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**FILED**  
2011 JUL 20 P 2:31  
RICHARD W. WIEKING  
CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE

6 Plaintiff Joseph Ciampi, in pro se

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

11  
12 *CLYK*

13 JOSEPH CIAMPI

Case No. C 09-02655 LHK (PSG)

14 Plaintiff,

**PLAINTIFF'S REPLY TO DEFENDANTS' RESPONSE TO PLAINTIFF'S MOTION FOR ORDER FOR NEW JUDGE, AND TO STRIKE DEFENDANTS' MOTION FOR SUMMARY JUDGMENT, AND TO STRIKE THE COURT'S ORDER GRANTING IN PART AND DENYING IN PART DEFENDANTS' MOTION FOR SUMMARY JUDGMENT AND TO VACATE THE CURRENT CASE SCHEDULE AND TO SECURE ALL EXHIBITS WITH THE COURT CLERK**

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;  
23 AGENT DAN RYAN; SERGEANT  
24 NATASHA POWERS, an individual.

[TITLE 28 PART 1 CHAPTER 21 § 455.  
(a) U.S. CODE];  
FRCiv.P. 60(b)(3)(6);  
FRCiv.P. 5(d)(2)(B);  
Civil L.R. 5-1  
RE: Court Docs. 123, 125 and 155

25 Defendants.

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27 Defendants have filed a Response, Court Document 174, to Plaintiff's Motion for New  
28 Judge and to Strike Defs.' Motion for Summary Judgment and the Court's Order Granting Defs.'

1 Motion for Summary Judgment and to Vacate the Current Case Schedule so that a new, impartial  
2 Judge can take over the case, Court Document 169.

3 Defendants claim that they sent their exhibits regarding their Motion for Summary  
4 Judgment via Federal Express because the exhibits were too voluminous to file through PACER.  
5 Defendants business, the Palo Alto Police Department, is in Palo Alto the same City in which  
6 Plaintiff lives. They could have just as easily provided the exhibits pursuant to Civil Rules as  
7 Plaintiff did and is required to. Defendants are pulling whatever they can out of thin air to  
8 sustain their unlawful Motion for Summary Judgment.

9 Additionally Defendants' excuse does not explain why Defendants did not file two copies  
10 of their exhibits according to Local Rules of Civil Procedure, "5-1. *Filing Original and*  
11 *Submitting Chambers Copy. (a) Filing Original. Except as provided in Civil L.R. 5-2, the*  
12 *original of any document required to be filed by the Federal Rules or by these local rules,*  
13 *together with a certificate of service, must be delivered to the Office of the Clerk during*  
14 *regular hours (as defined in Civil L.R. 77-1(b)) in the courthouse in which the*  
15 *chambers of the Judge to whom the action has been assigned pursuant to Civil L.R.*  
16 *3-3(a) are located. (b) Extra Copy for Chambers. An extra copy of the document filed under*  
17 *Civil L.R. 5-1(a), marked by counsel as the copy for "Chambers," must be submitted at the same*  
18 *time to the Office of the Clerk in the courthouse in which the chambers of the Judge to whom the*  
19 *action has been assigned are located."*

20 Defendants filed numerous briefs and documents prior to their Motion for Summary  
21 Judgment and knew the rules, yet decided to deliberately act contrary by only filing one copy to  
22 the Judge in order to mislead Plaintiff and the Court.

23 Plaintiff was able to file even more voluminous records and DVD recordings than  
24 Defendants according the L.R. of Civil Procedure, as such Defendants have no excuse.

25 Defendants claim that they provided the exact duplicates of the exhibits to Plaintiff as  
26 they did to the Court, however during the June 30, 2011 Sanctions hearing Defendants and  
27 Plaintiff were in dispute as to what 9/11-radio communications DVD was actually given to  
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1 Plaintiff. Plaintiff produced a DVD that Plaintiff claims that Defendants provided to Plaintiff as  
2 a part of their Motion for Summary Judgment and Defendants, Mr. Sherman, denied that they  
3 gave that particular copy to Plaintiff, thus the necessity of a copy of all documents being secured  
4 with the Court Clerk to avoid such disputes.

5 Defendants claim that they provided the exact duplicates of the exhibits to Plaintiff as  
6 they did to the Court, however during the June 30, 2011 Sanctions hearing Defendants claimed  
7 to have provided the court the DA's copy of the MAV recordings which they did not provide  
8 Plaintiff nor did they cite the DA's copy in their exhibits. The DA's copy is a tampered version  
9 of the MAV recordings and is not acceptable pursuant to Federal Rules of Evidence 1002.  
10 Plaintiff would have objected to Defendants use of this recording for the purposes of Defs.' Mot  
11 for Summ. Judg. and will object to Defendants use of this version for the trial on the same  
12 grounds.

13 Plaintiff strongly objects to Defendants providing any more exhibits or recordings to the  
14 court as that would further corrupt and taint the evidence that has already been submitted to the  
15 court. Additionally Defendants had their opportunity to provide any and all exhibits according to  
16 Civil Rules of Procedure. Should the court allow any more exhibits be submitted by Defendants  
17 prior to securing the exhibits that are currently in possession of the court the court itself will be  
18 actively engaging in deception and corruption of the evidence by further violations of Civil Rules  
19 of Procedure.

20 Civil Rules of Procedure do not permit the extension of providing exhibits after the fact.  
21 Defendants failed to provide the exhibits according to Civil Rules of Procedure and therefore  
22 their Motion for Summary Judgment is procedurally deficient and must be stricken.

23 Plaintiff demands that the court secure the current DVD's and exhibits with the Court  
24 Clerk so that Plaintiff can determine exactly what the court received from the Defendants as a  
25 part of their Motion for Summary Judgment.

26 Defendants have done absolutely nothing to verify what copies they have provided to  
27 Plaintiff and have actually disputed the copies provided to Plaintiff as coming from them. Every  
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1 exhibit provided to Plaintiff by Defendants as a part of their Mot. for Summ. Judg. Lines 2-3 of  
2 pg. 2 of Court Doc. 174 are now disputed and that's not how the court system is supposed to  
3 operate, thus the reason why the evidence is supposed to be secured with the Court Clerk.  
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5 This entire process is counter to long established evidentiary rules and protocols and has  
6 cast into doubt everything that Defendants have said and done.

7 Lines 23 to 25 of pg. 2 of Court Document 174 Defendants acknowledge that the DA's  
8 copy was not created by the Defendants and was submitted as evidence as a part of their Motion  
9 for Summary Judgment. *"Since the Defendants had no involvement in the creation of the D.A.'s*  
10 *video (clearly marked as such) how long the video plays is nothing the Defendants had anything*  
11 *to do with."* Mr. Sherman did not cite the DA's version in his Declaration in Support of  
12 Defendants' Motion for Summary Judgment and it appears that he probably did not provide the  
13 court a copy of Temores' MAV video exhibit 14 of Court Document 125, both of which would  
14 constitute a violation of Mr. Sherman's Declaration to the Court under Penalty of Perjury.

15 Plaintiff has no idea why Mr. Sherman and the Defendants are using obfuscation  
16 regarding the length of the DA's tampered version of Temores' and Burger's MAV recordings  
17 for that has absolutely nothing to do with the issues presented to the court.

18 The entire Motion for Summary Judgment has been corrupted due to Defendants failing  
19 to adhere to F.R. Civ.P. 5(d)(2)(A)(B) and Civ. L.R. 5-1(a) and therefore Defendants' Motion for  
20 Summary Judgment as well as the Court's order granting in part Motion for Summary Judgment  
21 must be stricken.

22 Should the Court not strike Defendants' Motion for Summary Judgment and the Court's  
23 order granting in part Motion for Summary Judgment, the Court itself will be violating Plaintiff's  
24 Fourteenth Amendment Right to Due Process by violating Federal Rules of Civil Procedure.

25 Who knows what has been going on behind the closed doors of Judge Koh's chambers  
26 since none of the Exhibits have been secured with Officer of the Clerk in violation of FRCiv.P.  
27 5(d)(2)(B) for over five months and two full weeks of being notified of the violation.  
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Defendants refuse to specifically lock into place individual recordings so that they cannot be further tampered with. Defendants and Mr. Sherman refuse to provide the missing video footage.

Mr. Sherman claims that no one is lying to Plaintiff; Lines 23-24 of pg. 1 of Court Doc. 174. And lines 6-9 of pg. 3 of Court Doc. 174, *“As to the vast majority of Plaintiff’s other unfounded accusations, no one is lying; no rules have been intentionally violated and no false statements have intentionally been made. Plaintiff appears to again be interfering and interpreting events and actions as he sees fit.”*

Mr. Sherman is a hypocrite. He filed a brief stating that Plaintiff’s first Amended Complaint was procedurally deficient and should be stricken, which was recognized by both the Court and Plaintiff and which took place. Now that his, Sherman’s, Motion is procedurally deficient he wants the court to look the other way. If the court looks the other way, the court will be demonstrating prejudice against Plaintiff and bias for Defendants.

1) Mr. Sherman lied to Plaintiff by having someone write onto the MAV recordings, paraphrase *“Date of last Modification 3/15/08,”* when Mr. Sherman knew, he not only knew but he admitted to knowing, that the date of last modification was not 3/15/08 and still had it written on the recordings regardless.

2) Mr. Sherman falsely stated to the court that Plaintiff admits the existence of pock-marks on his person. Mr. Sherman does not even know what pock-marks are and then when he attempted to define them, he actually supported Plaintiff’s position by pointing out that they are not caused from drug use.

3) Mr. Sherman has lied to Plaintiff and the court as to how the serial number on taser camera V07-065373 disappeared in two months while secured in evidence.

4) Mr. Sherman and Defendants have lied to Plaintiff by falsely stating that taser camera V07-065373 was never sent to Taser International and then stating that it was sent to Taser International.

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5) Mr. Sherman falsely stated on August 11, 2010 to the court in the JCMS that Plaintiff was parked in front of Mr. Alsman's house on Ramona St.

6) Mr. Sherman falsely stated on February 10, 2011 that Mr. Alsman stated that Plaintiff was watching his wife and young daughter.

7) Mr. Sherman falsely stated to Plaintiff during the October 20, 2010 Deposition that Plaintiff had to answer specific questions or be ordered to pay for a completely new deposition.

9) Mr. Sherman falsely stated to Plaintiff during the October 20, 2010 Deposition that the taser wires are not insulated when in fact they are insulated.

10) On May 12, 2011 Mr. Sherman falsely stated to the court and Plaintiff that the MAV recordings that contain the watermark cannot play on a computer.

11) On May 12, 2011 Mr. Sherman falsely stated to the court and Plaintiff that he never stated that the "watermark" on the MAV recordings were proprietary.

12) On October 22, 2010 Mr. Sherman falsely stated to the court and Plaintiff that the MAV recordings containing the watermark were proprietary therefore Defendants could not provide those copies but only the ones that do not have the watermark.

13) On October 22, 2010 Mr. Sherman falsely stated that he and the Defendants provided Plaintiff authentic copies of the MAV recordings, (this is false because Mr. Sherman and the Defendants refuse to authenticate any of those recordings provided to Plaintiff also stating on July 14, 2011 that they are of "non-issue,").

14) Mr. Sherman and his expert Andrew Hinz from Taser International have falsely stated that no electricity was discharged through Def. Burger's taser wires when in fact Def. Burger actually testified that electricity was discharged through his taser wires.

15) Mr. Sherman along with Andrew Hinz intentionally refuse to identify the taser gun activation data the Mr. Hinz has analyzed as a part of his analysis of the evidence documented in his reports and declarations.

1  
2 16) On July 14, 2011 Mr. Sherman falsely stated to Plaintiff that Plaintiff never  
3 availed himself of the Defendants' offer to have experts analyze the videos and the evidence  
4 surrounding the videos.

5 17) On February 10, 2010 Mr. Sherman knowingly submitted falsified taser gun  
6 activation data to the court and Plaintiff.

7 18) On May 12, 2011 Mr. Sherman knowingly submitted falsified taser gun activation  
8 data a second time to the court in order to conceal and cover up the falsified taser gun activation  
9 data that was previously submitted to the court.

10 19) Mr Sherman falsely stated that Plaintiff would not believe God, lines 1-2 of pg.  
11 204 of the October 20, 2010 Deposition Transcript.

12 20) Mr. Sherman indirectly acknowledged that the current videos have been  
13 tampered with by agreeing with Plaintiff we will all probably see the (unadulterated recordings),  
14 some day, lines 1-6 of pg. 204 of the October 20, 2010 Deposition Transcript verifying that Mr.  
15 Sherman is lying when he states that the videos have not been tampered with in any way.

16 21) Mr. Sherman refuses to provide the missing video footage from Temores' MAV  
17 video that corresponds to the Taser videos, exhibit 669 of Court Doc. 173.

18 There may not be an actual dialog going on between Defendants and Judge Koh and it is  
19 unnecessary for a dialog to take place in order to violate Plaintiff's Fourteenth Amendment  
20 Rights to Due Process. All that is necessary is for both the Defendants and Judge Koh to  
21 intentionally violate Plaintiff's Fourteenth Amendment Rights to Due Process.

22 *"A civil conspiracy or collusion is an agreement between two or more parties to deprive*  
23 *a third party of legal rights or deceive a third party to obtain an illegal objective. It is not*  
24 *necessary that the conspirators be involved in all stages of planning or be aware of all details.*  
25 *Any voluntary agreement and some overt act by one conspirator in furtherance of the plan are*  
26 *the main elements necessary to prove a conspiracy."*

27 *[http://en.wikipedia.org/wiki/Conspiracy\\_\(civil\)](http://en.wikipedia.org/wiki/Conspiracy_(civil))*

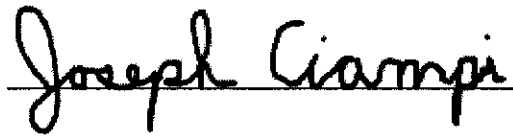
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Additionally, the act itself is not required for the necessity of Judge Koh to disqualify herself, all that is necessary is an appearance of impartiality which Plaintiff has established by Judge Koh's actions that have prejudiced Plaintiff's case contrary to the facts and the law as well as Chief Judge James Ware's personal relationship with Palo Alto City Council Member Larry Klein.

Given the court's blatant violations of Civil Rules of Procedure and demonstrated bias for Defendants' and using fabricated evidence in order to justify granting Summary Judgment in favor of Defendants this case needs to be re-established with a new case schedule with a new Judge in order to provide at least some degree of Due Process to Plaintiff and legitimacy to the United States Court System.

Plaintiff

Dated: July 20, 2011



Plaintiff JOSEPH CIAMPI in pro se



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**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 July 20, 2011 I served **PLAINTIFF'S REPLY TO DEFENDANTS' RESPONSE TO PLAINTIFF'S MOTION FOR ORDER FOR NEW JUDGE, AND TO STRIKE DEFENDANTS' MOTION FOR SUMMARY JUDGMENT, AND TO STRIKE THE COURT'S ORDER GRANTING IN PART AND DENYING IN PART DEFENDANTS' MOTION FOR SUMMARY JUDGMENT AND TO VACATE THE CURRENT CASE SCHEDULE AND TO SECURE ALL EXHIBITS WITH THE COURT CLERK** the interested parties in this action by placing a true copy thereof, enclosed in a sealed envelope/package, addressed as follows:

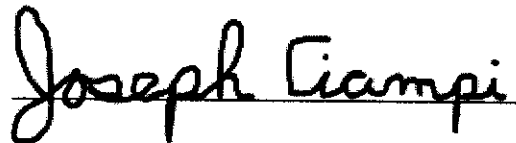
Steven A. Sherman, Esq. Bar No. 113621  
FERGUSAN, PRAET & SHERMAN  
A Professional Corporation  
1631 East 18<sup>th</sup> Street  
Santa Ana, California 92705-7101  
(714) 953-5300 Telephone  
(714) 953-1143 Facsimile  
Ssherman@law4cops.com

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 July 20, 2011, at Palo Alto, California.



Plaintiff JOSEPH CIAMPI in pro se