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LEGAL PROCESS #2

8 Attorney for Defendants COUNTY OF SACRAMENTO, SACRAMENTO COUNTY SHERIFF'S  
9 DEPARTMENT, CITY OF RANCHO CORDOVA, RANCHO CORDOVA POLICE  
10 DEPARTMENT, OFFICER and GARY GONSALVES  
11 *Exempt From Filing Fees Pursuant to Government Code § 6103*

12 **SUPERIOR COURT OF CALIFORNIA**

13 **COUNTY OF SACRAMENTO**

14 YURIY MARTYNOV and SVETLANA CASE NO.: 34-2009-00054094  
15 MARTYNOV,

16 Plaintiffs,

17 vs.

18 **DEFENDANTS' MOTION FOR**  
19 **SUMMARY JUDGMENT;**  
20 **MEMORANDUM OF POINTS AND**  
21 **AUTHORITIES IN SUPPORT**

22 COUNTY OF SACRAMENTO, SACRAMENTO  
23 COUNTY SHERIFF'S DEPARTMENT, CITY  
24 OF RANCHO CORDOVA, RANCHO  
25 CORDOVA POLICE DEPARTMENT,  
26 OFFICER GARY GONSALVES, and DOES 1  
27 through 10, Inclusive,,

28 Date: January 27, 2014  
Time: 2:00 p.m.  
Dept: 53  
Reservation #: 1886343

29 Defendants.

30  
31 Defendants COUNTY OF SACRAMENTO, SACRAMENTO COUNTY SHERIFF'S  
32 DEPARTMENT, CITY OF RANCHO CORDOVA, RANCHO CORDOVA POLICE  
33 DEPARTMENT, and OFFICER GARY GONSALVES (collectively "Defendants") hereby move for  
34 summary judgment as to each and every cause of action asserted by Plaintiff YURIY MARTYNOV  
35 ("Plaintiff")<sup>1</sup> and submit the following Memorandum of Points and Authorities in Support.

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38 <sup>1</sup>Judgment was entered against Plaintiff Svetlana Martynov on March 15, 2013.

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I

**INTRODUCTION**

This case arises out of the 2007 arrest of Plaintiff by Rancho Cordova Officer GARY GONSALVES and the officer's use of force during same. What commenced as a traffic stop escalated into multiple shots fired as Plaintiff fled the scene while Officer GONSALVES attempted to effect an arrest. Plaintiff was ultimately convicted of Penal Code § 69 and Vehicle Code § 2800.2, which have not been overturned or expunged. Defendants submit these convictions bar the current civil action arising out of the same transaction.

II

**FACTUAL BACKGROUND**

**A. Allegations of the Complaint**

For purposes of this motion, Defendants treat the following allegations as undisputed:

According to Plaintiff, on July 27, 2007, at approximately 2:15 a.m., Defendant Rancho Cordova Police Officer Gary GONSALVES stopped Plaintiff YURIY MARTYNOV's vehicle on a routine traffic stop. (Complaint, ¶ 12; Statement of Undisputed Material Facts, ("UMF"), No. 1). After searching Plaintiff MARTYNOV's vehicle, Defendant GONSALVES attempted to effect an arrest of Plaintiff MARTYNOV. (Complaint, ¶ 12; UMF, No. 2). During this attempt to arrest Plaintiff MARTYNOV, Defendant GONSALVES used pepper spray on Plaintiff MARTYNOV. (Complaint, ¶ 12; UMF, No. 3). In response, Plaintiff MARTYNOV attempted to drive away. (Complaint, ¶ 12; UMF, No. 4). In furtherance of his attempt to place Plaintiff under arrest, Defendant GONSALVES fired multiple rounds at Plaintiff MARTYNOV, striking him multiple times. (See Complaint, ¶s 13-14; UMF, No. 5).

Based thereon, Plaintiff asserts causes of action for violation of Civil Code § 52.1 (Complaint, ¶s 22-25), and common law causes of action for assault (Complaint, ¶s 26-31), battery (Complaint, ¶ 32-37), negligence (Complaint, ¶ 38-43), negligent hiring and retention (Id.), and intentional infliction of emotional distress (Complaint, ¶ 44-47).

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1 **B. Conviction of Plaintiff**

2 The arrest resulted in criminal charges including, inter alia, Count One: felony violation of  
3 Penal Code § 245(c)<sup>2</sup> arising out of MARTYNOV's willful and unlawful assault with a deadly weapon  
4 and by force likely to produce great bodily injury against Deputy Sheriff Gonzalez in the performance  
5 of his duties, and Count Two: felony evasion under § 2800.2(a)<sup>3</sup> of the Vehicle Code by attempting to  
6 elude police officers. (See Felony Complaint, Sacramento Superior Court Case No. 07F07260;  
7 Request for Judicial Notice, Ex. A; UMF No. 6.)

8 On December 9, 2010, Plaintiff MARTYNOV admitted a violation of Penal Code § 69,  
9 reasonably related to Penal Code § 245(c), resisting a peace officer in the course of his duties, and a  
10 violation of Vehicle Code § 2800.2(a). (Transcript for proceedings on December 9, 2010, Sacramento  
11 Superior Court Case Nos. 07F07260 & 09F02964, pp. 4:26-5:5; Request for Judicial Notice, Ex. B;  
12 UMF No. 7). The court then accepted the factual basis for the violations as follows:

13 " . . . [Yuriy Martynov] did commit a felony violation Penal Code section 69 as  
14 reasonably related to the crime alleged in Count One of Penal Code Section 245(c) in  
15 that on or about July 27, 2007 in the County of Sacramento [Yuriy Martynov] did resist  
16 or deter a peace officer, specifically Officer Gonsalvez of the Sacramento Sheriff's  
17 Department who was then and there an executive officer attempting to perform his  
18 duties.

19 The resist or deterrence came by way of force or fear in...that [Yuriy Martynov]  
20 did attempt to make contact or hit the deputy with a motor vehicle at the time, in  
21 violation of Penal Code section 69.

22 As well, [Yuriy Martynov] committed a Vehicle Code section 2800.2 violation  
23 parenthesis (a) in that after the commission of the Penal Code section 69 had occurred  
24 [Yuriy Martynov] then fled the scene while being pursued...."

25 (Request for Judicial Notice, Ex. B, Transcript for proceedings on December 9, 2010, Sacramento  
26 Superior Court Case Nos. 07F07260 & 09F02964, pp. 11:1-18; UMF No. 8). Plaintiff YURIY  
27 MARTYNOV accepted these facts. (Request for Judicial Notice, Ex. B, Transcript for proceedings on  
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24 <sup>2</sup>Penal Code § 245(c) states that "Any person who commits an assault with a deadly weapon or instrument, other  
25 than a firearm, or by any means likely to produce great bodily injury upon the person of a peace officer or  
26 firefighter, and who knows or reasonably should know that the victim is a peace officer or firefighter engaged in  
27 the performance of his or her duties, when the peace officer or firefighter is engaged in the performance of his or  
28 her duties, shall be punished by imprisonment in the state prison for three, four, or five years."

27 <sup>3</sup>Vehicle Code § 2800.2(a) states: "If a person flees or attempts to elude a pursuing peace officer in violation of §  
28 2800.1 and the pursued vehicle is driven in a willful or wanton disregard for the safety of persons or property,  
the person driving the vehicle, upon conviction, shall be punished by imprisonment in the state prison, or by  
confinement in the county jail for not less than six months nor more than one year...."

1 December 9, 2010, Sacramento Superior Court Case Nos. 07F07260 & 09F02964, pp. 12:7-14; UMF  
2 No. 9). Accordingly, the court accepted a plea of no contest to both charges, and found YURIY  
3 MARTYNOV guilty. (Id., p.9:20:24, 13:19-28;14:1-3; See also Minute Order dated December 9,  
4 2010; Request for Judicial Notice Ex. C; UMF No. 10). Judgment was entered on January 7, 2011.  
5 (Minute Order dated January 7, 2011; Request for Judicial Notice Ex. D; UMF no. 11).

6 **III.**

7 **LEGAL STANDARD APPLICABLE TO MOTIONS FOR SUMMARY JUDGMENT**

8 Pursuant to California Code of Civil Procedure § 437c, a defendant moving for summary  
9 judgment meets its burden by showing that one or more elements of a cause of action cannot be  
10 established, or that there is a complete defense to the claim. Aguilar v. Atlantic Richfield (2001) 25  
11 Cal.4th 826, 849. A defendant is no longer required to conclusively negate an element of the plaintiff's  
12 cause of action. (Id. at 853.) Once the defendant has met the burden, the burden shifts to the plaintiff  
13 to show there is a triable issue of one or more material facts as to the cause of action or defense thereto.  
14 (Id.) How each party bears its burden of persuasion/production depends on what each party's burden  
15 of proof would be at trial. (Id. at 850-51.) If a party moving for summary judgment or adjudication  
16 would prevail at trial without submission of any issue or material fact to a fact-finder, then the party  
17 should prevail at the summary judgment stage. (Id. at 855.) Similarly, if the cause of action lacks any  
18 triable issue of material fact, the trial court may grant summary adjudication of issues if the  
19 adjudication completely disposes of the cause of action. Code Civ. Pro. § 437c(f); R.J. Land & Assoc.  
20 Construction Co. v. Kiewit-Shea (1999) 69 Cal.App.4th 416, 424.

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IV

ARGUMENT

A. **Plaintiff is Barred From Seeking Civil Relief by Virtue of His Convictions Arising Out of Same Transaction Between Himself and Officer Gonsalves**

One who has been convicted of a crime is barred from obtaining civil relief in a subsequent civil action involving the same issues. See Yount v. City of Sacramento (2008) 43 Cal.4th 885, 902 (conviction for resisting arrest arising from DUI arrest bars a later civil suit for battery) citing Coscia v. McKenna & Cuneo (2001) 25 Cal.4th 1194, 1202 (noting policy considerations). This is because to do so is essentially tantamount to a collateral attack on a criminal conviction. See Yount, 43 Cal.4th at 902, and Edwards v. Balisok (1997) 520 U.S. 641, 643 (a claim for damages is barred where “a [civil] judgment in favor of the plaintiff would necessarily imply the invalidity of his conviction or sentence,” quoting Heck v. Humphrey (1994) 512 U.S. 477, 487). In other words, courts refuse to grant civil relief arising from the same matters which a plaintiff was criminally convicted. This is because applying Heck principles to bar civil suits based on convictions of California criminal law “promot[es] judicial economy and the strong judicial policy...against the creation of two conflicting resolutions arising out of the same or identical transaction.” Yount, 43 Cal.4th at 902 (citations omitted).

In Yount, the Supreme Court proposed the following analytical framework: “First, the court must determine, using the substantial evidence test, what acts or omissions may have formed the factual basis for the plaintiff’s [] conviction. Second, the court must ascertain what alleged misconduct by the officer forms the factual basis for the civil rights claim (e.g., excessive force). The final step is to consider the relationship between the plaintiff’s acts of obstruction and the officer’s alleged misconduct.” (Yount, supra, 43 Cal.4th at p. 894.) Thus, in Yount, the court held that any portion of resistance up until he was shot was embraced by the Penal Code § 148 conviction, and therefore Yount could not premise a civil rights claim for unlawful force without impugning the conviction. *Id.* See also Lujano v. County of Santa Barbara (2010) 190 Cal.App.4th 801, 805 (minor charged with resisting an officer agreed to informal probation, thus avoiding prosecution on the charge; her subsequent civil lawsuit for excessive force was Heck/Yount-barred.)

1 Here, Plaintiff was convicted of criminal charges stemming from his interaction with Defendant  
2 GONSALVES, which is also the base for this civil suit. In accordance with the above authorities, this  
3 suit is barred.

4 Specifically, the bases for the convictions were Penal Code § 69<sup>4</sup> and Vehicle Code § 2800.2(a)  
5 arising from Plaintiff's unlawful use of his vehicle in his attempt to strike the officer while fleeing the  
6 scene. While the original charge was for violation of Penal Code § 245(c) based on Plaintiff's willful  
7 and unlawful assault with a deadly weapon and by force likely to produce great bodily injury against  
8 Officer GONSALVES in the performance of his duties, the court recognized that the lesser included  
9 charge of violation of Penal Code § 69 was related to that assault charge.

10 In addition, the lawfulness of the officer's conduct is an essential element of the offense under  
11 violations of Penal Code § 69. People v. Jenkins (2000) 22 Cal. 4th 900, 1020 (noting that it is a "well-  
12 established rule [in California] that when a statute makes it a crime to commit any act against a peace  
13 officer engaged in the performance of his or her duties, part of the corpus delicti of the offense is that  
14 the officer was acting lawfully at the time the offense was committed"); See also People v. Wilkins  
15 (1993) 14 Cal App 4th 761, review denied (1993) (violations of Penal Code § 69 includes the element  
16 the officer was acting lawfully). This is because "the right to make an arrest or investigatory stop  
17 necessarily carries with it the right to use some degree of physical coercion or threat thereof to effect it.  
18 (Graham v. Connor (1989) 490 U.S. 386, 396 (Graham).) As provided in Penal Code § 835a, a peace  
19 officer "may use reasonable force to effect the arrest, to prevent escape or to overcome resistance" of a  
20 suspect whom the officer has reasonable cause for the belief that the person has committed a public  
21 offense.

22 In the facts as accepted by Plaintiff in the criminal case, Defendants submit Plaintiff implicitly  
23 admitted Officer GONSALVES was lawfully performing his duties at all time. Plaintiff admittedly  
24 resisted or deterred the officer by way of force or fear in attempting to make contact or hitting Officer  
25 GONSALVES with a motor vehicle in the lawful conduct of his duties. In order to attempt to

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28 <sup>4</sup>Penal Code § 69 states "Every person who attempts, by means of any threat or violence, to deter or prevent an  
executive officer from performing any duty imposed upon such officer by law, or who knowingly resists, by the  
use of force or violence, such officer, in the performance of his duty, is punishable...."

1 overcome that resistance, Officer GONSALVES used pepper spray and discharged his weapon  
2 multiple times.

3 Equally important, the convictions for violations of Penal Code § 69 necessarily includes an  
4 implied finding by the court that the use of force by Officer GONSALVES was reasonable such that  
5 Officer GONSALVES was lawfully acting when Plaintiff attempted to hit him with his vehicle and flee  
6 the scene.<sup>5</sup> In other words, because an officer's conduct must be lawful as a necessary element of the  
7 crime of Penal Code § 69, in order to be convicted of said crime, the court implicitly determined base  
8 on the facts recited to him as the basis for the conviction that the force used in an attempt to overcome  
9 the resistance offered by Plaintiff was lawful.

10 In this civil action, Plaintiff claims force was unlawfully applied to him when Officer  
11 GONSALVES on June 27, 2007, attempted to arrest him by using pepper spray and firing multiple  
12 times. This is the same interaction upon which Plaintiff was convicted. In other words, allegations that  
13 Officer GONSALVES unlawfully applied force at the same time Plaintiff was using his vehicle in  
14 attempt to assault the officer, or that Plaintiff was attempting to avoid the officer while in his vehicle,  
15 but force was applied by way of pepper spray or gunfire cannot be reconciled with bases for the  
16 convictions. In accordance with the above authorities, the force applied during the attempted arrest of  
17 Plaintiff and in an attempt to stop Plaintiff's flight are all part of a singular transaction and were part  
18 and parcel of Officer GONSALVES's attempt to overcome that resistance or deterrence in the lawful  
19 performance of his duties. Thus, Plaintiff's alleged conduct, if proven, is wholly contrary to his  
20 conviction and finding the officer was acting lawfully. (See Complaint, ¶s 12-14).

21 It is therefore clear that these facts demonstrate the scenario contemplated by the United States  
22 Supreme Court in Heck, and the California Supreme Court in Yount to bar this civil action by virtue of  
23 Plaintiff's convictions. To allow otherwise is tantamount to an improper collateral attack on those  
24 convictions. Accordingly, Defendants are entitled to summary judgment as to each and every cause of  
25 action.

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28 <sup>5</sup>See also e.g. Hassan v. Cal. 2009 Cal. App. Unpub. LEXIS 4498, 9 (2009), where the Third Appellate District  
found convictions for violating Penal Code §§ 148 and 69 arising from an assault on an officer barred a civil  
action based on the officer's conduct in relation to that assault.

CONCLUSION

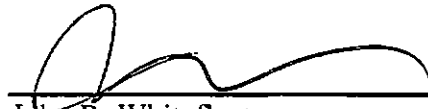
Based on the foregoing reasons, Defendants are entitled to summary judgment, and each and every cause of action by Plaintiff should be dismissed with prejudice.

Respectfully submitted,

Dated: October 16, 2013

PORTER SCOTT  
A PROFESSIONAL CORPORATION

By



John R. Whitefleet  
Attorney for Defendants  
COUNTY OF SACRAMENTO, SACRAMENTO  
COUNTY SHERIFF'S DEPARTMENT, CITY  
OF RANCHO CORDOVA, RANCHO  
CORDOVA POLICE DEPARTMENT, and  
OFFICER GARY GONSALVES



3  
4 **DECLARATION OF SERVICE**

5 I am a citizen of the United States and employed in Sacramento County, California; I am over  
6 the age of 18 years and not a party to the within action; my business address is 350 University Avenue,  
Suite 200, Sacramento, California 95825.

7 On the date below, I caused to be served the attached:

8 **DEFENDANTS' MOTION FOR SUMMARY JUDGMENT;**  
9 **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT**

10

**BY MAIL:** I caused such envelope with postage thereon fully prepaid to be placed in  
11 the United States mail at Sacramento, California.

12  
13

**BY PERSONAL SERVICE:** I caused such document to be delivered by hand to the  
office of the person(s) listed below.

14  
15

**BY OVERNIGHT DELIVERY:** I caused such document to be delivered by overnight  
16 delivery to the office of the person(s) listed below.

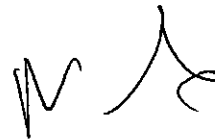
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**BY FACSIMILE:** I caused such document to be transmitted by facsimile machine to  
the office of the person(s) listed below.

19  
20 addressed as follows:

21 Cyrus Zal  
22 CYRUS ZAL, A PROFESSIONAL CORPORATION  
23 102 Minsail Court  
Folsom, CA 95630

24 I declare under penalty of perjury that the foregoing is true and correct and was executed on  
25 October 16, 2013, at Sacramento, California.

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Mor Saetern