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28UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

MEDINA, et al.,

No. C 08-3946 WDB

Plaintiffs,

ORDER RE LETTER BRIEFS

v.

CITY OF MENLO PARK, et al.

Defendants.

Having considered the letter briefs submitted by counsel following the May 19, 2009, case management conference, we are of the view, at this juncture, that if Plaintiffs can prove that Defendants intended to deny Plaintiffs' constitutional rights, Plaintiffs are permitted to pursue their cause of action for malicious prosecution under 42 U.S.C. § 1983. *Usher v. City of Los Angeles*, 828 F.2d 556, 561-62 (9th Cir. 1987) (quoting *Bretz v. Kelman*, 773 F.2d 1026, 1031 (9th Cir. 1985) (en banc)). However, it appears that Plaintiffs are barred from litigating a cause of action for malicious prosecution under state law against Defendants. Cal. Gov't Code §§ 815.2, 821.6. We are inclined, therefore, to dismiss the Third Cause of Action (State Law Malicious Prosecution) from the Second Amended Complaint.

If any party disagrees with the Court's inclinations, it must file a motion by June 24, 2009, setting forth in detail the support for its position.

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Defendants are hereby ORDERED to file an answer or otherwise respond to the
Second Amended Complaint by June 24, 2009.

IT IS SO ORDERED.

Dated: June 17, 2009



WAYNE D. BRAZIL
United States Magistrate Judge