

1 Mansfield Law Office, A Professional Corporation
2 Andrew S. Mansfield (SB No. 174556)
3 45121 Ukiah St.
4 P.O. Box 2402
5 Mendocino, CA 95460
6 707-937-0820 / FAX 707-937-0834

7 Attorney for Plaintiff Mary Geddry

8 SUPERIOR COURT OF CALIFORNIA, COUNTY OF MENDOCINO
9 TEN-MILE BRANCH

10 MARY GEDDRY,) UNLIMITED
11)
12 Plaintiff,) Case No.: SCTM CVPO 02 88145
13 vs.)
14) **MEMORANDUM OF POINTS AND**
15) **AUTHORITIES IN OPPOSITION TO**
16) **DEFENDANTS DEE IVERSEN'S AND**
17) **JOHN IVERSEN'S MOTION FOR**
18) **SUMMARY ADJUDICATION**
19)
20) DATE: August 28, 2003
21) TIME: 10:00 A.M.
22) CTRM: TM
23) TRIAL DATE: November 4, 2003
24)
25)

1 Defendants Dee and John Iversen’s motion for summary adjudication is procedurally
2 deficient and must be denied on that ground alone. Dee and John Iversen noticed a motion for
3 summary adjudication on causes of action two through seven. On a motion for summary
4 adjudication, as compared to summary judgment, each undisputed material fact in the Separate
5 Statement of Undisputed Facts must be tied the particular claim, defense or issue it relates to.
6 California Rule of Court 342(b) provides, “the specific cause of action, affirmative defense,
7 claim for damages or issues of duty must be stated specifically in the notice of motion and be
8 repeated, verbatim, in the separate statement of undisputed facts.”

9 When multiple causes of action, issues or defenses are presented for summary
10 adjudication in one motion, as the Iversens have done here, each cause of action, issue or defense
11 to which the motion for summary adjudication is directed must have a separate section heading
12 indicating the issue number and specifying the issue. The undisputed facts must be repeated for
13 each issue, if they apply to each issue.

14 California Code of Civil Procedure § 437c(b) allows the Court, in its discretion, to deny
15 Ron and Marlene Iversen’s motion for summary adjudication for this reason alone. *See also*
16 *Wilson v. Blue Cross of So. Calif.* (1990) 222 Cal.App.3d 660, 671. The lack of attention to the
17 rules apparent in the failure to follow the California Rules of Court reflects defendants lack of
18 effort in carefully and fully presenting the undisputed facts to the Court or allowing a proper
19 response from Ms. Geddry. Ms. Geddry asks that Dee and John Iversen’s motion for summary
20 adjudication be denied as to all causes of action.

21 While this may seem a drastic remedy, “section 437c is a complicated statute” and “there
22 is little flexibility in the procedural imperatives of the section, and the issues raised by a motion
23 for summary judgment . . . are pure questions of law.” The court continued, “section 437c is
24 unforgiving; a failure to comply with any one of its myriad requirements is likely to be fatal to
25 the offending party.” *Brantley v. Pisaro* (1996) 42 Cal.App. 4th 1591, 1607.

1 Ms. Geddry is prepared to argue the substance of the opposition if the Court does not feel
2 this procedural error warrants denial of the motion.¹ No one disputes that Don Iversen killed
3 Mary Geddry's dog with a shotgun on June 1, 2003. *See, e.g.*, Don Iversen's Response to
4 Requests for Admissions of Truth and Facts (Set One), page 1, response 1; *see also* Ron and
5 Marlene Iversen's Undisputed Fact Number 5 and Dee and John Iversen's Undisputed Fact
6 Number 5. Every defendant except Don Iversen, on the other hand, now attempts to remove him
7 or herself from this litigation by means of summary judgment or summary adjudication, leaving
8 only Don Iversen to answer for the conversion, negligent infliction of emotional distress,
9 intentional infliction of emotional distress, trespass and assault that flowed from the shooting.

10 Don Iversen is, of course, the son of Ron and Marlene Iversen. Don and his wife Dee still
11 live on property owned by Ron and Marlene Iversen and adjacent to their home. John, another
12 defendant, is Don's brother, who lives a few miles farther west on the same road in Mendocino.
13 John was caught by the California Highway Patrol driving the "get-away" truck moments after
14 Don shot Mary Geddry's dog. Mark and Barbara Kalina were neighbors of both Mary Geddry
15 and Ron and Marlene Iversen. Since the shooting, they too have moved onto property owned by
16 Ron and Marlene Iversen.

17 Defendants Dee and John Iversen argue to this Court that the declarations they submitted
18 from the defendants shifts the burden to Ms. Geddry to introduce evidence of a conspiracy or
19 evidence that Don Iversen acted as an agent of the other defendants. In addition, Ron and
20 Marlene argue that, at most, they "merely" had knowledge of Don Iversen's intent to shoot Ms.
21 Geddry's dog prior to the incident. Page 5:4-16. If that is so, they argue, they are not joint
22 tortfeasors with Don Iversen. Ron and Marlene argue that Ms. Geddry must introduce evidence
23 that they "encouraged, directed, assisted, aided or conspired" with Don Iversen. As to
24

25 ¹ The facts and arguments presented here are substantially similar to those in the oppositions to the other summary
adjudication and summary judgment filed simultaneously herewith. Dee and John's motion appears almost word for
word identical to that of Ron and Marlene Iversen.

1 conspiracy, Ron and Marlene then argue that Ms. Geddry must introduce evidence they acted in
2 concert with Don Iversen.

3 Ron and Marlene Iversen present the Court with fifteen “undisputed facts.” Most of the
4 undisputed facts simply assert that Ron and Marlene Iversen had no discussions about nor did
5 they plan or conspire to shoot Ms. Geddry’s dog.

6 Lieutenant Robert Arbayo submits a declaration in opposition to defendants’ motions for
7 summary judgment. As the investigating Animal Care and Control officer, Lt. Arbayo provides
8 both percipient witness testimony and expert opinion that contradicts the Iversens’ assertions.
9 The Court must, then, let this case proceed to a jury of Mary Geddry’s peers so that they may
10 decide whether the Iversens’ declarants or Lt. Arbayo are more credible.

11 12 **I. Legal Standards**

13 Summary judgment allows the Court to determine that Ms. Geddry’s claims lack
14 evidentiary support and to terminate the action. Cal. Code of Civ. Procedure § 437c(a). “The
15 purpose of the law of summary judgment is to provide courts with a mechanism to cut through
16 the parties’ pleadings in order to determine whether, despite their allegations, trial is in fact
17 necessary to resolve their dispute.” *Aguilar v. Atlantic Richfield Co.* (2001), 25 C.4th 826, 843.

18 The Court’s sole function on a motion for summary judgment is issue finding, not issue-
19 determination. Matters going to the *weight* of the evidence must be disregarded in ruling on the
20 motion.

21 **A. Lt. Robert Arbayo may provide an expert opinion in opposition to summary 22 judgment.**

23 In this case, expert testimony will assist the jury in understanding and interpreting the
24 facts uncovered by Animal Care and Control (as well as the Sheriff’s Department) during the
25 investigation of the case. Lt. Robert Arbayo establishes his competency to provide expert
testimony by testifying in his declaration to his special training, experience and skill that

1 qualifies him to render an opinion on the matters in controversy. *Salasguevara v. Wyeth Labs,*
2 *Inc.* (1990), 222 CA3d 379, 387. Lt. Arbayo provides the Court with the matters relied on in
3 expressing his opinion that the matters are of the type reasonably relied upon by Animal Care
4 and Control officers, and the bases for his opinions.

5 **B. Ms. Geddry need only show there is one triable issue of fact to defeat the summary**
6 **judgment motion.**

7 The Iversens did not organize their Separate Statement of Undisputed Facts by the issues
8 they seek to adjudicate. In effect, this converts the motion into one for summary judgment or
9 judgment on the pleadings. Because the Iversens have asserted an absence of evidence, the
10 burden has shifted to Ms. Geddry to present evidence to show that there is at least one triable
11 issue of material fact concerning the Iversens involvement in the shooting. *Saelzler v. Advance*
12 *Group 400*, (2001) 25 Cal.4th 763, 774.

13 As to the independent tort of conspiracy, Ms. Geddry agrees with their assertion that she
14 must ultimately prove that there was (1) an agreement among the alleged conspirators to commit
15 a tort; (2) the tort was committed pursuant to that agreement; and (3) that she was injured by the
16 tort. *Kidron v. Movie Acquisitions Corp.* (1996) 40 Cal.App.4th 1571, 1581.

17 **C. Ms. Geddry need not present personal evidence of knowledge of conspiratorial**
18 **communications.**

19 Ron and Marlene Iversen cite *Villa v. McFerren* (1995) 35 Cal.App. 4th 733, 749, as if it
20 supports their motion for summary adjudication. It does not. In that case, plaintiff was unable to
21 demonstrate that he personally was aware of the communications between the named defendants
22 and conspirators. Defendants, on summary judgment, did not show plaintiff's cause of action
23 could not be established because *there was no reason to suppose plaintiff would have been*
24 *present to observe such communications. Id.* Such a showing was not sufficient to shift the
25 burden to plaintiff to prove a triable issue existed as to the conspiracy allegations. *Id.*

1 and Placer Counties. Arbayo Decl. ¶¶ 4-5. Lt. Arbayo worked for Mendocino County Animal
2 Care and Control from November 2000 to June 2002. Arbayo Decl. ¶ 6. Most recently, Lt.
3 Arbayo served as the Director of the Mendocino Coast Humane Society. Arbayo Decl. ¶ 2.

4 Lt. Arbayo's involvement with the Iversen/Kalina/Geddry dog dispute began in January
5 2002. Arbayo Decl. ¶ 14. In May 2002, Mark Kalina began to pressure Animal Care and
6 Control to declare Ms. Geddry's dog as dangerous. Arbayo Decl. ¶¶ 16, 17 and 18.
7 Investigating Officer Sue Bottom determined that Ms. Geddry's dog was not dangerous upon
8 investigation. Arbayo Decl. ¶ 18.

9 It was shortly after that finding by Officer Bottom that Ron, Marlene, Don, Dee and John
10 Iversen began to repeatedly call Animal Care and Control and complain about Ms. Geddry's dog.
11 After investigation one claim by the Iversens, Animal Care and Control determined that one of
12 the incidents that the Iversens complained about occurred on Ms. Geddry's property. Arbayo
13 Decl. ¶ 19.

14 Lt. Arbayo concludes the following from the events he witnessed:

15 The most reasonable inference from the immediate escalation in calls from the
16 Iversens about Mary Geddry's dog after Mark Kalina's complaints were rejected
17 is that the Iversens and the Kalinas were communicating about their mutual
18 concerns about Ms. Geddry's dog and their intentions to have the dog taken away
19 or destroyed. This inference is based on the facts that Mark Kalina and his wife
20 are experienced lawyers and made obvious reference to the County's vicious dog
21 regulations in their letter and that the Department of Animal Care & Control
22 received calls from both the Iversens and Kalinas at about the same time, and that
23 the families are neighbors.

24 Arbayo Decl. ¶ 20.

25 Ms. Geddry's dog was shot on June 1, 2002. On the Monday following the weekend
shooting, District Attorney Norm Vroman called Animal Care and Control early in the morning
and said the "Geddry dog matter has been taken care of." Arbayo Decl. ¶ 21. Mr. Vroman's call
was extremely unusual. Arbayo Decl. ¶ 22. Lt. Arbayo concludes from these actions that "the
most reasonable inference from this early, aggressive call from District Attorney Vroman was

1 that he had been contacted by the Iversens and/or Kalinas late Saturday or Sunday (June 1st and
2 2nd) and asked to intervene in the matter to protect them from prosecution.” Arbayo Decl. ¶ 22.

3 Lt. Arbayo immediately deduced that Ms. Geddry’s dog had been executed by the
4 Kalinas and Iversens. Arbayo Decl. ¶¶ 23. The phone call from the District Attorney and an
5 unreported conversation with Sergeant Bushnell the day of the shooting indicate that Mark
6 Kalina spoke with Norman Vroman about the shooting and that his declaration in support of
7 summary judgment is not true and correct. Arbayo Decl. ¶¶ 23, 24, 25 and 26. Lt. Arbayo
8 believes that “the most reasonable inference from these facts is that Mark Kalina provided
9 advice, direction and suggestions concerning the Mary Geddry dog shooting case, even though
10 he later admitted that he had a conflict of interest.” Arbayo Decl. ¶ 27.

11 Animal Care and Control determined that there was no basis for Don Iversen’s claim of
12 self-defense. The evidence indicated that Don Iversen shot Ms. Geddry’s dog on the dog
13 owner’s property from the (public) roadway, and also that he probably shot the dog in the back
14 with a second shot as it tried to crawl to safety. The Sheriff and the District Attorney had these
15 facts from the same Sheriff’s report Lt. Arbayo was working with. Arbayo Decl. ¶ 30.

16 Lt. Arbayo declares that “the most reasonable inference from Mr. Vroman’s conduct and
17 the cooperation in what was obviously an abuse of power and deliberate misrepresentation of the
18 facts by the Sheriff’s Department personnel was that Norm Vroman was complicit in his support
19 of Mark Kalina and the Iversen family’s attempt to cover up the shooting.” Arbayo Decl. ¶ 31.

20 In the middle of June 2002, Animal Care and Control conducted an on-site investigation
21 into the dog shooting. Lt. Arbayo determined from the scene of the crime that the shooting was
22 “planned carefully” and “was not self defense.” Arbayo Decl. ¶¶ 33-34. When Lt. Arbayo went
23 to the Iversen residence, Ron, Marlene and Dee Iversen were combative and non-cooperative.
24 Arbayo Decl. ¶¶ 36-38.

1 The next day, District Attorney Norm Vroman attempted to call off Animal Care and
2 Control's investigation into the dog shooting. Norm Vroman personally called Lt. Arbayo. He
3 then communicated with Lt. Arbayo's supervisor and had Lt. Arbayo pulled from the
4 investigation. Arbayo Decl. ¶¶ 40-43. Lt. Arbayo also notes that the Sheriff's Department
5 personnel did not perform their job appropriately. Arbayo Decl. ¶ 44. Lt. Arbayo draws the
6 following most reasonable inference from these facts:

7 The handling of the Geddry matter was corrupt from the outset. The corruption
8 exhibited between the Iversens, the Kalinas and the District Attorney in the matter
9 indicates that the law was not being applied equally in Mendocino County.
Personal interests and the "good-ole-boy" system were being served.

10 Arbayo Decl. ¶ 43.

11 Another of Lt. Arbayo's conclusions based on the most reasonable inference from the
12 evidence should inform the Court's rejection of this summary judgment motion:

13 The coordination of the May 2002 letter from the Kalinas and the increased phone
14 calls and complaints, both about Mary Geddry's dog, from two neighbors on
15 either side of her property, indicate to me that Mark Kalina, Barbara Kalina, Don
16 Iversen, Dee Iversen, Ron Iversen and Marlene Iversen discussed individually
and/or collectively having Animal Care & Control kill or remove Mary Geddry's
dog prior to the shooting. When that effort failed, the only inference from the
facts is that there was some collusion between these individuals who then planned
the shooting of Mary Geddry's dog.

17 Arbayo Decl. ¶ 45. Animal Care & Control recommended that the District Attorney prosecute
18 Don and John Iversen for violations of Penal Code Sections 597(a)-Animal Cruelty and 374(c)-
19 Discharging a firearm from a Public Roadway based on overwhelming evidence against them.
20 Arbayo Decl. ¶ 46. Of course, no action was ever taken by the District Attorney.

21 Lt. Arbayo concludes that the facts and interviews from his investigation demonstrate
22 that Don Iversen, Dee Iversen, Ron Iversen, Marlene Iversen, John Iversen, Mark Kalina and
23 Barbara Kalina planned and conspired to have Don Iversen lay in wait and execute Ms. Geddry's
24 dog. Arbayo Decl. ¶¶ 47-51. Lt. Arbayo explains that his conclusions are based on reasonable
25 inferences, not speculation. Arbayo Decl. ¶ 52.

1 Finally, Lt. Arbayo is clearly an expert in the field of Animal Care and Control. Arbayo
2 Decl. ¶ 53. Lt. Arbayo’s expert opinion based on his review of all the facts in the case is this:

3 Based on the interaction between Animal Care & Control and the Iversens leading
4 up the shooting, as well as the actions of Mark and Barbara Kalina (both before
5 and after the shooting), as well as the physical evidence of the shooting’s layout,
6 the wounds on the animal, the dead deer at the scene of the shooting, and the
7 cooperation and attitude of witnesses following the shooting, it is my professional
8 expert opinion that Dee Iversen, Don Iversen, Ron Iversen, Marlene Iversen, John
9 Iversen (the driver), Mark Kalina and Barbara Kalina participated in, discussed,
10 endorsed and covered-up the premeditated shooting of Mary Geddry’s dog by Don
11 and John Iversen.

12 Arbayo Decl. ¶ 54.

1 **III. CONCLUSION**

2 This summary judgment motion should be denied. Lt. Arbayo has provided contrary
3 percipient and expert testimony that strongly disputes most of the Iversens' "undisputed" facts.
4 Lt. Arbayo's declaration is entitled to significantly more weight than the defendants'
5 declarations. There are numerous facts, as indicated in Ms. Geddry's Separate Statement of
6 Disputed and Undisputed Facts, that require the Court to deny this motion. The procedural
7 defects in the Iversens' Separate Statement of Undisputed Facts should lead the Court to reject
8 all of the Iversen claims for summary adjudication. Finally, Ms. Geddry is not required to
9 present evidence of private conspiratorial communications between the defendants.

10 For all of these reasons, summary judgment should be denied.

11 Dated this ____ Day of August , 2003

12 By: _____
13 Andrew S. Mansfield
14 (SB No. 174556)
15 45121 Ukiah St.
16 P.O. Box 2402
17 Mendocino, CA 95460
18 707-937-0820
19 FAX 707-937-0834
20
21 Attorney for Plaintiff
22 MARY GEDDRY
23
24
25

Table of Contents

1

2 I. Legal Standards 4

3 A. *Lt. Robert Arbayo may provide an expert 4*

4 *opinion in opposition to summary judgment.*

5 B. *Ms. Geddry need only show there is one 5*

6 *triable issue of fact to defeat the summary*

7 *judgment motion.*

8 C. *Ms. Geddry need not present personal 5*

9 *evidence of knowledge of conspiratorial*

10 *communications.*

11 D. *Lt. Arbayo draws the most reasonable 6*

12 *inferences from the circumstantial evidence*

13 *and such inferences create triable issues of*

14 *fact.*

15 E. *The Court must liberally construe Lt. 6*

16 *Arbayo’s declaration while strictly construing*

17 *declarations submitted by the defendants.*

18

19

20

21

22

23

24

25

13 II. The Evidence 6

14 III. Conclusion 11

1 **Table of Authorities**

2 **Cases**

3 *Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826 4,6

4 *Brantley v. Pisaro* (1996) 42 Cal.App. 4th 1591 2

5 *D’Amico v. Board of Medical Examiners* (1974), 11 Cal.3d 1 6

6 *Hulett v. Farmers Ins. Exchange* (1992), 10 Cal.App. 4th 1051 6

7 *Joseph E. DiLoreto, Inc. v. O’Neill* (1991), 1 Cal.App. 4th 149 6

8 *Kidron v. Movie Acquisitions Corp.* (1996) 40 Cal.App.4th 1571 5

9 *Saelzler v. Advance Group 400*, (2001) 25 Cal.4th 763 5

10 *Villa v. McFerren* (1995) 35 Cal.App. 4th 733..... 5

11 *Wilson v. Blue Cross of So. Calif.* (1990) 222 Cal.App.3d 660..... 2

12

13 **Statutes**

14 Cal. Code of Civ. Procedure § 437c(a)..... 4

15 California Code of Civil Procedure § 437c(b)..... 2

16 California Rule of Court 342(b)..... 2

17

18

19

20

21

22

23

24

25