  
27 that the plaintiff can prove no set of facts in support of the claim that  
28 would entitle the plaintiff to relief." Thompson v. Davis, [295 F.3d 890](#), 895  
(9th Cir. 2002). [from Hydrick v. Hunter]

Motion to dismiss is frivolous and short on law.

25. The defense tactics in their motions have been those of creating venues to take  
1 advantage of plaintiffs inexperience by filing frivolous motions, that are  
2 baseless and that contain actual lies, untruths, perjury, as if they are  
3 witnesses to events by stating them as allegation in an answer, but their  
4 captions are noted as "motions to dismiss." These defense counsels are lawyers  
5 bound by Rules of Conduct, yet they violate some of these rules without fear of  
6 the courts enforcement, as if they are excused from this conduct by some  
7 immunity.

8 26. Grounds 1-10 in defendants motion to dismiss have no factual basis and must be  
9 stricken.

10 27. Paragraph 1 of Motion to dismiss Memorandum is not a valid issue, as plaintiffs  
11 complied with Local rule 7-130 "General Format of Documents" is the basis for  
12 modeling the format of pleadings and Plaintiffs belief upon good faith is that  
13 they have complied with local rules referred from the "Pro Se Package - A Simple  
14 Guide to Filing a Civil Action." There was no other dictates on font size etc.

15 28. Paragraph 2 complied with court order stating on page 4 line 11-13, "While  
16 pertinent exhibits of original documents (not further writings by plaintiffs)  
17 may be attached to the Second Amended Complaint, and referenced therein,..."

18 29. Paragraph 3 also is not factual, as they motioned for dismissal, when  
19 plaintiff's motion for "leave to amend" was denied by a previous order. Whereby  
20 defendants motion was granted, and that complaint was dismissed and Plaintiffs  
21 amended the complaint in compliance with the order and plaintiffs right after, a  
22 "reasonable inquiry modified the complaint accordingly to name Does, and will  
23 also name more Does upon more reasonable inquiry if necessary.

24 30. Paragraph 4 is also additional frivolous complaining intended to frustrate the  
25 Plaintiffs and ignores precedent that controls this issue, and Pro Se litigants  
26 "relaxed standard." Previously, a request to amend the complaint to "30 or 40  
27 pages" was denied by your Honor. In the 9<sup>th</sup> circuit, in discussing "...burden..."  
28 Fed.R.Civ.P 8(a), McKeever, states, "With respect to pro se litigants this

burden is relaxed."<sup>3</sup> without benefit to Rule 15(a)(2) "...when justice so requires" a pleading may be amended by leave of the court."<sup>4</sup> So when defendant states we are "...obviously retaliating to court order...pg 2 ln 5" he must believe we have a good case, because, we are inexperienced at pleading and any defects may "obviously" be due to that inexperience. More defense dribble that is baseless and has no merit on the case.

31. So in studying what Notice pleading is, this Pro Se litigant discovers a balance between, not telling every detail, as he attempted to do in the 132 page accounting, to what is left. Divided 25 pages between 15 defendants to describe with, "sufficient facts" 2 years of continual abuses, marked by overt examples, that are "sufficient facts" of "facial plausibility" for a pro se litigant, is a limiting task that denies "redress of grievance" a constitutional deprivation. In examining other case with 2 to 5 defendants 30 to 40 pages is common, yet we have been denied common and don't know the "rationale basis."

"[a] claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged."; "...rule 8 does not require "detailed factual allegations," but it demands more than an unadorned, the-defendant unlawfully- harmed-me accusation. [emphasis added] ...nor does a complaint suffice if it tenders "naked assertion[s]" devoid of "further factual enhancement."" To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to "state a claim to relief that is plausible on its face." *Ashcroft v. Iqbal*<sup>5</sup>,. *Hydrick v. Hunter*, (9th Cir.2006).<sup>6</sup>

There is no mention of page limits in these cases.

32. However, in all aspects of business, there are predators, with predatory schemes designed to feed off of the inexperienced or weaker species. Why not defense counsel continues the ruse that Plaintiff's are so incompetent that they cannot file a complaint to "simply put defendants on notice." "a short and plain statement of the claim' that will give the defendant fair notice of what the plaintiff's claim is and the grounds upon which it rests." *Id.*, at 47 (footnote omitted).<sup>7</sup> Imagine a person who feeds on the weak and somehow becomes a Judge in the United States of America. Civil

1 Rights would come at great expense to anybody not making several million  
2 dollars per year and be impossible to attain, because we all know absolute  
3 power corrupts absolutely. "Power tends to corrupt, and absolute power  
4 corrupts absolutely. Great men are almost always bad men"---Lord Acton.  
5 Rather antiquated but his opinion.

6 33. Moving on to Page 3 identified in the footer as, "P&AS ON MOTIONS TO DISMISS  
7 SECOND AMENDED COMPLAINT/MORE DEFINITE STATEMENT 3" Plaintiff's draw an  
8 inference from these facts that suggest defendants motion should be stricken and  
9 the hearing vacated at this point, because, He notes on this page line 3  
10 "plaintiffs were advised by the court that Rule 8..." as if your honor created  
11 this as the only rule in the Fed.R.Civ.P. It seems that this lawyer with "33+"  
12 years experience believes he has achieved tenure to not practice what he  
13 preaches. When clearly Rule 10(b)Fed.R.Civ.P., states "A party must state its  
14 claims or defenses in numbered paragraphs, each limited as far as practicable to  
15 a single set of circumstances." Defense claims so boldly that Plaintiff's ,  
16 "undaunted," "misinterpreting," "refused to heed the courts advice." Is it not  
17 unbalanced justice for a "professional" to not heed the Fed.R.Civ.P willfully  
18 ignoring Rule 10 or 11? Usually when one breaks the rules and attempts to force  
19 other rules on their opponent that is called cheating. It's like an  
20 unscrupulous monopoly player teaching the game to infants, and somehow owning  
21 Park Place and Boardwalk on the second role of the dice. As if they have a "get  
22 out of jail free card" but didn't land on the corner square. Or perhaps they  
23 anticipate that they will be given a get out of Jail free card.

24 34. How dare us puny unworthy naives ask your Honor to take "judicial notice of  
25 facts" that are being purposefully unnoticed.

26 35. Do you want to see "undaunted, misinterpreting, refusing? Look at the footnote  
27 on pg 2. "Responding parties here did not alter the Court's caption."  
28

36. Defendants MOVE THE COURT TO TAKE JUDICIAL NOTICE WITHOUT DISCRETION: Defendants  
1 are "referring back to a dismissed complaint" and have not addressed this  
2 complaint and cannot be heard on September 2, 2009 in a motion to dismiss. Their  
3 motion must be stricken and the hearing vacated. Defendants have not taken  
4 this lawsuit seriously and are toying with plaintiffs in a frivolous manner.

5 37. The above analogy brings us back to "Deliberate indifference." Lack of training  
6 is alleged in the complaint throughout. El Dorado County steps over the dead  
7 bodies, eternally, that are the result of lack of training to the civil rights  
8 of Murder victims such as Art Meiz, Jasmine Gonzales, Roy Clayton, and 2 year  
9 old Andrew Bailey. These are just a few examples of the corpses these arrogant  
10 officials are hardened to. These are victims too. The Recent murder spree at  
11 Virginia Tech, was proceeded by overt examples that mental health officials and  
12 Police investigators could have prevented had they been "adequately trained."  
13 Yet our complaint had examples far exceeding pre murder warning signs of the  
14 Virginia Tech massacre. See Hydrick v. Hunter (supra).

15 38. Plaintiffs allege this lawsuit is an attempt to stop this rotten smug policy  
16 adopted by El Dorado County. Because this attorney has been a Pro Tem Judge for  
17 El Dorado county, is adapting their deliberate indifference and is displaying  
18 his lack of training in the area of civil rights for citizens. His over the top  
19 willful defiance of procedure and hypocritical assertions against Plaintiffs  
20 obvious deficiencies are proof that far out weigh the good faith attempts of a  
21 Pro Se litigant just learning this discipline. This court can take the defense  
22 counsels pleadings, with a grain of salt, as they prejudice the plaintiff and  
23 the defense clients egregiously.

24 39. RAFAEL NAVARRO V. SHERMAN BLOCK AND MICHAEL D ANTONOVICH 250 F.3D 729 (9TH CIR.  
25 2001). Can Boards of supervisors and officials act in "bad faith" and have  
26 immunity? NO! Unlike El Dorado County Board of Supervisors, and all other  
27 defendants named, who ratified the policy [see exhibit A1, A2, and overt  
28 incidences of participation], These Supervisors provided evidence that they

acted in good faith. Because, we have shown that defendants made a "deliberate choice" to deprive plaintiffs rights maliciously, with callous disregard, [see ¶ 13 supra] and we have contrasted the evidence provided by Bob Berger, and Senator Dave Cox, and Rob Olmstead, exhibit A1 who were the very few political officials, who failed to maliciously ratify, defendants scheme of artifice. Further evidence of bad faith exists with exhibit A2. This was the weazel forced in the corner, momentarily subdued by the tamer, Bob Berger, when his inquiry resulted in a confession of the deed to Bob. However, we know that Helen Bauman had vainly promoted her integrity to the Sacramento County Republican Party Committee on September, 13, 2007, which shattered Bauman's image and chance for a legislative ticket with Sacramento Republicans avoiding the appearance of "overt" corruption by vouching for Bauman, who's true colors emerged how she will destroy Pat and Donnas' persons in order to protect corrupt colleagues. This is the act that goes beyond malice, because Plaintiff's explained, prior to these exhibits [this contact noted in the exhibits] that they were being treated with deliberate indifference and wanted the supervisors to "endimmify" her constituents from constitutional deprivations of the "right to honest tangible services." A duty she owes to all constituents,<sup>8</sup> But what did she do? She retaliated and furthered the conspiracy through he wires with deceitful artifice to defraud. UNITED STATES of America, Plaintiff-Appellee, v. John Anthony WILLIAMS:

...three kinds of intangible rights the defrauding of which would create wire fraud liability. First, defendants were convicted of defrauding persons of nonmonetary, intangible interests...

The meaning of the "intangible right of honest services" has different implications, however, when applied to public official malfeasance and private sector misconduct. Public officials inherently owe a fiduciary duty to the public to make governmental decisions in the public's best interest. See Lopez- Lukis, 102 F.3d at 1169."

40. Defense motions actually support and are evidence of deliberate indifference, because they don't know these things and that is because they willfully refuse training.

41. Furthermore, when Helen Bauman revealed to Bob Berger the deception was "untrue" see exhibit A2, her career as a crooked politician was revealed, and she disappeared from that race, only to be arrested for endangering the public further by drunk driving and attempting to flee the scene. These are not the acts of responsible people. Additionally, the other defendants, decided to hide their involvement and not admit like Bauman, so their acts wouldn't grant the people the automatic justice intended by the 11<sup>th</sup> amendment to allow officials who act corruptly to naturally give them the rope to hang themselves. Because these defendants quieted this incident, unlike Bauman, who's blundering secretary spilled the beans, They made a deliberate choice among various others, to continue plaintiffs deprivation and they did it with malice placing Plaintiffs in situations that threatened their very lives. This is law suit is to grant relief from their acts!

42. Defendants use an 11<sup>th</sup> circuit case "Nezhat" to show that plaintiffs are "unethically" filing motions, pleadings, etc. Yet, evidence shows the more experienced, "Pro Tem Judge" on occasion holds Plaintiffs to the high standards of years of hard work and dedication as if plaintiffs are bound by the Bar association. If so, I want to be compensated for this in my wherefore clause! See Nezhat, "the court found that "Neal's continued unethical behavior, . . . ." Plaintiffs have pointed out controversial unethical behavior by this counsel, who should know better.

43. Page 3 lines 14-15 have a bald assertion, "they created a complex web of incomprehensible claims." Then this counsel, without any quotes, lines 16-27, doesn't have the guts or honesty to make one quote, like a real man attorney should do, and then actually lies and makes false testimony in violation of his own rules of ethics 5-210, by attempting to enter into record all misleading phrases with the intent to prejudice plaintiffs case and mislead the judge violating other rules stated in this motion. Page 3 line 16 thru page 4 line 20, defendant breaks down allegation in more than "simplified" statements, by using

1 tiny phases. Had they been stated in context, perhaps he could argue them,  
2 however, this defense is attempting to mislead the court! Nevertheless, this  
3 unethical tactic is sufficient evidence for a competent reasonable person to  
4 understand the baseless assertions other than offering evidence that does not  
5 exist. This is assurance that he does not want to address the facts. In  
6 context our complaint contains "sufficient allegations to put defendants fairly  
7 on notice of the claims against them."<sup>9</sup> *McKeever v. Block*, 932 F.2d 795, 798 (9<sup>th</sup>  
8 Cir. 1991).

9 44. The paragraph continues in *Swierkiewicz*, See *Conley, supra*, at 48 ("The Federal  
10 Rules reject the approach that pleading is a game of skill in which one misstep  
11 by counsel may be decisive to the outcome and accept the principle that the  
12 purpose of pleading is to facilitate a proper decision on the merits").<sup>10</sup>  
[emphasis added].

13 45. Response to "THERE IS NO VIABLE FIRST AMENDMENT CLAIM RELATED TO **DEPRIVATION OF**  
14 **RIGHTS TO PETITION GOVERNMENT: See Paragraph 2 supra.**

15 46. See page 4 lines 23, 25 page 5 lines 1-5 of the defense motion:

16 PLAINTIFFS allege that they sought relief from the state court and obtained a  
17 restraining order against RANDALL, but they insist that they were still  
18 deprived of their right to petition government by failure to enforce that  
19 restraining order, the manner in which RANDALL was criminally prosecuted and  
20 failure to obtain his conviction, and failure to keep PLAINTIFFS abreast of  
21 all matters and/or to allow them to testify at RANDALL's criminal case"

22 That statement is a complete and utter perjured testimony by the defense lawyer.  
23 Nowhere has that been stated in the complaint and is a purposeful misleading  
24 proof of the frivolousness of this motion and we object object object!!! Please  
25 refer to the 2<sup>nd</sup> amended complaint ¶¶ 13, 15, 49, 56 which clearly controvert  
26 that above defense quote by showing plaintiffs identified multiple examples of  
27 the arrest of Dave Randall.

47. Page 5 lines 5-12, is misleading because plaintiffs never alleged those acts  
1 that are based upon 1 time negligence claims against employees. Plaintiff is  
2 not bound by those misleading non controlling alleged precedent from other  
3 circuit. They use Smith v. Arkansas and Degrassi v. City. Both are barred by  
4 the fact that the allegations arise while they are employees, and employees are  
5 no viewed with the same rights as private citizens. Degrassi, "DeGrassi asserts  
6 that her exclusion from Council meetings in October 1996 violated her free  
7 speech rights under the First Amendment." This is not on point on topic, and  
8 short of law. Again more deception, more frivolous time wasting attempt at  
9 draining plaintiffs resources, {working pretty good I might add}. See"

10 From 9<sup>th</sup> circ. Civil jury inst. § 9.10

11 *Sloman v. Tadlock*, 21 F.3d 1462, 1469-70 (9th Cir.1994). "Although officials  
12 may constitutionally impose time, place, and manner restrictions on political  
13 expression carried out on sidewalks and median strips, they may not  
'discriminate in the regulation of expression on the basis of content of that  
14 expression.' . . . 'State action designed to retaliate against and chill  
15 political expression strikes at the very heart of the First Amendment.' " *Id.*  
(citations omitted).

16 Thus, in order to demonstrate a First Amendment violation, a citizen  
17 plaintiff must provide evidence showing that "by his actions [the defendant]  
18 deterred or chilled [the plaintiff's] political speech and such deterrence  
19 was a substantial or motivating factor in [the defendant's] conduct." *Id.*  
(quoting *Mendocino Env'l Ctr. v. Mendocino County*, 14 F.3d 457, 459-60 (9th  
20 Cir.1994). A plaintiff need not prove, however, that "his speech was actually  
21 inhibited or suppressed." *Mendocino Env'l Center v. Mendocino County*, 192  
22 F.3d 1283, 1288 (9th Cir.1999). See also *Awabdy v. City of Adelanto*, 368 F.3d  
23 1062, 1071 (9th Cir.2004).

24 In *Rayford v. Omura*:

25 Other circuits have set forth similar tests for non-employee retaliation  
26 cases. For example, as *Keenan V. Tejada*, 290 F.3d 252, 258 (5th Cir. 2002),  
27 explained: Unlike most of this circuit's First Amendment retaliation cases,  
28 this case does not involve an employment or other contractual relationship  
between the plaintiffs and the governmental officials. The settled law of  
other circuits, which we endorse, holds that to establish a First Amendment  
retaliation claim against an ordinary citizen, [the plaintiffs] must show  
that (1) they were engaged in constitutionally protected activity, (2) the  
defendants' actions caused them to suffer an injury that would chill a  
person of ordinary firmness from continuing to engage in that activity, and  
(3) the defendants' adverse actions were substantially motivated against the  
plaintiffs' exercise of constitutionally protected conduct. See also *Worrell*  
*v. Henry*, 219 F.3d 1197, 1212-13 (10th Cir.2000) (setting forth a nearly  
identical test in a non-employee retaliation case).

48. Again more frivolous defense dribble in Peterson v. Cazemier, 164 F.Supp.2d

1 1217, 1225 (D.Or. 2001). Was a case where an officer made an actual arrest in  
2 his "official capacity" without "bad faith" or policy, or other allegations we  
3 have asserted. The officer was entitled to immunity and these defendants are  
4 not!

5 49. Response to "PLAINTIFFS ASSERTIONS THAT DEFENDANTS FAILED TO ENFORCE RESTRAINING

6 ORDERS CANNOT SUPPORT A VIABLE DUE PROCESS VIOLATION CLAIM." See page 5 lines  
7 17-27. Plaintiffs have never alleged a cause of action complaining of a single  
8 incident such a Gonzales, v. Castle Rock. This is the ultimate low blow  
9 disgusting defense! The murder of babies by a restrained individual. In El  
10 Dorado County, Andrew Bailey didn't stand a chance with El Dorado County  
11 Sheriff's who "willfully" ignored federal Amber alert requirements See KOVR news  
12 coverage. Along with Castle Rock, the African American child, Andrew, had not a  
13 chance in El Dorado county, where defendants can provide news articles showing  
14 little white children spoken to by elderly people in the presence of their  
15 mothers was "probable cause" for a kindly grandfatherly gentlemen to be arrested  
16 and incarcerated on suspicion of "child molesting" when facts do not support  
17 these. Amidst public outcry and ACLU intervention, the man was released. But  
18 this is El Dorado County under these defendants! This court has an opportunity  
19 to teach politicians how to behave and discrimination is a lesson they lack!  
20 Nobody so far has the guts to do what is right and rebuke El Dorado officials  
21 for a "wide spread" pattern of abuse that is equal to deadly force. Plaintiffs  
22 are looking for an honorable individual who can do their job without fear and  
23 hold these defendants as examples! It is time! Plaintiffs are risking their  
24 lives, their livelihoods, their reputations, their business, their finances are  
25 drained, to do public good!

26 50. "no federal defamation claim"??? yeeahh? We never filed one for sure. See  
27 defense motion page 5 lines 1-10. There is no cause of action for defamation.  
28 Plaintiffs are alleging deceitful written instrument.

1 THE FOURTH AMENDMENT, and THE ALLEGED DETENTION WAS REASONABLE UNDER THE FOURTH  
2 AMENDMENT:" Plaintiffs were retaliated against, and the defense that it is  
3 reasonable to treat crime victims as criminals, without any warrant, just to  
4 intimidate them becomes more obvious by these 4<sup>th</sup> amendment defenses that are  
5 frivolous. Plaintiffs were never charged or even accused of committing any  
6 crimes!! They were targets of a RICO enterprise covering up criminal activity  
7 and a conspiracy to deprive rights! See Civil Jury instructions 9<sup>th</sup> circ. "§ 9  
8 civil rights."

9 "A 'seizure' triggering the Fourth Amendment's protections occurs only when  
10 government actors have, 'by means of physical force or show of authority, . .  
11 . in some way restrained the liberty of a citizen.'" *Graham v. Connor*, 490  
12 U.S. 386, 395 n.10 (1989) (quoting *Terry v. Ohio*, 392 U.S. 1, 19 n.16  
13 (1968)). . This may occur through coercion, physical force, **or a show of**  
14 **authority.**[emphasis added] *United States v. Chan-Jimenez*, 125 F.3d 1324, 1326  
15 (9th Cir.1997). A person's liberty is restrained when, "taking into account  
16 all of the circumstances surrounding the encounter, the police conduct would  
17 'have communicated to a reasonable person that he was not at liberty to  
18 ignore the police presence and go about his business.'" *Florida v. Bostick*,  
19 501 U.S. 429, 437 (1991) (citations omitted). A seizure, however, "does not  
20 occur simply because a police officer approaches an individual and asks a few  
21 questions." *Bostick*, 501 U.S. at 434.

22 In determining whether a reasonable person would have felt free to ignore  
23 police presence, the Ninth Circuit considers five factors: (1) the number of  
24 officers; (2) whether weapons were displayed; (3) whether the encounter  
25 occurred in a public or nonpublic setting; (4) whether the officer's  
26 officious or authoritative manner would imply that compliance would be  
27 compelled; and (5) whether the officers advised the detainee of his right to  
28 terminate the encounter. *United States v. Washington*, 387 F.3d 1060, 1068  
(9th Cir.2004) (citations omitted). "

In general, a search of [a person] [a person's [residence] [vehicle]  
[property]] is unreasonable under the Fourth Amendment if the search is not  
authorized by a search warrant. 9<sup>th</sup> circuit jury instructions § 9.12

*Id.* at 129 S. Ct. 1723-24. Although earlier Ninth Circuit precedent holds a  
search incident to arrest must be "roughly contemporaneous with the arrest,"  
(see *United States v. Smith*, 389 F.3d 944, 951 (9th Cir.2004) (quoting *United*  
*States v. McLaughlin*, 170 F.3d 889, 892 (9th Cir.1999)),

52. Defendants are misleading the court again in this assertion. They are stating  
that Plaintiffs "that the underlying criminal case ended in their favor, i.e.,  
that their innocence be indicated." This is misleading and prejudicial to allow  
this to continue.

53. Plaintiffs move the court to take judicial notice without discretion that  
1 Plaintiffs were not arrested, or charged with a crime but were Innocent Crime  
2 Victims!!!! Please instruct council of this!

3 54. see the complaint! Page 7 line 15 Def. motion PLAINTIFFS HAVE NOT ALLEGED A  
4 VIABLE FEDERAL CLAIM OF CONSPIRACY: However, plaintiffs have alleged, :  
5 defendants all individually and personally participated in the rights  
6 deprivation and that the action occurred under the color of law. See para.'s  
7 4, 40, 102, 103, 116, 122, 143 and Page 1 line 17-18

8 In order to be individually liable under § 1983, an individual must  
9 personally participate in an alleged rights deprivation. *Jones v. Williams*,  
10 297 F.3d 930, 934 (9th Cir.2002). The elements of a § 1983 claim are "(1) the  
11 action occurred 'under color of state law' and (2) the action resulted in the  
12 deprivation of a constitutional right or federal statutory right." *Id.*  
(quoting *Parratt v. Taylor*, 451 U.S. 527, 535 (1981), overruled on other  
grounds by *Daniels v. Williams*, 474 U.S. 327 (1986)). For cases interpreting  
"color of law," see *Anderson v. Warner*, 451 F.3d 1063 (9th Cir.2006), and  
*McDade v. West*, 223 F.3d 1135, 1139-40 (9th Cir.2000).

13 55. Additionally Plaintiffs named each official in individual and official capacity  
14 and provided facts to show participation, and also named them as to their  
15 official positions, but assert that they are sued individually and officially  
16 where their actions hold them liable.

17 56. Page 8 lines 1-19 Sheriff Neves is not able to claim vicarious liability or  
18 Respondeat superiour as he directly participated and failed to act in a lawful  
19 manner consistant with an ulawful policy. See ¶¶ 14, 34, 89, 98, 99. and see  
20 **Leatherman v. Tarrant County paragraph 12 supra.**

21 57. **Page 8 line 20 thru Page 9 line 1. THERE IS NO INTENTIONAL INFLICTION OF**  
22 **EMOTIONAL DISTRESS CLAIM.** The behavior committed against plaintiffs during that  
23 2 year period, where plaintiffs property was destroyed and ratified by the  
24 county, and the use of their property was denied them and El Dorado County  
25 mandated by turning a blind eye, that they be threatened with murder, assaulted,  
26 defamed, ridiculed, inter alia, is outrageous, and never tolerated in the United  
27 States, "in a civilized community." Plaintiffs suffer emotional distress due to  
28 malicious wanton disregard and that is the same as stating as "outrageous"

acts, and where murder is to be "potentially" deadly, and plaintiffs were told they would be shot, and then attempts at running Pat Hamer over in a truck! Yes "expectable civilized manner?" These are felonies that were perpetrated against plaintiffs for 2 years.

58. Malicious prosecution, by any defendant, is not alleged by plaintiffs.

Defendants allege,

"STATE LAW MALICIOUS PROSECUTION CLAIMS ARE NOT VIABLE Malicious prosecution claims are unavailable to PLAINTIFFS because they require, *inter alia*, that the underlying criminal case ended in their favor, i.e., that their innocence be indicated. Brennan v. Tremco, Inc. (2001) 25 Cal.4th 310, 313; Sheldon Appel Co. v. Albert & Oliker (1989) 47 Cal.3d 863, 871-872; Eells v. Rosenblum (1995) 36 Cal.App.4th 1848, 1854-1856.

Plaintiffs agree with the case law but this law makes the claim viable if there was such a claim, because The "underlying criminal case" because there were none, ended in our favor, and our innocence is indicated because we are "crime victims." Yet, though El Dorado county treated us like criminals and told our representatives we were criminals, we received the same stigma given to criminals to our peers see exhibit A1, We received all the same indications that we were criminals, but we were actually innocent because we were crime victims and not being charged with any crimes?????.

59. Government Code 821.6: "A public employee is not liable for injury caused by his instituting or prosecuting any judicial or administrative proceeding within the scope of his employment, even if he acts maliciously and without probable cause." However, Defendants need to identify an "instituting or prosecuting any judicial or administrative proceeding" where plaintiffs were harmed. If only that would have happened! Perhaps we Plaintiffs would have been able to see some form of due process. Perhaps they learned a lesson. It's better to cover your butt and do what is right than ignore your "DUTY TO PROVIDE HONEST TANGIBLE SERVICES."

60. Amylou R. v. County of Riverside (1994) 28 Cal.App.4th 1205 is a case absent Monell liability issues.

61. Plaintiffs have brought up "genuine issues of fact" for negligence and other  
1 issues that abrogate 821.6 immunity. Outside of "malicious prosecution" which  
2 has not been alleged by plaintiffs, by the way, this defense is not applicable,  
3 and defendant / investigators if any, never attempted to "investigate the  
4 validity" of an unlawful policy which is their duty, such as did Bob Berger and  
5 Senator Dave Cox, and Rob Olmstead his aide. Had plaintiffs filed against those  
6 who would not ratify the policy, now that would have been a "frivolous" pleading  
7 ok? In a recent 9<sup>th</sup> circuit district court decision, negligence does not offer  
8 immunity for Gov. Code 821.6 see IN THE UNITED STATES DISTRICT COURT FOR THE  
9 NORTHERN DISTRICT OF CALIFORNIA SAN JOSE DIVISION RICK M. REINHARDT, Plaintiff,  
10 SANTA CLARA COUNTY, Case No. C05-05143 HRL:

11 Cal. Gov. Code § 826.1 protects officers from liability for claims of  
12 malicious prosecution. *Martinez v. City of Los Angeles*, 141 F.3d 1373, 1379  
13 (9th Cir. 1998). A claim of malicious prosecution, however, is distinct from  
14 a claim of negligence such as the one raised by plaintiff in the present  
15 case. Plaintiff's negligence claim against the officers is similar to the  
16 negligence claim raised in the *Martinez* case. That court's reasoning is  
17 instructive:

18 With regard to the false imprisonment claim grounded on prolonged  
19 detention . . . Martinez correctly points out that a jailer has a duty to  
20 investigate the validity of an incarceration after sufficient notice.  
21 *Sullivan [v. County of Los Angeles]*, 12 Cal.3d [710] at 719 [(1974)]. . .  
22 . It is a similar duty, predicated upon the special relationship between  
23 the LAPD and Martinez, which gives rise to Martinez's false imprisonment  
24 claim grounded on prolonged detention. Martinez has presented evidence of  
25 negligence sufficient to create a genuine issue of material fact as to  
26 this claim.

27 THE COURT SHOULD NOT GRANT DEFENDANTS MOTION TO DISMISS WITH PREJUDICE AND  
28 SHOULD STRIKE THEIR MOTION FOR THE IMPROPRIETY AND SHORTNESS ON LAW.

Let the record show that Plaintiffs object to the misleading and false  
assertions in their motion. Even the last paragraph alluding to Plaintiffs were  
allowed "one further opportunity" to amend their complaint is subterfuge to an  
individual unaware of the circumstances and is therefore misleading.  
Plaintiff's motion to amend the complaint was denied when it was not convenient  
to the Plaintiffs. However, in a move that seems irrational and conflicting,  
plaintiffs were allowed to amend only after dismissal with leave to amend. This

gives an allusion, that plaintiffs were given every opportunity as if it could  
1 by said by defense or the court, 'we tried tried treid, but them ignant folk  
2 just caint do it!' Well that's not the truth! The U.S. Courts are about the  
3 truth, and if we plaintiffs are abused, here, it will be quite a revelation.  
4 Appellate courts have already attempted to protect Pro Se litigants, in Karim-  
5 Panahi, Rule 8(a) was grounds for dismissal but they remanded the case, and  
6 they noted that Karim-Panahi in his amended complaint,

7 "asserting essentially the same claims", or "but the court did not  
8 identify any particular deficiencies in the complaint," "Fed.R.Civ.P.  
9 12(b)(6). The district court did not advise Karim-Panahi of the  
10 deficiencies in the amended complaint," or In civil rights cases where the  
11 plaintiff appears pro se, the court must construe the pleadings liberally  
12 and must afford plaintiff the benefit of any doubt," [emphasis added] or  
13 "A pro se litigant must be given leave to amend his or her complaint  
14 unless it is 'absolutely clear that the deficiencies of the complaint  
15 could not be cured by amendment,'" or Moreover, before dismissing a pro se  
16 civil rights complaint for failure to state a claim, the district court  
17 must give the plaintiff a statement of the complaint's deficiencies," or  
18 "Without the benefit of a statement of deficiencies, the pro se litigant  
19 will likely repeat previous errors." Noll, 809 F.2d at 1448," or "Although  
20 Karim-Panahi's amended complaint consists in large part of a rambling and  
21 vituperative narrative plagued with errors in grammar and spelling, it  
22 does appear to allege.." [emphasis added] or "the court must do more than  
23 simply advise the pro se plaintiff that his complaint needs to be shorter  
24 and more concise," or The amended complaint contains legal conclusions but  
25 no specification of any facts to support the claim of conspiracy. The  
26 district court should have advised Karim-Panahi of this deficiency."  
27 [emphasis added] From McKeever<sup>9</sup>

18 62. Apparently, 9<sup>th</sup> circuit court of appeals precedence shows empathy to the  
19 rights of "civil rights pros se" litigants who cannot afford counsel in  
20 appellate court decisions that have controlling authorities to meet justice  
21 requirements, therefore defendants fail to meet the burden of proof.<sup>11</sup>

22 63. In citing Pink v. Modoc Indian, defendants again site another intentionally  
23 misleading claim, or perhaps defendants clients have lied to their counsel  
24 also and stated that Plaintiffs are their "employees." It wouldn't be  
25 surprising. But this case is another employee case precedence cited  
26 applicable to different rules, and off point due to being affirmed for "lack  
27 of subject matter jurisdiction" and unrelated to these matters.

28 **64. WHEREFORE, Plaintiffs Pat and Donna Hamer move the court to:**

- a. Vacate the September 2 2009.
- b. Do not dismiss this case and order that this case be set to go to trial
- c. That Plaintiff's be allowed to amend their pleading to additional 5 to 15 pages in the interest of justice.
- d. That the court provides plaintiffs a statement of deficiency in compliance with the authority cited.
- e. That the court orders a RICO STATEMENT if applicable as plaintiffs was ordered not to attach other documents to the complaint.
- f. That the defendants be ordered to take nothing from Plaintiffs.
- g. That if the defendants be sanctioned for total disregard of Rule 10 and 11.
- h. For such other relief as the court deems just.

Dated August 12, 2009

Respectfully Submitted

Plaintiffs Pro Se

Patrick M. Hamer

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Donna L. Hamer

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1 <sup>1</sup> Crime victims bill of rights are both federal Title 18 U.S.C. § 3771 and state  
2 rights under the California Constitution article 1 § 28 were denied plaintiffs  
and all crime victims by defendants.

3 <sup>2</sup> *Rafael Navarro v. Sherman Block and Michael D Antonovich* 250 F.3d 729 (9th  
4 Cir. 2001)

5 <sup>3</sup> North Country Gazette by Valerie D. Nixon June 13, 2006.

6 <sup>4</sup> *McKeever v. Block*, 932 F.2d 795, 798 (9th Cir. 1991).

7 <sup>5</sup> *Ashcroft v. Iqbal*, \_\_\_U.S. \_\_\_, 129 S.Ct. 1937, 1949 (May 18, 2009) (quoting  
8 *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570, 556, 557 (2007)).

9 <sup>6</sup> *Hydrick v. Hunter*, 466 F.3d 676, 688 (9th Cir.2006).

10 <sup>7</sup> *Leatherman v. Tarrant County Narcotics Intelligence and Coordination Unit*, 507  
11 U.S. 163,168[] (1993).

12 <sup>8</sup> UNITED STATES of America, Plaintiff-Appellee, v. John Anthony WILLIAMS,  
13 Defendant-Appellant 441 F.3d 716 No. 05-30071

14 <sup>9</sup> *McKeever v. Block*, 932 F.2d 795, 798 (9th Cir. 1991).

15 <sup>10</sup> *Swierkiewicz v. Sorema N.A.*, 534 U.S. 506, 514 (2002)

16 <sup>11</sup> *Trevino v. Gates*, 23 F.3d 1480, 1482 (9th Cir. 1994).