

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

TIEN HONG VO, et al.	)	
	)	
Plaintiffs,	)	2:06-cv-00072-GEB-EFB
	)	
v.	)	<u>ORDER</u> *
	)	
JAN SCULLY, et al.,	)	
	)	
Defendants.	)	
_____	)	

Defendants move for summary judgment on each claim in this action. Plaintiffs oppose the motion except for the portion against their fifth claim for employment discrimination alleged under California Government Code § 12940. Plaintiffs request this claim be dismissed. The request is granted; this claim is dismissed.

BACKGROUND

Plaintiffs Thong Vo, Ngau Thi Nguyen, and Tien Hong Vo's (the "Property Plaintiffs") claims concern inspections of a real property located at 6045 Pomegranate Avenue, Sacramento, California (the "Pomegranate Property") and a subsequent state criminal

\* This matter was determined to be suitable for decision without oral argument. L.R. 78-230(h).

1 prosecution against them for violations of various zoning, building,  
2 and health and safety laws concerning the Pomegranate Property. The  
3 Pomegranate Property was owned by Tien, who leased the Property to her  
4 parents Thong and Nguyen. Three buildings are located on the  
5 property, in which Thong and Nguyen operated group homes for eighteen  
6 mentally impaired persons. On October 22, 2004, Nguyen made an  
7 emergency telephone call for assistance because a resident on the  
8 property was not taking prescribed medication and Nguyen feared for  
9 this resident's health. Captain Christopher Quinn of the Sacramento  
10 Metropolitan Fire District responded to that call. While on the  
11 property, Captain Quinn declares he observed hazardous conditions,  
12 including an open trench that was six feet in depth. He notified  
13 various other government agencies that hazardous conditions existed on  
14 the Pomegranate Property. In response to that notification, Defendant  
15 Deputy District Attorney Natalia Luna, Sacramento County Building  
16 Inspector Robin Rasmussen and Plaintiff Karen Alexandrou of the  
17 Sacramento County Code Enforcement Division, conducted an inspection  
18 of the Pomegranate Property on October 25, 2004.

19 After that inspection, the Nuisance Response Team ("NRT"),  
20 which is comprised of individuals from various government agencies,  
21 including Defendants Deputy District Attorneys Luna and Karen Maxwell,  
22 and Captain James Cooper of the Sacramento County Sheriff's  
23 Department, and Plaintiffs Alexandrou and Richard Maddox of the Code  
24 Enforcement Division, held an emergency meeting on October 27, 2004 to  
25 discuss the Pomegranate matter. Immediately following the meeting,  
26 members of the NRT conducted another inspection of the Pomegranate  
27 Property.

1 In late 2004, Luna filed criminal charges against the  
2 Property Plaintiffs based on conditions found on the Pomegranate  
3 Property. The Property Plaintiffs allege the inspections and the  
4 criminal prosecution led to a distress sale of the Pomegranate  
5 Property in approximately March 2005.

6 Further, Plaintiff Sonia Luong claims Defendants' actions  
7 triggered her obligation to indemnify Tien (who had purchased the  
8 Pomegranate Property from Luong before Defendants' inspections of the  
9 property) for "an apparent breach of the warranty of quiet enjoyment"  
10 which she owed Tien. (First Am. Compl. Prayer for Relief ¶ 5.) Luong  
11 alleges she had to satisfy this obligation when Tien was forced to  
12 sell the property "in an attempt to avoid future prosecution." (Id.)  
13 Luong also declares she was forced to settle this warranty dispute  
14 with Tien by forgiving a portion of the debt Tien owed her for the  
15 purchase of the Pomegranate Property.

16 The Property Plaintiffs allege the inspections and criminal  
17 prosecution constituted proscribed housing discrimination under the  
18 Fair Housing Act ("FHA") and the California Fair Housing and  
19 Employment Act ("FEHA"), and also violated other California law and  
20 the Property Plaintiffs' federal constitutional rights.

21 Plaintiffs Richard Maddox and Karen Alexandrou were employed  
22 in the County's Code Enforcement Division at the time of the  
23 inspections, but were reassigned after the October 27 Pomegranate  
24 Property inspection. They allege their reassignments were made in  
25 retaliation for certain statements they made in defense of the  
26 Property Plaintiffs concerning the inspections of the Pomegranate  
27 Property and the criminal prosecution of the Property Plaintiffs.

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DISCUSSION<sup>1</sup>

Defendants seek summary judgment on Maddox and Alexandrou's claims, arguing these Plaintiffs lack standing to bring their claims since any injury suffered from their reassignments is not "fairly . . . trace[able]" to any Defendant's action, but rather is "th[e] result [of] the independent action of some third party not before the court." Lujan v. Defenders of Wildlife, 504 U.S. 555, 560 (1991) (internal quotations citation omitted). Each Defendant submits a declaration denying participation in the decision to reassign Maddox and Alexandrou. Further, Maddox's supervisors Cheryl Creson and Robert Sherry declare they decided to reassign him. Moreover, Alexandrou's supervisor Larry Brooks declares he decided to reassign her. Plaintiffs counter Maddox and Alexandrou were reassigned at the behest of the Defendants.

Standing is not satisfied "if the injury complained of is the result of the independent action of some third party not before the court, [but this principle] does not exclude injury produced by determinative or coercive effect upon the action of someone else." Bennett v. Spear, 520 U.S. 154, 169 (1997).

In Maddox's case, Creson and Sherry declare that one month before the inspections of the Pomegranate Property, they each received an email from Defendant Chief Deputy District Attorney Cindy Besemer, informing them that Maddox had been improperly communicating with the criminal defense attorneys in an unrelated criminal prosecution handled by the District Attorney's Office. Further, they declare they knew that tension existed between Maddox and the District Attorney's

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<sup>1</sup> The summary judgment standard is well-known and need not be repeated unless applicable to a point discussed in the decision.

1 Office prior to the Pomegranate matter. Soon after the email from  
2 Besemer, psychologist Patricia Wiklund was hired by the Human  
3 Resources Manager for the Sacramento County Municipal Services Agency  
4 to assess the ongoing tension between the Code Enforcement Division  
5 and the District Attorney's Office. Wiklund reported her findings to  
6 Creson, in which Wiklund stated Maddox's behavior undermined the  
7 effectiveness of the Code Enforcement Division.

8 In addition, Sherry and Creson declare that around September  
9 2, 2005, they received a complaint from the District Attorney's Office  
10 that a memorandum written by Maddox regarding the inspection of the  
11 Pomegranate Property had been produced to the Property Plaintiffs  
12 pursuant to a subpoena in the criminal case although this memorandum  
13 had not been previously delivered to the District Attorney's Office.  
14 Sherry and Creson declare they reviewed the memorandum, following  
15 which they met with Maddox to discuss the production of the  
16 memorandum. Subsequently, Sherry, with Creson's concurrence,  
17 reassigned Maddox to the Department of Economic Development.

18 The evidence Defendants present indicates that Creson and  
19 Sherry reviewed the circumstances concerning Maddox's relationship  
20 with the District Attorney's Office and then made the decision to  
21 reassign Maddox. Maddox does not controvert this showing with  
22 evidence creating a genuine issue of material fact on whether any  
23 Defendant's action had a "determinative or coercive effect" on Sherry  
24 and Creson's decision to reassign him. Since Maddox has not shown his  
25 reassignment is "fairly traceable" to any Defendant's action, this  
26 portion of Defendants' motion is granted.

27 In Alexandrou's case, Brooks declares he was aware that  
28 tension existed between the District Attorney's Office and the Code

1 Enforcement Division which affected the efficient operation of the  
2 Code Enforcement Division. He also declares there was a disagreement  
3 with the District Attorney's Office regarding whether a report  
4 prepared by Alexandrou on the inspections of the Pomegranate Property  
5 was accurate. Brooks declares based on these reasons, he decided to  
6 reassign Alexandrou.

7 Alexandrou counters, declaring her reassignment "responded  
8 directly to any concerns raised by Defendants [Deputy District  
9 Attorneys] Karen Maxwell and Natalia Luna as if they were [her] own  
10 supervisors." (Alexandrou Decl. ¶ 16.) However, Alexandrou's  
11 averment about Maxwell and Luna is a bare assertion which does not  
12 contain facts creating a genuine issue of material fact on whether the  
13 reassignment decision is "fairly traceable" to any Defendant. Since  
14 Alexandrou fails to controvert Brooks' averments that he made the  
15 decision to reassign her or to show a genuine issue of material fact  
16 as to whether her reassignment is fairly traceable to any Defendant's  
17 action, this portion of Defendants' motion is also granted.

18 Defendants also seek summary judgment on Plaintiffs'  
19 California Unruh Civil Rights Act claims, California Civil Code § 53  
20 claims, and twelve state tort claims, asserting these claims are  
21 barred because Plaintiffs failed to file government claims required by  
22 California Government Code § 945.4. This section provides "no suit  
23 for money or damages may be brought against a public entity . . .  
24 until a written claim therefor has been presented to the public entity  
25 and has been acted upon by the board, or has been deemed to have been  
26 rejected by the board . . . ." Further, California Government Code  
27 § 950.2 states "a cause of action against a public employee . . . for  
28 injury resulting from an act or omission in the scope of his

1 employment as a public employee is barred if an action against the  
2 employing public entity for such injury is barred under [§ 945.4]."  
3 See Fowler v. Howell, 42 Cal. App. 4th 1746, 1753 (1996) (barring the  
4 plaintiff's claim against a public employee under Cal. Gov't Code  
5 § 950.2 because he did not file a claim with the employing public  
6 entity). However, "where a claimant seeks both damages and  
7 nonmonetary relief from a public entity in the same action, the  
8 applicability of the claim filing requirement turns on whether the  
9 damages sought are ancillary to the equitable relief also sought, in  
10 which case the claim filing requirement is inapplicable, or the  
11 reverse is true, in which case the filing requirement applies."  
12 Gatto v. County of Sonoma, 98 Cal. App. 4th 744, 761 (2002) (citation  
13 omitted).

14 Defendants argue § 945.4 applies since Plaintiffs primarily  
15 seek compensatory and punitive damages in this action. Plaintiffs  
16 failed to respond to this argument. Since Plaintiffs have admitted  
17 through responses to Defendants' document requests that they have not  
18 filed a claim pursuant to California administrative claim filing  
19 procedures, Plaintiffs' California Unruh Civil Rights Act and  
20 California Civil Code § 53 claims, and twelve state tort claims, are  
21 barred. Therefore, this portion of Defendants' motion is granted.

22 Defendants also argue the County prosecutors are absolutely  
23 immune from liability for Plaintiffs' claims because their actions in  
24 prosecuting the Property Plaintiffs and inspecting the Pomegranate  
25 Property are "intimately associated with the judicial phase of the  
26 criminal process," citing Imbler v. Pachtman, 424 U.S. 409, 430  
27 (1976). Further, Defendants argue Defendant District Attorney's  
28 Investigator William Motmans is also absolutely immune from liability

1 for Plaintiffs' claims, because this immunity depends on "the nature  
2 of the function performed, not the identity of the actor who performed  
3 it," citing Kalina v. Fletcher, 522 U.S. 118, 127 (1997) (quoting  
4 Forrester v. White, 484 U.S. 219, 229 (1988)). Defendants argue  
5 Motmans is entitled to this immunity since his involvement with the  
6 October 25 inspection was for the purpose of assisting prosecutors  
7 prepare for the prosecution of the Property Plaintiffs.

8 Plaintiffs counter this immunity does not apply to acts that  
9 are investigatory in nature, citing Buckley v. Fitzsimmons, 509 U.S.  
10 259, 273 (1993). In Buckley, the Supreme Court held "[a] prosecutor's  
11 administrative duties and those investigatory functions that do not  
12 relate to an advocate's preparation for the initiation of a  
13 prosecution or for judicial proceedings are not entitled to absolute  
14 immunity." The issue of whether the investigative acts at issue are  
15 "carried out in preparation for a prosecutor's case [such that the  
16 movants] enjoy absolute immunity" need not be decided because of the  
17 decision *infra* on Plaintiffs' challenge to the inspections. KRL v.  
18 Moore, 384 F.3d 1105, 1113 (9th Cir. 2004) (citation omitted). It is  
19 clear that the absolute immunity doctrine bars Plaintiffs' claims  
20 against the prosecutors for the criminal prosecution of the Property  
21 Plaintiffs.

22 Defendants also seek summary judgment on Plaintiffs' Fourth  
23 Amendment unlawful inspection claims, arguing Thong and Nguyen granted  
24 permission for Defendants to conduct the October 25 and 27  
25 inspections.

26 Defendants present deposition testimony from Building  
27 Inspector Robin Rasmussen who testified that prior to conducting the  
28 October 25 inspection, he requested and received Nguyen's consent to



1 enter and inspect the Pomegranate Property. Plaintiffs do not  
2 controvert this evidence.

3 Defendants also present evidence on the October 27  
4 inspection. Defendant Captain James Cooper of the Sheriff's  
5 Department declares prior to conducting the October 27 inspection, he  
6 requested and received Thong's consent to enter and inspect the  
7 Property. Cooper further declares he instructed Sheriff Lieutenant  
8 Trang To to participate in this inspection, since To is fluent in  
9 Vietnamese and could assist in translating and communicating with  
10 Thong and Nguyen, who are Vietnamese. To declares he explained to  
11 Nguyen he was present to translate and to assist her with  
12 understanding what was going on. He declares he explained why members  
13 of the Sheriff's Department and other government agencies were present  
14 and that they wanted to inspect the property "to make sure it was safe  
15 for the tenants and complied with health, safety, fire, zoning and  
16 building requirements." (To Decl. ¶ 6.) He also declares he then  
17 requested and received Nguyen's consent to enter and inspect the  
18 Property.

19 Plaintiffs counter that Thong and Nguyen declare they  
20 "expressed objections" to the inspection. Defendants object to these  
21 averments, arguing they are vague as to what Thong and Nguyen actually  
22 said, and when and to whom they "expressed objections."

23 In ruling upon a Rule 56 motion, "a District Court  
24 must resolve any factual issues of controversy in  
25 favor of the non-moving party" only in the sense  
26 that, where the facts specifically averred by that  
27 party contradict facts specifically averred by the  
28 movant, the motion must be denied. That is a  
world apart from "assuming" that general averments  
embrace the "specific facts" needed to sustain the  
complaint. . . . The object of [Rule 56] is not  
to replace conclusory allegations of the complaint  
or answer with conclusory allegations of an  
affidavit. Rather, the purpose of Rule 56 is to

1 enable a party who believes there is no genuine  
2 dispute as to a specific fact essential to the  
3 other side's case to demand at least one sworn  
4 averment of that fact before the lengthy process  
of litigation continues. . . . It will not do to  
"presume" the missing facts . . . .

5 Lujan v. Nat'l Wildlife Federation, 497 U.S. 871, 888-89 (1990).

6 Therefore, Thong and Nguyen's vague averments are insufficient to  
7 controvert Cooper and To's specific averments that they obtained  
8 consent from Thong and Nguyen to inspect the Property.

9 Plaintiffs also rely on the averment of Alexandrou where she  
10 declares she never saw Cooper and To speaking with Thong and Nguyen on  
11 October 27. However, this averment is insufficient to controvert  
12 Defendants' evidence since it does not establish Alexandrou has  
13 personal knowledge of whether Cooper and To spoke with Thong and  
14 Nguyen.

15 Plaintiffs also argue any consent given on October 27 was  
16 coerced since there were about twenty people on the property at the  
17 time Defendants assert consent was given. Plaintiffs, however, have  
18 not set forth specific facts from which a reasonable inference could  
19 be drawn creating genuine issues of fact on the voluntariness of Thong  
20 and Nguyen's consent.

21 Plaintiffs also argue Defendants should have sought consent  
22 from the Pomegranate Property residents because Thong and Nguyen  
23 lacked authority to consent since they did not reside on the premises,  
24 and contend the residents lacked the necessary mental competency to  
25 consent. Defendants rejoin the law does not authorize Plaintiffs to  
26 assert the rights of those residents. This issue need not be reached  
27 since Plaintiffs have not controverted Defendants' evidence that Thong  
28 and Nguyen had authority to consent to the inspections as "persons

1 generally having joint access or control for most purposes." United  
2 States v. Matlock, 415 U.S. 164, 171 n.7 (1974). Accordingly, this  
3 portion of Defendants' motion is granted.

4 Defendants also seek summary judgment on Plaintiffs' Equal  
5 Protection claim, arguing Plaintiffs were not treated differently from  
6 others similarly situated. To succeed on this claim, Plaintiffs must  
7 show they were treated differently from others similarly situated.  
8 Pierce v. County of Orange, 526 F.3d 1190, 1225 (9th Cir. 2008).  
9 Plaintiffs counter Defendants specifically targeted group homes used  
10 by mentally disabled and other disadvantaged persons, relying on  
11 Maddox's declaration and the testimony of Paul Lake, the chairperson  
12 of the Nuisance Response Team ("NRT"). Plaintiffs present Maddox's  
13 averment in which he declares he had "an opinion that the [District  
14 Attorney's Office] used . . . unlawful selective enforcement  
15 practices." (Maddox Decl. ¶ 20.) He further declares he was  
16 concerned that the District Attorney's Office's "criminal law  
17 enforcement practices were not appropriate for administrative law  
18 enforcement cases, particularly where criminal law enforcement  
19 officers were taking advantage of the lower burden placed on  
20 administrative officers by the Fourth Amendment in order to conduct  
21 criminal investigations." (Maddox Decl. ¶ 19.) However, Maddox's  
22 averments are vague as to what the District Attorney's Office actually  
23 did that was "unlawful" and "not appropriate," and therefore are  
24 insufficient to create a triable issue on whether the District  
25 Attorney's Office targeted group homes used by mentally disabled and  
26 other disadvantaged persons.

27 Plaintiffs also rely on Lake's deposition testimony in which  
28 he testified that the NRT had dealt with group home issues numerous

1 times because these homes created a nuisance. However, this testimony  
2 is also insufficient to show the group homes at issue were treated  
3 differently from other similarly situated homes. Accordingly, this  
4 portion of Defendants' motion is granted.

5 Defendants also seek summary judgment on Plaintiffs' housing  
6 discrimination claims alleged under the FHA and the FEHA. Defendants,  
7 argue they did not have discriminatory intent at any time, which is a  
8 necessary element of these claims. The McDonnell Douglas v. Green,  
9 411 U.S.792, 802 (1973), burden-shifting analysis applies to this  
10 portion of the motion. Harris v. Itzhaki, 183 F.3d 1043, 1051 (9th  
11 Cir. 1999) (discussing the burden shifting analysis applicable to  
12 determining whether a defendant had discriminatory intent); Brown v.  
13 Smith, 55 Cal. App. 4th 767, 780 (1997) (stating "FEHA in the housing  
14 area is . . . intended to conform to the general requirements of  
15 federal law in the area . . . .").

16 Defendants submit the declaration of Fire District Captain  
17 Quinn for the purpose of explaining what conditions existed on the  
18 Pomegranate Property on October 22, 2004. Captain Quinn declares he  
19 observed "a large trench in the yard of the residence, approximately  
20 125 feet long and three feet wide with a depth of up to six feet in  
21 some areas. . . . [He] observed that many of the residents appeared to  
22 suffer from mental health issues and [he] deemed this open trench a  
23 hazard . . . . While on the scene [he] saw a hole of approximately six  
24 feet depth in the rear yard hidden by weeds which was full of water."  
25 (Quinn Decl. ¶¶ 3, 5.) He declares "[t]he bottom of the trench had  
26 mud and water in it and the sides of the trench showed evidence of  
27 collapse." (Quinn Decl. ¶ 10.) He also declares he saw one of the  
28 residents enter the trench to recover a small dog which had fallen

1 into the trench. (Quinn Decl. ¶ 10.) He declares he "felt the  
2 resident had no understanding of the potential hazards the trench  
3 presented because of her mental health condition." (Quinn Decl. ¶  
4 11.) He further declares he found non-working smoke detectors, and  
5 observed "bars on windows which lacked panic hardware and saw other  
6 evidence of fecal matter on walls and floors." He also noted  
7 "[n]umerous cats . . . occupying all areas of the residence and a  
8 great deal of flies . . . in at least two rooms of the residence."  
9 (Quinn Decl. ¶ 12.) He declares he notified various agencies about  
10 his observations. (Quinn Decl. ¶¶ 4, 9.) He declares he observed  
11 Lana Harrington of the California Department of Social Services arrive  
12 at the property and remove at least three residents from the property.  
13 (Quinn Decl. ¶ 9.)

14 Defendant District Attorney Investigator William Motmans  
15 declares he received a telephone call from Lana Harrington during  
16 which he was informed there were hazardous conditions on the  
17 Pomegranate Property; Motmans relayed this information to Defendant  
18 Luna on October 22. (Motmans Decl. ¶ 11.) Luna declares based on the  
19 information supplied by Motmans, she decided to conduct an inspection  
20 of the Pomegranate Property on October 25, 2004. (Luna Decl. ¶¶ 12,  
21 13.) Luna, Building Inspector Robin Rasmussen, and Alexandrou  
22 conducted the October 25 inspection.

23 Thong Vo declares the trench was dug in October 2004 to  
24 connect the property to the sewer system, pursuant to a building  
25 permit. He further declares the trench was inspected and approved by  
26 a building inspector on October 22, 2004. He also declares the trench  
27 was shallow on the end near the building and increased in depth until  
28 it was about six feet deep on the end near the street. However, Vo's

1 averments are insufficient to controvert Captain Quinn's averments  
2 that the open trench constituted a hazardous condition for the  
3 mentally impaired residents. Vo further declares the trench was  
4 filled during the weekend of October 23-24, 2004. However, this is  
5 also insufficient to controvert Luna's declaration that she conducted  
6 the October 25 inspection based on information she received on October  
7 22 that hazardous conditions existed on the Pomegranate Property.

8 Alexandrou declares she tested many smoke detectors during  
9 the October 25 inspection and all the smoke detectors she tested were  
10 working. However, Alexandrou's averment is insufficient to controvert  
11 Captain Quinn's declaration that non-working smoke detectors existed  
12 on the property since Alexandrou did not test all the smoke detectors.

13 In light of the uncontroverted evidence that Luna conducted  
14 the October 25 inspection in response to information she received on  
15 October 22 about conditions on the Pomegranate Property, including an  
16 open trench, non-working smoke detectors, and other health and safety  
17 issues, Plaintiffs have not raised a genuine material factual issue  
18 regarding the authenticity of the Defendants' stated non-  
19 discriminatory motive for conducting the October 25 inspection.

20 Plaintiffs also dispute whether a non-discriminatory basis  
21 existed for the October 27 inspection. The question is whether a  
22 genuine issue of material fact exists concerning Defendants' motive  
23 for that inspection. Defendants provide Rasmussen's deposition  
24 testimony in which he testified during his inspection on October 25 he  
25 saw windows lacking proper egress and guardrail posts for a stairway  
26 that were too far apart, which constitutes violations of the building  
27 code. Rasmussen also testified that the windows lacking proper egress  
28 created imminently dangerous conditions on the property. Based on

1 these violations, he issued three notices of violation, one for each  
2 of the buildings on the property.

3           Plaintiffs counter, pointing to Alexandrou's declaration  
4 where she declares she observed bars on two windows but "one window  
5 led to an entry area with plenty of egress in case of emergency, and  
6 the other [window] led to a storage closet . . . ." (Alexandrou Decl.  
7 ¶ 4.) However, Alexandrou's averment is insufficient to show that  
8 other windows at the Pomegranate Property had proper egress.

9           Luna and Cooper declare they attended an emergency meeting  
10 of the NRT on October 27, 2004, concerning the Pomegranate Property.  
11 They declare that based on statements made by various team members  
12 that hazardous conditions existed on the property, a decision was made  
13 to inspect the property immediately.

14           Plaintiffs argue discriminatory intent can be inferred from  
15 the NRT's non-compliance with the NRT procedures in conducting the  
16 October 27 inspection, relying on Maddox's declaration, in which he  
17 declares that before conducting an inspection, the NRT must designate  
18 a "Lead Person" or "Lead Agency" who, together with the chairperson of  
19 the NRT, decides how the investigation would be conducted. However,  
20 this evidence is not probative of discriminatory intent.

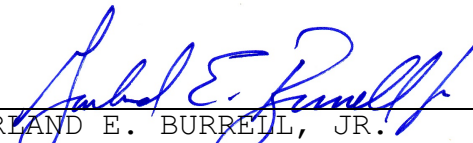
21           In light of the conditions found on the property posing  
22 safety risks to the mentally impaired residents, Plaintiffs have not  
23 raised a genuine material factual issue regarding the authenticity of  
24 Defendants' stated non-discriminatory motive for conducting the  
25 October 27 inspection. Accordingly, this portion of Defendants'  
26 motion is granted.

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1           For the reasons stated, Defendants' motion is granted, and  
2 judgment shall be entered in favor of Defendants.

3 Dated: January 16, 2009

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6 \_\_\_\_\_  
7 GARLAND E. BURRELL, JR.  
8 United States District Judge  
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