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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) **MARK KALINA'S AND BARBARA**
17) **KALINA'S MOTION FOR SUMMARY**
18) **JUDGMENT**
19)
20) DATE: August 28, 2003
21) TIME: 10:00 A.M.
22) CTRM: TM
23) TRIAL DATE: November 4, 2003
24)
25)

1 No one disputes that Don Iversen killed Mary Geddry's dog with a shotgun on June 1,
2 2003. *See, e.g.*, Don Iversen's Response to Requests for Admissions of Truth and Facts (Set
3 One), page 1, response 1; *see also* Ron and Marlene Iversen's Undisputed Fact Number 5 and
4 Dee and John Iversen's Undisputed Fact Number 5. Every defendant except Don Iversen, on the
5 other hand, now attempts to remove him or herself from this litigation by means of summary
6 judgment, leaving only Don Iversen to answer for the nuisance, conversion, negligent infliction
7 of emotional distress, intentional infliction of emotional distress, trespass and assault that flowed
8 from the shooting.

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

16 Defendants Mark and Barbara Kalina (the Kalinas) argue to this Court that there is no
17 evidence whatsoever (and therefore no triable issue of fact) as to whether they conspired with
18 Don Iversen and the other defendants to kill Mary Geddry's dog. The Kalinas also argue that
19 there is no evidence whatsoever (and therefore no triable issue of fact) as to whether they
20 attempted to cover up the shooting and lessen the sanctions, if any, brought by law enforcement
21 and the District Attorney against Don Iversen.

22 The Kalinas present the Court with seventeen "undisputed facts." The evidence for each
23 of these facts consists of nothing more than self-serving declarations by the defendants, the
24 Sheriff's Deputy accused of assisting in the cover-up and the District Attorney who was, at least,
25

1 complicit in the cover-up. Each of these declarations, as described below, must be strictly
2 construed against the defendants.

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

8 9 I. Legal Standards

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

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

18 **A. The Kalinas have not moved for summary adjudication in the alternative and** 19 **individual issues may not, therefore, be summarily adjudicated.**

20 The Kalinas have moved only for summary judgment (and not for summary
21 adjudication). Because the notice of motion seeks only summary judgment, the presence of *any*
22 triable issue of fact requires denial of the motion. The Court may not summarily adjudicate
23 claims or defenses as to which no triable issue was raised unless requested to do so in the notice
24 of motion. *Homestead Sav. V. Sup. Ct. (Dividend Develop. Corp.)* (1986), 179 CA3d 494, 498.

1 **B. Lt. Robert Arbayo may provide an expert opinion in opposition to summary**
2 **judgment.**

3 In this case, expert testimony will assist the jury in understanding and interpreting the
4 facts uncovered by Animal Care and Control (as well as the Sheriff’s Department) during the
5 investigation of the case. Lt. Robert Arbayo establishes his competency to provide expert
6 testimony by testifying in his declaration to his special training, experience and skill that
7 qualifies him to render an opinion on the matters in controversy. *Salasguevara v. Wyeth Labs,*
8 *Inc.* (1990), 222 CA3d 379, 387. Lt. Arbayo provides the Court with the matters relied on in
9 expressing his opinion that the matters are of the type reasonably relied upon by Animal Care
10 and Control officers, and the bases for his opinions.

11 **C. Ms. Geddry need only show there is one triable issue of fact to defeat the summary**
12 **judgment motion.**

13 The Kalinas move for summary judgment by asserting that Ms. Geddry does not have or
14 cannot produce evidence supporting her claims of conspiracy against the Kalinas. Because they
15 have asserted an absence of evidence, the burden has shifted to Ms. Geddry to present evidence
16 to show that there is at least one triable issue of material fact concerning the Kalinas. *Saelzler v.*
Advance Group 400, (2001) 25 Cal.4th 763, 774.

17 The Kalinas provide the Court with legal information on the independent tort of civil
18 conspiracy. Ms. Geddry agrees with their assertion that she must ultimately prove that there was
19 (1) an agreement among the alleged conspirators to commit a tort; (2) the tort was committed
20 pursuant to that agreement; and (3) that she was injured by the tort. *Kidron v. Movie*
21 *Acquisitions Corp.* (1996) 40 Cal.App.4th 1571, 1581.

22 **D. The Kalinas have procedurally failed to present their claim that Mark Kalina is**
23 **immune from suit.**

24 Finally, the Kalinas attempt to show a complete defense – namely that *Ingram v. Flippo*
25 (1999), 74 Cal.App.4th 1280 provides complete and absolute immunity to Mark Kalina. Before
addressing *Ingram* in particular, the Court must note the Kalinas did not request judicial notice of

1 Mark Kalina’s government position. The Kalinas did not provide any evidence whatsoever, let
2 alone undisputed evidence, that Mark Kalina acted in a governmental capacity or that he even
3 holds a governmental position.

4 In a summary judgment proceeding, the Kalinas must have alleged all undisputed
5 material facts necessary for this complete defense. The lack of evidence and failure to request
6 judicial notice automatically results in the denial of summary judgment based on this defense. In
7 their reply brief, the Kalinas cannot add additional evidence nor can they go beyond the scope of
8 the material facts already alleged. *Huynh v. Ingersoll-Rand* (1993), 16 Cal.App.4th 825, 831.

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

14 **E. The Kalinas are not immune for the act of providing advice to law enforcement.**

15 In *Burns v. Reed*, 500 U.S. 478 (1991), the United States Supreme Court interpreted and
16 limited the immunity of prosecutors from suit. Mr. Kalina provided assistance to (and interfered
17 with) the job of the Sheriff’s Department. As Lt. Robert Arbayo’s declaration makes clear, and
18 as is explained below, the most reasonable inference is that Mark Kalina’s actions were not
19 intimately tied to a judicial role. The Supreme Court indicates:

20 Turning to respondent’s acts of providing legal advice to the police, we note first that
21 neither respondent nor the court below has identified any historical or common law
22 support for extending absolute immunity to such actions by prosecutors. Indeed, the
23 Court of Appeals stated that its “review of the historical or common law basis for the
immunity in question does not yield any direct support for the conclusion that a
prosecutor’s immunity from suit extends to the act of giving legal advice to police
officers.”

24 *Id.* at 474.

1 In addition, there is absolutely no basis to extend prosecutorial immunity, if the Court
2 finds that the *Burns* exception does not apply, to Mrs. Kalina. The actions of which she is
3 accused and the evidence supporting those material allegations indicate that she acted as a
4 private citizen.

5 **F. Ms. Geddry need not present personal evidence of knowledge of conspiratorial**
6 **communications.**

7 Finally, the Kalinas point to a discovery record in which, they allege, Ms. Geddry has
8 been unable to demonstrate facts that constitute conspiracy. The personal lack of knowledge of a
9 plaintiff in a civil conspiracy case has been addressed in prior decisions. For example, in *Villa v.*
10 *McFerren* (1995) 35 Cal.App. 4th 733, 749, plaintiff was unable to demonstrate that he
11 personally was aware of the communications between the named defendants and conspirators.
12 Defendants, on summary judgment, did not show plaintiff's cause of action could not be
13 established because *there was no reason to suppose plaintiff would have been present to*
14 *observe such communications.* *Id.* Such a showing was not sufficient to shift the burden to
15 plaintiff to prove a triable issue existed as to the conspiracy allegations. *Id.*

16 **G. Lt. Arbayo draws the most reasonable inferences from the circumstantial evidence**
17 **and such inferences create triable issues of fact.**

18 To defeat summary judgment, inferences drawn from evidence must be reasonable and
19 cannot be based on speculation or surmise. *Joseph E. DiLoreto, Inc. v. O'Neill* (1991), 1
20 Cal.App. 4th 149, 161. The inferences that Lt. Arbayo relies on satisfy the "more likely than not"
21 evidentiary standard. Finally, Lt. Arbayo's inferences are not vague or based on unsound
22 reasoning.

23 Summary judgment cannot be granted solely because the opposing party's evidence is
24 only circumstantial. "The presence of (reasonable) inferences supporting a judgment in favor of
25 plaintiff is sufficient to defeat a summary judgment in favor of defendant." *Hulett v. Farmers*

1 *Ins. Exchange* (1992), 10 Cal.App. 4th 1051, 1059. Further, “the court may not grant the
2 defendants’ motion for summary judgment based on inferences . . . if contradicted by other
3 inferences or evidence, which raise a triable issue as to any material fact.” *Aguilar v. Atlantic*
4 *Richfield Co.* (2001) 25 Cal.4th 826, 856.

5 **H. The Court must liberally construe Lt. Arbayo’s declaration while strictly construing**
6 **declarations submitted by the defendants.**

7 Because the courts still approach summary judgment cautiously, the declarations and
8 evidence offered in opposition to a motion for summary judgment must be liberally construed,
9 while the moving party’s evidence must be construed strictly. *D’Amico v. Board of Medical*
10 *Examiners* (1974), 11 Cal.3d 1, 21.

11 **II. The Evidence**

12 Lieutenant Robert Arbayo has worked, trained and studied in the field of Animal Care
13 and Control since 1997. Declaration of Robert Arbayo in Opposition to Summary Judgment
14 (“Arbayo Decl.”) at ¶ 4. During that time, he has served in Animal Care and Control in Butte
15 and Placer Counties. Arbayo Decl. ¶¶ 4-5. Lt. Arbayo worked for Mendocino County Animal
16 Care and Control from November 2000 to June 2002. Arbayo Decl. ¶ 6. Most recently, Lt.
17 Arbayo served as the Director of the Mendocino Coast Humane Society. Arbayo Decl. ¶ 2.

18 Lt. Arbayo’s involvement with the Iversen/Kalina/Geddry dog dispute began in January
19 2002. Arbayo Decl. ¶ 14. In May 2002, Mark Kalina began to pressure Animal Care and
20 Control to declare Ms. Geddry’s dog as dangerous. Arbayo Decl. ¶¶ 16, 17 and 18.
21 Investigating Officer Sue Bottom determined that Ms. Geddry’s dog was not dangerous upon
22 investigation. Arbayo Decl. ¶ 18.

23 It was shortly after that finding by Officer Bottom that Ron, Marlene, Don, Dee and John
24 Iversen began to repeatedly call Animal Care and Control and complain about Ms. Geddry’s dog.
25 After investigation one claim by the Iversens, Animal Care and Control determined that one of

1 the incidents that the Iversens complained about occurred on Ms. Geddry's property. Arbayo
2 Decl. ¶ 19.

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

4 The most reasonable inference from the immediate escalation in calls from the
5 Iversens about Mary Geddry's dog after Mark Kalina's complaints were rejected
6 is that the Iversens and the Kalinas were communicating about their mutual
7 concerns about Ms. Geddry's dog and their intentions to have the dog taken away
8 or destroyed. This inference is based on the facts that Mark Kalina and his wife
9 are experienced lawyers and made obvious reference to the County's vicious dog
10 regulations in their letter and that the Department of Animal Care & Control
11 received calls from both the Iversens and Kalinas at about the same time, and that
12 the families are neighbors.

13 Arbayo Decl. ¶ 20.

14 Ms. Geddry's dog was shot on June 1, 2002. On the Monday following the weekend
15 shooting, District Attorney Norm Vroman called Animal Care and Control early in the morning
16 and said the "Geddry dog matter has been taken care of." Arbayo Decl. ¶ 21. Mr. Vroman's call
17 was extremely unusual. Arbayo Decl. ¶ 22. Lt. Arbayo concludes from these actions that "the
18 most reasonable inference from this early, aggressive call from District Attorney Vroman was
19 that he had been contacted by the Iversens and/or Kalinas late Saturday or Sunday (June 1st and
20 2nd) and asked to intervene in the matter to protect them from prosecution." Arbayo Decl. ¶ 22.

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

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

6 Lt. Arbayo declares that "the most reasonable inference from Mr. Vroman's conduct and
7 the cooperation in what was obviously an abuse of power and deliberate misrepresentation of the
8 facts by the Sheriff's Department personnel was that Norm Vroman was complicit in his support
9 of Mark Kalina and the Iversen family's attempt to cover up the shooting." Arbayo Decl. ¶ 31.

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

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

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

24 Arbayo Decl. ¶ 43.

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

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

9 Arbayo Decl. ¶ 45. Animal Care & Control recommended that the District Attorney prosecute
10 Don and John Iversen for violations of Penal Code Sections 597(a)-Animal Cruelty and 374(c)-
11 Discharging a firearm from a Public Roadway based on overwhelming evidence against them.

12 Arbayo Decl. ¶ 46. Of course, no action was ever taken by the District Attorney.

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

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

20 Based on the interaction between Animal Care & Control and the Iversens leading
21 up the shooting, as well as the actions of Mark and Barbara Kalina (both before
22 and after the shooting), as well as the physical evidence of the shooting's layout,
23 the wounds on the animal, the dead deer at the scene of the shooting, and the
24 cooperation and attitude of witnesses following the shooting, it is my professional
25 expert opinion that Dee Iversen, Don Iversen, Ron Iversen, Marlene Iversen, John
Iversen (the driver), Mark Kalina and Barbara Kalina participated in, discussed,
endorsed and covered-up the premeditated shooting of Mary Geddry's dog by Don
and John Iversen.

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 each of the Kalinas “undisputed” facts. Lt.
4 Arbayo’s declaration is entitled to significantly more weight than the defendants’ declarations.
5 There are numerous facts, as indicated in Ms. Geddry’s Separate Statement of Disputed and
6 Undisputed Facts, that require the Court to deny this motion. The procedural defects in the
7 Kalinas’ request prevent the granting of summary judgment based on the alleged defense of
8 immunity. Finally, Ms. Geddry is not required to present evidence of private conspiratorial
9 communications between the defendants.

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

11 Dated this ____ Day of August , 2003

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