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6 Plaintiff Joseph Ciampi, in pro se

FILED
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RICHARD J. ...
CLERK ... COURT

7
8 UNITED STATES DISTRICT COURT
9 FOR THE NORTHERN DISTRICT OF CALIFORNIA
10 (SAN JOSE DIVISION)
11

12 CLK

13	JOSEPH CIAMPI) NO. C09-02655 LHK (PSG)
14)
15	Plaintiff,) [SUPPLEMENTAL]
16) PLAINTIFF'S NOTICE
17	CITY OF PALO ALTO, a government entity;) REQUESTING APPROPRIATE
18	LYNNE JOHNSON, an individual; CHIEF) ACTION REGARDING THE
19	DENNIS BURNS, an individual; OFFICER) VIOLATIONS OF LAW AND
20	KELLY BURGER, an individual; OFFICER) RULES COMMITTED BY
21	MANUEL TEMORES, an individual; OFFICER) ATTORNEY STEVEN SHERMAN
22	APRIL WAGNER, an individual; AGENT DAN)
23	RYAN; SERGEANT NATASHA POWERS,) CIV. L.R. 11-4
	an individual.) CIV. L.R. 11-6
)
	Defendants.) Judge: LUCY H. KOH
)
) Hearing Date: June 30, 2011
) Time: 1:30 PM

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25 On April 21, 2011 the Honorable Judge Lucy Koh heard arguments regarding
26 Defendants' Motion for Summary Judgment. During the hearing Judge Koh took Plaintiff's
27 request for appropriate action regarding Steven Sherman's conduct, Court Document 143, under
28 submission and ordered a sanctions hearing for June 30, 2011.

1 Due to Steven Sherman's persistent unethical conduct subsequent to Plaintiff's filing of
2 Court Document 143 and Judge Koh's order for a sanctions hearing, Plaintiff is compelled to
3 provide further information of unethical conduct perpetrated by Steven Sherman included as this
4 Supplement To Court Document 143.

5 SUPPLEMENT TO: PLAINTIFF'S NOTICE REQUESTING APPROPRIATE ACTION
6 REGARDING THE VIOLATIONS OF LAW AND RULES
7 BY ATTORNEY STEVEN SHERMAN

8 **TEN:**

9 On April 28, 2011, Steven Sherman filed court document 151, DEFENDANTS'
10 OPPOSITION TO PLAINTIFF'S MOTION FOR LEAVE TO FILE A MOTION FOR
11 RECONSIDERATION re PLAINTIFF'S OPPOSITION TO DEFENDANTS' MOTION FOR
12 SUMMARY JUDGMENT and SUPPLEMENTAL THERETO.

13 From line 1 through 4 of pg. 2 of Court Doc. 151 Mr. Sherman states, "Declaration of
14 Plaintiff states that he became aware of Harper v. City of Los Angeles 533 F.3d 1010 (9th Cir)
15 '...about a week ago. I first became aware of the 9th Circuit's ruling a few days ago on or about
16 April 17/18, 2011.' Pls' Decl at 3:16-17." That is NOT what Plaintiff stated in Plaintiff's
17 Declaration.

18 Plaintiff stated, "I first became aware of the Harper v. City of Los Angeles verdict about
19 a week ago. I first became aware of the Ninth Circuit's ruling a few days ago on or about April
20 17/18, 2011," lines 15-17 of pg. 3 of Court Doc. 146.

21 Notice the significant difference, Plaintiff became aware of the Harper v. City of Los
22 Angeles **VERDICT** about a week ago and then became aware of the NINTH CIRCUIT'S ruling
23 a few days ago. Mr. Sherman states that Plaintiff Ciampi was aware of the Ninth Circuit's ruling
24 both a week ago and a few days ago which is not the case. See Exhibit 606-2.

25 It is clear that Mr. Sherman deliberately misquoted Plaintiff in an attempt to mislead the
26 court and falsely portray Plaintiff contradicting himself in order to discredit Plaintiff.

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1 For clarification, Plaintiff first discovered the, Edward Ortiz, (Paul **Harper**) and Brian
2 Liddy v. City of Los Angeles **verdict**, Exhibit 605-2 of Court Doc. 143 at pg. 38 first and then
3 discovered the Ninth Circuit's ruling of the appeal of that verdict after. The verdict was filed
4 with the court on Monday April 18, 2011. Plaintiff became aware of the 9th Circs' ruling Sunday
5 night but didn't have an opportunity to truly delve into it until Monday night April 18. Plaintiff
6 sought out the means to incorporate the law set down by the 9th Circuit Tuesday and began
7 writing up the Motion For Leave on Tuesday April 19, 2011 and completed it on Wednesday
8 April 20, 2011. Plaintiff filed the Motion for Leave containing the 9th Circuit's decision on April
9 21, 2011.

10 **ELEVEN:**

11 Lines 9 & 10 of Court Doc. 151 Mr. Sherman states that Plaintiff failed to argue the
12 Harper case at the April 21st hearing. This is another false statement to the court made by
13 attorney Steven Sherman.

14 From lines 17 to 22 of pg. 55 of the hearing transcript it is documented that Plaintiff
15 Ciampi argued the Harper case at the April 21st hearing. Additionally Plaintiff argues that the
16 Harper versus City of Los Angeles, 533 F.3d at 1010 case cover's Plaintiff's Negligence,
17 Intentional Infliction of Emotional Distress and Defamation causes of action documented on
18 lines 5 through 10 of pg. 76 of the April 21, 2011 hearing transcript.

19 Mr. Sherman knowingly and intentionally attempted to mislead the court by making a
20 false statement to the court.

21 **TWELVE:**

22 During the April 21, 2011 hearing before Judge Koh, Steven Sherman verified with the
23 court that he submitted a MAV recording created by the Santa Clara County DA in which the
24 DA's office synched Defendant Burger's MAV audio to Defendant Temores' MAV video
25 creating one MAV recording out of the two recordings to the court as one of his exhibits in
26 support Defs.' Mot. to Comp. and Steven Sherman's Declaration, Court Documents 123 & 125,
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1 as documented on line 25 of pg. 39 and from line 1 through 15 of pg. 40 of the April 21, 2011
2 hearing transcript.

3 If this is true, then Plaintiff was misled as to the evidence provided to the court for
4 Plaintiff was not provided this exhibit as a part of Defs' Mot. for Summ. Judg. and Steven
5 Sherman's Declaration Court Docs. 123 & 125. The court has been informed that Def. Temores'
6 MAV recording did not record any audio of the March 15, 2008 incident, Exhibit 560 of Court
7 Doc. 133, because inexplicably Defendants claim that Def. Temores' MAV microphone's battery
8 ran out of power and therefore did not record the incident, lines 7 through 28 of pg. 39 of Exhibit
9 567-1 of Court Doc. 133 and Steven Sherman's Exhibit number 4 of Court Doc. 125.

10 As a part of the exhibits provided to Plaintiff, Plaintiff received Def. Temores' MAV
11 recording without the audio as Exhibit "14" of Steven Sherman's Declaration documented in ¶
12 17 and on line 9 of pg. 3 of Steven Sherman's Declaration, Court Doc. 125.

13 As a part of the exhibits provided to Plaintiff, Plaintiff received Def. Burger's MAV
14 recording with the audio as Exhibit "15" of Steven Sherman's Declaration documented in ¶ 18
15 and on line 11 of pg. 3 of Steven Sherman's Declaration, Court Doc. 125. This recording did not
16 capture any visual aspects of the incident for the camera was facing away from the scene.

17 Plaintiff was provided a copy of the DA's "mated" version of Defs. Temores' and
18 Burger's MAV recordings during the Discovery process, however Plaintiff was not provided this
19 copy along with Steven Sherman's other exhibits as it appears that the court has received.

20 If this is true then Steven Sherman misled Plaintiff as to the evidence he submitted to the
21 court denying Plaintiff the opportunity to either object to the evidence or refute the evidence as a
22 part of Plaintiff's Opposition to the Motion.

23 By providing the court Defendant Temores' MAV recording that has audio it could be
24 construed Mr. Sherman was intentionally misleading the court regarding the fact that Def.
25 Temores' MAV recording did not record any audio of the incident on March 15, 2008.

26 Given that Mr. Sherman has entered this "synched" version of Defendants' Temores' and
27 Burger's MAV recordings, then Mr. Sherman and the Defendants should have no objections to
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1 the other videos that the District Attorned compiled in their analysis which confirms that a
 2 minimum of four seconds is missing from Defendant Temroes' taser video, see Exhibits 36 and
 3 46 of Court Document 55. Exhibit 36 is a DVD containing the videos.

4 **THIRTEEN:**

5 On April 21, 2011 Magistrate Judge Grewal issued an Order, Court Doc. 144, compelling
 6 Defendants to provide Plaintiff with copies of the MAV recordings containing the watermarks
 7 and the identical amount of memory to that which their expert Warren Page received. Pursuant
 8 to the Order, Defendants were to provide the MAV recordings no later than April 29, 2011.

9 On April 27, 2011 Defendants' attorney, Blakney Boggs acting under the supervision and
 10 direction of attorney Steven Sherman informed Plaintiff that one of the Palo Alto Police
 11 Department's (IT-Personnel), Brian Furtado, was away on vacation for the week and that he was
 12 the only person in the entire police department able to provide Plaintiff with a copy of the MAV
 13 recordings therefore Defendants requested an extension, see Exhibit 607-2.

14 Based upon this representation Plaintiff agreed to give Defendants to May 3, 2011 to
 15 provide the MAV recordings. Upon reflection and inspection of evidence, Plaintiff realized that
 16 Defendants' representation that Brian Furtado is the only person capable of providing the MAV
 17 videos was false. In less then 32 hours of being falsely informed that that Mr. Furtado is the only
 18 person that can provide the MAV recordings Plaintiff rescinded his agreement to an extension in
 19 time.

20 On April 29, 2011, Blakney Boggs under the supervision of and at the direction of
 21 Defendants' attorney Steven Sherman filed a Declaration with the court giving an account as to
 22 why Defendants are not capable of meeting the court's order, Court Doc. 152.

23 A) On lines 16 through 24 of pg. 4 of Blakney Boggs' Declaration, Ms. Boggs states,
 24 "The first person he names Terry (Terri) Hoang is a Communications Technician that handles
 25 primarily portables and radios. Prior to the server system currently in place at Palo Alto Police
 26 Department, several years ago, she assisted with the older system; however, she is not involved
 27 with this instant matter. She is not involved with the instant matter and would have no
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1 understanding of the court order as the item requested is for a copy of the MAV recordings in the
2 format Warren Page received.”

3 During the October 19, 2010 inspection of the MAV recordings Plaintiff was provided a
4 printout of the “Export History Log” of the personnel who have exported Defendant Temores’
5 MAV recording from the MAV server, Exhibit 608-2. The printout states that on 9/25/2008
6 “thoang,” (Terri Hoang), Exported Def. Temores’ MAV recording that recorded the March 15,
7 2008 incident from the MAV server.

8 Additionally during the October 28, 2010 MAV inspection Plaintiff Ciampi asks Brian
9 Furtado if he created the two MAV recordings provided to Plaintiff by Steven Sherman that have
10 Palo Alto Police labels on them. Mr. Furtado states that the hand writing on the labels is not his
11 and that it could be Dacia Tavares or Terri Hoang who created the MAV recordings from the
12 1:00 mark to the 3:00 mark of Exhibit 611-1.

13 B) On lines 25 through 28 of pg. 4 of Boggs’ Decl. Ms. Boggs states, “The second
14 person he, (Ciampi), names Sgt. Tavares is not a sworn officer and is not a sergeant. She is a
15 crime analyst. Her job description is not such that she handles MAV downloads. She is not
16 involved with the instant matter and would have no understanding of the court order as the item
17 requested is for a copy of the MAV recordings in the format Warren Page received. During the
18 October 28, 2010 MAV inspection Brian Furtado stated that Dacia Tavares is capable of creating
19 MAV recordings, Exhibit 611-1.

20 C) On lines 4 through 8 of pg. 5 of Boggs’ Decl. Ms. Boggs states, “The third
21 person referenced is Charles Cullen. Charles Cullen is the Deputy Director of
22 Technical Services. His job as management is to oversee multiple departments
23 such as Technical Services, Emergencies, Dispatch, some Records and Crime.

24 From the 3:15 mark to the 3:45 mark of Exhibit 611-1 Brian Furtado confirms that his
25 former Director was Sheryl Contois who instructed Mr. Furtado to place the Palo Alto Police
26 Department labels on the MAV recordings.

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1 According the City of Palo Alto 2006 Gross Salaries, Sheryl Contois' title was, Coordinator:
 2 Police Technical Services and Charles Cullen's job title was Supervisor Police Services. In 2008
 3 Sheryl Contois left the Palo Alto Police Department and Charles Cullen took Contois' position as
 4 Coordinator: Police Technical Services, see Exhibits 609-2 & 3. In addition the Palo Alto
 5 Police Department identifies Mr. Cullen as the, "Police Technical Services : Coordinator:,"
 6 Exhibit 610-3.

7 As a result of being followed and surveilled by Palo Alto Police on and off the last year;
 8 falsely incriminated by the Palo Alto Police while using fabricated evidence; and falsely reported
 9 by Defendant Powers and Officer Rebecca Phillips, Plaintiff maintains a camera and audio
 10 recorder on his person at all times in order to document encounters with the Palo Alto Police for
 11 fear that the Palo Alto Police will falsely incriminate Plaintiff again in the future using fabricated
 12 evidence.

13 Plaintiff was waiting close by the Palo Alto Police Station in order to obtain the MAV
 14 videos when directed to by Defendants' attorneys when Plaintiff witnessed Charles Cullen
 15 obtaining a cup of coffee from "Peete's Coffee," and reasoned that Mr. Cullen was working at
 16 the police station a few blocks away. Plaintiff went to the police station and witnessed Mr.
 17 Cullen entering the police station just prior to 11:00am on Friday April 29, 2011 and documented
 18 the incident, Exhibits 610-2 & 3. Mr. Cullen was available to provide Plaintiff with the MAV
 19 recordings within the time allotted by the court's order but chose not to do so. Ms. Boggs also
 20 states in lines 9 through 17 of Boggs' Decl. that Mr. Cullen does not involve himself with the
 21 technical expertise to download.

22 D) In ¶ 11 of pg. 3, of Boggs' Decl. Ms. Boggs states, "Brian Furtado, P.S.D.
 23 Technologist, has been involved in the instant matter from a supervisory and hands-on capacity.
 24 **He is the manager of the MAV system. He handles all court requested copies or**
 25 **reproductions of MAV videos.** He was present during the sealing of the disc on or about
 26 October 28, 2010 and he has been in communication with MAV expert Warren Page during this
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1 litigation. He is the only person qualified at the Palo Alto Police Department to produce the
2 information required on the Order dated 4/21/11.

3 Mr. Furtado identifies his job title as, "Lead Public Safety Dispatcher and Technology,"
4 0:34 mark to the 0:52 mark of Exhibit 612-2.

5 During the October 19, 2010 inspection of the MAV recordings Brian Furtado confirms
6 that he downloaded Defs. Temores' and Burger's MAV recordings on the day of incident and
7 created copies of the recordings for the supervisors that day even before Defendants' Temores'
8 and Burger's shifts ended so that the supervisors could investigate the use of force which is
9 normal procedure, Exhibit 612-1 from the 0:05 mark to the 0:45. This is also confirmed by the
10 MAV Server's "Export History Log," which states that Mr. Furtado exported Def. Temores'
11 MAV recording at 12:44:27pm on 3/15/2008, Exhibit 608-2.

12 The Defendants expect the court to believe that Mr. Furtado is the only person in the
13 entire Palo Alto Police Department capable of producing MAV recordings. What happens if Mr.
14 Furdado were to become ill or suffer an accident unexpectedly. Who would provide the videos
15 to the court and supervisors then. If Mr. Furtado is incapacitated at home or in the hospital he
16 couldn't even train someone on how to produce the recordings.

17 From the 0:26 mark through the 0:45 mark of Exhibit 612-1 Brian Furtado stated the
18 following: "I was personally here that day and I downloaded it and um they were actually
19 pulled, instead of at the end of the shift, after the incident so that our supervisors can investigate
20 any type of "use of force" its just their normal procedure to write a report."

21 So the question is, if Brian Furtado is the only person capable of making MAV
22 recordings within the Palo Alto Police Department who was making the MAV recordings
23 according to normal procedure for the supervisors while Mr. Furtado was away on vacation?

24 Plaintiff anticipates that Defendants will argue that it takes special expertise to create
25 MAV recordings that contain the watermark which only Brian Furtado possesses. Plaintiff will
26 point out now that this is not the case. During the inspections on October 19, 2010 and October
27 28, 2010 Mr. Furtado simply exported the MAV recordings out of the "MAV Server" and into a
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1 folder onto the computer's hard drive. This is exactly what Terri Hoang did on 9/25/2010 as
2 documented in Exhibit in 608-2.

3 The MAV recordings in these folders are the recordings with the original date of
4 modification and contain the watermark as asserted to by Brian Furtado. And it was these MAV
5 recording files that Mr. Furtado was not permitted to release to Plaintiff by his superiors in the
6 Palo Alto Police Department. Defendants simply need to copy the MAV recording files intact
7 from these folders directly onto DVD's utilizing the standard windows file copy system.

8 **Summary:**

9 MAV recordings can be copied from the MAV server to a DVD within two hours of an
10 incident by personnel other than Brian Furtado.

11 The Defendants and their attorneys, Steven Sherman and Blakney Boggs, failed to
12 comply with the court's order by using unjustified delay tactics and false statements to justify
13 why they did not comply with the court order in the time allotted.

14 Obviously the Defendants and their attorneys do not want anyone other than Mr Furtado
15 to provide Plaintiff with the MAV recordings, but why? Based upon the actions of the
16 Defendants and their attorneys it appears that Mr. Furtado is aiding the Defendants in concealing
17 evidence that Defendants and their attorneys do not want Plaintiff to have.

18 Since Terri Hoang has already produced a copy of Defendant Temores' MAV recording,
19 Plaintiff requests that the court order "Terri Hoang" to produce and provide Plaintiff a copy of
20 Defendant Temores' and Burger's MAV recordings. Plaintiff requests that this production of the
21 recordings to a DVD from the MAV server be done in the presence of Plaintiff to ensure the
22 chain of possession.

23 **Conclusion:**

24 Blakney Boggs stated in her Declaration that no one other than Brian Furtado can
25 produce and provide Plaintiff with the MAV videos. That statement is false.

26 Blakney Bloggs stated in her Declaration that Terri Honag does not have the
27 understanding to produce the MAV recordings. That statement is false.

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1 Blakney Boggs stated in her Declaration that (Dacia) Tavares would have no
2 understanding of a court order in providing a copy of the MAV recordings in the format that
3 Warren Page received. That statement is false.

4 According to the California State Bar's website, Blakney Boggs has been admitted to
5 practice law as an attorney beginning from December 2009 to the present, approximately 17
6 months. Steven Sherman is the lead attorney for the Defendants. Blakney Boggs is supervised
7 by and works under the authority of Steven Sherman. Blakney Boggs does not do anything
8 without Steven Sherman's approval or at his direction.

9 In allowing and or directing Blakney Boggs to submit a Declaration to the court which
10 blatantly uses false statements of fact in order to mislead the court, Steven Sherman violated Cal.
11 State Bar Rule 3-110 (A), see Exhibit 613-2.

12 **TEN:** Steven Sherman has violated Cal. Bus. & Prof. Code § 6128(a), Bus. & Prof.
13 Code § 6068 (d), Cal. Bus. & Prof. Code § 6106 and Cal. State Bar Rule 5-200 (A)(B) by
14 knowingly and deliberately misquoting Plaintiff in a statement to the court regarding the citation
15 of case law.

16 **ELEVEN:** Steven Sherman has violated Cal. Bus. & Prof. Code § 6128(a), Cal. Bus. &
17 Prof. Code § 6068 (d), Cal. Bus. & Prof. Code § 6106 and Cal. State Bar Rule 5-200 (A)(B) by
18 knowingly and falsely stating to the court that Plaintiff did not cite or argue a specific case law,
19 Harper v. City of Los Angeles, when Plaintiff did in fact cite and argue the case law during a
20 judicial proceeding.

21 **TWELVE:** Steven Sherman has violated Cal. Bus. & Prof. Code § 6128(a), Cal. Bus. &
22 Prof. Code § 6068 (d), Cal. Bus. & Prof. Code § 6106 and Cal. State Bar Rule 5-200 (A)(B) by
23 submitting evidence to the court that was not cited in his Motion for Summary Judgment or Mr.
24 Sherman's Declaration in Support of Mot. for Summ. Judg..

25 **THIRTEEN:** Steven Sherman has violated Cal. Bus. & Prof. Code § 6128(a), Cal. Bus.
26 & Prof. Code § 6068 (d), Cal. Bus. & Prof. Code § 6106 and Cal. State Bar Rule 5-200 (A)(B)
27 and Failed to Comply with a Court Order pursuant to FRCiv.P 37 (b)(1)(2) by using false
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1 statements in order to avoid having someone other than Brian Furtado produce the MAV
2 recordings pursuant to the court's order deadline. These violations are dependant upon Steven
3 Sherman insulating himself from the false statements by having a subordinate, Blakney Boggs,
4 working under his authority submit a Declaration to the court containing the false statements in
5 question which is a violation of Cal. State Bar Rule 3-110 (A).

6 Should the court determine that any of the allegations set forth by Plaintiff be found to be
7 factual, Plaintiff requests that court impose an appropriate disciplinary action pursuant to
8 FRCiv.P. 37(b)(1)(2)(A)(B)(C) and or Civ. L.R. 11-6 (a)(1)(2)(3)(4)(5).

11 Plaintiff

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13 Dated: May 2, 2011

14 Plaintiff Joseph Ciampi in pro se