

1 Plaintiff Joseph Ciampi, in pro se  
2 P.O. Box 1681  
3 Palo Alto, California 94302  
4 Phone (650) 248-1634  
5 Email: t.ciampi@hotmail.com

6 Plaintiff Joseph Ciampi, in pro se

**FILED**  
2011 MAY 13 A 9:19  
RICHARD W. WHEAT  
CLERK, U.S. DISTRICT COURT

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

12 JOSEPH CIAMPI

13  
14 Plaintiff,

15 v.

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

25 Defendants.

Case No. C 09-02655 LHK (PSG)

**PLAINTIFF REQUEST CLARIFICATION  
OF PORTIONS OF THE COURT'S  
ORDER**

**Re:  
ORDER GRANTING IN PART AND  
DENYING IN PART DEFENDANTS'  
MOTION FOR SUMMARY JUDGMENT**

**RE: Court Doc. 155**

**Judge: The Honorable Judge Koh**

26 TO EACH PARTY AND THEIR COUNSEL OF RECORD YOU ARE HEREBY NOTIFIED  
27 THAT Plaintiff intends to submit the appropriate appeal and or reconsideration of the court's  
28 Order Granting In Part...Motion For Summary Judgment, Court Doc. 155.

*CHHK*

1 According to the FRCiv.P 56 (a) "...The court should state on the record the reasons for  
2 granting or denying the motion."

3 The court stated a lengthy reason for granting the particular parts for granting Motion for  
4 Judgment, however there is some confusion to Plaintiff on the reasoning of the court in coming  
5 to its findings and decisions.

6 Therefore Plaintiff requests the court clarify some of the aspects of its findings and  
7 decisions so that Plaintiff can properly address the courts finding in an appropriate appeal and or  
8 reconsideration.

9 The court stated "[T]he district court does not assess credibility or weigh the evidence,  
10 but simply determines whether there is a genuine factual issue for trial." *House v. Bell*, 547 U.S.  
11 518, 559-560 (2006)," pg. 8 lines 22-24 of Court Doc. 155.

12 Pg. 21 lines 3 through 10 of Court Doc. 155 the court found that Plaintiff was unusually  
13 agitated since the beginning of the encounter, who exhibited tensed and twitching muscles that  
14 could be consistent with use of a controlled substance and who had "fresh and old" sores on his  
15 arms that appeared similar to sores Defendants had observed on individuals suspected of illegal  
16 drug use. Sherman Dec. Ex. 2 at 30, 33, 38; *id.* Ex. 21 ¶ 9. Plaintiff does not controvert these  
17 facts, but claims that Defendants drew an incorrect inference from them."

18 a) Plaintiff was not agitated from the beginning of the encounter, so how does  
19 the court come to that conclusion?, see Def. Temores' MAV video from the 10:06:35  
20 mark to the 10:08:40 mark. During this time Def. Wagner stated numerous times that  
21 Plt. was violating a sleeping ordinance whose act intentionally provoked and antagonized  
22 Plaintiff and which is and of itself a disputed fact actually supported by Def. Burger's  
23 MAV recording in which Def. Wagner is heard stating that Plaintiff is violating a  
24 "SLEEPING ORDINANCE" not an overnight parking ordinance.

25 b) Plaintiff disputes that he was twitching his muscles, so how does the court  
26 come to the conclusion that Plaintiff was twitching his muscles, given the courts findings  
27 on pg. 24 lines 12 through 24 which document that Plaintiff was calm and speaking  
28

1 coherently? Additionally, even Temores' MAV video demonstrates that Plaintiff was  
2 not twitching his muscles.

3 c) Additionally, how does the court conclude that the sores on Plaintiff Ciampi's  
4 arms are an undisputed fact giving rise to reasonable suspicion when the Defs. are not  
5 experts in diagnosing skin conditions?

6 The court found that, "Because the police had not lawfully detained Plaintiff's van prior  
7 to the attempted extraction," pg. 18 lines 9-10 of Court Document 155.

8 The court found that, "Nonetheless, the Court agrees that the "weighty interest in officer  
9 safety" during vehicle stops, the lesser protection accorded to readily mobile vehicles, and the  
10 unsettled scope of case law on unlawful ruses, taken together, is sufficient to demonstrate that  
11 the law was not clearly established at the time of Plaintiff's seizure, pg. 18 lines 13-16 of Court  
12 Document 155.

13 Plaintiff cannot find any facts in the court's decision or the Defs. Mot. for Summ. Judg  
14 supporting the Defendants' contention of an issue with "officer safety" which the court relies  
15 upon to grant Defs. Mot. For Summ. Judg. regarding Plaintiff's Fourth Amendment Rights.  
16 Therefore, Plaintiff requests that the court point to the non-disputable facts which give rise to  
17 officer safety.

18 As Plaintiff pointed out during the April 21, 2011 hearing, Defendants' contradict their  
19 contention that "officer safety" arose when Plaintiff shut the door to his vehicle and then stating  
20 that Plaintiff should have shut the door or walk away from the officers, lines 1-4 of pg. 4 of  
21 Court Doc. 141.

22 The court found that, "Plaintiff has not presented any case law suggesting that the law on  
23 this issue was clearly established," lines 22-23 of Court Doc. 155.

24 Plaintiff provided numerous case law regarding this issue, pages 10-12 of Court Doc.132  
25 with specific cases including Boyd v. United States, Rios v. United States, Bumper v. North  
26 Carolina and Katz v. United States. Plaintiff requests that the court demonstrate how these cases  
27 do not apply by not being established prior to the March 15, 2008 incident as the court has stated.  
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1 The court concluded that, "However, as discussed above, Plaintiff has not produced  
2 admissible expert testimony suggesting that Defendants altered or tampered with the MAV or  
3 Taser recordings.," lines 10-11 of pg. 13 of Court Doc 155. Furthermore the court found that  
4 Plaintiff does not have the expertise to submit photographic evidence to support Plaintiff's  
5 allegations of tampering or even point out missing data from documents submitted to the court  
6 by the Defendants, pages 11-12 of Court Doc. 155.

7 With that said Plaintiff submitted Exhibit 512-11 which are photographs of the incident  
8 taken by Def. Temores' MAV and Taser camera. Plaintiff points out to the court a shoe and foot  
9 behind Plaintiff in said exhibit.

10 Plaintiff requests that the court clarify what qualifications are necessary for a party or  
11 witness to point out images on photographs submitted by Defendants in order to assert facts and  
12 or dispute of facts.

13 Plaintiff pointed out missing data from the taser gun activation data that Defendants  
14 submitted to the court, Exhibit 522 and specifically 522-15 and 522-16.

15 The court has determined that Plaintiff is not qualified to present this evidence  
16 demonstrating a dispute of facts giving rise to the falsification of the taser gun activation data.  
17 Plaintiff requests that the court cite what are the qualifications necessary for a witness or party to  
18 point out missing taser gun activation data to the court that is documented on the Defendants'  
19 own Exhibits in order for it to be admissible.

20 Plaintiff points out that Def. Burger confirms with the paramedics that four taser probes  
21 were discharged during the incident as documented on Defendant Burger's MAV recording.  
22 Plaintiff points out Defendants document and secure a taser probe lodged in the fence and one on  
23 the sidewalk into evidence yet failed to document and secure the taser probe that Def. Burger  
24 retrieves from Def. Temores' patrol car as documented on Defs.' Burger's and Temores' MAV  
25 recordings provided to this court by Defendants and exhibits 47 of Court Doc. 55; 162, 163 and  
26 166 of court doc. 109.

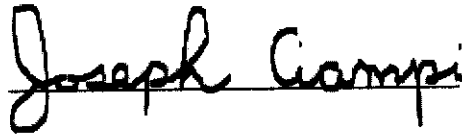
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Defendants' acknowledge destroying two taser probes, a taser cartridge, taser wires and AFIDS. Plaintiff requests that the court specify the qualifications necessary to point to taser probes and other images in photographs submitted as evidence in order to be accepted as evidence in order to give rise to a disputed fact. Plaintiff requests the court specify the qualifications necessary to point to dialog in an audio recording in order for the court to accept that dialog giving rise to a disputed fact.

Gregg Stutchman cites the Critical Review, Waveform Analysis and Time Code Analysis in his report. Plaintiff attaches Stutchman's Declaration to this submission.

Date: May 13, 2011

Plaintiff



Plaintiff JOSEPH CIAMPI in pro se

1 UNITED STATES DISTRICT COURT  
2 NORTHERN DISTRICT OF CALIFORNIA

3 NO. C09-02655

4 DECLARATION OF GREGG STUTCHMAN

5  
6 I, GREGG STUTCHMAN, declare:


7 I am a forensic analyst and the owner of Stutchman Forensic Laboratory. My area of expertise is audio  
8 and video forensic analysis. I have testified as a forensic expert on more than 140 occasions. My  
9 testimony has been in State and Federal Courts throughout the United States.

10 I was hired by Mr. Ciampi's civil attorneys Stacy North and Andy Pierce to conduct analysis of video  
11 recordings related to the incident that occurred on March 15, 2008 where Mr. Ciampi was tasered twice  
and arrested by Palo Alto Police officers.

12 Among the materials which I received were eight audio/video discs as described below:

- 13 1. DVD identified as Officer Temores' MAV recording contained seven (7) files with dates of last  
14 modification of October 12, 2008. The seven files totaled size is 1,202,834 KB.
- 15 2. DVD identified as Officer Burger's MAV recording contained six (6) files with the last modified  
16 date of March 15, 2008. The six files totaled 796,391,414 bytes (759 MB).
- 17 3. DVD identified as Officer Temores' Taser-CAM recording contained one file. The last modified  
18 date is March 15, 2008. The file size is 1.03 MB.
- 19 4. DVD identified as Officer Burger's Taser-CAM recording contained one file. The last modified date  
20 is March 15, 2008. The file size is 1,137 KB.
- 21 5. 1. DVD identified as Officer Temores' MAV recording contained seven (7) files with dates of last  
22 modification of October 12, 2008. The total size of seven files totaled 1,202,834 KB. (Note: this is a  
duplicate of #10
- 23 6. DVD identified as Officer Burger's MAV recording contained six (6) files with the last modified  
24 date of October 13, 2008. The six files totaled size is 36 KB.
- 25 7. DVD identified as Officer Burger's MAV recording contained six (6) files with the last modified  
26 date of March 15, 2008. The total size of files is 795,805,696 bytes (758 MB).
- 27 8. CD identified as Palo Alto P. D Communications. The last modified date is March 15, 2008. There  
28 is one file. The total size is 1,278 KB.

1 I declare under penalty of perjury that the foregoing is true and correct and that this declaration was  
2 executed on September 28, 2010 and Napa, CA.

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4 Signature

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UNITED STATES DISCTRICT COURT  
NORTNER DISCTRIC OF CALIFORNIA

JOSEPH CIAMPI	)	NO. C09-02655
	)	
Plaintiff,	)	DECLARATION OF GREGG STUTCHMAN
v.	)	
	)	
CITY OF PALO ALTO, a government entity;	)	
LYNNE JOHNSON, an individual; CHIEF	)	
DENNIS BURNS, an individual; OFFICER	)	
KELLY BURGER, an individual; OFFICER	)	
MANUEL TEMORES, an individual;	)	
OFFICER APRIL WAGNER, an individual;	)	
AGENT DAN RYAN; SERGEANT	)	
NATASHA POWERS, Individual,	)	
	)	
Defendants.	)	

I, GREGG STUTCHMAN, declare:

I am a forensic analyst and the owner of Stutchman Forensic Lab. My area of expertise is audio, video and imaging forensics. I have testified on more than 140 occasions throughout the United States, in State and Federal Courts.

I was hired by Mr. Ciampi's criminal defense attorney, David Beauvias, to conduct analysis of video recordings related to Mr. Ciampi's arrest in this case. Among case material which I received were two Taser "Weapons Summary" reports consisting of one sheet each. Copies are attached.

I declare under penalty of perjury that the foregoing is true and correct and that this was executed on September 17, 2010 in Napa, CA

  
Signature





Weapon Summary

*TEMOREZ*

	X00-292417
	106
	2
	78
	Sergeant Natasha Powers
	Palo Alto Police Department / PHD
	11/7/2007 6:10:28 AM
	3/15/2008 11:56:40 AM
	11/7/2007 6:03:04 AM
	3/15/2008 11:56:19 AM

Firings

35	3/15/2008 12:07:44 PM	3/15/2008 8:07:44 AM	00:00:01	25 °C	73%
36	3/15/2008 5:16:08 PM	3/15/2008 10:16:08 AM	00:00:05	21 °C	73%

Time Changes

1	6/27/2007 8:08:30 PM	6/27/2007 1:08:30 PM	FROM
2	6/27/2007 8:08:30 PM	6/27/2007 3:08:30 PM	TO
1	2/27/2008 8:08:30 PM	2/27/2008 12:08:30 PM	FROM
2	3/8/2008 11:54:28 PM	1/8/2008 3:54:28 PM	TO

Videos

V06-015530	3/15/2008 12:07:43 PM	3/15/2008 8:07:43 AM	00:00:01
V06-015530	3/15/2008 5:15:42 PM	3/15/2008 10:15:42 AM	00:00:23
V06-015530	3/15/2008 6:38:07 PM	3/15/2008 11:38:07 AM	00:00:02



Weapon Summary *BURGER*

Weapon ID	X00-292463
Serial	89
Quantity	1
Model	53
Owner	Sergeant Natasha Powers
Department	Palo Alto Police Department / PSD
Acquired	11/6/2007 4:07:43 PM
Returned	3/15/2008 11:19:31 AM
Lost	11/6/2007 3:31:03 PM
Found	3/15/2008 11:18:51 AM

Firings

Serial	Time	Time	Duration	Temp	Temp
90	3/15/2008 2:45:10 PM	3/15/2008 7:45:10 AM	00:00:02	25 °C	72°
91	3/15/2008 5:04:55 PM	3/15/2008 10:04:55 AM	00:00:02	23 °C	72°

Time Changes

Serial	Time	Time	From	To
1	6/27/2007 6:50:58 PM	6/27/2007 11:50:58 AM	FROM	
2	6/27/2007 6:50:58 PM	6/27/2007 11:50:58 AM	TO	

Videos

Serial	Time	Time	Duration
V06-015542	3/15/2008 2:45:04 PM	3/15/2008 7:45:04 AM	00:00:07
V06-015542	3/15/2008 5:04:25 PM	3/15/2008 10:04:25 AM	00:00:37

**PROOF OF SERVICE**

STATE OF CALIFORNIA, COUNTY OF SANTA CLARA

I, Joseph Ciampi, live in the aforesaid County, State of California; I am over the age of 18 years. My address is: P.O. Box 1681 Palo Alto, CA 94302.

On May 13, 2011 I served **PLAINTIFF REQUEST CLARIFICATION OF PORTIONS OF THE COURT'S ORDER Re: ORDER GRANTING IN PART AND DENYING IN PART DEFENDANTS' MOTION FOR SUMMARY JUDGMENT** on the interested parties in this action by placing a true copy thereof, enclosed in a sealed envelope/package, addressed as follows:

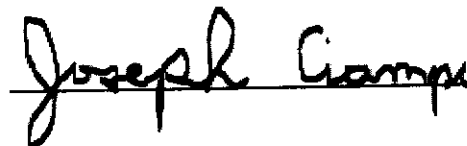
Steven A. Sherman, Esq. Bar No. 113621  
FERGUSAN, PRAET & SHERMAN  
A Professional Corporation  
1631 East 18<sup>th</sup> Street  
Santa Ana, California 92705-7101  
(714) 953-5300 Telephone  
(714) 953-1143 Facsimile  
Ssherman@law4cops.com

Attorney for Defendants

I placed such envelope/package for deposit, sealed, with postage thereon fully paid and the correspondence to be deposited in the United States mail at Palo Alto, California on the same day.

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

Executed on May 13, 2011, at Palo Alto, California.



Joseph Ciampi in pro se