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5 PATRICK M. HAMER AND DONNA L. HAMER, PRO SE

6 PATRICK M. HAMER AND DONNA L.
7 HAMER,
8 Plaintiffs,

9 vs.

10 COUNTY OF EL DORADO: El Dorado
11 County Board of Supervisor District 2 Helen
12 Baumann, El Dorado County Sheriff Jeff
13 Neves, and DOES 1 through 40, inclusive,

14 Defendants

) CASE NO.: 2:08-CV-02269-KJM-EFB
) FORMALLY CASE NO.: CIV.S-08-02269-
) MCE_EFB-PS
)
)

) MOTION IN OPPOSITION TO DCKT.'S 117
) AND 117-2 DEFENDANTS REQUEST FOR
) ATTORNEY FEES.
)

15
16 COMES NOW PETITIONERS PATRICK M. HAMER AND DONNA L. HAMER
17 PRIVATE CITIZENS AND CIVIL RIGHTS ACTIVISTS, in opposition to awarding attorney fees,
18 because of procedural defects by the Magistrate Judge. There is no support in the defense
19 argument's erroneous claim that plaintiffs, "...lawsuit is frivolous if it is "so lacking in arguable
20 merit as to be groundless or without foundation, infra."

21 **Introduction**

22 The Defendants are seeking around \$26,000 from Plaintiffs as compensation for legal fees that
23 Defendants contend they incurred because of legal action filled by Plaintiffs. Plaintiff is seeking
24 relief from such claims.

25
26 Litigation has dragged on for three years because the District Court repeatedly ignored and refused
27 to properly address or respond the merits of the complaint in the legal briefs submitted by Plaintiff.
28

1 The Confusion with the court lies in the fact that the Plaintiff posted on his website comments on the
2 lack of action taken by Sheriff Jeff Neves and then Board of Supervisor Helen Bauman. Supervisor
3 Bauman was at the time aspiring to be chosen by the Republican Central Committee to run for
4 Sacramento Legislator. The negative publicity occurred by the Plaintiff's actions could be perceived
5 as damaging to her chances.
6

7
8 Instead of arguing the plaintiffs subject matter, the first amendment claim regarding the website, the
9 Defendants argued predicate matters addressed in the website that caused the retaliatory politically-
10 based animus exhibited by Baumann's acts.
11

12
13 In order to ameliorate any negative impact on her image Helen Bauman made accusations to the
14 Central Committee that Plaintiff had been arrested for unlawful activity. Although these charges
15 were false, unlawfully, they were corroborated by defendant Sheriff Jeff Neves who aided her in the
16 use of his credibility.
17

18
19 Inappropriately, her private campaign activities lulled named defendants and El Dorado County in
20 conspiracy to deprive Plaintiff's right to be free from arbitrary retaliatory abuse, when she abused
21 her power under the color of law and created false arrests reports against, "Hamer," and then
22 admitted to this in exhibits attached to the complaint. So there is no controversy, yet, illogically, the
23 court has granted Judgment to Baumann authorizing totalitarian abuse to those who object to her
24 dictatorship style governance.
25
26
27
28

1 **Prayer for Relief and Opposition to Attorney Fee Request Motion**

2
3 1. Defendants are barred from claiming attorney fees under FRCP 54(d)(2) which states:

4 **(2) Attorneys' Fees.**

5 (A) *Claim to Be by Motion.* A claim for attorney's fees and related nontaxable
6 expenses must be made by motion unless the substantive law requires those fees
7 to be proved at trial as an element of damages.

8 (B) *Timing and Contents of the Motion.* Unless a statute or a court order provides
9 otherwise, the motion must:

10 (i) be filed no later than 14 days after the entry of judgment;

11
12 2. Judgment was entered on September 6, 2011, Dckt 113. Dckt 117 and 117-1, "Request for
13 Attorney Fees," was filed on October 6, 2011, 16 days after the deadline, Therefore Defendants
14 are not entitled to attorney fees.

15 3. Because the district courts have erred and "misconstrued plaintiffs allegations, see *Macias v. Ihde*,
16 *infra*, they have abandoned the rule of law methods, aiding the defense in an overtly bias display
17 of abuse of discretion, for their friends, the Apellees.

18
19 4. Contrary to the Apellees that our suit was wholly frivolous, appellants cite controlling precedence
20 that proves our claims are far from frivolous, see [Fox v. Vice](#), 2011 U.S. LEXIS 4182 (U.S. June
21 6, 2011), "The defendant is not entitled to fees arising from these non-frivolous charges, see
22 *Christiansburg*, 434 U. S., at 420–421,."

23
24
25 **Appellants Fundamentally Misconstrued False Contentions "Failure to Arrest Dave Randall."**

1 5. For instance, Appellants Alleged, “Entity Liability Unconstitutional Policies and Practices
2 (*Monell* claim: actionable under 42 U.S.C. §1983),” see 5th cause of action Plaintiffs Complaint
3 pg. 20 @ 24.

4 6. Exhibit A1, has always been the Subject matter of the merits of the Appellant Complaint, but it is
5 ignored by the court, these exhibits are so rare in a conspiracy allegation the court can rely on
6 inferences, where this solid proof is not available, but this case rules out inferences, and is ignored
7
8 See Dckt. 22 ¶ 22:

9 *See, e.g., ES Dev., Inc. v. RWM Enters., 939 F.2d 547, 553-54 (8th Cir. 1991) ("it is*
10 *axiomatic that the typical conspiracy is 'rarely evidenced by explicit~ agreements: but must*
11 *almost always be proved by 'inferences that may be drawn from the behavior of the alleged*
12 *conspirators"')* (quoting *H.L. Moore Drug Exch. v. Eli Lilly & Co., 662 F.2d 935, 941 (2d*
Cir. 1981), cert. denied 459 U.S. 880 (1982)), cert. denied, 502 U.S. 1097 (1992).

13 7. Yet the district court ignores 100% controlling precedence submitted by Appellants, and uses
14 conclusory defense allegations and non controlling authorities, in spite of objections.

15 8. So arguing the above *Monell*, *id.* is not frivolous in citing a policy as “failing to act,” which is an
16 abuse of discretion without a rational basis to do.

17 9. In three years of litigation, the district court has ignored objections, and we find this grounds for
18 reversal under rule 8(b)(6), where the defense has ignored and not addressed appellant objections.
19 As a result, the court has not properly addressed or responded to the facts stated in plaintiff
20 motions surrounding this subject and the merits of our real claim.
21

22 10. Instead they created another claim, but it was a erroneous and contrary to law. In *Norse v. Santa*
23 *Cruz*, an on point controlling authority regarding free speech, the En Banc Panel, stated, “We
24 must respectfully reject the City’s attempt to engage us in doublespeak.” “Doublespeak” is
25 defined by Webster.com as, “language used to deceive, usually through concealment or
26 misrepresentation of truth. **Also: gobbledygook.**
27
28

1 11. Magistrate Brennan has been enforcing a premise that plaintiffs have “contended” failure to
2 arrest, that *Gonzales v. Castle Rock*, *infra*, upheld the longstanding fact, that the Constitution does
3 not obligate police to protect, and “failures to enforce or arrest” are not actionable. In this case, to
4 award attorney fees based upon a defense that has not been alleged as the “substantial motivating
5 factor,” is “doublespeak.”

7 12. The subject of the appellants complaint is the “point of view” expressed on a website and the
8 retaliation but-for the plaintiffs’ speech, or “viewpoint discrimination¹,” *Norse*,” *infra*. Objections
9 were made, trying to stop the defense strategy, but during the three years of objections efforts
10 were futile. Nevertheless, the defense strategy, using frivolous defense motions and with the
11 Magistrate’s acquiescence, successfully dismissed a meritorious claim that is reversible on
12 appeal!

14 13. Early on in Dckt. 16 pg 21 @ 26 thru pg Dckt. 22 pg 2 @ 7, appellants objected, stating,
15 “Plaintiffs object to the defense motion to dismiss because their imagined grounds have been
16 asserted without the ability to prove, that plaintiffs have a "failure to act" as a federal question.”
17 In futility appellants pointed to the Appellees’ error in Dckt 16, pg 15 @ 17 thru 23. The
18 appellants state that Failure to act is the point of a web site “www.preventmurder.org” named in
19 exhibit A1, and not the substantial motivating factor.

21 14. Plaintiffs have opposed the false assertion of fact... [plaintiff quoting plaintiff herein this Dckt..]
22 “Plaintiffs have never alleged the claim “stemmed²” or was filed because of a claim for
23 “failure to enforce a restraining order.” See Dckt. 49-1 *supra*, and Dckt. 78 Order # 4(a).
24 See *U.S. v. Hinkson* (9th Cir. 2009) *infra*.

27 ¹ *Norse v. City of Santa Cruz* (9th Cir. - March 12, 2010):

28 ² F&R pp. 2 at 11

1 15. Apellees failed to respond, thus Rule 8(b)(6) prevents defendants from alleging further “failure to
2 arrest or enforce” as a defense, but this has been ignored by the courts and makes the decision
3 appealable and stops the awarding of attorney fees and any claim relating to hours spent by the
4 defense relating to “failure to arrest or enforce defense.”

5
6 16. There has been no argument on the “merits” presented by Appellants in this case against the
7 misapplied failure to arrest contentions because they were not opposed in objections, as the
8 “substantial motivating factor³” is not specified in any defense “Failure to arrest David Randall”
9 claim as a “Constitutional Injury which was objected to and not opposed, see *Swierkiewicz v.*
10 *Sorema N.A.*, 534 u.s. 506, 514 (2002):

11
12 The Federal Rules reject the approach that pleading is a game of skill in which one
13 misstep by counsel may be decisive to the outcome and accept the principle that the
purpose of pleading is to facilitate a proper decision on the merits.

14 17. There is no record indicating that the defense or Magistrate “focused litigation on the merits⁴ of
15 the plaintiffs claim,” *id.*, regarding the above references. Therefore, defense’s imaginary claims
16 will not withstand reversal.⁵

17
18 18. Appellants have been excluded from participating; there is no record of the courts ever responding
19 to any motions, presented by the district court to correct the error,

20 19. In Dckt. 89, “opposition to defense motion to dismiss” at ¶¶ 3 plaintiffs clearly lead with this
21 objection, and again the court allows the ruse to continue:

22
23 Plaintiffs' complaint is to stop retaliation and vindicate the constitutional violations done
24 by defendants for their exercising Free Speech, not in the non existing allegations of "Failure
25 to arrest" people, because parties were arrested based upon plaintiffs local complaints and the
complaints of other citizens. It is again absurd for a court to adopt defense tactics the TAC is
based upon "failure to arrest," where the question should be, "is it rational arrest criminals

26
27 ³ See the second sentence in the complaint at Dckt 82, pg. 1 @ 23.

⁴ “First Amendment Retaliation claim relating to a web site, *infra*,” see Dckt.5 pg. 9 @ 3 thru 4.

⁵ *Teresa Macias v. Mar ldhde* 219 F.3d 1018 (9th Cir. 2000) *infra/infra*, “*infra* Misconstruing is grounds for reversing;”

1 and release them to assault his accusers because they complained to defendants piers causing
2 them damages, their motive for vindictive animus and retaliation.

3 20. AE JA Elliot-Park v. Jarrod Manglona 592 F.3d 1003 2010 U.S. App. LEXIS 723:

4 Would-be criminals will act with a great impunity if they believe they have a get out of jail
5 free card if they commit crimes against the disfavored group." Estate of Maria Teresa
6 Macias v. Mark Ihde 219 F.3d 1018, 1028 *'2000 U.S:

7 21. It is not frivolous to avoid vigilante justice and seek law abiding remedy for murder threats.

8 22. In Macias, id. the district court stated that it was arbitrary government denial of services that

9 caused Maria Teresa's murder: state of Macias v. Ihde, 219 F.3d 1018, 1028-29 (9th Cir. 2000):

10 The Appellants contend that the district court "fundamentally misconstrued" the
11 constitutional deprivation at issue in this case. They maintain that the alleged constitutional
12 deprivation occurred when the defendants failed to provide Mrs. Macias with equal police
13 protection in the months leading up to her death. Their brief states: 35

14 The district court erred in determining that there was insufficient evidence of actual causation
15 in part, by misconstruing [the Appellants'] constitutional injury as `murder' rather than `lack
16 of equal protection.' By so doing, the court ignored the evidence that [the Appellees']
17 arbitrary failure to enforce the law caused [Mrs. Macias] to suffer not only her murder on
18 April 15, 1996, but the three months of harassment, stalking, and death threats that proceeded
19 it.

20 23. This case is on point and controlling, because the Apellees, attempting to extract attorney fees,
21 are asserting that the plaintiffs had no merit and their claims were baseless, and the way they
22 asserted this claim was to "fundamentally misconstrue" the case. Yet the Ninth circuit disagreed
23 with them 10 years ago, but the Eastern District has struck down controlling precedence. This
24 will not stand on appeal.

25 24. The appellants speech was to warn the public that El Dorado County was ignoring Macias
26 Precedent, and thus according to the Ninth Circuit, "a cause of murder" for stalking victims.

27 25. So the District Court has ruled that plaintiffs have been singled out and not, allowed to make
28 public statements that show "thumbs down" on policy.

1 26. According to the district court, the only contention ever mentioned is the defense contention, see
2 Dckt.103, pg. 15 at 25 thru pp 16 at 5 and pp. 15 at 16 thru 19, in the Findings and
3 Recommendation Dckt. 103 which erroneously states, “that the Appellants Contend,” @ pg. 19 at
4 25:

5
6 27. This above defense contention as a premise is uncogent and does not follow that we show, supra,
7 the first sentences of the claim, and contrast it with a predicate, “failure to arrest” defense
8 allegation way down in the pleadings on page “24, Dckt 82.”

9 28. Again this is no argument against the plaintiffs claim, as this the record reflects, their panoply of
10 ignored opposition to the theory of “failure to arrest” as the nexus Apellees contend, is of course,
11 not actionable, so for the Appellants to make that argument as the “substantial motivating factor”
12 is absurd. **Anthoine v. North Central Counties Consortium, 605 F.3d 740 (9th Cir. 2010):**

13
14 To show that retaliation was a substantial or motivating factor behind an adverse
15 employment action, a plaintiff can

16 (1) introduce evidence that the speech and adverse action were proximate in time, such that a
17 jury could infer that the action took place in retaliation for the speech;

18 (2) introduce evidence that the employer expressed opposition to the speech; or

19 (3) introduce evidence that the proffered explanations for the adverse action were false and
20 pretextual. Id. at 977...

21 29. In order to support this claim, a plaintiff must allege facts sufficient under Twombly, infra, and
22 we have done that! Instead of being rewarded

23 30. Plaintiffs did allege the real constitutional injury in the first few sentences of Dckt 82, discussed,
24 infra, and if this is not reasonable, you have to change the constitution. In Norse v. Santa Cruz,
25 infra, in oral argument, the Ninth circuit told Santa Cruz, “we will not let you engage in Double
26 speak...and we will not let you rewrite the First Amendment.” Eastern district court has not been
27 acquiescing to justice, and refused to acknowledge this precedent.
28

1 31. Plaintiffs objections, discussed infra, were ignored. Thus, this encouraged the Apellees to argue
2 this Red Hearing defense strategy with vigor. Although Appellants objected after every frivolous
3 defense motion asserted, contradicting their argument with the free speech claim objecting to the
4 false contention as stated by defense.

5
6 32. In order to reach this Red Herring defense, they had to bypass the first “simple statements in the
7 complaint that comply with FRCP rule 8(a)(2), as if they were "...pigs, hunting for truffles
8 buried in briefs⁶.”

9 33. They could not see the first sentences and the First Amendment allegations followed by the
10 assertion of that claim being the “substantial motivating factor.” See Anthoine v. North Central
11 Counties Consortium, 605 F.3d 740 (9th Cir. 2010):

12
13 To show that retaliation was a substantial or motivating factor behind an adverse
14 employment action, a plaintiff can
15 (1) introduce evidence that the speech and adverse action were proximate in time, such that a
16 jury could infer that the action took place in retaliation for the speech;
17 (2) introduce evidence that the employer expressed opposition to the speech; or
18 (3) introduce evidence that the proffered explanations for the adverse action were false and
19 pretextual. Id. at 977...

20 34. All of the above elements have been allege, and on appeal we will show this is cause to reverse
21 the Judgment because Rule 8(b)(2)(3), inter alia, were “**Denials** —A denial must fairly respond to
22 the substance of the allegation..”

23 35. ...And were Rule 8(d)(2) says:

24 (d) Pleading to Be Concise and Direct; AlternativeStatements; Inconsistency.
25 (1) In General.
Each allegation must be simple, concise, and direct. No technical form is
26 required.
27 (2) Alternative Statements of a Claim or Defense.

28

⁶ see Defense Motion asserting this in Dckt. 106 pp 2 at 20 thru 23: "...pigs, hunting for truffles buried in briefs."
Christian Legal Society v. Wu, 626 F.3rd 483, 487-488 (9th Cir. 2010); Rodella v. Jackson, No. CIV S-09-0794 GEB EFB
P, 2011 WL 587557 *7 (E.D. Cal. Feb. 8, 2011).

1 A party may set out 2 or more statements of a claim or defense
2 alternatively or hypothetically, either in a single count or defense or in
3 separate ones. If a party makes alternative statements, the pleading is
4 sufficient if any one of them is sufficient.

(3) Inconsistent Claims or Defenses.

4 A party may state as many separate claims or defenses as it has,
5 regardless of consistency.

(e) Construing Pleadings.

Pleadings must be construed so as to do justice

7 36. There is only one claim, and the is the “failure to arrest or enforce claim, contrary to the required
8 necessity of “two or more claims, id. Rule 8” made by the defense. And the court did not
9 “construe pleadings to do justice.”

10 37. Thus the Supreme Court has ruled, exactly as the appellants have been objecting too, “remove the
11 failure to arrest defense claims!”

12 38. A recent Supreme Court Decision, Fox v. Vice, *infra*, regarding awarding Attorney fees for Civil
13 right suits, supports all of the appellants contentions and objections. These objections, as a matter
14 of law, were to remove the Apellees false contention that our claim was a “Failure to Arrest Dave
15 Randall Claim.” The premise was imagined and uncogent, and it was objected to for 3 years,
16 without any response by the court. Apellees without having basis to prevail on the merits
17 prevailed.

18 39. The Fox v. Vice case, was a case that is on point involving Political Campaign corruption.
19 However, that plaintiff was an opposing candidate in a similar smear campaign and sued his
20 opponent.
21

22
23 **Plaintiffs Unopposed and Ignored First Amendment Claim is not Frivolous**
24

25 40. The first few sentences in the complaint make for the Rule 8 short plain statement, see Dckt 82
26 pg. 1 ¶ 1:
27
28

1 Plaintiffs PATRICK M. HAMER AND DONNA L. HAMER complain and allege as
2 follows:

3 INTRODUCTION

4 1. This complaint arises out of a vindictive action against the plaintiffs, by defendants Neves
5 and Baumann who has final policy making authority and who adopted a policy of
6 discriminatory purpose. The defendants succumbed to unjustified animus in retaliation,
7 chilling the plaintiff's free speech and other First Amendment and Fourteenth Amendment
8 rights; and this was a substantial motivating factor for the defendant's actions. Plaintiffs
9 exercised a constitutional right to prevent officials from abusing their power under the
10 color of authority by defending their good names: from the defendant's unjustified animus
11 through legal redress and media and they were punished for this when the defendants
12 denied them equal protection of rights...

13 41. There is nothing about "failure to arrest or enforce" in the stated claim. You have to go to page 24 or
14 Dckt. 82 the "COMPLAINT," to see any mention of "failure to enforce ordinances" which would
15 be the first mention of any failure to protect, and not about "David Randall, as stated erroneously
16 by the defense and Magistrate rulings. These "failures" they mention were recorded in the "web
17 site" that the defense and magistrate have hidden from the record. Why would they do this? We
18 contend that our case above, "free speech retaliation is "viewpoint discrimination" that put Santa
19 Cruz, and the City of Maui on notice to stop this unconstitutional behavior. This case is ripe for
20 Sacramento and El Dorado because they are contentious in refusing to comply with Bogan v.
21 Scott-Harris U.S. Supreme Court that is upheld by Kaahumanu v. Cnty. of Maui, 315 F.3d 1215,
22 1220 (9th Cir. 2003), upheld in **Norse v. City of Santa Cruz** (9th Cir. - March 12, 2010). The
23 Norse ruling states:

24 42. (1) Ad hoc decision making. In considering the first factor, the court determined that the
25 counsel's decision denying Ms. Barkers application was ad hoc. The Court concluded: The
26 decision was taken based on the circumstances of the particular case and did not affect public
27 policy or create a binding rule of conduct.
28

1 43. Appellants were engaging in private exercise of a fundamental right to own and operate media
2 outlet on the world wide web, called www.preventmurder.org. But-for the appellants website, the
3 Apellees alleged unjustified libel per se retaliation that would have never taken place . This law
4 suit would not have been needed to redress the grievance because appellants were led to believe
5 by the Supreme Court in prior speech cases:
6

7 “Governmental "action designed to retaliate against and chill political expression strikes at
8 the heart of the First Amendment." Gibson v. United States, 781 F.2d 1334, 1338 (9th
9 Cir.1986)

10 44. It does not follow that a defense has to reach way past the first few sentences to deep in a
11 document to find a claim that is not supported as the “substantial motivating factor.”

12 45. The Supreme Court in Fox, invoked the “but-for” standard in interpreting them. Interestingly
13 enough the “but for,” test see Anthoine, standard can interpret if the allegations made in support
14 of the web site, “but for” that site, would the Apellees have retaliated, Anthoine v. North Central
15 Counties Consortium, 605 F.3d 740 (9th Cir. 2010):
16

17 The “but-for causation inquiry” is “purely a question of fact.” Robinson, 566 F.3d at 825.
18 **Appellees contend that Anthoine has not carried his burden at the third step of showing**
19 **that his statements to Freeman were a substantial or motivating factor** [emphasis added]
20 in any adverse employment action. But **appellees do not directly address the related**
21 **question,** [emphasis added] at the fifth step, of whether they have carried their own burden
22 of showing that his statements were not a but-for cause of the adverse actions. As we have
23 already discussed, Anthoine **has provided evidence from which a jury could conclude**
24 **that his protected speech was a motivating factor in the adverse actions.** [emphasis
25 added] In light of the absence of conclusive evidence that Anthoine's unprotected behavior
26 was the but-for cause of the adverse actions, that question cannot be resolved on summary
27 judgment.
28

29 46. Appellees do not even have to argue our pro se allegations stating the “Substantial Motivating
30 Factor.” All they have to do is allege anything they want, and the court will uphold uncogent
31 arguments.
32

1 47. We argued this web site and that “Bob Berger” forced a candidate, Helen Baumann, into
2 explaining her “lack of concern...” see Exhibit A2, and there was no response by the defense or
3 court, and thus to award fees is barred by the following controlling precedence.

4 48. In Fox, the Justices said you have to remove the allegations that are claimed to be frivolous and
5 see if what is left. We have been objecting and asking the court to do just that, but then they
6 would not have a defense. It is odd that the court answers the objections after a kangaroo court
7 judgment.
8

9 49. We alleged that their defense was frivolous, “failure to arrest David Randall,” though we state he
10 was arrested 5 times in the complaint. So a defense claim that is implausible on its face, is not a
11 “rational basis” for the Eastern District Court to dismiss this case and harm plaintiff’s, see
12 Engquist v. Oregon Dept. of Agriculture, 128 S. Ct. 2146 - Supreme Court 2008:
13

14 Thus, when it appears that an individual is being singled out by the government, the specter
15 of arbitrary classification is fairly raised, and the Equal Protection Clause requires a "rational
16 basis for the difference in treatment." *Olech*, 528 U. S., at 564.

17 50. Furthermore, the court adds insult to injury, and is requiring a hearing that is time barred, yet the
18 past shows that regardless of the law, the court will undoubtedly erroneously award 26,000.00
19 dollars in attorney fees, without basis. How can a court contradict a judgment by all of a sudden
20 enforce the law, that contradicts Fox v. Vice? See new *Fox v. Vice*, 2011 U.S. LEXIS 4182 (U.S.
21 June 6, 2011) Which Identifies the but-for application:

22 The dispositive question is not whether attorney costs at all relate to a non-frivolous claim,
23 but whether the costs would have been incurred in the absence of the frivolous allegation. \

24 So the Fox court said.

25 The trial court has wide discretion, but must apply the correct but-for standard. And the
26 appeals court must determine whether the trial court asked and answered this but-for
27 question, rather than some other. Pp. 7–11.
28

1 Amazingly this case in on point, as my claim arose out of “campaign conduct.”

2 “The charges arose out of Vice’s conduct in the campaign, and with respect both to the
3 frivolous federal claims and to the non-frivolous state-law claims, his “defense entailed proof
4 or denial of essentially the same facts.”

5 In the appellants case at hand the district court made the same error:

6 “...it failed to take proper account of the overlap between the frivolous and non-frivolous
7 claims.”

8 51. This court ignored our insistence a “but-for test” on our first amendment claim, and this request in
9 objections was not responded to by defense or the court.

10 **The Court Used an Improper Standard of Review for Pro Se litigants**

11 52. Mckeever v. Block, *infra*, points to an absurdly drafted pro se pleading, and the Ninth Circuit
12 which stated that it did “fairly put the opposing party on notice, and that is all that is
13 required.” Dckt 16, *id.* was an “injunction request”. The Magistrate entered an order, Dckt 21 on
14 the pleadings and dismissed the claim, making a ruling on an injunction in violation of 18 USC
15 636(b)(1)(A) violating this statute. Thus, it allowed a unmeritorious defense to proceed.

16 53. The objections in the appellant records that follow to this day, all point to “clearly erroneous
17 rulings by a magistrate under 28 USC 636(b)(1)(A) deficiency by the defense, and the objection
18 has not been opposed, see. In addition, we show, using the “but-for” test that validates
19 appellants’ ignored version of the ignored underlying website that caused the Sacramento
20 Republican Party to question Helen Baumann’s integrity, honesty and
21 credibility, when she was seeking their approval for a legislative position in a meeting on September
22 13th 2007. See **Robinson v. York**, 566 F.3d 817, 822 (9th Cir. 2009):

23 The “but-for causation inquiry” is “purely a question of fact.” Robinson, 566 F.3d at 825.
24 Appellees contend that Anthoine has not carried his burden at the third step of showing that
25 his statements to Freeman were a substantial or motivating factor in any adverse employment
26 action.
27

1 Similarly, all that is required is alleging the fact that the website was the cause of “viewpoint
2 discrimination” to state a claim of relief. Because Appellants are pro se, their deficiencies must be
3 liberally construed, as in Norse, infra, see **Hebbe v. Pliler**, 627 F. 3d 338 – (9th Cir. 2010),
4

5 For the purposes of a motion to dismiss, we construe the pleading in the light most favorable
6 to the party opposing the motion, and resolve all doubts in the pleader’s favor. *See Hospital*
7 *Bldg. Co. v. Trustees of Rex Hospital*, 425 U.S. 738 (1976). We therefore take the factual
8 allegations in Hebbe’s complaint as true. *See Galbraith v. County of Santa Clara*, 307 F.3d
9 1119, 1121 (9th Cir. 2002)

10 We “review *de novo* a district court’s disposition of a motion to dismiss pursuant to Rule
11 12(b)(6).”

12 On September 27, 2007, a jury returned a verdict in favor namely, that a complaint may
13 survive a motion to dismiss only if, taking all well-pleaded factual allegations as true, it
14 contains enough facts to “state a claim to relief that is plausible on its face.” *Ashcroft v.*
15 *Iqbal*, 129 S. Ct. 1937, 1949 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570
16 (2007)). [...] *pro se*, his complaint “must be held to less stringent standards than formal
17 pleadings drafted by lawyers,” as the Supreme Court has reminded us since *Twombly*. *See*
18 *Ericksn v. Pardus*, 551 U.S. 89, 94 (2007) (per curiam). Because *Iqbal* incorporated the
19 *Twombly* pleading standard and *Twombly* did not alter courts’ treatment of *pro se* filings, we
20 continue to construe *pro se* filings liberally.

21 54. Contrary to the defense assertion, that there is no merit to the case, Exhibit A1 came from two
22 reliable sources: (1) Bob Berger, a committee member of the Sacramento Republican Party, and
23 (2) The office of late Senator, Dave Cox, through his aid, Rob Olmstead, who actually provided
24 the physical exhibit. The State Senators office affixed Exhibit A1 with official judicially
25 noticeable Senatorial Seal on the Correspondence. As stated, the subject of the appellate claim
26 can be deduced or inferred from reading Exhibit A1, and with A2, A3, and Q, which are a part of
27 the “set of facts” provided. Exhibit Q was provided by the Defense in Dckt 71, as a Defense
28 exhibit. A1, A2, A3, which are attached to the original complaint and all exhibits mentioned,
have been referenced.

1 55. Though they are referenced, the County Appellees have not posed objections to the exhibits, nor
2 have Appellees referenced the subject matter contained therein in three years of litigation. Yet the
3 Appellees absurdly state that this complaint is frivolous, stating in Dckt, 117-1 pg 2 @ 23,
4 “Plaintiffs were so angry that a neighbor was not arrested that they never focused on the facts
5 and applicable legal principles” [emphasis added]. This is an egregious error, and the FRCP
6 rule 8(b)(6) is the solution to correct this, as well as,
7

8 28 USC § 636(b)(A) “A judge of the court may reconsider any pretrial matter under this
9 subparagraph (A) where it has been shown that the magistrate judge’s order is clearly
10 erroneous or contrary to law.”

11 56. Dckt 22 objection, id. is sufficient and the District Court Magistrate cannot ignore the FRCP.
12

13 **The Ninth Circuit Court does not punish citizens filing claims that have basis!**
14

15 57. The Ninth Circuit, in the recent case denying attorney fees in a civil right claim, addresses the
16 arbitrary treatment of those who “perceive” civil rights abuse against them. “Harris v. Maricopa
17 County Superior Ct,” infra is concerned that:

18 Even when unsuccessful, such suits provide an important outlet for resolving grievances in
19 an orderly manner and achieving nonviolent resolutions [emphasis added] of highly
20 controversial, and often inflammatory, disputes.

21 Guaranteeing individuals an opportunity to be heard in court instead of leaving them only
22 with self-help as the means of remedying perceived injustices creates respect for law and
23 ameliorates the injury that individuals feel when they believe that they have been wronged .

24 58. Federal Evidence Code Rule 103(a)The court cannot be erroneous by denying defense motion to
25 dismiss because the FR 103 which is erroneous and Rule 103(a)(1) no objections have been made
26 by defense, and Rule 103(a)(2) the court made a definitive ruling
27
28

1 59. Judge Wagoner volunteered his inference as coconspirator, and this is admissible under Federal
2 Rules of Evidence Code 902(1)(2) [herein referred to as FRE] exhibit Q⁷ and Defense submission
3 identical “exhibit 1 at Dckt. 71 submitted by a defendant and the court failed to address it and it is
4 undisputed.
5

6 60. In another recent private citizen free speech case, September 2011, municipal officials appealed to
7 the Supreme Court, and their Certiorari was denied. So Norse v. Santa Cruz stands. In that case
8 the En Banc panel ruled that citizens can associate government officials as Nazis by hand salute,
9 T-Shirt, etc. Rule 8(b)(6) states that the “failure to arrest claims” are not valid, after Dckt 22, due
10 to the objections.
11

12
13 **Failure to Arrest Claims Were dismissed and not alleged in the Complaint Dckt 82.**

14 61. Furthermore, Judge England’s order, Dckt 78, adopted in full and dismissed all cause of actions
15 for “Failure to Enforce Restraining Orders,” see Dckt. 78 pg. 2 @ 17. However, as plaintiffs had
16 never claimed constitutional injury for “failure to enforce a restraining order”, it does not follow
17 that the defense could still use these uncogent dismissed premises, though they did. The only
18 existing record of “failure to enforce a restraining order” is the Gumpert and Magistrate Brennan
19 defense team’s contentions, Dckt 117-1 pg. 2 @ 20 thru 26, and Dckt.103, pg. 15 at 25 thru pp 16
20 at 5 and pp. 15 at 16 thru 19.
21
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26 ^{7 7} TAC Dckt. 82 at pp. 14 footnote at line 28. Dckt. 16 Hard COPY See Dckt. 71 Identical to
27 exhibit q, submitted by defendant Brown, but not addressed by the defendants herein, or the court.
28 Self authenticated by the seal, and plaintiffs have an original wet signed copy E.C 902(1)(2).

1 62. In order to overcome a 12(b)(6) motion appellants had to successfully argue that Qualified
2 Immunity was abrogated by Monell, citing Pembaur requirements, and that Appellants had pled a
3 prima facie claim:

4 FRCP rule 12(b)(6) failure to state a claim upon which relief can be granted; see *Hartman v.*
5 *Moore*, 547 U.S. at 260 (citing *Mt. Healthy*, 429 U.S. at 287). An objective legitimacy test,
6 argued for by Defendants, (Defs.' Mem. P. & A.: 6):

7 Once a plaintiff makes "a prima facie showing of retaliatory harm, the burden shifts to the
8 defendant official to demonstrate that even without the impetus to retaliate [*18] he would
9 have taken the action complained of"

10 63. In order to win their claim, the Appellees created a fallacy by "Red Herring" using the
11 explanations or "Monell" requirements showing a "pattern of practice."⁸ "Appellants have always
12 contended that the district court and defense erred in presenting a "failure to arrest" argument
13 against the Appellant argument that arose from "viewpoint discrimination," that appellants plea
14 was the cause of "vindictive political animus."

15 **Norse v. City of Santa Cruz** (9th Cir. - March 12, 2010):

16 [13] Thus, even though we can tell from the face of the amended complaint that Norse's
17 provocative gesture was made after the public comment period closed, Norse still had a First
18 Amendment right to be free from viewpoint discrimination at that time.¹⁰

19 *Monteiro v. City of Elizabeth*, 436 F.3d 397, 404 (3d Cir. 2006) "In cases in which a
20 constitutional violation depends on evidence of a specific intent, it can never be objectively
21 reasonable for a government official to act with the intent that is prohibited by law."

22 THE CITY'S ARGUMENT PROVES THE DANGER OF ITS THEORY [emphasis added].
23 The City contended at oral argument before us that, because the public had no First
24 Amendment rights after the public comment period had closed, the Council could
25 legitimately eject members of the public who made a "thumbs down" gesture, but allow
26 members of the public who made a "thumbs up" gesture to remain.¹¹

27 _____
28 ⁸ This pattern was banned under *Monell v. Department of Social Services*, 436 U.S. 658 (1978).

1 64. Finally, after three years, in Document 103 pg 14 @ 3 thru 6, of the Findings and
2 Recommendations, the terms stated as “Exhibits, A1, A2, A3.” But stated out of context to our
3 claim:

4 Exhibits A1, A2, and A3, “are a direct causal link that show that Neves conspired with
5 Baumann, both with ‘final policy making authority,’ and many others named in the exhibits,
6 and because a witness and possible Doe, Brenda Bailey corroborates and explains this
7 conspiracy, these are plausible facts.” Dckt. No. 89 at 13.

8 65. These facts are waived by the Apellees and they cannot argue other than supporting the inferences
9 in favor of the Appellants under the authority of FRCP Rules 8(b)(6), and 12(f)(2), 12(g)(2),
10 12(h), 12(i), discussed infra.

11 66. However, this does point to the fact that our claim is not based upon the contentions of the
12 defense in the only “sworn affidavit, Dckt 117-1 pg. 2 @ 20 thru 26 that is a proclamation under
13 consequences of arrest for “perjury.” When Franklin Gumpert attests:

14 Instead, I believe that this litigation was initiated as a vendetta because Plaintiffs were so
15 angry that a neighbor was not arrested that they never focused on the facts and applicable
16 legal principles, becoming an overbroad sweeping attack seeking damages against
17 COUNTY, the elected SHERIFF, members of the Board of Supervisors and their staff,
18 prosecutors and deputy sheriffs.

19 67. However the complaint states in 5 locations that “David Randall was arrested,” Dckt 82 pg. 6 @
20 20, 27; pg. 9 @ 3 thru 8, 12, 19. This is a contradiction on the defense premise. Apellees weak
21 premises remove the facial plausibility from the defense claim. This is so apparent and is
22 appealable. Nevertheless, why is the court showing overt bias at the District court level in their
23 favoritism against the appellants?

24 68. Appellants have been excluded from the foundations of the legal process that other similarly
25 situated pros se litigants as a matter of law, are entitled to, and this is not constitutional to exclude
26 them! The court cannot show where any “light favorable” to them has been provided. Hebbe is a
27
28

1 pro se specific case and the standard of review that is ignored, therefore, clearly erroneous and
2 contrary to law.

3 **Hebbe v. Piler**, 627 F. 3d 338 – (9th Cir. 2010),

4 For the purposes of a motion to dismiss, we construe the pleading in the light most favorable
5 to the party opposing the motion, and resolve all doubts in the pleader’s favor.

6 69. Also see:

7 Review of a complaint under Fed.R.Civ.P. 12(b)(6) is based on the contents of the complaint,
8 the allegations of which are accepted as true and construed in the light most favorable to the
9 plaintiff. North Slope Borough v. Rogstad (*In Re Rogstad*), [126 F.3d 1224](#), 1228 (9th Cir.
1997)

10 70. Magistrate Brennan’s rulings are “misconstrued⁹” using an incorrect standard of review. Of
11 course he is referring to his “legal principles of Gonzales v. Castle Rock” that precludes a
12 constitutional claim on those merits, see Dckt 6-2 pg. 5 @ 22 thru 27:

13 Plaintiffs cannot prevail in a civil rights action against police and a municipality for an
14 alleged due process violation, arising from failure to enforce it. *Town of Castle Rock,*
15 *Colorado v. Gonzales*, 545 U.S. 748, 756-758 (2005) [any benefit received by third party
16 from having someone else arrested for a crime generally does not trigger procedural or
17 substantive due process protection].

18 For the plaintiffs “legal Principles” that he says The Complaint states in the first sentences
19 quoted

20 Failure to arrest claim was mooted by objections in Dckt. 22 pg. 2 @ 7:

21 2. Plaintiff’s object to court failing to notice, prima facie evidence Exhibit A, Q, and witness
22 statements exhibit C, and overt evidence of retaliation by a policy of failure to act. Proving
23 the merits of a conspiracy is not easily overcome, when it is written on official documents,
24 inter alia. The Court and defense are ignoring *Pembaur v. City of Cincinnati*, 475 U.S. 469,
106, 106 S. Ct. 1292, 89 L. Ed. 2d 452 (1986) and other case precedence regarding policy
cited in the complaint that form the basis of his suit.

25 71. Plaintiffs object to the defense motion to dismiss on grounds asserting without the ability to
26 prove, that plaintiffs have a “failure to act” as a federal question. Plaintiff’s demure defense

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1 motions and arguments to dismiss, because they have filed motions that are not of the nature of
2 this complaint.

3 72. Appellants repeatedly objected to the uncogent premise when they refused to respond to previous
4 objections, but it was futile. Dckt. 76-2, Request for Judicial Notice, @ ¶ 46 again points to
5 defense references to a “failure to arrest...” claim.

6 73. This reflects a pattern of abuse, and the Magistrate warned Appellants that they could be
7 “sanctioned for this,” see in Dckt. 34 “Order” pg 1 @ 23 thru pg. 2 @ 1.

8 74. Yet this appears to be bias when “patterns” are overt, but allowed to be hidden from the
9 Magistrate or Defense record, and that is prejudicial to the Appellants’ case, as is now obvious.
10

11 75. MOTION TO STRIKE: Appellees “declare under penalty of perjury,” Dckt. 117 pg. 3 @ 3 thru
12 7, that states:

13 Plaintiffs alleging that their Constitutional rights were violated when numerous individuals
14 did not take seriously enough their legal duties to arrest, prosecute and convict David
15 Randall, a neighbor against whom Plaintiffs had many disputes [Docket 5, ¶20].

16 76. This Claim is barred by Rule (8)(b)(6), due to unopposed objections in Dckt. 22, and the
17 following Appellant Documents. Yet we show that this is a pattern of pleading ignored by the
18 court to allow imaginary citations that don’t exist concerning the merits of the plaintiffs’ claim
19 which is contrary to the Appellees’ merits of their 12(b)(6) motion which was successful but in
20 error. This is a mistake and it is reversible¹⁰.

21 77. According to FRCP Rule 8(b)(6) “Affect of failing to deny” states, “An allegation ... is admitted
22 if a responsive pleading is required and the allegation is not denied. If a responsive pleading is not
23 required, an allegation is considered denied or voided.”
24

25 78. Also FRCP Rule 72(a) states:
26

27
28 ¹⁰ Macias v. Mar Idhde 219 F.3d 1018 (9th Cir. 2000) infra!infra, “infra Misconstruing is grounds for reversing;”

1 A party may serve and file objections to the order within 14 days after being served with a
2 copy. A party may not assign as error a defect in the order not timely objected to. The district
3 judge in the case must consider timely objections and modify or set aside any part of the
4 order that is clearly erroneous or is contrary to law.

79. Also FRCP Rule 72(b)(2)(3) "Objections," states:

5 **(2) Objections.**

6 Within 14 days after being served with a copy of the recommended disposition, a party may
7 serve and file specific written objections to the proposed findings and recommendations. A
8 party may respond to another party's objections within 14 days after being served with a
9 copy. Unless the district judge orders otherwise, the objecting party must promptly arrange
10 for transcribing the record, or whatever portions of it the parties agree to or the magistrate
11 judge considers sufficient.

10 **(3) Resolving Objections.**

11 The district judge must determine de novo any part of the magistrate judge's disposition that
12 has been properly objected to. The district judge may accept, reject, or modify the
13 recommended disposition; receive further evidence; or return the matter to the magistrate
14 judge with instructions.

13 80. Though we objected, the court has no idea what is alleged other the one contention because the
14 court denies the appellants all basic rights with the exception to pay a filing fee!

15
16 81. Dckt. 117 Request for Attorney Fees by Appellees states that , "A lawsuit is frivolous if it is "so
17 lacking in arguable merit as to be groundless or without foundation." Karam v. City of Burbank,
18 352 F.3rd 1188, 1195 (9th Cir. 2003)," The Appellees have either been punished as a result of
19 allegations made by the Appellants, such as James Wagoner's 2009 admonishment
20 http://www.cjp.ca.gov/res/docs/public_admon/Wagoner_DO_9-13-11.pdf based on the
21 allegations in this complaint, or their political party has challenged them on allegations that
22 originated from the Republican Party Committee and which forms the basis for a First
23 Amendment retaliation claim that has merit. **And the defense claims in Dckt 117 (Does this lead
24 into 3, below?)**
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1 82. The recent Ninth Circuit oral argument in *Norse v. Santa Cruz*, case # 07-15814EB argument
2 depended on deductive logic using Hypothetical Syllogisms. The En Banc panel simply would
3 reverse the forms, and find the fallacy of error in uncogent premises. The City Council required
4 acquiescence from the En Banc panel to adopt absurdly illogical ideas. This is exactly what the
5 Appellees have depended on in the district court to win a case that otherwise is a prima facie First
6 Amendment claim. However, the court has only considered the false contentions, which we show
7 are impossible for a court to conceive.
8

9 83. Simply using a proper hypothetical syllogism, appellants can explain a fallacy that results in
10 irreparable harm that should not happen in terms of the facts that the district court has hidden
11 from orders and the District Court Judges, who rely on the honesty of their Magistrates.
12

13 84. Suppose that the Appellees breached a contract, failing to build a house on the Appellants' lot,
14 and the Appellees contended to the court that this was not true. The media, taken to the empty
15 lot, would be appalled. The appellees probably would be jailed by the contractor license board.
16 But plaintiffs' First Amendment Retaliation claim being intangible, injury is intangible and thus
17 more difficult to demonstrate by visual tangible facts, but the elements are supported to state a
18 claim and that is what matters.
19

20 85. Defense claim and the District Court erroneously dismissed plaintiffs' First Complaint, quoting
21 Dckt.34 pg. 2 @ 16 thru pg. 3 @1, "*Ashcroft v. Iqbal*, ___ U.S. ___, 129 S.Ct. 1937, 1949 (May
22 18, 2009) (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570, 556, 557 (2007)):
23

24 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.

25 Complaint clearly fails to conform to Fed. R. Civ. P. 8(a),1 which requires that a complaint
26 set forth "a short and plain statement of the claim[s] showing that the pleader is entitled to
27 relief." Fed. R. Civ. P. 8(a)(2).
28

1 86. The Appellees argued their own imaginary merits, “failure to arrest” the content of the website that
2 caused Appellee Baumann to lose her credibility with the Republican Party, Exhibits, A1, A2, A3.

3 The Content of the website “but-for” it, is the proximate cause of Helen Baumann’s animus.

4 87. Further objections noted in Dckt. 22, pg. 1 thru 7, “declaring that a complaint should not be
5 dismissed unless it appears that the plaintiff can prove no set of facts in support of his claim,”
6 citing, “Ascon Properties, Inc. v. Mobil Oil Co., 866 F.2d 1149, 1155 (9th Cir. 1989).”

7 88. Ironically, and illogically, proving the Magistrate’s premises are uncogent and unsound, at Dckt.
8 22, ¶ 28 pg. 29 thru pg 32 is a heading titled, “Declaration and explanations of exhibits.” This
9 objection motion explicitly identified and explained that “facts” that supported the “facial
10 plausibility,” *id.*, if the claim. While pages 34 thru 63 are exhibits, referencing claims in the
11 complaint.
12

13 89. It would have been FUTILE if the Appellants had drafted a 100% perfect complaint, but the
14 misapplication of *Iqbal*¹¹ pleading standards made impossible any effort to successfully plead a
15 claim in the Magistrates forum.
16

17 90. Regardless, of the “Facts” pled or not pled, or as a matter of law, holding Pro Se pleadings judged
18 under the “*Iqbal* standards” are not supported by the Constitution and, therefore, are clearly
19 erroneous, see *Hebbe v. Pliler*, 627 F. 3d 338 – (9th Cir. 2010):
20

21 On September 27, 2007, a jury returned a verdict in favor, namely, that a complaint may
22 survive a motion to dismiss only if, taking all well-pleaded factual allegations as true, it
23 contains enough facts to “state a claim to relief that is plausible on its face.” *Ashcroft v.*
24 *Iqbal*, 129 S. Ct. 1937, 1949 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570
(2007)).

25 91. Though plaintiffs plead facts, in Dckt.5, and they were also supported by objections, Dckt. 22, the
26 “factual allegations as true, *Hebbe*, *id.*, and the facts are undisputed and admitted, see *Hebbe*, *id.*
27
28

1 ...proceeded *pro se*, his complaint “must be held to less stringent standards than formal
2 pleadings drafted by lawyers,” as the Supreme Court has reminded us since *Twombly*. See
3 *Ericksn v. Pardus*, 551 U.S. 89, 94 (2007) (per curiam). Because *Iqbal* incorporated the
4 *Twombly* pleading standard and *Twombly* did not alter courts’ treatment of *pro se* filings, we
5 continue to construe *pro se* filings liberally. This is particularly important where, as in the
6 instant case, a petitioner is a *pro se* prisoner litigant in a civil rights matter. See *Bretz v.*
7 *Kelman*, 773 F.2d 1026, 1027 n.1 (9th Cir. 1985) (courts “have an obligation where the
8 petitioner is *pro se*, particularly in civil rights cases, to construe the pleadings liberally and to
9 afford the petitioner the benefit of any doubt.”).

10 92. As noted, that facts speak for themselves, in the Magistrates Order, 34 pg. 2 @ 16 thru pg. 3 @1,
11 Magistrate Brennan, further demonstrates abuse of discretion as a matter of law and it is
12 indisputable, when his citation refers to “*Twombly*,” explicitly.

13 93. Logically it does not follow, non sequitur, that Magistrate Brennan could be a Magistrate, and
14 unable to ‘liberally construe’ Pro Se pleadings he may feel are “rambling,” Dckt.34 pg. 3 @ 13
15 thru 16. The relevant law is *Hebbe*, id., and Magistrate Brennan show no evidence of an attempt
16 to preserve the rights of plaintiffs, where he did in fact hold the “pro se pleadings to less stringent
17 standards than formal lawyer pleading, *Hebbe id.*” The Magistrate failed to “construe the
18 pleadings liberally and to afford the petitioner the benefit of any doubt, *Hebbe id.*”

19 94. Using a hypothetical syllogism, if the magistrate is abandoning “benefit of doubt, id.,” which is
20 his requirement as a matter of controlling law, then he is extending litigation costs, and this is not
21 the fault of a pro se litigant. It is required that he provide a rational basis, other than the
22 conclusory terms and words like “rambling,” supra which are fallacies that cannot support an
23 order to dismiss a claim.

24 95. Furthermore, in the case of a Magistrate encouraging frivolous litigation by appellees, instead of
25 discouraging the “engineering” of a frivolous defense, the specter of arbitrary ethics violations
26 points to the only benefit, a profit motive, and not “substantial justice” for the appellants.

27 ¹¹ Dckt. 34 pg. 2 @ 16 thru 22,
28

1 96. Plaintiffs have never have never had their day in court. El Dorado County has fabricated false
2 criminal arrest reports against the plaintiffs. Exhibit A1 demonstrates this irrefutably. The court
3 has enforced the right of officials to make criminals out of citizens whose political viewpoints
4 interfere with campaign activities: See exhibit A1, A2, A3. **Harris v. County Superior Ct.** (9th
5 Cir. - Jan. 20, 2011):

6
7 Even when unsuccessful, such suits provide an important outlet for resolving grievances in
8 an orderly manner and achieving nonviolent resolutions of highly controversial, and often
9 inflammatory, disputes. Guaranteeing individuals an opportunity to be heard in court instead
10 of leaving them only with self-help as the means of remedying perceived injustices creates
respect for law and ameliorates the injury that individuals feel when they believe that they
have been wronged because society views them as inferior.

11 97. The only way to avoid the accusations of an ethics violation is to not create inferences supported
12 by the facts stated herein, see California Bar Association Rules of Professional conduct, [herein
13 referred to as RPC]:

14
15 “Rule 3-110(a) Failing to Act Competently.” “(A) A member shall not intentionally,
recklessly, or repeatedly fail to perform legal services with competence,

16
17 Rule 3-110 (B) To present a claim or defense in litigation that is not warranted under existing
law, unless it can be supported by a good faith argument for an extension, modification, or
18 reversal of such existing law.

19 Rule 3-200 Prohibited Objectives of Employment:

20 A member shall not seek, accept, or continue employment if the member knows or should
know that the objective of such employment is:

21 (A) To bring an action, conduct a defense, assert a position in litigation, or take an appeal,
22 without probable cause and for the purpose of harassing or maliciously injuring any person;
23 or

24 (B) To present a claim or defense in litigation that is not warranted under existing law, unless
it can be supported by a good faith argument for an extension, modification, or reversal of
25 such existing law.

26 **Conclusion**

27 I. That the plaintiffs, civil right litigants, **PAY NOTHING!**

- 1 II. That the court deny motion request for either FRCP 54(d)(2) for failing to meet filing
2 requirements...and/or,
- 3 III. That the court recognize that that the plaintiffs claims are not baseless nor frivolous
4 and deny attorney fees in their entirety on the grounds that Rule 8(b)(6) and the above
5 mentioned statutes, and precedence have barred the Appellees from asserting “failure
6 to arrest claims” that are undisputed facts alleged, in opposition and not properly
7 addressed or responded to.
- 8
- 9 IV. That the court follow the Supreme Court Precedence in Fox v. Spice, supra, and after
10 removing the defense allegations for any Failure Claims, determine if the plaintiffs
11 ignored contentions described in the Firsn¹²t few sentences as the “substantial
12 motivating factor” follow the “but-for” test to determine that Free Speech Retaliation
13 supported by witness described in Exhibit A1, A2, A3, Q, [A thru R]¹³ Bob Berger,
14 inter alia to support that this was not a claim arising out of the imaginations of
15 appellants.
- 16
- 17 V. That the court award costs of litigation excluding attorney fees in the amount
18 appropriate for filing documents, inter alia,
- 19
- 20 VI. That the court close these proceedings with prejudice.
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22 **DEMAND FOR TRIAL BY JURY**

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27 ¹² Defense Motion Dckt 117 pg. 2 @ 23.

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Plaintiffs Patrick M. Hamer and Donna L. Hamer demand trial by jury.

DATED: October 24, 2011

Respectfully Submitted

P.O. Box 1007

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Pro Se