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7 **UNITED STATES DISTRICT COURT**  
8 **NORTHERN DISTRICT OF CALIFORNIA**  
9 **SAN FRANCISCO DIVISION**  
10

11 GARY ARDEN,

12 Plaintiff,

13 v.

14 FRANK KASTELL,

15 Defendant.

Case No. 10-cv-00436 NC

**JURY INSTRUCTION  
SUPPLEMENT 1**

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18 At this point, I will give you a further instruction in response to jury note  
19 number 42. By giving a further instruction at this time, I do not mean to emphasize  
20 this instruction over any other instruction. You are not to attach undue importance to  
21 the fact that this was read separately to you. You shall consider this instruction  
22 together with all of the other instructions that were given to you.

23 In order to establish his claim for violation of the Fourteenth Amendment,  
24 Gary Arden must prove each of the following three things by a preponderance of the  
25 evidence:

26 *First*, that Frank Kastell made a false statement about Gary Arden in a police  
27 report. Gary Arden may show either, or both, of two types of false statements: (1)  
28 statements attributed to witnesses, and (2) statements of Frank Kastell's own

1 observations.

2 *Second*, that Frank Kastell's false statement shocks the conscience, that is, he  
3 deliberately made a false statement either:

4 (a) With intent to deprive Gary Arden of his rights; OR,

5 (b) With deliberate indifference to Gary Arden's rights. Deliberate  
6 indifference is the conscious or reckless disregard of the consequences of one's acts or  
7 omissions. It entails something more than negligence but is satisfied by something  
8 less than acts or omissions for the very purpose of causing harm or with knowledge  
9 that harm will result.


10 *Third*, that Frank Kastell's deliberate false statement or statements about Gary  
11 Arden in Frank Kastell's report were a proximate cause of Gary Arden's prosecution  
12 for embezzlement.

13 Also, the jury is not asked to decide if Frank Kastell deprived Gary Arden of  
14 his rights under the United States Constitution by conducting an improper arrest,  
15 detention, or interrogation, or by failing to preserve evidence. The jury is not asked to  
16 decide if probable cause existed to conduct an arrest, detention, or interrogation of  
17 Gary Arden.

18  
19 You will now retire to the jury room and continue your deliberations.

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22 IT IS SO ORDERED.

23 Date: October 21, 2014

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26 Nathanael M. Cousins  
27 United States Magistrate Judge  
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