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Thomas Seiver, Brendan Cook, Jesse Allensworth, James Breneman, Michael Proctor,  
6 San Diego County Sheriff's Department, and Bonnie Dumanis

7 **IN THE UNITED STATES DISTRICT COURT**  
8 **FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

9 AMERICAN NEWS AND )  
INFORMATION SERVICES, INC., a )  
10 Connecticut Corporation; EDWARD A. )  
PERUTA; and JAMES C. PLAYFORD, )

11 Plaintiffs, )

12 v. )

13 WILLIAM D. GORE, individually and in )  
14 his official capacity as San Diego County )  
Sheriff; JAN CALDWELL, individually )  
15 and in her official capacity as San Diego )  
County Sheriff's Department Public )  
16 Affairs Director; THOMAS SEIVER, )  
San Diego County Sheriff's Department )  
17 Deputy, individually; BRENDAN COOK, )  
San Diego County Sheriff's Department )  
18 Deputy, individually; JESSE )  
ALLENSWORTH, San Diego County )  
19 Sheriff's Department Deputy, individually; )  
JAMES BRENEMAN, San Diego County )  
20 Sheriff's Department Deputy, individually; )  
MICHAEL PROCTOR, San Diego County )  
21 Sheriff's Department Deputy, individually; )  
JOHN DOE 1-10; San Diego County )  
22 Sheriff's Department; WILLIAM )  
LANSLOWNE, individually and in his )  
23 official capacity as San Diego Police )  
Chief; JOHN DOE 1-10; San Diego Police )  
24 Department; and BONNIE DUMANIS, )  
25 individually and in her official capacity as )  
San Diego County District Attorney; )  
26 JOHN DOE 1-10; San Diego County )  
District Attorney's Office, individually, )

27 Defendants. )  
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No. 12-cv-2186-BEN(KSC)

SEPARATE STATEMENT OF  
UNDISPUTED MATERIAL FACTS IN  
SUPPORT OF DEFENDANTS' MOTION  
FOR SUMMARY JUDGMENT

Date: April 22, 2016  
Time: 10:30 a.m.  
Dept.: 4D - Courtroom of the  
Honorable Roger T. Benitez  
Trial Date: None

1 Defendants submit this separate statement of undisputed material facts, together  
 2 with references to supporting evidence, in support of their Motion for Summary  
 3 Judgment.

4 **COUNT ONE -- RETALIATORY GOVERNMENT ACTION**

<p>5</p> <p>6 <b>DEFENDANTS' UNDISPUTED</b></p> <p>7 <b>MATERIAL FACT AND SUPPORTING</b></p> <p>8 <b>EVIDENCE</b></p>	<p>6 <b>PLAINTIFFS, RESPONSE AND</b></p> <p>7 <b>SUPPORTING EVIDENCE</b></p>
<p>9</p> <p>10 1. Deputy Seiver requested that Playford</p> <p>11 be charged violation of Penal Code section</p> <p>12 148 for interfering with his investigation on</p> <p>13 February 28, 2010. Playford continually</p> <p>14 interfered with Seiver as he was</p> <p>15 interviewing a subject involved in</p> <p>16 brandishing a handgun. Seiver did not</p> <p>17 prevent Playford from filming.</p> <p>18 <b>Evidence:</b> Declaration of Thomas</p> <p>19 Seiver ¶¶ 2-6.</p>	
<p>16 2. Deputy Seiver arrested Playford on</p> <p>17 March 9, 2010, for interfering with him</p> <p>18 during an encounter with suicidal and</p> <p>19 homicidal woman. Playford continually</p> <p>20 interfered while Seiver was trying to</p> <p>21 keep the woman calm and get her</p> <p>22 voluntarily into his patrol car. Playford's</p> <p>23 action caused the woman to try to attack</p> <p>24 Playford and deputies had to restrain her</p> <p>25 and start all over again with the woman.</p> <p>26 <b>Evidence:</b> Declaration of Thomas</p> <p>27 Seiver ¶¶ 7-9.</p>	

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1 3. Deputy Seiver was not the subject of an  
2 Internal Affairs complaint by Playford, was  
3 not directed by Caldwell or Gore to make  
the arrests, and did not arrest for the  
purpose of retaliation.

4 **Evidence:** Declaration of Thomas  
5 Seiver, ¶10; Declaration of Jeff  
6 Duckworth; Declaration of Jan Caldwell,  
¶¶3-4.

7 4. Deputy Brendan Cook was dispatched  
8 to Congressman Issa's Office to assist  
9 patrol units with maintaining a perimeter  
10 after a bomb threat had been made. People  
11 were being evacuated from the building and  
12 Cook was told that there was a bomb  
13 located inside the doorway on the west  
14 entrance. Cook was on the west side of the  
15 building where firetrucks were stationed to  
16 delineate the potential bomb blast area and  
the safety zone. While Cook was helping  
get people out of the blast perimeter,  
someone pointed out Playford to him and  
told him that he had seen Playford with the  
protestors earlier right before the bomb  
threat came out. Cook noticed that  
Playford was hurrying to get close to the  
building, and wore dirty jeans covered with  
grease that was consistent with bomb-  
making.

17 **Evidence:** Exhibit A. Trial Transcript  
18 Superior Court Case No. CN 300278.  
19 Testimony of Brendan Cook, Vol. I, pp. 49-  
51, 55, 58-59, 61, 80.

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1 5. As Playford went past patrol cars and  
 2 headed into the blast area, Cook contacted  
 3 him and told him to stop and back out of  
 4 the area. Playford argued with him but  
 5 backed out. Cook was concerned that he  
 6 might be involved in the bomb threat  
 7 because of his attire, demeanor and because  
 8 he had a hand-held camera. Playford then  
 9 began filming and then began dialing on a  
 10 cell phone. Cook thought Playford was  
 11 going to detonate a bomb based on his  
 12 training and military experience. He knew  
 13 that the most common way to detonate a  
 14 bomb is with a cell phone and people who  
 do that want to record it. And when he told  
 Playford to stop calling four to five times,  
 Playford didn't comply. Cook took the  
 phone and camera from Playford and put  
 them on the ground and asked Playford to  
 sit down. Playford wouldn't sit down and  
 kept arguing with Cook. Cook was  
 concerned for his safety because of  
 Playford's size, angry demeanor and body  
 movements. Playford refused to answer  
 questions and became tense and hostile.  
 Cook could not control Playford and had to  
 call other officers to assist.

15 **Evidence:** Exhibit A, Testimony of  
 16 Brendan Cook, Vol. I, pp. 61-75.

17 6. Cook did not know who Playford was  
 18 at the time of this event, had never seen a  
 19 photograph of him and had never been  
 20 briefed by anyone about him. Cook  
 21 arrested Playford for obstructing him in  
 22 investigating the bomb threat and  
 delaying him and other deputies who  
 were securing the area and trying to get  
 people to safety. He did not arrest him  
 because he was filming or because he  
 was a media person.

23 **Evidence:** Exhibit A, Testimony of  
 24 Brendan Cook, Vol. I, p. 77. Vol. II, p.  
 25 23).

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1 7. On May 31, 2012, Jan Caldwell sent a  
 2 photograph of Playford to the front desk  
 3 at the Sheriff's Administrative Center on  
 4 Ridgehaven Court for security concerns.  
 5 The photograph was not distributed to  
 6 deputies in the field.

7 **Evidence:** Declaration of Jan Caldwell, ¶  
 8 4.

9 **COUNT -- TWO FAILURE TO TRAIN**

10 8. Deputies are trained in media  
 11 relations at the Regional Academy and  
 12 Jan Caldwell has conducted in-service  
 13 training regarding the rights of media  
 14 since 2009, The training includes  
 15 information about the rights of media and  
 16 the public and the current trends in social  
 17 media and the impacts on law  
 18 enforcement. The training provided to  
 19 deputies, professional staff, new  
 20 supervisors, and Search and Rescue  
 21 volunteers also includes blocks of  
 22 instruction on the various types of media,  
 23 policy and procedure on working with  
 24 the media, interview training/scenarios,  
 25 media release preparation, media  
 26 conference considerations, and Joint  
 27 Information Centers.

28 **Evidence:** Declaration of Jan Caldwell, ¶  
 5.

***HECK V. HUMPHREY***

9. The only issue litigated in the criminal  
 trials was whether Playford obstructed or  
 delayed deputies conducting investigations,  
 not whether he was resisting arrest.

**Evidence:** Exhibit D, pp. 73-78, 80-84;  
 Exhibit B, pp. 6-7.

10. Playford specifically made his First  
 Amendment right a defense in both  
 criminal cases.

**Evidence:** Exhibit A, pp. 2-82 – 2-89;  
 Exhibit B, pp. 2, 4; Exhibit C, pp. 37-51.

1 11. Playford pled guilty for both of the  
2 2010 arrests and was convicted of violation  
3 of Penal Code section 148 for the 2011  
4 arrest.

**Evidence:** Exhibit D, pp. 81-84.; Exhibit C,  
p. 3.

5  
6 DATED: March 24, 2016

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