

1 Steven A. Sherman, Esq. Bar No. 113621  
2 **FERGUSON, PRAET & SHERMAN**  
3 A Professional Corporation  
4 1631 East 18th Street  
5 Santa Ana, California 92705-7101  
6 (714) 953-5300 Telephone  
7 (714) 953-1143 Facsimile  
8 Ssherman@law4cops.com

9 Attorneys for Defendants

10 UNITED STATES DISTRICT COURT  
11 NORTHERN DISTRICT OF CALIFORNIA

12 JOSEPH CIAMPI,

13 Plaintiff,

14 v.

15 CITY OF PALO ALTO, a government entity;  
16 LYNNE JOHNSON, an individual; CHIEF  
17 DENNIS BURNS, an individual; OFFICER  
18 KELLY BURGER, an individual; OFFICER  
19 MANUEL TEMORES, an individual; OFFICER  
20 APRIL WAGNER, an individual; AGENT DAN  
21 RYAN; SERGEANT NATASHA POWERS,  
22 individual,

23 Defendants.

) NO. C09-02655 LHK (PSG)

)  
) **DEFENDANTS' RESPONSE VIA**  
) **DECLARATION TO**  
) **PLAINTIFF'S MOTION FOR**  
) **APPROPRIATE ACTION**  
) **REGARDING THE VIOLATION S**  
) **OF LAW AND RULES**  
) **COMMITTED BY STEVEN A.**  
) **SHERMAN**

) **DATE: June 30, 2011**  
) **TIME: 1:30 p.m.**  
) **CTRM:**

24 I, STEVEN A. SHERMAN, declare:

25 1. I am the attorney of record for the City of Palo Alto, the Palo Alto Police  
26 Department, Chief Dennis Burns, former Chief of Police Lynne Johnson, Sergeant Natasha  
27 Powers, Sergeant April Wagner, Officer Kelly Burger, Officer Manuel Temores, and former  
28 agent Dan Ryan in the above-entitled action.

2. I am a partner with the law firm of Ferguson, Praet & Sherman, and duly  
licensed to practice in the State of California in both state and federal venues.

1           3.       The facts stated herein are of my own personal knowledge unless otherwise  
2 stated.

3           4.       I now respond to Plaintiff's request for appropriate action re violations of  
4 law and rules committed by myself. Wherever possible, I will attempt to utilize Plaintiff's  
5 exhibits when addressing the numerous, and extremely serious, accusations before this  
6 Court.

7           **PLAINTIFF'S ACCUSATION NUMBER ONE:**

8           *On January 24, 2011 attorney Steven Sherman submitted Defendant Natasha*  
9 *Powers' response to Plaintiff's Interrogatories, Set Nine, to Plaintiff Ciampi, Exhibit 601.*  
10 *Plaintiff points out to Defendants in Exhibit 161 of Court Document 109 that a portion of*  
11 *the serial number of Taser Camera V07-065373 had disappeared while maintained in*  
12 *evidence for the previous two months. Plaintiff requested that Defendant Powers explain*  
13 *why the serial number disappeared, Exhibit 603-2. Defendant Powers stated that no*  
14 *changes had occurred to the serial number between the two inspection dates of October 28,*  
15 *2010 and December 17, 2010, Exhibit 601.*

16           *During the December 17, 2010 inspection, attorney Steven Sherman stated that the*  
17 *serial numbers were being messed up because he was repeatedly attaching and removing a*  
18 *sticker from the taser camera serial number, Exhibits 600 and 602. Natasha Powers'*  
19 *statement is contradicted by Steven Sherman's statement and actions.*

20           *Additionally, there is a portion of the text below the serial number and bar code that*  
21 *was missing on October 28, 2010 and then somehow reappears on December 17, 2010,*  
22 *Exhibit 603-19. Defendants and their attorney have not provided any explanation as how*  
23 *this could have occurred.*

24           *With the knowledge of attorney Steven Sherman, Defendants have tampered with the*  
25 *serial number on taser camera V07-065373. This is the taser camera that was downloaded*  
26 *in January of 2008 as being in possession of Defendant Burger and initially identified by*  
27 *Defendant Bums, (Court Document 55, line 4 of pg. 4 through line 21 of pg. 5), as the taser*  
28 *camera used by Defendant Burger to record the March 15, 2008 incident.*

1           **5. Response** - Plaintiff's exhibit series 600-603 deal with an allegation of  
2 evidence tampering. Exhibits 600 through 602 are the precursors to Exhibit 603 which  
3 depicts two out-of-focus photographs.

4           In looking at the photographs, it is very evident from the light reflected off the piece  
5 of metal located above the label that the camera angle was different when each photograph  
6 was taken.

7           The photograph labeled October 28, 2010, indeed shows a label, however, the  
8 photograph also seems to show a camera flash reflecting off of the label and the light from  
9 that flash hitting reflective metal at the far right. This would tend to indicate that the picture  
10 was taken from an angle.

11           In second photograph dated December 17, 2010, it appears the photo was taken  
12 more head-on and as such, light is reflected fully across the top of the reflective metal rather  
13 than only on the right. This also yields a clearer copy of the label's text.

14           This further assumes that Plaintiff has the photographs in the correct date order and  
15 on that, Defendants will have to take his word because other than that, there is absolutely no  
16 evidence offered to the Court that shows this exhibit is an accurate depiction of the date  
17 order of these photographs.

18           Lastly, Plaintiff has placed much weight on my innocuous statement that the post-it  
19 being used to mark the taser camera during the inspection process may be removing ink  
20 from the label. See, Plaintiff's Exhibit 602 wherein he quotes "We're going to have to put  
21 this, (Taser Camera V07-065373), into an envelope because we're messing up the numbers;  
22 some of it could be my fault from sticking this sticker on the wrong side all day long and  
23 pulling it off, but we may be pulling of the number, the ink on it." In all truth, I have no  
24 idea why it's lifting.

25           Using Plaintiff's date order and in viewing Exhibit 603-2, it would appear that the  
26 photo identified as being taken December 17, 2010, does indeed have a lighter serial  
27 number than the photo above it taken October 28, 2010. As such, my statement was a  
28 truthful observation - ink may be lifting off the serial number. I have absolutely not any

1 intentional act that would cause the print to lift and/or fade. Also and despite the fact it's  
2 been some time since I've viewed the labels, I believe the serial numbers are embossed into  
3 the actual gun. Further, it is my belief that once the units are plugged in they are self-  
4 identifying and the unit number appears on the screen.

5 Lastly, the tasers and cameras remain in evidence. Should the Court care to issue an  
6 order allowing them to be removed, I would be more than happy to present them to the court  
7 for inspection.

8 **Conclusion** - Plaintiff's out-of-focus photographs taken at different camera angels  
9 offer absolutely no proof evidence tampering. See also, Plaintiff's allegation concerning  
10 "conspiracy" statement below.

11  
12 **PLAINTIFF'S ACCUSATION NUMBER TWO:**

13 *Plaintiff Ciampi requested that Defendant Burns provide a copy of Defendant*  
14 *Temores' MAV recording containing the original "Date of last Modification" of March 15,*  
15 *2008, for the only copies provided to Plaintiff Ciampi up to that time had "dates of last*  
16 *modification" of March 18, 2008 and October 12, 2008. At that time, Plaintiff believed*  
17 *that all copies of the MAV recordings contained the watermark. Defendant Bums sent*  
18 *Plaintiff Ciampi a copy of Defendant Temores' MAV recording stating that that the*  
19 *recording contained a "date of last modification" of March 15, 2008, see Exhibit 52 of*  
20 *Court Document 55. The recording sent to Plaintiff did not have "date of last modification"*  
21 *of March 15, 2008, but it had a "date of last to modification" of September 3, 2010.*

22 **Response** - What the above boils down to is two different modification dates. This  
23 has been explained ad nauseam, however, I will attempt to explain this yet again as it has  
24 been explained to me:

- 25 1) At the inception of this litigation they were provided copies of the MAV and  
26 taser recordings of Officers Temores and Burger. These copies were taken  
27 directly off the Department's server and provided to me.  
28 2) As they were the only copies in my possession at the time a response was due

1 to Plaintiff's production demand, copies of the disks provided by the  
2 Department were burned in a commercial burning program and provided to  
3 Plaintiff pursuant to his request with my office retaining the original copy  
4 that was sent by the Police Department.

5 3) The date the disk recordings were burned for Plaintiff was September 3,  
6 2010, and directly correlate with the production response provided to  
7 Plaintiff at the same time.

8 4) They were and are a true and accurate copy of the copies provided by the  
9 Department.

10 5) As Plaintiff began requesting additional copies, different modification dates  
11 began to appear. The "new" modification dates reflect the date(s) the new  
12 disks were burned. That's it - nothing more. Each and every one provided is  
13 a true and correct copy of the DVD that Defendants have relied upon since  
14 the inception of this litigation.

15 *Additionally it did not have all of the data necessary to play the recording. Steven*  
16 *Sherman then states on lines 3 through 7 of pg. 7 of Court Document 59 that the "date of*  
17 *last modification" of Temores' MAV recording is September 3, 2010. Steven Sherman*  
18 *intentionally attempted to mislead Plaintiff regarding the "date of last modification" of*  
19 *Temores' MAV recording. This deception was continued through the inspection process*  
20 *which resulted in Plaintiff amending his Motion to Compel.*

21 **Response** -. I am unsure as to the meaning of the statement, "all the data necessary  
22 to play the recording." Plaintiff was provided a copy of the MAV recordings in a format  
23 that was viewable in Windows or other commercial viewing programs. Plaintiff received  
24 this type of copy because that is what Defendants' possessed and in fact, possess to this day.

25 It has been explained numerous times that when the Department burns a copy of a  
26 MAV recording, the "watermark" is dropped because it is not recognized by commercial  
27 burning programs. What this means, of course, is that the copies in the possession of the  
28 Defendants don't contain a watermark either; they're identical to that provided to Plaintiff.

1 In fact, the only way to view/read/verify the watermark is to run the raw data  
2 recording through the proprietary software designed by Kustom Signals. Defendants do not  
3 possess this software and if this is what Plaintiff is meaning by “all the data necessary to  
4 play the recording,” Defendants were/are unable to provide it.

5 Ironically, it was through this lawsuit that the City of Palo Alto Police Department  
6 learned that it had not been provided the software to verify the MAV recordings. This  
7 oversight was corrected by Kustom Signals and the recordings of Plaintiff’s incident were  
8 immediately run through the verification program to ensure their integrity. Both recordings  
9 passed. Plaintiff was advised of this in Defendant Johnson’s response to production, set  
10 four. Screen shots of the verification results were provided as well.

11 I fail to see this alleged deception and quite frankly, the motions to compel resulted  
12 in Defendants providing Plaintiff additional copies of what had already been provided. The  
13 only exception to this would have been the raw data recording recently released by  
14 Plaintiff’s neutral party. The only reason for withholding that particular recording was to  
15 allow Plaintiff to secure an expert qualified to read the recording. There was a concern that  
16 should Plaintiff attempt to do so himself, the data could be manipulated and would no  
17 longer match the recordings that had been verified as it now could be altered. The concern  
18 was that altered copies would start appearing and obviously, this is something that the  
19 Department wished to prevent.

20  
21 **PLAINTIFF’S ACCUSATION NUMBER THREE:**

22 *On October 19, 2010 during the first inspection of the MAV recordings Plaintiff was*  
23 *informed by attorney Steven Sherman that Plaintiff could not have a copy of Defendant*  
24 *Temores’ MAV recording containing the original “date of last modification” of March 15,*  
25 *2008 because that copy contains the watermark which was proprietary in nature.*

26 *This is a direct contradiction of the statement made by Defendant Burns in Burns’*  
27 *response to Discovery that he had provided Plaintiff Ciampi a copy of Temores’ MAV*  
28 *recording containing “date of last modification” of March 15, 2008. October 19, 2010 was*

1 *the first time that Plaintiff was informed by the Defendants that none of the MAV recordings*  
2 *previously provided to him did not have the watermark. Steven Sherman stated on October*  
3 *22, 2010 that the watermark was of such proprietary nature that no one other the*  
4 *Defendants could possess copies of the MAV recordings containing the watermark, see lines*  
5 *17 through 19 of pg. 2 of Court Document 65. It was discovered through the Discovery*  
6 *process that the watermark on the MAV recordings are not proprietary to such a degree*  
7 *that the only persons that are authorized to possess such recordings are the Defendants. see*  
8 *Court Documents 115, 116 and 131.*

9 *Defendants' attorney Steven Sherman deliberately and knowingly made a false*  
10 *statement of fact in order to mislead the court and Plaintiff.*

11  
12 **Response** - Another explanation is that Plaintiff misunderstood my statement. I  
13 have never contended that the watermark itself is proprietary. It is the manufacturer's  
14 software that allows a party to view/read the watermark that is proprietary.

15 As noted above, a watermarked copy of the recordings cannot be made that would  
16 allow an individual to view the recordings on a computer or DVD player. When the  
17 recording is copied to a format that allows viewing, the watermark is dropped. The purpose  
18 of the watermark is strictly for internal auditing purposes. What was provided to Plaintiff is  
19 an identical copy of the recordings in the possession of the defense and the Court. I, myself,  
20 do not possess a raw data copy of the recordings. It would serve no purpose as it is not a  
21 viewable format. For me to view the incident, a copy identical to that provided to Plaintiff  
22 is utilized.

23 There has been no misconduct on my part and this allegation is unfounded. As a  
24 further aside, based on the Magistrate judge's recent ruling, Plaintiff now has two (2) copies  
25 which should have the watermark coding whether Plaintiff has the ability to read them or  
26 not.

27 ///

28 ///



1                    **PLAINTIFF’S ACCUSATION NUMBER FOUR:**

2                    *On September 3, 2010 Defendant Bums provided Plaintiff copies of Defendants*  
3                    *Temores' and Burger's taser guns' activation data Exhibits #4 and #6 of Def. Burns'*  
4                    *Response to Request for Production of Documents Set Two, requests numbers five and six,*  
5                    *see Exhibits 178 and 179 of Court Document 109. On December 17, 2010 Plaintiff*  
6                    *downloaded the taser gun activation data directly from Defendants' Temores' and Burger's*  
7                    *taser guns. A copy of this activation data was provided to attorney Steven Sherman and was*  
8                    *documented by court videographer Kevin McMahon of McMahon & Associates, LLC; 97 E.*  
9                    *ST. James Street Suite 101, San Jose, Ca 95112; phone, 1-408-298-6686; email,*  
10                   *MMCMAHON@MCMAHONVIDEO.COM.*

11                   *Plaintiff provided Defendants copies of the December 17, 2010, taser gun activation*  
12                   *data downloads, Exhibits 175 and 177 of Court Document 109 along with copies previously*  
13                   *provided to Plaintiff by Defendant Burns. Exhibits 178 and 179 of Court Document 109 on*  
14                   *December 22, 2010. Attached as Exhibit 604 is a copy of Defendant Dennis Bums'*  
15                   *Response To Plaintiff's Requests For Admissions, Set Nine dated January 24, 2011.*  
16                   *Defendant Bums acknowledges the activation data between the reports are different,*  
17                   *Responses to Requests 2, 3, 12 and 13.*

18                   *On February 10, 2011 Attorney Steven Sherman submitted Exhibits 178 and 179 in*  
19                   *support of Defendants' Motion for Summary Judgment, Court Document 124 to the court as*  
20                   *Exhibits "10" and "11," "13" and "14" of Steven Sherman's Declaration. Steven Sherman*  
21                   *submitted these documents fully informed that the information on contained these*  
22                   *documents had been contradicted by direct downloads obtained on December 17, 2010.*  
23                   *Attorney Steven Sherman intentionally attempted to mislead the court regarding the taser*  
24                   *gun activation data from Defendants Temores' and Burger's taser guns.*

25                   **Response** - I grow weary of Plaintiff’s “false statements” and attorney misconduct  
26                   accusations. Plaintiff’s statement that “Steven Sherman submitted these documents fully  
27                   informed that the information on contained these documents had been contradicted by  
28                   direct downloads obtained on December 17, 2010” is in itself a false statement.



1 After sitting down and carefully comparing the two documents, something that  
2 Plaintiff himself could have done, I have compiled a chart showing that while the  
3 documents look different, the data relevant to 2008 is shown in each report.

4 I initially provided to Plaintiff in response to a production demand, a Taser Weapon  
5 Summary as to each taser utilized during this incident. This report provided far more  
6 information than was relevant for this litigation, however, in the spirit of cooperation the  
7 documents were released. The Taser Weapon Summary is a download that goes back to the  
8 last recordable date. The reports provided to Plaintiff and to the Court as Defendants'  
9 Exhibit 13 to their motion for summary judgment, are these weapon summary reports. They  
10 go back to into 2007. The 2007 dates are irrelevant for purposes of this litigation but again,  
11 I was trying to be as cooperative as possible. So in sum, the download provided by the  
12 court and to Plaintiff via the weapon summary far exceeds the perimeters necessary for this  
13 litigation.

14 On December 17, 2010, Plaintiff appeared at the police department for an  
15 inspection. The taser guns/cameras in question were downloaded and he was provided  
16 reports on each. These downloads were for the year 2008, only. It is important to note that  
17 the downloads stop on approximately August 28, 2010, the date Chief Burns became aware  
18 of Plaintiff's allegations and took the weapons out of service.

19 Attached hereto as Exhibit 1 are charts prepared by defense counsel wherein the data  
20 from the previously provided weapon summary report is integrated with the downloads of  
21 December 17, 2010. There is one for Officer Burger and one for Officer Temores.

22 It is quite obvious that when the data from the September 13, 2010, weapon  
23 summary is matched up with the same sequence from the December 17, 2010, download,  
24 the information is identical. The only difference is that the December download utilizes  
25 military time whereas the summary uses Pacific Time.

26 It is irrefutable that all information contained in the December 17, 2010, download is  
27 contained in the Weapon Summary Report provided to both Plaintiff and the Court.  
28 Plaintiff's allegation of misconduct is again misplaced.

1                   **PLAINTIFF’S ACCUSATION NUMBER FIVE:**

2                   *Pages 20 through 25 of Defendants' Motion for Summary Judgment Court*  
3                   *Document Steven Sherman states that Defendants are immune and not liable for the*  
4                   *damages caused by their actions. If this were true then the courts would not have allowed*  
5                   *the jury verdicts, judgments and settlements regarding the same offenses by municipalities*  
6                   *and police officers in other cases including malicious prosecution, defamation, negligence*  
7                   *intentional infliction of emotional distress false arrest, false imprisonment and assault and*  
8                   *battery, Exhibit 605. It is clear that Steven Sherman is attempting to mislead the court in*  
9                   *regards to the liability of Defendants.*

10                   How does one address this statement? The law and cases cited in Defendants’  
11                   motion are what they believe to be applicable to the matter before the Court. Defendants  
12                   did not invent the concept of “qualified immunity.” Defendants have presented their  
13                   argument to the Court and it is up to the Court, not Plaintiff, to determine whether the  
14                   authority provided is applicable.

15  
16                   **PLAINTIFF’S ACCUSATION NUMBER SIX:**

17                   *On lines 17 and 18 of pg. 4 of Defendants' Reply To Plaintiff's Opposition To*  
18                   *Motion For Summary Judgment Court Document 141, Steven Sherman states, "Nor does*  
19                   *Plaintiff refute the existence of pock marks on his person, and in fact admits their*  
20                   *existence." This is flat out lie made by Attorney Steven Sherman, for Plaintiff has never*  
21                   *stated or admitted in any way shape or form that Plaintiff has pock marks on his person.*  
22                   *This is a false statement made about Plaintiff by Steven Sherman and is in and of itself a*  
23                   *defamatory statement made by Steven Sherman.*

24                   **Response** - Webster’s New World Dictionary, Third College Edition 1988, defines  
25                   “pock mark” as “1) a scar or pit in the skin left by a pustule, as of small pox. 2) any pit or  
26                   mark suggestive of this.”

27                   Plaintiff has admitted that he suffers a dermatological condition and in fact,  
28                   provided Defendants and the Court with photographs of same. Plaintiff placed these photos

1 of his skin condition next to photographs of “pock marks” belonging to heroin addicts in an  
2 attempt to show the difference between the two. Defense counsel has never labeled or  
3 referred to Plaintiff as a heroin addict and whether he chooses to identify the pitted scarring  
4 on his skin by some other term, the scarring is, by look and definition, a pock mark.

5 And quite frankly, the only reason the scarring/pock marks are remotely relevant to  
6 this case is that they were immediately noticeable to Officer Temores. Plaintiff himself  
7 states that when he opened van door he was heated. He does not dispute this. [Deposition  
8 of Plaintiff, 329:10-23; Exhibit 2] The hostility in Plaintiff’s response was so unexpected  
9 by Officer Temores that he immediately tried to assess whether something else could be  
10 fueling the anger. Officer Temores took note of Plaintiff’s arms and, when coupled with  
11 Plaintiff’s angry and unexplainable behavior, inquired of Plaintiff whether he was a heroin  
12 addict.

13 The law does not allow for Monday-morning quarter backing. “The  
14 ‘reasonableness’ of a particular use of force must be judged from the perspective of a  
15 reasonable officer on the scene, rather than the 20/20 vision of hindsight . . . even . . . . The  
16 Fourth Amendment is not violated by an arrest based on probable cause, even though the  
17 wrong person is arrested, . . . , nor by a mistaken execution of a valid search warrant on the  
18 wrong premises. With respect to a claim of excessive force, the same standard of  
19 reasonableness at the moment applies: ‘not every push or shove, even if it may later seem  
20 unnecessary in the peace of a judge's chambers . . . violates the Fourth Amendment. The  
21 calculus of reasonableness must embody allowance of the fact that police officers are often  
22 forced to make split-second judgments . . .’ Graham v. Connor, (1989) 490 U.S. 386

23 Officer Temores encountered a hostile individual and had a split second to  
24 determine whether there was an additional reason for Plaintiff to be exhibiting that type of  
25 hostility. From training and experience the officer knows that this type of behavior is  
26 suggestive of substance abuse. He notices the scarring on Plaintiff’s arms. The fact it came  
27 to light later that Plaintiff suffers from a skin condition does not negate the facts Officer  
28 Temores had to work with at the time. Officer Temores noticed pock marks/scarring and

1 parred such with Plaintiff's unexplainable hostility.

2 As such, this allegation is unfounded as well.

3

4 **PLAINTIFF'S ACCUSATION NUMBER SEVEN:**

5 *On lines 23 through 25 of pg. 4 of Defendants' Reply To Plaintiff's Opposition To*  
6 *Motion For Summary Judgment. Court Document 141 Steven Sherman implies that Plaintiff*  
7 *violated Cal. Penal Code 834(a) regarding the March 15, 2008 incident. Again this is a*  
8 *false and defamatory statement made about Plaintiff by Steven Sherman with the intent to*  
9 *mislead the court. Penal Code 834 states: "An arrest is taking a person into custody, in a*  
10 *case and in the manner authorized by law. An arrest may be made by a peace officer or by a*  
11 *private person."*

12 *Cal. Penal Code 834(a) is a conditional penal code requiring that standard set by*  
13 *Cal. Penal Code 834 has been met for Cal. PC 834(a) to be in effect. By only citing Cal.*  
14 *Penal 834(a) Mr. Sherman knowingly and intentionally submitted an erroneous*  
15 *interpretation of the law to the court.*

16

17 *Furthermore, Defendants have asserted that they never stated to Plaintiff that*  
18 *Plaintiff was under arrest prior to placing handcuffs on Plaintiff during the March 15, 2008*  
19 *incident. If no arrest had occurred, Cal. Penal Code 834(a) cannot be in effect and*  
20 *therefore cannot be violated. Two, Cal. Penal Code 834(a) is dependent upon the arrest*  
21 *being made in a case and in a manner authorized by law. Even if Plaintiff was arrested, the*  
22 *arrest was unlawful and therefore was not authorized by law. Since the arrest was not*  
23 *authorized by law Cal Penal Code 834(a) cannot be violated. Lastly, Steven Sherman*  
24 *completely ignores the facts which demonstrate that Defendant Burger was using*  
25 *unreasonable and excessive force by torturing Plaintiff with electricity for an extended*  
26 *period of time which gives rise to Plaintiff's Constitutional and legal right to self-defense;*  
27 *ARTICLE 1 SECTION I OF the California Constitution; and California Penal Codes 692,*  
28 *693 and 694.*

1           **Response** - As the Court is well aware, it is not uncommon that disagreement  
2 should occur when advocating for parties with divergent interests. That such disagreement  
3 at times includes what a statute means or how it should be applied is hardly surprising. In  
4 fact, Plaintiff's accusation that defense counsel is intentionally misleading the court as to  
5 erroneous "interpretations" of law arises from just that – a disagreement over what a statute  
6 means and how it is applied. But this type of disagreement is a two way street, and as set  
7 forth below, it is the Plaintiff whose "interpretation" of Penal Code § 834(a) is incorrect.

8           Penal Code § 834 provides:

9                   An arrest is taking a person into custody, in a case and in the manner  
10                   authorized by law. An arrest may be made by a peace-officer or by a  
11                   private person."

12           Penal Code § 834(a) provides:

13                   "If a person has knowledge, or by the exercise of reasonable care,  
14                   should have knowledge, that he is being arrested by a peace officer, it  
15                   is the duty of such person to refrain from using force or any weapon  
16                   to resist such arrest."

17           Essentially, the plaintiff contends that for Penal Code § 834(a) to apply (i.e.,  
18 requirement to refrain from using force to resist arrest), the "arrest" itself must be in  
19 compliance with Penal Code § 834 (i.e., that the arrest is done in a manner authorized by  
20 law). In other words, if the arrest is not made in a manner authorized by law, the  
21 requirement to refrain from resisting such an arrest does not apply. That is what Plaintiff  
22 thinks is correct, and he contends defense counsel mislead the court by implying otherwise.

23           Plaintiff's accusation raises an interesting question. If, for example, defense counsel  
24 shows that Penal Code § 834(a) applies both to "lawful" and "unlawful" arrests, would it  
25 then be the Plaintiff who has "intentionally" mislead the Court? Presumably, the answer  
26 would be no, because he thought he was correct. Regardless, § 834(a) does apply to both  
27 "lawful" and "unlawful" arrests.

28           ///

1 Over 40 years ago, in People v. Curtis (1969) 70 Cal. 2d 347, 352, the California  
2 Supreme Court held that § 834(a) prohibits forceful resistance to unlawful as well as lawful  
3 arrests. While the Court acknowledged that an arrest without a warrant or probable cause is  
4 "unreasonable" within the purview of the Fourth Amendment, the notion of "self-help" by  
5 resisting as a practical remedy is anachronistic. "Indeed, self-help not infrequently causes  
6 far graver consequences for both the officer and the suspect than does the unlawful arrest  
7 itself. Accordingly, the state, in deleting the right to resist, has not actually altered or  
8 diminished the remedies available against the illegality of an arrest without probable cause;  
9 it has merely required a person to submit peacefully to the inevitable and to pursue his  
10 available remedies through the orderly judicial process." Id. at 352-353

11 Additionally, the plaintiff's assertion that § 834(a) does not apply if there was no  
12 "arrest" is erroneous. For example, in Evans v. City of Bakersfield (1994) 22 Cal. App. 4th  
13 321, the court noted that "an arrest is a greater infringement than a detention. In fact, a  
14 detention is subsumed by an arrest because an arrest cannot occur without an initial  
15 detention. However, the converse is not true; a detention may occur without an arrest. As  
16 we shall explain, it is that subsumption which mandates our conclusion that if there is no  
17 right to resist the greater, there is no right to resist the lesser." Id. at 330.

18 Clearly, it was the Plaintiff that mixed up his interpretation of law and that is why  
19 we have judges to decide such matters as I am only an advocate. As such, Plaintiff's  
20 allegation of misconduct is unfounded.

21  
22 **PLAINTIFF'S ACCUSATION NUMBER EIGHT:**

23 *On February 8, 2010 Defendants through their attorney Steven Sherman provided*  
24 *Plaintiff a copy of the audio recording of the 911 call of the March 15, 2008 incident and*  
25 *the radio communications between the officers and the Palo Alto Dispatch as Defendant*  
26 *City of Palo Alto's Response to Request For Production Of Documents No. 47 of Set One.*  
27 *This CD audio recordings are essentially identical to the ones provided to Plaintiff by the*  
28 *Palo Alto Police Department during the criminal case, (People v. Ciampi), and submitted*

1 *into evidence during the Pre-Trial Examination Heard by Judge Thang Barrett, as*  
2 *Documented in Steven Sherman's Declaration of Steven A. Sherman In Support Of*  
3 *Defendants' Motion for Summary Judgment Or, In The Alternative, Summary Adjudication*  
4 *Of Issues, Court Document 125, (Exhibit 4). beginning on line 14 of pg. 86 through line 22*  
5 *of pg. 88, and can also found from pg. 33 through pg. 35 in Plaintiff's Exhibit 567-1 of*  
6 *Plaintiff's Declaration in Opposition to Der. Mot. for Summ. Judg. The recordings are also*  
7 *submitted as evidence during the Pre-Trial Examination documented The contents of the*  
8 *recordings is commented upon by Judge Thang Barrett in his ruling as documented on lines*  
9 *19 through 28 of Exhibit 61 pg. 163 of Sherman's Decl. in Supp. of Det: Mot for Swnm.*  
10 *Judg. Judge Thang Barrett found a finding of fact regarding the contents of the 911*  
11 *recording and radio communications call in his ruling on December 17. 2008 as*  
12 *documented from line 15 of pg. 180 through line 1 of pg. 181 of Exhibit 7 of Sherman's Decl*  
13 *in Supp. of Defs. Mot for Summ. Judg Court Document 125 and can also be found from line*  
14 *8 15 of g. 126 through line 1 of pg. 127 of Plaintiff's Exhibit 567-1 of Plaintiff's Declaration*  
15 *in Opposition to Det: Mot. for Summ. Judg. The above mentioned recordings are the ones*  
16 *that Plaintiff submitted to the court as Exhibits 551 and 552 documented at 139 and 140 of*  
17 *Declaration of Joseph Ciampi In Supp. of PIts'. Opp. To Defs'. Mot. For Summ Judg ...•*  
18 *Court Document 133. In , 21 of Steven Sherman's Declaration of Steven A. Sherman In*  
19 *Support Of Defendants' Motion for Summary Judgment Or, In The Alternative, Summary*  
20 *Adjudication Of Issues. Court Document 125, Steven Sherman states, "Attached hereto as*  
21 *Exhibit' IS' is a CD containing the original 911 call into the Palo Alto police dispatch."*  
22 *This exhibit provided to Plaintiff as a part of Steven Sherman' Declaration is missing nearly*  
23 *half, (50%) of the 911 call when compared to the exhibit provided to Plaintiff during*  
24 *Plaintiff's criminal case and Discovery request.*

25 *It is presumed that the court received an identical exhibit from Steven Sherman*  
26 *regarding the 911 call to the Palo Alto police dispatch. If this is the case, it can be argued*  
27 *that Steven Sherman was intentionally attempting to mislead the court regarding a material*  
28 *fact especially when viewed in light of the convoluted manner in which Mr. Sherman*



1 *presents to the court the Pre-Trial Examination transcript and completely excludes the*  
2 *radio communications between the officers and the Palo Alto dispatch. Mr. Sherman further*  
3 *reveals his intent by attempting to mislead the court by providing the court a fabricated and*  
4 *falsified document, the CAD report, Decl. of Steven A. Sherman Exhibit 3. Mr. Sherman*  
5 *states that, "the reporting party's wife and young daughters uncomfortable, they [sic] way*  
6 *he watches them," as documented from line 18 through 21 of Defs.' Reply To Plts.' Opp. To*  
7 *Mot. For Swrn. Judg., Court Document 141. The fact is, the reporting party never stated*  
8 *that Plaintiff was watching his wife and young daughters, for his wife and daughter were*  
9 *not even living in the home at the time the call was made. Mr. Sherman has made a*  
10 *false statement of fact to the court by submitting a fabricated document in order to support*  
11 *his false statement.*

12 **Response** - I can only state that if indeed the court somehow received a less-than  
13 full copy of the 911 call, which appears to be the case, such was inadvertent and can hardly  
14 be classified as misconduct. My assistant burned copies of the MAV recordings, taser  
15 recordings, and the 911 recording for exhibits to Defendants' motion for summary  
16 judgment. There was no error noted when the CDs finished burning and as such, the  
17 recording was believed to be complete.

18 I have apologized to both the Court and Plaintiff for this error. However, it was  
19 hardly deliberate.

20  
21 **PLAINTIFF'S ACCUSATION NUMBER NINE:**

22 *On lines 13 and 14 of pg. 4 of the JOINT CASE MANAGEMENT STATEMENT,*  
23 *Court Document 142 Steven Shennan states that, "Plaintiff wants there to be a conspiracy*  
24 *and he therefore interprets all information in a manner to support such. He is*  
25 *misinformed." Once again attorney Steven Sherman has made a speculative and false*  
26 *statement regarding Plaintiff Ciampi. Plaintiff Ciampi has never stated or made any*  
27 *outward actions which anyone would could derive that, "Plaintiff wants there to be a*  
28 *conspiracy." Strictly speaking, Plaintiff has simply attempted to obtain the facts which*

1 *Defendants have repeatedly attempted to thwart. The facts which Plaintiff has obtained and*  
2 *submitted to this court overwhelmingly. clearly and convincingly prove that several*  
3 *Defendants have acted in concert together to deprive Plaintiff's Fourteenth Amendment*  
4 *right of due process and commit several injurious torts against Plaintiff. According to Cal.*  
5 *Penal Code 1 82. (a) "If two or more persons conspire:*

6 *(1) To commit any crime.*

7 *(2) Falsely and maliciously to indict another for any crime, or to procure another to*  
8 *be charged or arrested for any crime.*

9 *(5) To commit any act injurious to the public health, to public morals, or to*  
10 *pervert or obstruct justice, or the due administration of the laws." Not only is a conspiracy*  
11 *being perpetrated by the Defendants., but it appears that their*  
12 *attorney Steven Shennan is actively involved in that conspiracy based upon his actions of*  
13 *suppressing and changing the evidence which results in perverting and obstructing justice*  
14 *and the due administration of laws.*

15 **Response** - What we again have here appears to be an issue of semantics. Plaintiff  
16 does not "want" there to be a conspiracy, but believes there is one.

17 Let it be said that when Plaintiff and his former attorney parted ways, he and I began  
18 this journey on good terms. In fact, I informed Plaintiff that should it be found that  
19 evidence tampering did indeed occur, punishment would be swift, harsh and that I  
20 personally would lead the brigade.

21 Discovery has borne out that there was no evidence tampering and this has been  
22 substantiated by several experts. It is only after I was unable to agree with Plaintiff's  
23 allegations of evidence tampering that the relationship declined to the point it is now; where  
24 every typographical error is believed to be a "false statement" (it should be noted that there  
25 have, in fact, been mistakes by the defense and its' taser expert, honest mistakes, those  
26 issues have been clarified and rectified) .

27 I believe the best way to illustrate the conspiracy issue and Plaintiff's ability to turn  
28 is a short story, documented by exhibits.

1 In his quest to obtain a taser expert, Plaintiff contacted several individuals. One of  
2 these individuals was a professor from Florida Gulf Coast University, a Dr. Charles Mesloh  
3 of the Weapons and Equipment Research Institute.

4 Plaintiff had become aware of testing and research Dr. Mesloh had done on tasers  
5 and inquired as to whether Dr. Mesloh could help him. Dr. Mesloh apparently indicated  
6 that he had some information/testing that he thought might be helpful to Plaintiff and agreed  
7 to provide same.

8 After searching, Dr. Mesloh was unable to locate the information/items and so  
9 informed Plaintiff. Plaintiff immediately turned on the professor as is clearly evidenced in  
10 Exhibit 3. Attached hereto as Exhibit 3 is a true and correct copy of an email train between  
11 Plaintiff and Dr. Mesloh.

12 Worse, Plaintiff included as cc's to his defamatory email, colleagues of the  
13 professor, local new agencies, etc. Dr. Mesloh relates that Plaintiff nearly ruined his career.  
14 According to the doctor, the University IT Department was required to write a special  
15 program to weed out Plaintiff's email. The Professor did, in fact, file a police report of  
16 which a true and correct copy is attached as Exhibit 4. Interestingly enough, Palo Alto  
17 Online blogger, Mark Peterson-Perez was also involved in the Florida incident as well.

18 The point of this illustration is that this incident is not all that dissimilar to  
19 Plaintiff's attack personal attack on myself, i.e, reporting me to the State Bar, the  
20 Department of Justice, sending defamatory emails to other police departments/clients, etc.  
21 and it clearly illustrates the pattern of if you don't agree with Plaintiff, you're part of the  
22 conspiracy to hide the truth.

23 6. Plaintiff's motion has had the inadvertent affect of allowing me to explain  
24 certain issues that previously I had been precluded of addressing.

25 7. The court has also stated that the City has been less than forthright with  
26 discovery. I respectfully disagree. Let it be said that anyone can bring a motion to compel.  
27 The fact that it was granted merely resulted in Plaintiff being provided the very material he  
28 had been provided previously. The "modification date" issue was the subject of a motion to

1 compel and as shown above, this is essentially a red herring. The date the CD was burned is  
2 irrelevant, however, Plaintiff managed to convey to the Court that it was of the utmost  
3 importance. Nevertheless, the Defendants have complied with any and all discovery orders  
4 to the extent they can including the most recent concerning the release of the raw data  
5 recording.

6 8. At no time during the pendency of this litigation have I behaved or  
7 conducted myself in a manner that was less than professional.

8 9. I have at no time deliberately tried to vex or frustrate Plaintiff or worse,  
9 prejudice his case. He simply doesn't like what I have to say and it further frustrates him  
10 that I can't provide evidence in accordance with his beliefs.

11 10. However, this is does not rise to the level of unprofessional conduct - the  
12 facts of the case are the facts of the case.

13 11. I thank the Court, and actually Plaintiff, for presenting me with the  
14 opportunity to explain the situation perhaps a bit more clearly.

15 I declare under the penalty of perjury that the foregoing is true and correct.

16 Executed this 12<sup>th</sup> day of May 2011, in Palo Alto, California.

17  
18 /s/ Steven A. Sherman  
19 Steven A. Sherman  
20 Declarant  
21  
22  
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28