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10 Attorneys for Plaintiff MARK POTTS

11 UNITED STATES DISTRICT COURT
12 EASTERN DISTRICT OF CALIFORNIA
13 SACRAMENTO DIVISION

14 MARK POTTS,

15 Plaintiff,

16 v.

17 COUNTY OF TRINITY; TRINITY
18 COUNTY SHERIFF'S OFFICE; and
19 BRUCE HANEY, Sheriff of Trinity County,

20 Defendants.

Case No. 2:12-cv-01793-JAM-CMK

**REPLY DECLARATION OF MARK
POTTS IN SUPPORT OF MOTION FOR
PRELIMINARY INJUNCTION**

Date Filed: July 6, 2012

Hearing Date: August 22, 2012

Trial Date: Not Set

1 I, Mark Potts, declare as follows:

2 1. I am the plaintiff in the above-named action. The information set forth in this
3 declaration is based upon my personal knowledge and, if called upon to testify, I could and would
4 competently testify thereto.

5 2. As set forth in my prior declaration, I have served as a deputy sheriff in the Trinity
6 County Sheriff's Office from January 2000 to September 2004 and January 2007 through the
7 present. Between 2008 and 2011, I was assigned to the Narcotics Task Force in the Narcotics
8 Investigations Unit, where I focused on marijuana enforcement. I am currently assigned to
9 Uniform Patrol in the Patrol Division, and in that capacity, am involved in everything from traffic
10 citations to violent crime.

11 **Pre- and Post-August 2011 Letters Addressed Similar Topics**

12 3. To the best of my recollection, I began writing letters to the editor of the local
13 newspaper, the *Trinity Journal*, in the early 2000s.

14 4. Sheriff Haney has submitted a declaration in this matter that states "Until recently,
15 Deputy Potts' letters to the editor were written on a variety of political topics that were not
16 directed at the operations of the Department. The Department took no exception to those articles
17 and I personally even agreed with some of the political views he was expressing. However,
18 starting in August 2011 and continuing on to October 2011, and as further discussed below,
19 Deputy Potts began writing articles which reflect poorly on the Department, have caused
20 disruption and inefficiencies within the Department, and have seriously affected the Department's
21 working relationship with the District Attorney's Department." Decl. of Sheriff Bruce Haney
22 (Doc. 17-1), ¶ 6.

23 5. Since the early 2000s, I have written dozens of letters to the *Trinity Journal*,
24 generally themed around the Constitution, related laws, and how we have gotten very far away
25 from the original intent of the Constitution. The letters I wrote prior to August 2011 were similar
26 in subject matter to the letters I wrote between August 2011 and October 2011.

27 6. For example, in the October 5, 2011 letter for which I was disciplined (attached as
28 Exhibit E to my prior declaration), I analogize the war on drugs to Prohibition, and discuss how

1 drug laws, just like Prohibition, have given rise to a black market and created the Mexican Drug
2 Cartels. I questioned the wisdom of laws against drugs many times before August 2011. For
3 example, in a letter published by the *Trinity Journal* on November 24, 2010 under the title “Prop.
4 19 postmortem,” I stated that I supported “legalization, not governmentalization” of the drug
5 industry. I criticized Proposition 19 because it would “have had next to zero affect,” and because
6 it would be very “cost[ly] . . . to implement.” See Harper Decl. (Doc. 17-2), Ex A.

7 7. In the October 26, 2011 letter for which I was disciplined (attached as Exhibit E to
8 my prior declaration), I wrote that in our federal, not national, system of government, the states
9 exercise all authority not expressly vested by the Constitution in the federal government. The
10 limited role of the federal government in our constitutional scheme is an important issue to me,
11 and one about which I have written in the past. I have repeatedly criticized what I consider to be
12 an overreaching federal government, and did so in letters published well before August 2011. For
13 example, in a letter published by the *Trinity Journal* on November 11, 2009 under the title
14 “Power vs. health care,” I criticize the “acquisition of power and control by the already out-of-
15 control federal government.” In another letter published by the *Trinity Journal* on December 30,
16 2009 under the title “Time to trim government,” I quote James Madison in support of my
17 argument that Congress has exceeded its constitutional authority. A true and correct copy of
18 these two letters, printed from the website of the *Trinity Journal*, is attached as Exhibit 1 to this
19 declaration.

20 8. In the November 23, 2011 article for which I was disciplined (attached as Exhibit
21 E to my prior declaration), I wrote that there are too many laws on the books and that “[t]he
22 liberty that this Republic was founded upon has been squandered by busy body statist that want
23 to control every aspect of our lives based on their idea of appropriate behavior whether we harm
24 anyone else or not.” I have repeatedly expressed libertarian views that criticize big government,
25 and did so in letters published well before August 2011. For example, in a letter published by the
26 *Trinity Journal* on December 17, 2008 under the title “Irresponsibility rewarded,” I state that
27 “[t]he government created this mess by meddling in private business in the first place, and now
28 their fix is yet more government. The fix is to get the government out of the way of prosperity

1 and the free market.” A true and correct copy of this letter, printed from the website of the *Trinity*
2 *Journal*, is attached as Exhibit 2 to this declaration.

3 9. In the November 30, 2011 article for which I was disciplined (attached as Exhibit
4 E to my prior declaration), I express my views in support of the Second Amendment and the right
5 to bear arms. I have repeatedly expressed my view that gun regulations are unconstitutional, and
6 did so in letters published well before August 2011. For example, on April 8, 2009, the *Trinity*
7 *Journal* published a letter of mine under the title “Shredding the Constitution,” in which I
8 emphasized that Congress has only those powers enumerated in the Constitution and therefore
9 had “no authority for involvement in” areas such as “gun regulation.” In another article, on June
10 23, 2010, the *Trinity Journal* a letter of mine under the title “Protection against tyranny,” in which
11 I quote Thomas Jefferson, who said “The strongest reason for people to retain the right to keep
12 and bear arms is, as a last resort, to protect themselves from tyranny in government.” A true and
13 correct copy of these letters, printed from the website of the *Trinity Journal*, is attached as Exhibit
14 3 to this declaration.

15 10. I have also written on a wide variety of other topics, but usually focused on
16 constitutional and other legal issues. For example, on June 17, 2009, the *Trinity Journal*
17 published a letter of mine under the title “Term limits can only benefit country” that supported
18 term limits and criticized career politicians. A true and correct copy of this letter, printed from
19 the website of the *Trinity Journal*, is attached as Exhibit 4 to this declaration.

20 11. Since I stopped writing letters, several members of the public have written to the
21 *Trinity Journal* to express their support for my ability to state my views through letters to the
22 editor. A true and correct copy of one such letter, titled “In support of Mark Potts,” is attached as
23 Exhibit 5 to this declaration.

24 **Only Argument in Workplace Concerned Temperature**

25 12. Sheriff Haney also states in his declaration that he has “observed that the articles
26 have caused some heated arguments between Deputy Potts and his fellow deputies.” Haney Decl.
27 (Doc. 17-1), ¶ 19. His declaration does not state where or when the alleged arguments occurred,
28 or with whom. In all my years of service with the Office, I can recall only one argument with a

1 co-worker in the workplace, and that was a disagreement over the thermostat, because my co-
2 worker routinely set the thermostat at a level that was far too hot for me. The matter did not
3 escalate and we were able to resolve our disagreement.

4 **Literature in the Workplace**

5 13. Sheriff Haney also states that I left pamphlets on political topics on a work station
6 in the evidence room. Haney Decl. (Doc. 17-1), ¶ 20. His declaration fails to mention, however,
7 that the particular location on which I had left pamphlets was the location used for years by staff
8 and the Office alike to disseminate information, including personal and official notifications,
9 which ranged from magazines to coupons to job postings. Common items I put out for people to
10 peruse were medical newsletters, political newsletters, and *American Cop Magazine*. I also recall
11 once leaving pocket-sized copies of the U.S. Constitution in that location.

12 14. I do recall Sheriff Haney raising this issue with me when we met sometime in the
13 late summer of 2011, but at that time he never told me that my materials were causing
14 “disharmony ... in the Department.” Haney Decl. (Doc. 17-1), ¶ 20. What he told me at the time
15 was that the Office wanted to make the area more professional, and that he personally had
16 removed my materials from the table. I asked him if only my materials were to be removed. He
17 did not provide an answer to that question, but thereafter, I did notice that the area was no longer
18 used to distribute personal literature.

19 **Testimony at Trial**

20 15. As set forth in my prior declaration, I have testified at countless court hearings
21 about crimes that I have investigated, and my personal political views have never been raised in
22 court by either the District Attorney or defense attorneys.

23 16. I testified at a pre-trial hearing in a marijuana case as recently as July 27, 2012. At
24 that hearing, my personal political views and articles in the *Trinity Journal* never came up.

25 **Impact of Discipline**

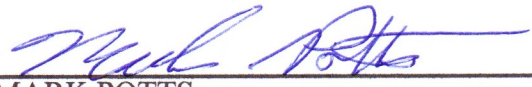
26 17. As set forth in my prior declaration, I ceased writing letters to the editor on
27 constitutional and other legal issues because I was disciplined, and because I fear further
28 employment consequences. The Written Reprimand (attached as Exhibit J to my prior

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declaration) states “[a]ny further violations may result in additional disciplinary action up to and including termination.” If the Written Reprimand is rescinded [or I receive some other equivalent assurance that I would not be disciplined for doing exactly what I have done for years without incident], I would resume writing letters to the editor so I can express my deeply held views about the Constitution.

I declare the foregoing under penalty of perjury under the laws of the state of California.

Executed on this 14th day of August 2012 in WEAVERVILLE, California.

By: 
MARK POTTS