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5
6 SUPERIOR COURT OF CALIFORNIA, COUNTY OF MENDOCINO
7 TEN-MILE BRANCH
8

9 MARY GEDDRY,) UNLIMITED
10 Plaintiff,) Case No.: SCTM CVPO 02 88145
11 vs.) **OPPOSITION OF PLAINTIFF MARY**
12 DON IVERSEN, DEE IVERSEN, RON) **GEDDRY TO GENERAL DEMURRER**
13 IVERSEN, MARLENE IVERSEN, JOHN) **BY DEFENDANT MARK KALINA TO**
14 IVERSEN, MARK KALINA and BARBARA) **PLAINTIFF MARY GEDDRY'S FIRST**
15 KALINA,) **AMENDED COMPLAINT**
16 Defendants) **DEMAND FOR JURY TRIAL**
17

18 **I. INTRODUCTION**

19 Mr. Mark Kalina is named in this civil action as a defendant for actions which he took as
20 a private citizen or in violation of his duties as a Deputy District Attorney. This motion concerns
21 whether Mr. Kalina may be able to hide behind Government Code § 950.2 to shield those actions
22 from civil liability.

23 In reviewing Mr. Kalina's general demurrer to the First Amended Complaint, the Court is
24 required to find as true all material facts plead by Ms. Geddry. No matter how unlikely or
25 improbable, Ms. Geddry's allegations must be accepted as true for purposes of ruling on the

1 demurrer. *Del. E. Webb Corp. v. Structural Materials Co.* (1981) 123 CA3d 593, 604. Problems
2 of proof are not considered in ruling on a demurrer. *Committee on Children's Television, Inc. v.*
3 *General Foods Corp.* (1983) 35 C.3d 197, 213-214.

4 5 **II. PROCEDURAL HISTORY**

6 Ms. Geddry filed her verified complaint against Don, Dee, John, Ron and Marlane
7 Iversen on June 7, 2002. The five defendants retained two law firms to represent them. Ron and
8 Marlane (the parents of the confessed dog shooter, Don Iversen) are represented by Alvord &
9 Ewing in Lakeport. Don, his wife Dee, and his brother John are represented by Petersen Law
10 Offices in Fort Bragg. As a result of motions to strike and demurrers filed by all five defendants,
11 Ms. Geddry amended her complaint and filed a First Amended Complaint on July 7, 2002.

12 In addition to the original five defendants, Mendocino County Sheriff and Animal
13 Control reports, as well as other investigatory work, revealed that Mark and Barbara Kalina
14 conspired in the planning and execution of the killing of Ms. Geddry's dog and the other violent
15 torts committed against her. Mark and Barbara Kalina were neighbors of Ms. Geddry and are
16 friends of the accused Iversen family. In fact, since this litigation was commenced Mark and
17 Barbara Kalina have rented a house on the same family compound on which Ron, Marlane, Don
18 and Dee Iversen live.

19 Mark and Barbara Kalina are represented by the law firm of Mitchell, Brisso, Delaney &
20 Vrieze in Eureka California. On August 21, 2002 the Kalinas filed a verified Answer responding
21 to all ninety-three paragraphs of the First Amended Complaint. Mark and Barbara Kalina filed
22 the appropriate verification.

23 Also on August 21, 2002, County Counsel for the County of Mendocino filed a General
24 Demurrer on behalf of Mark Kalina alone. This opposition responds to that general demurrer
25 which is only on behalf of Mark Kalina.

1 Eight days later, the law firm of Mitchell, Brisso, Delaney & Vrieze associated with the
2 County Counsel's office as co-counsel for defendant Mark Kalina. Barbara Kalina, of course,
3 remains represented only by Mitchell, Brisso, Delaney & Vrieze.

4 In the meantime, the responses taken by counsel for Ron and Marlene Iversen and Don,
5 Dee and John Iversen have diverged. Ron and Marlene Iversen filed a verified Answer on
6 August 21, 2002 in response to the First Amended Complaint. Don, Dee and John instead filed a
7 second motion to strike allegeding "evidentiary" pleading. Don, Dee and John appear to allege
8 that plaintiff has plead detail that is not required and that her pleading does not consist of
9 ultimate facts. An opposition to that motion to strike will be filed separately although it is set for
10 hearing with this motion.

11 12 **III. ARGUMENT**

13 **A. Mr. Kalina Engaged in Illegal Activity**

14 This motion turns on only one issue – was Mr. Kalina acting in the scope of his
15 employment as Deputy District Attorney in carrying out the actions alleged by Ms. Geddry? Ms.
16 Geddry does not take issue with County Counsel's recitation of the law concerning the procedure
17 for notifying the County that a claim is made against it nor pleading compliance with this
18 statutory procedure. Ms. Geddry simply asserts that this procedure has no applicability to the
19 facts that she has plead because Mr. Kalina's actions cannot be considered within the scope of
20 his employment.

21 This dispute arose because Don, Dee, John, Ron and Marlene ("the Iversens") let their
22 two dogs roam the neighborhood they shared with Ms. Geddry and Mark and Barbara Kalina.
23 This was a clear violation of the County animal leash laws and the Iversens were cited on at least
24 one occasion known to Ms. Geddry. Several times, this negligent conduct of the Iversens led to
25 dog fights between Ms. Geddry's dog and the Iversens' dogs. Mark and Barbara Kalina are

1 afraid of dogs and carry a prejudice about the breed commonly referred to as a “pit bull.” Ms.
2 Geddry’s dog was a pit bull, or more specifically, a Staffordshire Terrier.

3 On June 1, 2002, one of the Iversens’ dogs was killed as it ran loose on Little Lake Road.
4 No one witnessed its death. The Iversens blamed Ms. Geddry’s dog. The Mendocino County
5 Sheriff investigated but exonerated Ms. Geddry’s dog. First Amended Complaint, paragraphs 18
6 and 19. Nevertheless, the Iversens continued to blame Ms. Geddry’s dog.

7 Ms. Geddry alleges that Mark Kalina conspired with the Iversens and his wife to illegally
8 and improperly kill Ms. Geddry’s dog (and it must, for purposes of this motion, be assumed as
9 true that he did). Mr. Kalina, familiar with the law of self-defense as it related to dogs and the
10 valuation of family pets subject to conversion through death, advised his co-conspirators that
11 Don Iversen should intentionally shoot Ms. Geddry’s dog and then claim self-defense. First
12 Amended Complaint, paragraphs 29 and 30.

13 Based on such advice, Don Iversen and John Iversen stalked Ms. Geddry’s dog with their
14 white SUV on June 1, 2002. First Amended Complaint, paragraph 20. At 7:15 p.m. on June 1,
15 2002, Don Iversen effectuated the plan. Ms. Geddry was in her front yard with her dog. She
16 saw the Iversen’s white pick-up truck pulled over in front of her yard. Two enormous shotgun
17 shots rang out. Her dog was killed. The white pick-up truck fled quickly down Little Lake
18 Road. First Amended Complaint, paragraphs 21-26.

19 Because she called 911, Don and John Iversen were pulled over by the California
20 Highway Patrol near Little Lake Road and Highway One. Don Iversen was tricked by the
21 County Sheriff, who then arrived on the scene, into confessing that he shot the dog. Even though
22 he fled the scene and lied about his involvement until tricked, Don Iversen then claimed he shot
23 the dog in self-defense. *Id.*

24 In anticipation of the fact that Don Iversen might be apprehended, Mr. Kalina promised
25 his co-conspirators that he would *improperly* use his position as Deputy District Attorney to see

1 that Don Iversen was not arrested, charged and/or prosecuted. First Amended Complaint,
2 paragraph 31. Mr. Kalina improperly intervened in the police investigation the night of the
3 shooting, speaking to Mendocino County Deputy Sheriff John Bushnell “off the record” and
4 asking him to not collect the proper evidence, arrest Don Iversen or follow-up on the case. First
5 Amended Complaint, paragraphs 34 and 35.

6 On June 3, 2002, Mark Kalina again asked Deputy Bushnell to purposefully “drop the
7 ball” on the investigation and to see to it that the Sheriff’s report, collected over time on a
8 computerized system, did not reflect all of the appropriate evidence. First Amended Complaint,
9 paragraph 36.

10 Lieutenant Robert Arbayo of Mendocino Animal Control filed a report on his
11 investigation into the shooting on June 20, 2002. He found “**the evidence gathered indicates**
12 **that the dog was shot on its own property.**” In addition, his report indicates that Mark Kalina,
13 a Deputy District Attorney for the County of Mendocino, aided and abetted in violations of Penal
14 Code section 597(a) and 374(c). First Amended Complaint, paragraph 37.

15 Mark Kalina then illegally and improperly contacted District Attorney Norm Vroman,
16 asking Mr. Vroman to ensure that no charges were filed against Don Iversen even though
17 overwhelming evidence indicates the shooting was not in self-defense. Mr. Kalina further asked
18 Mr. Vroman to have Lieutenant Arbayo charged with false insubordination charges and fired.
19 This was done by Mr. Vroman and Mr. Arbayo was forced out of his position as a result of this
20 incident. First Amended Complaint, paragraphs 38-39.

21 One must ask whether the County of Mendocino and Mr. Kalina are able to seriously
22 contend that it is within the scope of his employment as Deputy District Attorney to:

- 23 • plan and carry out illegal activity;
- 24 • plan for the cover-up of such activity and assist in the cover-up;

- 1 • influence the police investigation of the activity so as to limit the police record and shape
2 the outcome of the case prior to the exercise of the acknowledged discretion of the
3 District Attorney concerning prosecution;
- 4 • illegally request and assist in the filing of false charges by District Attorney Norm
5 Vroman against Lieutenant Arbayo so as to result in illegal termination and employment
6 practices.

7

8 **B. The Law Does Not Recognize Mr. Kalina’s Activities as Within the Scope of His
9 Employment.**

10 In support of the astounding position taken by County Counsel that Mr. Kalina’s above-
11 listed activities were undertaken in the course of his employment, County Counsel essentially
12 cites only two cases. First, in *Neal v. Gatlin* the court held that “if the object or end to be
13 accomplished is within the employee’s express or implied authority his act is deemed to be
14 within the scope of his employment irrespective of its wrongful nature.” (1973) 35 Cal.App.3d
15 871, 875. Second, County Counsel provides one example in the case of *Meester v. Davies* in
16 which police officers and the district attorney falsely conspired to **accuse** someone of a crime.
17 (1970) 11 Cal.App.3d 342.

18 Ms. Geddry does not dispute or take issue with either case cited in the paragraph above.
19 However, neither case results in upholding the demurrer by Mr. Kalina.

20 In *Neal v. Gatlin*, the Court reviewed a demurrer to defamation charges brought by an
21 assistant professor against the management of a state college. The court found the allegedly
22 defamatory statements were made in the course of the managements’ employment for the state.

23 The semantic test developed by the Court of Appeal for the Fifth District was that a state
24 employee, such as Mr. Kalina, is acting within the scope of his employment “**when he is
25 engaged in work he was employed to perform or when the act is an incident to his duty and
was performed for the benefit of his employer and not to service his own purposes or**

1 **conveniences.”** 35 Cal.App.3d at 875 (citations omitted). The court added in a footnote the
2 language relied upon by County Counsel. That is, the ultimate test is whether the *object* of the
3 activity engaged in by one such as Mr. Kalina was within the scope of his employment. The
4 duties of a District Attorney are set forth in Government Code § 26500 *et seq.*

5 Under either a direct inquiry or by looking to the object of Mr. Kalina’s actions, the Court
6 can only conclude that the alleged activities were not in his scope of employment for the County
7 of Mendocino and the State of California. It is plainly ludicrous to allege that a Deputy District
8 Attorney may either intentionally violate the law or cover up such activities. There is no means
9 by which breaking the law and covering up those activities could even fulfill a valid “object” of
10 his employment. The causes of action alleging that Mr. Kalina influenced the Sheriff’s
11 investigation *before the matter reached the District Attorney’s office* and that he illegally sought
12 and obtained the firing of another County employee for personal reasons are not within the scope
13 of his employment. Again, neither action can be said to have been aimed at fulfilling even an
14 “object” of his employment.

15 In addition, all of the actions undertaken by Mr. Kalina were for his own “purposes and
16 conveniences” and did not (indeed, could not) benefit his employer – the State of California. Mr.
17 Kalina was engaged in the prosecutorial equivalent of a “dalliance” from his actual employment.
18 The County of Mendocino should not now come to his defense.

19 Likewise, *Meester v. Davies* contains facts that are inapposite of those in the matter
20 before the Court. It is clearly the job of the District Attorney to accuse individuals of criminal
21 violations. If an aggrieved citizen thinks that he was improperly accused, his first remedy should
22 be to file a complaint under the Government Code. The State of California should be allowed to
23 evaluate whether the prosecutor properly or improperly performed his duties in ***accusing***
24 individuals of crime and determining whether any compensation is due.

1 However, it is not the job of the District Attorney to influence a police or sheriff
2 investigation of a criminal matter or to otherwise prevent an adequate evidentiary record for
3 prosecution from being collected. Under our system of justice, we have independent branches of
4 government that collect evidence and apprehend criminals, decide whether to charge individuals
5 with crime, and then determine whether evidentiary burdens for such charging and detention are
6 met. Mr. Kalina’s conduct would collapse the first and second jobs into one. “The duty of
7 arresting and apprehending [criminals] rests with the Sheriff, not with the District Attorney.”
8 *Brite v. Brd of Sup’s of Siskiyou County* (1937) 21 Cal. App.2d 233.

9 Falsely accusing someone of a crime qualifies as an improper activity within the realm of
10 a proper object (accusing individuals of crime) for a District Attorney. Suppressing evidence
11 and interfering with an investigation is both an improper activity and does not qualify as
12 fulfilling the object of any duty assigned to the District Attorney. This is made all the more
13 important where, as here, the State Attorney General takes over a criminal prosecution because
14 of a District Attorney’s conflict of interest. Mr. Vroman ultimately disqualified himself under
15 Government Code § 12553 and asked the state to take over the case. However, Mr. Kalina’s
16 fingerprints remain all over the case because the record upon which the State Attorney General
17 will now review the case has been tainted at the investigatory level.

18

19 **IV. CONCLUSION**

20 Ms. Geddry believes that Mr. Kalina’s general demurrer to the First Amended Complaint
21 should be denied and that County Counsel should be admonished for spending taxpayer money
22 defending these clearly private and illegal actions by Mr. Kalina. Further, Mr. Kalina and his
23 wife have already answered the complaint and served discovery in this matter indicating their
24 ability and belief that they should proceed in defense of this matter.

1 Further, it is the policy of the courts of the State of California to construe complaints
2 liberally. Substantial justice between the parties must be accomplished. To that end, leave to
3 amend is routinely granted. Even in light of such policy, Mr. Kalina requests that leave to amend
4 be denied. This is clearly improper.

5 It is an abuse of discretion for the court to deny leave to amend where there is any
6 reasonable possibility that plaintiff can state a viable cause of action. *Goodman v. Kennedy*
7 (1976) 18 C3d 335, 349. Even though request for leave to amend is not required, Ms. Geddry
8 hereby requests such leave if the Court finds that Mr. Kalina was acting in the scope of his
9 employment as Deputy District Attorney in performing the alleged actions. Ms. Geddry has six
10 months in which to file a petition with the County. Less than three months have passed since the
11 killing of her dog and the discharge of the weapon onto her property.

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13
14 Dated this 10th Day of September, 2002

15 By: _____
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