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6 Plaintiff Joseph Ciampi, in pro se

FILED
SEP 12 2011
RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

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

11 JOSEPH CIAMPI

Case No. C 09-02655 LHK (PSG)

12
13 Plaintiff,

**PLAINTIFF'S MOTION TO ENFORCE
SETTLEMENT AGREEMENT AND A
SECOND MOTION FOR SANCTIONS
AGAINST DEFENDANTS AND THEIR
ATTORNEYS**

14
15 v.

FRCiv.P 71, 70(a), 37, 26 & 16(f)

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.

JUDGE: LUCY H. KOH
United States Judge

&

JUDGE: MARIA-ELENA JAMES
Chief United States Magistrate Judge

25 Defendants.

RE: Court Docs. 189, 195 & 198

26 **Introduction:** Plaintiff has consolidated two separate motions into one for ease
27 and expediency to the court.
28

1 On August 9, 2011 Defendants and Plaintiff settled Case No. C09-02655 at a Settlement
2 Conference adjudicated by Chief Magistrate Judge Maria-Elena James. Subsequent to the
3 Settlement Conference, two disputes arose between Defs. and Plt., See Court Docs. 196 & 198.
4 The first dispute regarding a lien placed on the settlement by attorney David Beauvais has been
5 resolved. The second dispute regarding THIRD/NON-PARTY CLAIMS has not been resolved
6 even at the direction of Judge James. During the course of the September 1, 2011 Settlement
7 Conference Judge James stated that if the dispute could not be resolved she would order the
8 "Settlement and Dismissal" back to Judge Koh, See ¶ 12 of Decl. of Ciampi, Sept. 1, 2011
9 Settlement Conference. Plaintiff therefore submits this Motion to the court, directed to Judge
10 Koh and Judge James to resolve the dispute and issue an appropriate Order to complete the
11 Settlement and Dismissal process.

12 Defendants believe and are asserting that Plaintiff settled claims against NON-
13 PARTY/THRID-PARTY entities and persons who were not and are not a part of Case No. C09-
14 02655 and who were never identified during the August 9, 2011 Settlement Conference nor were
15 they present during the August 9, 2011 Settlement Conference. Plaintiff believes and is asserting
16 that he did not settle any NON-PARTY/THIRD-PARTY claims during the August 9, 2011
17 Settlement Conference. Defendants, specifically Defendants' attorney Donald Larkin,
18 ("LARKIN"), is demanding that the NON-PARTY/THIRD-PARTY entities and persons be
19 included in the written settlement agreement. Plaintiff, ("CIAMPI"), is not willing to include
20 the NON-PARTY/THIRD- PARTY entities and persons who did not participate in the
21 Settlement Conference nor were identified during the Settlement Conference into the written
22 Settlement Agreement. The NON-PARTY/THIRD PARTY entities and persons that Plaintiff did
23 not settle with that LARKIN is demanding that they be included in the Settlement Agreement are
24 Kustom Signals Inc., ("K.S."); Warren Page, ("PAGE"); Taser International, ("T.I."); Andrew
25 Hinz, ("HINZ"); Michael Gennaco, ("GENNACO"); and Steven Sherman, ("SHERMAN").

26 Actually during the September 1, 2011 Settlement Conference LARKIN stated that he
27 only wanted to include HINZ and PAGE in the settlement agreement, See ¶15 of Ciampi Decl.
28

1 The fact that LARKIN did not find it necessary to include all NON-PARTY/THIRD PARTY
2 entities and persons contradicts LARKIN'S assertion that all NON-PARTY/THIRD PARTY
3 entities and persons were included in the August 9, 2011 Settlement Agreement and reveals that
4 LARKIN simply wants to protect the reputation of the City of Palo Alto and the Palo Alto Police
5 should it be exposed during any future proceedings against HINZ and PAGE or other persons
6 who were not a party to Case No. C09-02655 that the videos and taser gun activation data have
7 been tampered with.

8 At the close of the September 1, 2011 Settlement Conference heard by Judge James,
9 LARKIN agreed to write up a Settlement Agreement using the exact language of the August 9,
10 2011 Settlement Agreement that was placed on the record and that which LARKIN and Plaintiff
11 Ciampi bound themselves to, See ¶17 of Ciampi Decl. Judge James agreed that this would
12 resolve the dispute and directed that this take place.

13 On September 8, 2011 LARKIN stated to Plt. Ciampi in an email that he, LARKIN, had
14 completed a revised settlement agreement that was based on the August 9, 2011 transcript, (see
15 Exh. 914-2). LARKIN attached his revised written settlement agreement to the email and asked
16 Plt. Ciampi to sign it and return it, (see Exh. 910).

17
18 **1) Extortion:**

19 Plaintiff Ciampi and Defendants' attorneys; Donald Larkin, Molly Stump and Steven
20 Sherman have been involved in a protracted dispute regarding specific terms of the August 9,
21 2011 Settlement Agreement of Case No. C09-02655. On September
22 9, 2011 attorney Don Larkin sent Plaintiff Ciampi an email, (Exhibit 922), in which Mr. Larkin
23 clearly states to Mr. Ciampi that he will file sanctions against Mr. Ciampi unless Mr. Ciampi
24 signs the fraudulent Settlement Agreement that Mr. Larkin has drafted. Mr. Larkin clearly states
25 that unless Plaintiff Ciampi signs Mr. Larkin's Settlement Agreement, Mr. Larkin will take away
26 a portion of the Plaintiff Ciampi's \$35,000.00 settlement.

27 Additionally, Mr. Ciampi has claims of known and quantifiable damages against
28 THIRD/NON-PARTIES Andrew Hinz, Warren Page and others who are not a part of the lawsuit

1 or of the Settlement Agreement. Mr. Larkin has included these THIRD/NON-PARTES into his
 2 version of the Settlement Agreement against Plaintiff Ciampi's will. If Plaintiff Ciampi signs
 3 Mr. Larkin's version of the Settlement Agreement, Plaintiff Ciampi will be waiving away
 4 extremely valuable rights to significant damages owed to Plaintiff Ciampi. Plaintiff Ciampi has
 5 made it known that he does not want to sign Mr. Larkin's version of the Settlement Agreement
 6 and has provided one that is consistent to the agreement Plaintiff Ciampi bound himself to on
 7 August 9, 2011, Exh. 911. Thus, if Plaintiff Ciampi signs Mr. Larkin's fraudulent Settlement
 8 Agreement Plaintiff Ciampi will not only incur the injury of the loss of monies taken directly
 9 from him in the form of sanctions, but also the injury of losing a significant loss of rights to
 10 recoup the damages caused by THRID/NON-PARTIES Andrew Hinz and Warren Page.

11 Furthermore, the damages of emotional distress from the fear of losing property/money
 12 from the settlement amount and the stress and anxiety of spending 30 hours writing this brief
 13 have already occurred as a result of Mr. Larkin's extortive act, Plts' Decl

14 Mr. Larkin communicated the threat to Plaintiff Ciampi in an email, Exh. 922. to compel
 15 Plaintiff Ciampi to sign a Settlement Agreement prepared by Mr. Larkin, Exh. 910, sent to
 16 Plaintiff Ciampi by Mr. Larkin, Exh. 914, against Plaintiff Ciampi's will.

17 The elements of extortion are:

- 18 • Communication;
- 19 • Threatening accusation of any crime or offense or any injury to the person..;
- 20 • With intent to extort money or pecuniary advantage as to compel the person so
 21 threatened to do or refrain from doing an act against his/her will.

22 Mr. Larkin communicated the threat to Plaintiff Ciampi in an email, Exh. 922. to compel
 23 Plaintiff Ciampi to sign a Settlement Agreement prepared by Mr. Larkin, Exh. 910, sent to
 24 Plaintiff Ciampi by Mr. Larkin, Exh. 914, against Plaintiff Ciampi's will.

25 Mr. Larkin makes the threat to seek judicial sanctions in order take away property in the
 26 form of money directly from Plaintiff, (causing direct injury to Plaintiff and inducing fear in
 27 Plaintiff Ciampi to compel Plaintiff Ciampi comply with Mr. Larkin's demand against Plaintiff
 28

1 Ciampi's will). Mr. Larkin's threat seeks to coerce Plaintiff Ciampi to act against Plaintiff
2 Ciampi's will by having Plaintiff Ciampi sign a fraudulent Settlement Agreement which will
3 cause pecuniary advantage to Mr. Larkin and THRID-PARTIES Taser International, Andrew
4 Hinz, Kustom Signals and Warren Page in the form of Plaintiff Ciampi losing his rights to the
5 claims he has against them.

6 California Penal Codes:

7 § 518. "Extortion is the obtaining of property from another, with his consent, induced by
8 a wrongful use of force or fear, or under color of official right."

9 § 519. "Fear, such as will constitute extortion, may be induced by a threat, either:

10 1. To do an unlawful injury to the person or property of the individual threatened."

11 § 522. "Every person who, by any extortionate means, obtains from another his
12 signature to any paper or instrument, whereby, if such signature were freely given, any property
13 would be transferred, or any debt, demand, charge, or right of action created, is punishable in
14 the same manner as if the actual delivery of such debt, demand, charge, or right of action were
15 obtained."

16 § 523. "Every person who, with intent to extort any money or other property from
17 another, sends or delivers to any person any letter or other writing, whether subscribed or not,
18 expressing or implying, or adapted to imply, any threat such as is specified in Section 519, is
19 punishable in the same manner as if such money or property were actually obtained by means of
20 such threat."

21 Mr. Larkin has violated Calif. Penal Codes § 518, § 519, and § 523 and attempted to
22 violate PC § 522.

23 **Additionally, Mr. Larkin's extortive act also constitutes a violation of Calif. State**
24 **Bar Rule 5-100(A)**, which states that, "A member shall not threaten to present criminal,
25 administrative, or disciplinary charges to obtain an advantage in a civil dispute."

26 The extortive act committed by Attorney Donald Larkin is a violation of:
27 **Cal. Bus. And Prof. Codes § 6128(a) § 6068(a)(d) and § 6106.**
28

1 By way of being Assistant City Attorney Donald Larkin's direct supervisor, Palo Alto
2 City Attorney Molly Stump has violated Calif. State Bar Rule 1-120 and 3-110.

3 **2) Refusal to Comply with Settlement Agreement:**

4 Contrary to LARKIN'S agreement during the September 1, 2011 Settlement Conference
5 to use only the language that was placed on the record during the August 9, 2011 Settlement
6 Conference and LARKIN'S assertion in his email, LARKIN added numerous statements and
7 NON-PARTY/THIRD-PARTY entities and persons to the Revised Settlement which were never
8 stated during August 9, 2011 Settlement Agreement that was placed on the record. Plaintiff
9 provides a copy of the Settlement Agreement (Exhibit 910) and a redacted version of LARKIN'S
10 Settlement Agreement demonstrating everything that is not a part of the 8/9/2011 Settlement
11 record, (Exhibit 919). For comparison see the Transcript of the 8/9/2011 Settlement Conference
12 (Exhibit 918).

13 Plaintiff therefore drafted, signed and sent to LARKIN/defendants, a Settlement
14 Agreement that actually uses the Court Transcript, Exh. 918, as a the agreement, (Exhibit 911).
15 Due to the dispute over the THIRD/NON-PARTIES, Plt. did include clarification that Plt. did
16 not waive any rights against NON-PARTIES and has retained all his rights to sue THIRD/NON-
17 PARTIES.

18 CITY/LARKIN and the defendants refuse to comply with Settlement Agreement and
19 refuse to provide Plt. the sum of \$35,000.00 as agreed to and as the bound themselves to.

20 **3) Who are the parties that settled Case No. C09-02655:**

21 The entirety of all the parties settling any and all claims encompassed in Case No. C09-
22 02655 are identified from line 11 through line 19 of pg. 2 and lines 4-5 of pg. 3 of the 9/9/11 CT
23 (Court Transcript-Exhibit 918), which states:

24 **MR CIAMPI:** "Joseph Ciampi in pro se."

25 **MR. SHERMAN:** "Good morning, Your Honor. Steven Sherman on behalf of the Palo Alto
26 defendants."

27 **THE COURT:** "Could you come to the microphone. We're recording this—"
28

1 **MR. SHERMAN:** "I'm sorry, your Honor." "Good morning again, Your Honor." "Steven
2 Sherman on behalf of the Palo Alto defendants, Officer Temores, Officer Burger, Officer
3 Wagner, and the City."

4 **THE COURT:** "The defendants will be paying the plaintiff the sum \$35,000."

5 As can be clearly seen and understood, the only employees, agents, representatives
6 consultants, contractors of the City of Palo Alto involved in settling any and all claims associated
7 with Case No. C09-02655 are Officer Temores, Officer Burger and Officer Wagner. If any other
8 employees were involved in the settlement then LARKIN and attorney Steven Sherman would
9 have identified them. Since they did not identify any other employees, agents, representatives,
10 contractors of the City of Palo Alto, the only employees subject to and bound to the Settlement
11 Agreement are Officer Temores, Officer Burger and Officer Wagner. If LARKIN and Sherman
12 truly wanted to include NON-PARTIES Andrew Hinz, ("HINZ"); Warren Page, ("PAGE") and
13 Michael Gennaco, ("GENNACO"), agents, all other employees not named Temores, Burger,
14 Wagner, directors then LARKIN and Sherman would have identified them. Since LARKIN and
15 Sherman did not identify HINZ, PAGE and GENNACO, then they nor any other NON-
16 PARTIES, were not a part of the Settlement Conference and Settlement Agreement.

17 Had Plaintiff been informed that he was settling any claims against Taser International,
18 Kustom Signals, HINZ, PAGE and GENNACO, then Plaintiff would not have settled the case.
19 Had Mr. Sherman stated, "Steven Sherman on behalf of Palo Alto defendants, Officer Temores,
20 Officer Burger, Officer Wagner and the City which includes all contractors, consultants, agents
21 servants, employees, directors, representatives, anyone, nobody and everyone for anything and
22 everything when he identified all of the parties involved in settling the entirety of he case prior to
23 binding ourselves to the agreement, Plaintiff would not have settled the case. Plaintiff would
24 have objected and requested clarification.

25 LARKIN and Steven Sherman intentionally did not identify the THIRD/NON-PARTY
26 entities and persons during the Settlement Conference for if they had, they knew that Plaintiff
27 would not have settled the case with these and or other NON-PARTY entities and persons. By
28

1 not informing Plaintiff that he intended to include NON-PARTIES that were not identified nor
 2 present during Settlement Conference into the written Settlement Agreement LARKIN
 3 intentionally deceived Plaintiff in order to benefit from that deception at the expense and loss of
 4 Plaintiff's property/rights which is fraud and a violation of **Cal. Bus. And Prof. Codes, §**
 5 **6068(d), § 6128(a), and § 6106.**

6 By concealing the fact that LARKIN was including THRID/NON-PARTIES Andrew
 7 Hinz, Warren Page and others as a part of the Settlement Conference from Plaintiff Ciampi,
 8 LARKIN violated **Cal. State Bar Rule 5-220.**

9 By not including Andrew Hinz and Warren Page in Defendants' request to excuse
 10 individual defendants Manuel Temores, Kelly Burger and April Wagner from the Settlement
 11 Conference, (Court Doc. 180), and then not informing Judge James that Andrew Hinz and
 12 Warren Page were parties to the Settlement Conference even though they were not present at the
 13 Settlement Conference violated Judge James' standing Order, (Exh. 903 of Court Doc. 198) and
 14 misled Judge James and Plaintiff as to who were the parties involved in the Settlement
 15 Conference which is a violation of **Cal. Bus. And Prof. Codes, § 6068(d)** and **Cal. State Bar**
 16 **Rule 5-200(B).**

17 By failing to identify, disclose to Plaintiff Ciampi, the THRID/NON-PARTIES, Andrew
 18 Hinz, Warren Page and others, would be included in the Settlement Conference, Defendants and
 19 their attorney's violated the Court's, Judge James' standing Order, (Exh. 903 of Court Doc. 198),
 20 therefore are subject to sanctions pursuant to **FRCiv.P 37(c)(1)(A)(C) and FRCiv.P**
 21 **37(b)(2)(A)(C).**

22 **4) City-Contractors-Consultants:**

23 LARKIN has asserted that a dismissal against the City is against all agents, servants,
 24 employees, directors, contractors and representatives that work for the City, (Exhibit 921-2).
 25 If that were true then the every single employee of the City of Palo Alto and all of the City's
 26 agents, directors, contractors and representatives would had to been present during the 8/9/2011
 27 Settlement Conference and not just Officers Temores, Burger, and Wagner, (lines 23-28 of pg.
 28

1 27 and lines 1-9 of Exhibit 903-3 of Court Doc. 198-Judge James' standing **Order on the**
2 **mandatory attendance of the Settlement Conference.**

3 The fact is Mr. Larkin is attempting to deceive Plaintiff once again into believing that
4 Plaintiff must settle his claims with NON-PARTY entities and persons who are not named in the
5 lawsuit a violation of **Cal. Bus. And Prob. Codes § 6128(a) and § 6106.**

6 Defendants' attorney Steven Sherman and City of Palo Alto explicitly identify all of the
7 individual police officer defendants, (Palo Alto City Employees), involved in settling all of the
8 claims cited in Case No. C09-02655 and that being Manuel Temores, Kelly Burger and April
9 Wagner, Court Doc. 180. Had the Defendants and their Attorneys believed that all of the parties
10 involved in the lawsuit included all of the City's employees, agents, servants, directors,
11 contractors and representatives then LARKIN, and Steven Sherman and the City of Palo Alto
12 would have requested that all employees, agents, servants, directors, contractors and
13 representatives be excused from the 8/9/2011 settlement conference. The reason why LARKIN,
14 the City and Steven Sherman did not cite all of the City's employees, agents, servants, directors,
15 contractors and representatives to be excused from the settlement conference is because
16 LARKIN knows that they were not parties to the lawsuit or of the Settlement Agreement.

17 The Court, Judge James verifies that the only individuals subject to the Settlement
18 Conference and the Settlement Agreement are the specific parties named in the lawsuit, that
19 being, Manuel Temores, Kelly Burger and April Wagner, Court Doc. 183. If the Court and
20 Judge James believed that any other employees, agents, consultants, representatives or
21 contractors of the City of Palo Alto were a party to the lawsuit and the settlement, Judge James
22 would have demanded that they participate in the settlement conference or would have excused
23 them as she did Manuel Temores, Kelly Burger, and April Wagner. In excusing Temores,
24 Burger and Wager, Judge James verified that there are not other employees involved in Case No.
25 C09-02655 and the Settlement Agreement.

26 According to Judge James' Settlement Conference Order, lines 23-27 of pg. Exh. 903-3 if
27 Andrew Hinz, Warren Page and Michael Gennaco were a part of the City as indicated by
28

1 LARKIN, then Judge James would have demanded that they be present during the Settlement
 2 Conference. By not requiring Andrew Hinz, Warren Page and Michael Gennaco to be present
 3 during the settlement conference, Judge James verifies that Andrew Hinz, Warren Page and
 4 Michael Gennaco were NOT a part of the Settlement Agreement entered into by the City of Palo
 5 Alto and Plaintiff Ciampi.

6 LARKIN has asserted that a dismissal against the City is against all agents, servants,
 7 employees, directors, contractors and representatives that work for the City, (Exhibit 921-2).
 8

9 Michael Gennaco has a contract with the City of Palo Alto to provide consulting services
 10 as the Independent Police Auditor, (Exhibit 915). Mr. Gennaco is identified as both a
 11 "Consultant," (Exh. 915-2) and a "Contractor," (Sec. 10 of Exh. 915-3). According to Mr.
 12 Gennaco's contract with the City of Palo Alto, as a Consultant and Contractor Mr. Gennaco is to
 13 hold the City harmless from all liability resulting from, arising out of or in any manner related to
 14 performance or nonperformance by Consultant... , (Sec. 16 of Exh. 915-4). Thus, to the contrary
 15 of LARKIN'S assertion, the City of Palo Alto is no liable for the acts on committed by NON-
 16 EMPLOYEES of the City of Palo Alto and therefore, the City does not represent Mr. Gennaco.
 17 LARKIN has intentionally made a false statement claiming that all Contractors that do work for
 18 the city are included as a part of the City in any and all settlement agreements. LARKIN has
 19 made this statement with the intent to deceive Plaintiff into falsely believing that THRID/NON-
 20 PARTY entities and persons are a part of the Settlement Agreement under the City's umbrella,
 21 which is a violation of Cal. Bus. And Prob. Codes 6128(a) and 6106.

22 **5) LARKIN/City of Palo Alto Know that the THIRD/NON-PARTIES are not**
 23 **included in the Settlement Agreement.**

24 LARKIN has asserted that THIRD/NON-PARTIES, Andrew Hinz, Taser International,
 25 Warren Page, Kustom Signals and Michael Gennaco are included in the settlement agreement,
 26 (Exhibit 921) and (Sec. 6 & Sec. 7 of Exhibit 910-4), yet LARKIN contradicts himself in his
 27 own declaration from lines 6 through 9 of pg. 3, of Court Doc 196 in which LARKIN states, "*In*
 28 *response to Plaintiff's concern about third-party claims, the City would be willing to agree to a*

1 *add a mutual hold-harmless and indemnification provision to the settlement agreement, which*
2 *would protect both parties from additional claims related to or arising from the subject matter of*
3 *this lawsuit regardless of the source."*
4

5 LARKIN verifies two things in his declaratory statement. First, it verifies that the CITY
6 did not have an indemnifications provision taking on the liability of THIRD/NON-PARTIES
7 who are not employees of the City when the August 9, 2011 Settlement Conference took place.
8 Second and more importantly, LARKIN himself is acknowledging that he wants to add these
9 THIRD/NON-PARTIES to the settlement agreement which means that LARKIN knows and
10 understands that these THIRD/NON-PARTIES were not a part of the original Settlement
11 Agreement on August 9, 2011. LARKIN is acknowledging that THIRD/NON-PARTIES,
12 Andrew Hinz, Taser International, Warren Page, Kustom Signals and Michael Gennaco were not
13 a part of the 8/9/2011 Settlement Agreement.

14 By insisting that THIRD/NON-PARTIES, Andrew Hinz, Taser International, Warren
15 Page, Kustom Signals and Michael Gennaco must be included in the Settlement Agreement, Mr.
16 Larkin is knowingly and intentionally attempting to misled the court and Plaintiff which is a
17 violation of Cal.Bus. And Prof. Codes § 6128(a) and § 6106.

18 **6) Experts**

19 Defendants claim that Plaintiff waived his rights to sue due to the 1542 waiver.

20 Plaintiff has always known since approximately February 14, 2011 and or May 11, 2011
21 Taser International, Andrew Hinz, Kustom Signals, Warren Page actions did not arise out of the
22 case, Case No. C09-02655. Their actions were completely separate done to protect themselves
23 from liability. Their actions may have protected the Palo Alto Police, however that is not the
24 claim that Plaintiff has against Andrew Hinz and Warren Page. In their attempt to protect the
25 image of their respective companies, Hinz and Page submitted fraudulent reports to the court in
26 order to cover up that their products are not tamper proof. Hinz and Page submitted fraudulent
27 reports to the court in order to cover up that their products, videos and taser guns' data ports have
28 been and can be tampered with. This is some kind of product liability claim. Hinz and Page's

1 motive wasn't necessarily to protect the Palo Alto Police, but to protect their own companies as
2 such; their acts did not arise out of the March 15, 2008 incident. Their actions violated my 14th
3 amendment right to due process. The evidence gathered is not only beneficial for my own
4 claims, but also for a potential class action suit. Plaintiff will not waive any of these rights to
5 seek damages from Kustom Signals, Warren Page, Taser International and Andrew Hinz.

6 Had Hinz and Page submitted accurate reports documenting that the videos and taser gun
7 data ports had indeed been tampered with and falsified the court would have accurately upheld
8 Plaintiff's 14 Amendment Civil Rights Violations. As such, by submitting the falsified reports,
9 Hinz and Page violated Plaintiff's civil rights to due process.

10 Twaser International is not a part of the City of Palo Alto. Andrew Hinz is not an
11 employee of the City of Palo Alto, Andrew Hinz is an employee of Taser International Inc., (see
12 Exhibit 16 of Sherman's Declaration Court Doc. 125). Kustom Signals is not a part of the City
13 of Palo Alto. Taser International is located in Scottsdale, Arizona. In fact, Mr. Hinz had to fly to
14 Palo Alto in order to inspect evidence on February 17, 2011, see ¶ 12 of Court Doc. 129-1.

15 Warren Page is not an employee of the City of Palo Alto, Warren Page is an employee of
16 Kustom Signals Inc., (see Exhibit 20. Sherman's Decl. Court Doc 125). Kustom Signals is not a
17 part of the City of Palo Alto. Kustom Signals is located in Lexena, Kansas.

18 Michael Gennaco is not an employee of the City of Palo Alto however Mr. Gennaco
19 performs services for the City of Palo Alto. Mr. Gennaco's contract specifically states that the
20 City is not liable for any of the actions or damages caused by Mr. Gennaco while working in the
21 capacity of providing services for the City of Palo Alto demonstrating that that third parties who
22 are not employees of the City of Palo Alto do not fall under the definition of the City of Palo
23 Alto and that the City of Palo Alto is not liable for their actions and or omission.

24 *"A public entity is liable for injury proximately caused by an act or omission of an*
25 *employee of the public entity within the scope of his employment if the act or omission would,*
26 *apart from this section, have given rise to a cause of action against that employee or his*
27 *personal representative," Cal. Gov't Code § 815.2(a)." The City of Palo Alto is only liable for*
28

1 the acts and omission of its, "public" employees. Since Andrew Hinz, Warren Page and Michael
2 Gennaco are not public employees of Palo Alto, but private employees of private companies the
3 City of Palo Alto is not liable for any of the acts or omissions that Andrew Hinz, Warren Page
4 and Michael Gennaco have perpetrated. Since the City of Palo Alto is not liable for any of the
5 acts or omissions that Andrew Hinz, Warren Page and Michael Gennaco have perpetrated the
6 City of Palo Alto did not represent or settle any claims that Plaintiff has with Taser International,
7 Andrew Hinz, Kustom Signals, Warren Page and Michael Gennaco during the 8/9/2011
8 settlement conference.

9
10 The Deadline for designating experts was September 24, 2010. Plaintiff believes that
11 during the December 16, 2010 CMC that Plaintiff informed the court that Defendants had not
12 provided their expert reports in compliance with FRCiv.P 26(a)(2)(A)(B). Plt. believes that the
13 court directed Defs.' to provide Plt. with their expert reports. On January 31, 2011 Defs.
14 provided "HINZ'S" and "PAGE'S" expert reports, Exh. 916-2. These are the identical reports
15 provided to the court as Exhibits 16 & 20 of Court Doc. 125 Sherman's Declaration.

16 These expert reports from Andrew Hinz and Warren Page were not complete and did not
17 provide, "*a statement of the compensation to be paid for the study and testimony in the case,*"
18 pursuant to FRCiv.P 26(a)(2)(B)(vi). On March 15, 2011 Plaintiff requested that Defs. provide
19 the missing information, Exhs. 916-3 through 916-4. On March 29, 2011 Defs. sent Plt.
20 PAGE'S fee schedule, Exh. 917, however it was on an editable "Word" document and had
21 absolutely no identifying marks as to who the information related to, Exh. 916-5. Being an
22 editable document it is vulnerable to being easily altered. Plt. can reproduce this document
23 directly from Plt's. email account to verify its authenticity should the court request. Plt informed
24 Defs. that the information was incomplete and requested that Defs. produce the fee schedules for
25 Andrew Hinz and Warren Page, Exhs. 916-6 through 916-8. As of September 11, 2011 Defs.
26 have not provided the fee schedules, the contracts, between the City of Palo Alto and Andrew
27 Hinz and Warren Page.

1
2 Defendants and their attorneys Steven Sherman and LARKIN have intentionally withheld
3 this information from Plaintiff in violation of FRCiv.P 26(a)(2)(B)(vi). Defendants and their
4 attorney, LARKIN, have used this violation to their advantage in order to deceive Plaintiff
5 Ciampi and the Court as to what the actual nature of the contractual relationship between the
6 City of Palo Alto and the NON-PARTIES whom LARKIN wants to add to the settlement
7 agreement.

8 By not providing Plaintiff Ciampi with the the contractual statement of the compensation
9 to be paid to Andrew Hinz and Warren Page for their expert reports and testimony pursuant to
10 FRCiv.P 26(a)(2)(B)(vi) defendants and their attorneys are subject to the Sanctions pursuant to
11 FRCiv.P 37(c)(1)(A)(C).

12 Defendants, and LARKIN intentionally did not provide Plt. any contractual agreement
13 between the City of Palo Alto and NON-PARTIES that would cause the NON-PARTIES to be
14 considered a part of the "CITY" in terms of the August 9, 2011 settlement, prior to or during the
15 Settlement Conference which would inform Plaintiff that the CITY and LARKIN would be
16 adding the NON-PARTIES to the Settlement Agreement without informing Plaintiff.

17 Defendants and Larkin knew or should have known that this information would affect
18 Plaintiff's decision to settle the case, as such, by deliberately withholding this information from
19 Plaintiff in order to induce Plt. to settle the case constitutes fraud, for Plaintiff expects to receive
20 a much larger settlement and or judgment of damages from Andrew Hinz, Taser International,
21 Warren Page and Kustom Signals then what Plt. received from the City of Palo Alto. Plaintiff
22 would not have settled for \$35,000.00 had Plaintiff believed that he was settling with Andrew
23 Hinz, Taser International, Warren Page and Kustom Signals during the 8/9/2011 Settlement
24 Conference, Plaintiff would have demanded a much greater amount. Defendants and LARKIN
25 have violated Cal. Bus. and Prof. Codes § 6128(a) and § 6106.

26 7) 1542 Waiver:

27 The entire agreement that was placed on the record during the Settlement Conference that
28 Defendants, LARKIN and Plaintiff Ciampi bound themselves to is:

1 **THE COURT:** "All right. Good morning. We have reached a settlement as follows. I ask
2 both sides to listen carefully. The defendants will be paying the plaintiff
3 the sum of \$35,000.00." "This is not a matter that needs to go to City counsel. So how
4 long will it take you to – after the settlement's been signed – to get the payment to Mr.
5 Ciampi?

6 **MR. SHERMAN:** "I'd ask for two weeks, Your Honor. It shouldn't take that long."

7 **THE COURT:** "All right." "Each party will bear their own attorney's fees and
8 costs. There will be a 1542 waiver, a full and complete dismissal. There will be no
9 admission of fault, liability, or wrongdoing by either party. **I think that comprises the**
10 **entire agreement;** is that correct, Counsel and Mr. Ciampi?"

11 **MR. CIAMPI:** "I believe so, yes, Your Honor. Thank you."

12 **MR. SHERMAN:** "I believe so, Your Honor. Thank you."

13 **THE COURT:** "Mr. Larkin, you've heard the agreement that was placed on the record.
14 Did you understand it?"

15 **MR. LARKIN:** "Yes, Your Honor."

16 **THE COURT:** "And you have the authority to bind the city?"

17 **MR. LARKIN:** "Yes, Your Honor."

18 **THE COURT:** **"And do you bind the City?"**

19 **MR. LARKIN:** **"Yes, Your Honor."**

20 **THE COURT:** "And, Mr. Ciampi, **you've heard the agreement placed on the**
21 **Record.**" "Did you understand it?"

22 **MR. CIAMPI:** "Yes, Your Honor."

23 **THE COURT:** **"And do you agree to be bound by it?"**

24 **MR. CIAMPI:** **"Yes, Your Honor."**

25 That is the complete agreement nothing more and nothing less, (lines 1-28 of Exh. 918-4
26 and lines 1-10 of Exh. 918-5.

27 **Civil Code Section 1542 states:**

1 *"A general release does not extend to claims which the creditor does not know or*
2 *suspect to exist in their favor at the time of executing the release, which, if known*
3 *by them, must have materially affected their settlement with the debtor"*
4

5 By waiving one's rights to this legal protection, a creditor is releasing any claims he/she
6 may have sought from the debtor but didn't because the creditor was unaware of the claim at the
7 time creditor executed a release to the debtor.

8 First and foremost, since Taser International, Andrew Hinz, Kustom Signals, Warren
9 Page and Michael Gennaco are not parties to this lawsuit and were not a part of the Settlement
10 Conference, Plaintiff did not waive any claims that Plaintiff may or may not have against Taser
11 International, Andrew Hinz, Kustom Signals, Warren Page and Michael Gennaco.

12 Secondly, Code 1542 only applies to claims which creditor, Plaintiff Ciampi, does not
13 know or suspect to exist in his favor at the time of executing the release of the debtor. Plaintiff
14 Ciampi has been fully aware of claims he has against Taser International, Andrew Hinz, Kustom
15 Signals and Warren Page since approximately May 11, 2011 and even as far back as February
16 14, 2011. Plaintiff has been aware of claims he has against Michael Gennaco since November
17 2009.

18 Plaintiff deliberately settled the three pending STATE claims in his lawsuit against the
19 City of Palo Alto and officers Temores, Wagner, and Burger specifically so Plaintiff free himself
20 up in order to concentrate on seeking damages from Taser International, Andrew Hinz, Kustom
21 Signals, Warren Page and Michael Gennaco.

22 Additionally, to prove Plaintiff's case against Taser International, Andrew Hinz, Kustom
23 Signals and Warren Page Plaintiff will need the testimony of an expert, lines 26-28 of pg. 10 and
24 lines 1-28 of pg. 11 and lines 1-2 of pg. 12 of the Court's ruling, Court Doc. 155.

25 The deadline for designating experts was September 24, 2010. The Court granted
26 Plaintiff's amended complaint and opened discovery for a short period of time however the
27 Court did not extend the deadline by which to designate experts, pg. 6 of Court Doc. 104 and
28 December 16, 2010 Case Management Conference.

1
2 The acts and or omissions committed by Andrew Hinz and Warren Page occurred in
3 February 2011, thus Plaintiff would have been adding Hinz and Page to the complaint six months
4 after the designations of experts' deadline had expired. Plaintiff would not have been able to
5 prove Plaintiff's cause of action against Andrew Hinz and Warren Page due to the fact that
6 Plaintiff would have been denied the ability include an expert.

7 Had Plaintiff amended his complaint and included Taser International, Andrew Hinz,
8 Kustom Signals and Warren Page the Court would have dismissed Plaintiff's cause of action for
9 not providing expert testimony.

10 Given the procedural constraints placed on Plaintiff in Case No. C09-02655 denying
11 Plaintiff the necessity of expert testimony to prove Plaintiff's case against these entities and
12 persons Plaintiff would not have been able to prove Plaintiff's cause of action and would have
13 been a waste of everyone's time and resources.

14 Additionally, Plaintiff is under no legal obligation to include Taser International, Andrew
15 Hinz, Kustom Signals, Warren Page and Michael Gennaco in the current lawsuit.
16 "*Any party may move to strike the third-party claim, to sever it, or to try it separately.*" **FRCivP.**
17 **14 (a)(4)**. Plaintiff's current case up to May 11, 2011 was already too big to manage in the most
18 effective manner, to add four more parties to the current lawsuit would have made it impossible
19 to manage.

20 In an email sent to Plaintiff Ciampi from Attorney Steven Sherman, Mr. Sherman verifies
21 that there were only three (3) pending, (State), claims remaining when the Settlement Conference
22 took place on August 9, 2011, (pg. 22 of Court Doc. 196-7.

23 At the time of Settlement Conference Case No C09-02655 there were only three
24 individual defendants and three State Claims, thus the 1542 waiver only applies to what has
25 arisen out of the lawsuit, that being that Plaintiff's Civil Rights Claims and some State Claims
26 were dismissed along with four defendants who were no longer a part of Case No. C09-02655
27 and as such the 1542 waiver only pertained to Case No. C09-02655 and the three pending claims
28 and the four defendants, the City of Palo Alto, Manuel Temores, Kelly Burger and April

1 Wagner. As such, the 1542 waiver did not apply to any other THIRD/NON-PARTY nor did it
2 apply to Taser International, Andrew Hinz, Kustom Signals, Warren Page or Michael Gennaco.

3 **8) Judge James' Clarification:**

4 The following dialog was stated during the Settlement Conference, (lines 2-12 of Exhibit
5 918-6-Court Transcript):

6 **MR. CIAMPI:** "Okay. The – I guess, some clarification on "without prejudice."

7 **MR. SHERMAN:** "'With prejudice.'"

8 **MR. CIAMPI:** "Or 'with prejudice.'"

9 **THE COURT:** "Yes?"

10 **MR. CIAMPI:** "So there's nothing that will arise as to the City placing a counterclaim on
11 me for anything?"

12 **THE COURT:** "No. You're done." "This is it." "Everything ends today, arising out of
13 this incident." "Nobody can do anything to anybody anymore."

14 **MR. CIAMPI:** "Okay."

15 First and foremost, the entity in question is the "City," and no one else. As such,
16 "nobody," "anything," and "anybody," used in the proper context strictly applies to the "City"
17 and does not refer to Kustom Signals, Warren Page, Taser International, Andrew Hinz, Michael
18 Gennaco and or Steven Sherman.

19 None of the above dialog was placed on the record as a part of the agreement by Judge
20 James, (line 15 of Exh. 918-4). Therefore none of the above dialog should be incorporated in the
21 written settlement agreement. Additionally City/LARKIN and Plaintiff Ciampi bound
22 themselves to the agreement which does not contain the above dialog prior to the above dialog
23 being stated, as such it is physically impossible that City/LARKIN and Plaintiff Ciampi actually
24 bound themselves to the above dialog for in order to bind yourself to something, you first have to
25 know what you are binding yourself to.

26 For these reasons Plaintiff Ciampi did not bind himself to anything in the 8/9/2011
27 Settlement Conference that was stated after line 9 of pg. 4 of the Court Transcript, line 9 Exh.
28

1 918-5 and objects to anything placed in the written settlement agreement that Ciampi did no bind
2 himself to.

3 Additionally, LARKIN has actually defined the meanings of terms and words used in the
4 dialog between lines 2-12 of pg. 5 of the Court Transcript and of Exhibit 918-6 weeks after the
5 Settlement Conference took place, (Sections 6 & 7 of Exhibits 910-3 and 910-4), inserting these
6 subjective and prejudicial meanings into the Settlement Agreement without first consulting
7 Plaintiff. LARKIN knowingly and intentionally attempted to insert this information into the
8 Settlement Agreement that was not a part of the settlement agreement in order to deprive
9 Plaintiff Ciampi's his lawful right to due process secured by the FOURTEENTH
10 AMENDMENT of the United States of America. By perpetrating such an act, LARKIN violated
11 the Constitution which is a violation of Cal. Bus. And Prof. Codes § 6128(a), § 6068(a)(d)and
12 § 6106(a)(d).

13 If LARKIN'S position had any legitimacy, LARKIN would had defined the terms during
14 the Settlement Conference, however LARKIN'S position does not have any legitimacy, for
15 LARKIN knowingly and intentionally withheld these meanings and definitions from Plaintiff
16 Ciampi during the Settlement Conference in order to deceive Plaintiff Ciampi into settling the
17 case and waiving his rights away against THRID/NON-PARTIES, unawares to Plaintiff Ciampi.
18 LARKIN had a lawful duty to inform Plaintiff Ciampi how the City and LARKIN were going to
19 define the words and interpret the meanings of the dialog that would be cited in the written
20 Settlement Agreement. LARKIN committed a fraudulent act and violated Cal. Bus. And Prof.
21 Codes § 6128(a) and 6106 by not informing Plaintiff Ciampi during the Settlement Conference
22 how the dialog was going to be defined and applied to the written Settlement Agreement for had
23 LARKIN informed Plaintiff Ciampi during the Settlement Conference how he intended to define
24 and apply the dialog in question, Plaintiff Ciampi would had objected immediately and would
25 had refused to settle the case containing such definitions and interpretations of the dialog as
26 LARKIN has included in his draft of the written Settlement Agreement, (Sections 6 & 7 of
27 Exhibits 910-3 and 910-4).
28

1 LARKIN knew and knows that had he included the dialog of the Settlement Conference
2 from lines 2-12 of pg. 5 of the Court Transcript and of Exhibit 918-6 according to LARKIN'S
3 subjective and prejudicial leanings as cited in LARKIN'S draft of the written Settlement
4 Agreement, (Sections 6 & 7 of Exhibits 910-3 and 910-4), during the Settlement Conference
5 Plaintiff Ciampi would not have settled the case. This is verified by the fact that as soon as
6 Plaintiff Ciampi became aware that LARKIN was attempting to add the dialog to the Settlement
7 Agreement that was not a part of the Settlement Agreement and define that dialog for his own
8 benefit and to the detriment of Plaintiff Ciampi, Plaintiff Ciampi made it known to the City,
9 LARKIN and the court demonstrating that had Plaintiff Ciampi not been misled by LARKIN
10 Plaintiff would had acted differently during the Settlement Conference in regards to the
11 Settlement Agreement by NOT settling, see Court Docs. 196-7, 196-8.

12 For clarification regarding the dialog documented on the 8/9/2011 Court Transcript from
13 line 2 through line 12 of pg. 5, (Exhibit 918-6), Plaintiff understood the meanings of the
14 statements and the definitions of the words to be taken in the context which they were used.
15 Plaintiff was simply trying to ensure that the City could not file a lawsuit against Plaintiff for
16 anything including defamation as Mr. Sherman has asserted that he is going to do. As such,
17 when Judge James states, "Nobody can do anything to anybody anymore," lines 10-11 of Exh.
18 918-6 Plaintiff understands this to only include the City, Temores, Burger and Wagner and NOT
19 attorney Steven Sherman. Therefore the statement doesn't apply to Taser International, Andrew
20 Hinz, Kustom Signals, Warren Page or Michael Gennaco either. Additionally, when Judge
21 James states, "Everything ends today, arising out of this incident," it is clear that this does not
22 mean the defamation charge that attorney Steven Sherman has stated that he intends to file
23 against me which is in retaliation for Plaintiff Ciampi filing a State Bar Complaint against Mr.
24 Sherman due to his actions which arose out of defending the City in this incident. Simply put,
25 had Plaintiff had any inclination that anything stated during the Settlement Conference on record,
26 off record, recorded on the transcript would have denied Plaintiff the opportunity to pursue
27 damages against, Kustom Signals, Warren Page, Taser International, Andrew Hinz, and Michael
28

1 Gennaco Plaintiff would had immediately objected and would not had settled the case. Plaintiff
2 knows that he did not knowingly or unknowingly settle any claims with Kustom Signals, Warren
3 Page, Taser International, Andrew Hinz, and Michael Gennaco during the 8/9/2011 Settlement
4 Conference.

5 Using the logic of how LARKIN interprets "anybody," in line 6 of pg. 3 of his written
6 Settlement Agreement, Exh. 910-4, it includes President Obama and Kim Jong-il along with
7 everyone else in the world. Therefore LARKIN'S interpretation is not consistent with or in he
8 same context as that it which Judge James was using it.

9 In the Defendants' Supplemental Status Report Regarding Stipulation of Dismissal,
10 LARKIN states on August 18, 2011, "*Among the concerns raised by Plaintiff are the validity of*
11 *the lien asserted by Mr. Beauvais and the ability of third-parties to file new actions against*
12 *Plaintiff. In response to Plaintiff's concern about third-party claims, the City would be willing to*
13 *agree to a add a mutual hold-harmless and indemnification provision to the settlement*
14 *agreement, which would protect both parties from additional claims related to or arising from*
15 *the subject matter of this lawsuit regardless of the source.,*"(lines 5-12 of pg. 3 of Court Doc.
16 196. Thus, LARKIN is acknowledging that the THIRD/NON-PARTES were not a part of the
17 Settlement Agreement NINE (9) days after the Settlement Conference took place and that Judge
18 James' statements documented on the Court Transcript do not apply to anyone other those who
19 were present at the August 9, 2011 Settlement Conference. LARKIN completely contradicts
20 himself in attempting to add Judge James' statements according to his own bias interpretation to
21 the written Settlement Agreement, (Sections 6 & 7 of Exhibits 910-3 and 910-4 & Exh. 921),
22 that were not agreed to by Plaintiff. By inserting language into the written settlement agreement
23 that Plaintiff did not bind himself to without informing Plaintiff in order to deprive Plaintiff of
24 his rights against THIRD/NON-PARTIES IS FRAUD and a violation of Cal. Bus. And Prof.
25 Codes § 6128 (a) and 6106.

26 Once Mr. Larkin realized that he could not deceive Plaintiff Ciampi into waiving his
27 lawful rights to claims against THIRD/NON-PARTIES, LARKIN resorted to extortion in order
28

1 to compel Plaintiff Ciampi to sign the fraudulent Settlement Agreement prepared by Mr. Larkin.
 2 Plaintiff was not provided any information by Defendants or the court that Plaintiff was settling
 3 any claims against NON-PARTIES, Taser International, Andrew Hinz, Kustom Signals, Warren
 4 Page, Michael Gennaco and Steven Sherman. Had Plaintiff been informed that he was settling
 5 claims against NON-PARTIES, Taser International, Andrew Hinz, Kustom Signals, Warren
 6 Page, Michael Gennaco and Steven Sherman. Plaintiff would not have settled the case for
 7 \$35,000.00, Plaintiff would have demanded a much greater amount.

8 **CONCLUSION:**

9
 10 **A)** Plaintiff Ciampi has provided Defendants, (City /LARKIN), a written Settlement
 11 Agreement signed by Plaintiff Ciampi that incorporates everything that City/LARKIN and
 12 Plaintiff Ciampi bound themselves to on August 9, 2011 however City/LARKIN refuse to sign
 13 the written Settlement Agreement and provide Plaintiff Ciampi with the sum City/LARKIN
 14 agreed to pay Plaintiff Ciampi within two weeks of the August 9, 2011 Settlement Conference.

15 Plaintiff requests that the Court Order Defendants/City/LARKIN to sign the written
 16 Settlement Agreement, (Exhibit 911), and pay Plaintiff Ciampi the sum of \$35,000.00 in order to
 17 complete the Settlement Agreement and dismiss the remainder of Case No. C09-02655.

18 Defendants refuse to settle the case unless THIRD/NON-PARTIES, Taser International,
 19 Andrew Hinz, Kustom Signals, Warren Page and Michael Gennaco are included in the
 20 Settlement Agreement even though they are not a part of the Settlement Agreement. Plaintiff
 21 requests that the Court Order Defendants to settle Case No. C09-02655 as agreed to on August 9,
 22 2011 which specifically does not include THIRD/NON-PARTIES, Taser International, Andrew
 23 Hinz, Kustom Signals, Warren Page and Michael Gennaco pursuant to **FRCiv.P 70(a)**.

24 **B)** As a result of refusing to comply with the 8/9/2011 Settlement Agreement as he
 25 bound the City to, causing an unnecessary delay in ratifying the Settlement Agreement and
 26 paying Plaintiff the sum of \$35,000.00, Plaintiff requests that the court order appropriate
 27 sanctions against Attorney Don Larkin for being burdensome and oppressive, ¶ 22 of Ciampi's
 28 Decl.

1 C) Attorney Don Larkin attempted to extort a portion of Plaintiff Ciampi's
2 Settlement monies, (property), in order to compel Plaintiff Ciampi to give up his lawful claims,
3 (property), to injuries caused by Andrew Hinz and Warren Page. Plaintiff spent the better part
4 of 30 hours ensuring that he retain his lawful rights which is exceedingly burdensome and
5 oppressive ¶ 22 of Ciampi's Decl. Therefore, Plaintiff requests that court order appropriate
6 sanctions against Attorney Don Larkin.

7 D) FRCiv.P 37(c)(1)(A)(C) provides for appropriate sanctions should a party fail to
8 disclose discovery pursuant to **FRCiv.P 26(a)(2)(B)(vi)**. Defendants and their attorneys failed to
9 provide the statements of compensation for the expert reports and testimony provided by Andrew
10 Hinz and Warren Page pursuant therefore Plaintiff requests that the court order appropriate
11 sanctions given that the above acts significantly prejudiced Plaintiff during the Settlement
12 Conference.

13 E) FRCiv.P 37(c)(1)(A)(C) provides for sanctions should a party fail to provide
14 information or identify witnesses at a hearing. Defendants and their attorneys failed to inform
15 Plaintiff Ciampi that Andrew Hinz and Warren Page would be parties to Settlement Conference
16 and Settlement Agreement, as such Plaintiff requests that the court order appropriate sanctions
17 against the Defendants and their attorneys especially since this failure to disclose has prejudiced
18 Plaintiff's case.

19 F) FRCiv.P 37(b)(2)(A)(C) provides for sanctions should a party fail to obey a
20 Discovery Order. Defendants and their Attorneys did not obey Chief Magistrate Judge James'
21 Standing Order requiring that all parties necessary to settle the case be present for the Settlement
22 Conference or identified in a request excusing the parties from the Settlement Conference, lines
23 23-28 of pg. 2 and lines 1-10 of pg. 2 of Judge James' Standing Order Re: Settlement
24 Conference Procedures. According to attorney Don Larkin it was and is necessary that Andrew
25 Hinz and Warren Page be included in the Settlement Agreement, however Mr. Larkin never
26 disclosed Andrew Hinz's and Warren Page's identities to Plaintiff or the court prior to or during
27

28

1 the Settlement Conference. Therefore Plaintiff requests that the court order the appropriate
2 sanctions against attorneys Don Larkin and Steven Sherman.

3 **G)** Counsel who attends the settlement conference without full authority to settle may
4 be subject to sanctions, pursuant to **FRCiv.P 16(f)**, lines 2-3 of pg. 3 Judge James' Standing
5 Order Re: Settlement Conference Procedures. **FRCiv.P 16(f)(1)(B)(2)** provides for sanctions
6 should a party or its attorney is substantially unprepared to participate or does not participate in
7 good faith. Attorneys Don Larkin and Steven Sherman did not participate in the Settlement
8 Conference in good faith by not revealing to Plaintiff Ciampi that Andrew Hinz and Warren
9 Page were actually participating in the Settlement Conference without being present or even
10 identified. Additionally, it is believed that the City and Don Larkin do not actually have
11 authority to settle any of the claims regarding Taser International, Andrew Hinz, Kustom Signals
12 and Warren Page. Plaintiff therefore requests that the court order appropriate sanctions against
13 Defendants, attorney Don Larkin and attorney Steven Sherman.

14 **H)** Don Larkin has deliberately attempted defraud Plaintiff of his lawful rights and
15 claims against Taser International, Andrew Hinz, Kustom Signals and Warren Page, as such
16 Plaintiff requests that the Court Order appropriate sanctions be levied against Defendants and
17 Don Larkin.

18 **I)** If Defendants, LARKIN and the Court believe that Taser International, Andrew
19 Hinz, Kustom Signals, Warren Page and Michael Gennaco were represented during the August
20 9, 2011 Settlement Conference, then Plaintiff was denied the opportunity of knowing that for
21 Plaintiff was never informed prior to or during the Settlement Conference by the Defendants,
22 LARKIN or the Court that they were a part of the Settlement Conference. Plaintiff requests an
23 opportunity to actually participate in a Settlement Conference with Taser International, Andrew
24 Hinz, Kustom Signals, Warren Page and Michael Gennaco.

25 If Defendants, LARKIN and the Court believe that Taser International, Andrew Hinz,
26 Kustom Signals, Warren Page and Michael Gennaco should be a part of the Settlement
27 Conference, then Plaintiff requests that they be present during the Settlement Conference
28

1 pursuant to Judge James' standing Order, lines 23-28 of pg. 27 of Court Doc. 198 and if they are
2 not going to be there to submit a request to be excused from attending also pursuant to Judge
3 James' standing Order, lines 4-10 of pg. 28 of Court Doc. 198.

4 If the Court believes that Taser International, Andrew Hinz, Kustom Signals, Warren
5 Page and Michael Gennaco should be a part of the Settlement Conference then the Court should
6 Order them to participate pursuant to **FRCiv.P 71** which states, "*When an order grants relief for*
7 *a nonparty or may be enforced against a nonparty, the procedure for enforcing the order is the*
8 *same as for a party.*"

9
10 Plaintiff

11 Dated: September 12, 2011

12 A handwritten signature in black ink that reads "Joseph Ciampi". The signature is written in a cursive style and is positioned above a horizontal line.

13 Plaintiff JOSEPH CIAMPI in pro se
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Plaintiff Joseph Ciampi, in pro se
P.O. Box 1681
Palo Alto, California 94302
Phone (650) 248-1634
Email: t.ciampi@hotmail.com

Plaintiff Joseph Ciampi, in pro se

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

JOSEPH CIAMPI

Plaintiff,

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,
an individual.

Defendants.

) NO. C09-02655 LHK (PSG)
)
)
) **DECLARATION OF JOSEPH**
) **CIAMPI IN SUPPORT OF**
) **PLAINTIFF'S MOTION**
) **TO ENFORCE SETTLEMENT**
) **AGREEMENT AND A**
) **SECOND MOTION FOR**
) **SANCTIONS AGAINST**
) **DEFENDANTS AND THEIR**
) **ATTORNEYS**
)
)
)

In support of Plaintiff's Request For Clarification and Direction Regarding
Settlement Agreement.

I, Joseph Ciampi, declare as follows:

1 1. I am the Plaintiff in the above-entitled action. I was born in San Francisco,
2 California. I have lived in downtown Palo Alto for the last 18 consecutive years.

3 2. I have personal knowledge of all facts stated in this declaration and if called to
4 testify, I could and would testify competently thereto.

5 3. On September 1, 2011 Mark Peterson-Perez and I attended a Settlement
6 Conference meeting with Judge Maria-Elena James, Attorney David Beauvais and the
7 Defendants in order to resolve a dispute regarding the lien placed on \$35,000.00 sum to be paid
8 to me as well as the third party claims. Representing the Defendants were Palo Alto Assistant
9 City Attorney Donald Larkin and Lt. Sandra Brown.

10 5. At approximately 10:25 am Mr. Perez and myself entered Judge James court
11 room. A couple of minutes later, Mr. Larkin and Lt. Brown entered the court room.

12 6. After about 5 minutes Lt. Brown left the court room and returned a few minutes
13 later with attorney David Beauvais. Mr. Beauvais sat down next to Mr. Larkin and Lt. Sandra
14 Brown.

15 7. At approximately 10:50 am Judge James and her staff escorted all parties to the
16 Judge James's Chamber's area of the court house.

17 8. Mr. Larkin, Lt. Sandra Brown and Attorney David Beauvais were placed in
18 conference room together and Mr. Perez and myself were placed in separate conference room
19 together. I asked Judge James why my former attorney, Mr. Beauvais, was sequestered with the
20 Defendants, she replied that there was not enough room to place Mr. Beauvais in a room by
21 himself. However the court room was sitting empty where Mr. Beauvais could have remained in
22 order prevent the appearance of a conflict of interest and the probable attorney-client violations
23 that occurred by having my attorney discuss the case in the presence with the Palo Alto Police
24 who prosecuted me in the criminal case.

25 9. The meeting started off with dealing with the disputed lien. I informed Judge
26 James that I would give Mr. Beauvais \$5,000.00 for the work he did which is the legitimate
27 amount owed to him. Mr. Beauvais refused to accept the \$5,000.00.
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1 10. I then informed Judge James, that the lien was not valid for the lien was solely for
2 civil rights actions not state causes of action and as previously pointed out the settlement was
3 only about state causes of action. Judge James stated that that didn't matter, that the court would
4 enforce the lien despite this fact and give Mr. Beauvais \$20,000.00.

5 11. I then stated that if that was the case that I would not settle, for I did not bind
6 myself on August 9, 2011 to give David Beauvais \$20,000.00. I stated that the settlement was
7 off and I would not sign any Settlement Agreement which included Mr. Beauvais' lien of
8 \$20,000.00.

9 12. Judge James stated that was not possible. Judge James stated that the court would
10 hold me to what we agreed to on August 9, 2011 that was put on record. Judge James stated that
11 she would issue an order sending the Settlement Agreement back to Judge Koh so that the
12 settlement would be enforced. Based upon this representation by Judge James I conceded this
13 disputed point. I would have rather canceled the Settlement Agreement, as such my conceding
14 this point is based upon Judge James' representation that the court would enforce the agreement
15 against my will and desire.

16 13. Confronted with lack of options, I pointed out to Judge James that the lien was
17 only for \$20,000.00 and that Mr. Larkin wrongly attempted to place the entire \$35,000.00 into
18 the hands of David Beauvais. I stated to Judge James that the contract/lien specified that if there
19 is a dispute that the Alameda County Bar Association is the authority who is to arbitrate disputed
20 terms. I stated to Judge James that I would go along with the August 9, 2011 agreement if the
21 sum of \$35,000.00 was properly dispersed. I stated that a check for \$20,000.00 regarding the
22 disputed amount on the lien be sent to the Alameda County Bar Association for arbitration and
23 the remaining \$15,000.00 be paid solely to me. Judge James left the room to confer with Mr.
24 Larkin, Lt. Brown and Mr. Beauvais. When she returned, Judge James stated that those terms
25 were agreeable with the Defendants and Mr. Beauvais.

26 14. I then pointed out to Judge James that Palo Alto Assistant Attorney Donald
27 Larkin inappropriately attempted to add third parties to the Settlement Agreement contract that
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1 were not a part of the August 9, 2011 agreement nor were they ever identified as being a part of
2 the Settlement Agreement, thus any and all claims regarding third parties are in effect. Mr.
3 Larkin attempted to accomplish this by using vague generic terms such as, consultants,
4 contractors and representatives without actually identifying whom these entities truly are,
5 (Sections 2, 5 and 7 of pgs. 2,3 and 4 of Court Doc 196-5.

6 15. Judge James asked me to write down on a piece of paper all of the third parties I
7 intend to file a lawsuit against and or whom I did not want to waive my rights to sue. I wrote
8 down Kustom Signals, Taser International, Warren Page, Andrew Hinz, Michael Gennaco and
9 Steven Sherman. Judge James took the piece of paper into the other room where Mr. Larkin, Lt.
10 Sandra Brown and my former attorney David Beauvais were sequestered. When Judge James
11 returned she stated that Mr. Larkin was going to allow me to sue Kustom Signals, Taser
12 International, Michael Gennaco and Steven Sherman, however Mr. Larkin would not allow me to
13 sue Andrew Hinz or Warren Page for he had indemnified and placed them under the umbrella of
14 the City. I find it very revealing of a conflict of interest if the City of Palo Alto actually
15 indemnified the two experts they hired to provide the court independent and objective expert
16 analysis of the videos and taser guns' activation data.

17 16. I stated to Judge James that I was never informed of this indemnification and that
18 I would not have settled with the Defendants on August 9, 2011 if I knew that I would be
19 waiving any rights to sue third parties, specifically Andrew Hinz and Warren Page. I stated that
20 Defendants never informed me that third parties, Andrew Hinz and Warren Page would be a part
21 of the Settlement Conference/Agreement as directed to by Judge James' standing Order. I stated
22 to Judge James that if Andrew Hinz and Warren Page were to be a part of the Settlement
23 Agreement then they needed to have participated during Settlement Conference pursuant to her
24 own Order and since Mr. Hinz and Mr. Page did not participate in the August 9, 2011 Settlement
25 Conference in compliance with her own Order, Mr. Hinz and Mr. Page were not a part of the
26 Settlement Agreement. I stated that by adding Mr. Hinz and Mr. Page to the Settlement
27 Agreement after the Settlement terms were delineated on August 9, 2011 was a deliberate
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1 misrepresentation on the part of Mr. Larkin and the Defendants. I asked that Mr. Larkin produce
2 the contract that demonstrated that the City of Palo Alto actually indemnified Warren Page and
3 Andrew Hinz, however Mr. Larkin could not produce it. I asked Judge James to bring Mr.
4 Larkin into the room where Mr. Perez and I were residing so that Mr. Larkin could call the
5 Mayor of the City of Palo Alto on the phone in order to verify whether or not such a contract
6 existed. Judge James refused.

7 17. Attorney Don Larkin persisted that Warren Page and Andrew Hinz were covered
8 in the August 9, 2011 Settlement Agreement, so my question is why isn't Michael Gennaco and
9 Steven Sherman covered? I stated to Judge James that she intended to issue an Order to Judge
10 Koh to enforce the August 9, 2011 Settlement Agreement that was put on the record. I stated to
11 Judge James that that is exactly what should take place, for neither Mr. Hinz nor Mr. Page were
12 ever mentioned during the August 9, 2011 Settlement Agreement. I asked Judge James to have
13 Mr. Larkin, the Defendants, to write up a Settlement Agreement using the exact same language
14 that was placed on the record during the August 9, 2011 Settlement Agreement. Judge James left
15 the room and conferred with Mr. Larkin and returned stating that is what would take place.

16 18. Mr. Perez and myself then left Judge James' chambers and the Federal Building.

17 19. Later that afternoon, I sent an email to all parties regarding the Settlement
18 Conference and Agreement confirming what took place and what would be occurring in regards
19 to fulfilling the Settlement Agreement reached during the Conference.

20 20. On September 8, 2011, Palo Alto Assistant City Attorney Don Larkin sent me a
21 revised written Settlement Agreement attached to an email, Exh. 921. Mr. Larkin states in the
22 email that the revised settlement is based entirely on the August 9, 2011 transcript. However
23 upon inspecting the transcript Mr. Larkin had actually added several statements and definitions
24 of words and phrases that are not a part of the August 9, 2011 transcript, Exhs. 910, 918 and 919.

25 21. I spent a few hours writing up a Settlement Agreement containing the exact words
26 from the Court Transcript that were placed on the record by Judge James during the Settlement
27 Conference, Exh. 911. I signed the agreement and sent it to Mr. Larkin on September 9, 2011. I
28

1 received an email from Mr. Larkin at appx. 9:35 am on 9/9/2011 in which Mr. Larkin states that
2 he will not honor the Settlement Agreement that I provided to him, Exh. 921. Additionally Mr.
3 Larkin insists that all third/non-parties to the lawsuit and settlement of Case No. C09-02655 will
4 be a part of the Settlement Agreement.

5 22. At appx. 5:45 pm on 9/9/2011 I received a second email from Mr. Larkin in
6 which Mr. Larkin threatens to file sanctions against me to take money away from me in order to
7 coerce me to sign Mr. Larkin's fraudulent Settlement Agreement that is not based on what I
8 agreed to bind myself to on 8/9/2011, Exh. 922. This has caused me significant emotional
9 distress and fear of losing a portion of the settlement sum and the significantly valuable rights to
10 sue Taser International, Andrew Hinz, Kustom Signals and Warren Page. As a result of Mr.
11 Larkin's extortive threat and his refusal to sign the Settlement Agreement that I have provided to
12 him I have spent 30 hours working on this Motion and Declaration in order to protect my rights
13 from being stolen through Mr. Larkin's extortive and fraudulent tactics and to obtain the
14 \$35,000.00 that Mr. Larkin, Steven Sherman and the City of Palo Alto stated they would pay me
15 to settle the case. I worked on this Motion from 8:00 pm 9/9/11 to 1:00am 9/10/2011; from
16 6:00am to 12:00pm 9/10/2011; from 5:00 pm 9/10/2011 to 1:00 am 9/11/2011; from 11:00am to
17 5:00 pm 9/11/2011 and from 8:00 pm to 11:0 pm 9/11/2011. I anticipate spending two more
18 hours working on preparing this Motion on 9/12/2011. Putting in all these hours to protect my
19 lawful rights from Mr. Larkin's unlawful, extortive and fraudulent tactics has been exceedingly
20 oppressive and burdensome.

21 23. By way of this Declaration, I support all of the statements and assertions and
22 allegations cited in my "Motion to Enforce Settlement Agreement and a Second Motion for
23 Sanctions against Defendants and their Attorneys," as being true and correct.

24 24: I simply want to settle all claims cited in my lawsuit C09-02655 as agreed to. I
25 feel that I and the American People have been denied justice and will attempt to reveal the truth
26 and obtain justice in a lawsuit against Taser International, Andrew Hinz, Kustom Signals and
27 Warren Page. The safety and freedoms of the American People deserve and require it, Exh. 920.
28

1 25. Attached hereto as Exhibit "910" is a true and correct copy Don Larkin's revised
2 Settlement Agreement.

3 26. Attached hereto as Exhibit "911" is a true and correct copy of the written
4 Settlement Agreement prepared and signed by Plaintiff Joseph Ciampi and provided to
5 Defendants' attorney Don Larkin.

6 5. Attached hereto as Exhibits "914, 921 and 922" are true and correct copies of emails sent
7 to Plaintiff from Defendants' attorney Don Larkin.

8 27. Attached hereto as Exhibit "915" is a true and correct copy of excerpts of Michael
9 Gennaco's contract with the City of Palo to perform contracted services for the City of Palo Alto.

10 28. Attached hereto as Exhibit "916" is a true and correct copy of an email sent to
11 Plaintiff from Defendants' Attorney's, (Steven Sherman's), Office stating that they had provided
12 to Plaintiff Andrew Hinz's and Warren Page's expert reports which have been provided to the
13 court as Exhibits 16 & 20 of Court Doc. 125. Additionally, Exhibit 916 is a true and correct
14 copy of an email exchange between Plaintiff and Defendants' attorney Steven Sherman's office
15 describing how the expert reports were not complete and procedurally deficient and Plaintiff
16 demanding that Defendants provide the procedurally correct and complete expert reports.

17 29. Attached hereto as Exhibit "917" is a true and correct copy of a Fee Schedule sent
18 to Plaintiff from Defendants' attorney's office, Steven Sherman, that is supposed to represent
19 Warren Page's Fee Schedule Exh. 916-5.

20 30. Attached hereto as Exhibit "918" is a true and correct copy of the August 9, 2011
21 Court Transcript of the Settlement Conference provided to Plaintiff by attorney Don Larkin.

22 31. Attached hereto as Exhibit "919" is a true and correct copy of Don Larkin's
23 revised Settlement Agreement that has been redacted by Plaintiff in order to remove all of the
24 language that was not bound to by Plaintiff during the August 9, 2011 Settlement Conference.

25 32. Attached hereto as Exhibit "920" is a true and correct copy of an email from San
26 Jose Mercury News Paper Reporter Tracey Kaplan acknowledging that the "*tinkering of taser*
27 *results is a national concern.*"
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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 12th day of September at Palo Alto, California.

Plaintiff

Dated: September 12, 2011



Plaintiff Joseph Ciampi in pro se

SETTLEMENT AGREEMENT AND GENERAL RELEASE

This Settlement Agreement and General Release ("AGREEMENT") is entered into by and between the City of Palo Alto ("CITY") and Joseph Ciampi ("CIAMPI").

RECITALS

1. CIAMPI commenced a civil action against the City of Palo Alto and others (collectively "CITY") in the United States District Court, Northern District, Case No. C09-02655 LHK (PSGx) seeking to recover damages for state torts, constitutional violations, wrongful prosecution, physical and psychological damages, attorney fees and other damages allegedly sustained as the result of, arising out of or relating to an incident that occurred on March 15, 2008 (the "INCIDENT").
2. In order to avoid the costs, risks, and uncertainties of litigation, the parties to the above-referenced litigation now desire to settle and compromise all claims, including any and all liens, through this Settlement Agreement and General Release.
3. CIAMPI and CITY desire to fully and completely compromise and settle any and all disputes between them, including any and all issues and claims that have, could or should have been raised in the lawsuit, as well any other lawsuits or claims that arise from or relate to the March 15, 2008 INCIDENT.
4. CIAMPI is unwilling to sign CITY's form settlement agreement, and has requested that CITY prepare a settlement agreement that reflects the specific terms agreed to at the August 9, 2011 settlement conference. What follows is CITY's attempt to comply with CIAMPI's request.

AGREEMENT

NOW THEREFORE, the parties agree as follows:

1. **Payment to CIAMPI.** CITY shall pay to plaintiff the sum of THIRTY FIVE THOUSAND DOLLARS (\$35,000). FIFTEEN THOUSAND DOLLARS AND 00/100, (\$15,000) shall be paid by negotiable check payable to Joseph Ciampi immediately upon execution of this agreement by CIAMPI. CITY shall cause an additional TWENTY THOUSAND DOLLARS AND 00/100 (\$20,000) to be held in a non-interest bearing escrow pending the outcome of a fee arbitration between CIAMPI and his prior counsel, David Beauvais. (see Transcript of Proceedings, August 9, 2011 ("CT") p. 3,. 4-5 and Notice of Lien filed by David Beauvais on November 9, 2009).

2. **Fees and Costs.** Each party will bear their own attorneys' fees and costs. CT p. 3, 11-12.

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3. **Waiver of Civil Code Section 1542.** CIAMPI understands that Civil Code of State of California Section 1542 provides:

"A general release does not extend to claims which the creditor does not know or suspect to exist in their favor at the time of executing the release, which, if known by them, must have materially affected their settlement with the debtor"

and that he is expressly waiving his rights under the aforesaid statute. Further, any rights under any similar law of any state or territory of the United States are hereby expressly waived. CT p. 3, 12-13.

4. **Non-Admission of Liability.** There is no admission of fault, liability or wrongdoing by any party. Nothing in this AGREEMENT shall constitute precedent or evidence in any other proceeding, with the exception that this AGREEMENT shall be admissible evidence in any proceeding to enforce the terms hereof. CT p. 3, 13-14.

5. **Dismissal.** Promptly upon receipt of the sum agreed herein as consideration for this compromise and release and execution of this settlement agreement, the parties shall dismiss with prejudice any and all litigation or claims which may be filed against each other as a result of, related to or arising out of the incident. The parties will take all steps necessary, including the preparation and filing of any documents required, to effect these dismissals. CT p. 3, 12-13; 4, 14-25.

6. **Release.** All claims, actions, causes of action and demands of any kind or nature that have accrued as of August 9, 2011, arising out of the INCIDENT are released and discharged. CT p. 5, 9-10. CIAMPI and CITY agree, as stated at the August 9, 2011 hearing, "This is it. Everything ends today, arising out of this incident. Nobody can do anything to anybody anymore." CT p. 5, 9-10.

The term "nobody" is understood to mean "no person" including but not limited to CIAMPI and CITY, including any of their past and present agents, servants, employees, directors, contractors, and representatives.

The term "anything" is understood to mean "a thing of any kind" including but not limited to any and all causes of action or claims of whatever character and all matters alleged and which could or would have been alleged during the pendency of the action entitled United States District Court, Northern District, State of California, and assigned Case No. C09-02655 LHK (PSGx) entitled,

JOSEPH CIAMPI,
Plaintiff,

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,

and any and all claims or liability, whether asserted or not, relating to or arising out of the INCIDENT.

The term "anybody" is understood to mean "any person" including but not limited to CIAMPI and CITY, including any of their past and present agents, servants, employees, directors, contractors, and representatives.

7. **Entire Agreement.** The terms and conditions of this AGREEMENT shall constitute the entire agreement in compromise and settlement of the lawsuit as to CITY, as well as any and all other claims and matters that could have or should have asserted against CITY and its past and present agents, servants, employees, directors, contractors, and representatives.

APPROVED AS TO FORM AND CONTENT:

CITY OF PALO ALTO

By: _____
MOLLY S. STUMP
City Attorney

Dated: _____, 2011

By: _____
JAMES KEENE
City Manager

Dated: _____, 2011

APPROVED AS TO FORM AND CONTENT:

By: _____
Joseph Anthony Ciampi
Plaintiff

Dated: _____, 2011

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SETTLEMENT AGREEMENT AND GENERAL RELEASE

This Settlement Agreement and General Release ("AGREEMENT") is entered into by and between the Parties- defendants, City of Palo Alto ("CITY") and Joseph Ciampi ("CIAMPI").

RECITALS

1. CIAMPI commenced a civil action against CITY and others in the United States District Court, Northern District, Case No. C09-02655 LHK (PSGx) seeking to recover damages for state torts, constitutional violations, wrongful prosecution, physical and psychological damages, attorney fees and other damages allegedly sustained as the result of, arising out of or relating to an incident that occurred on March 15, 2008 (the "INCIDENT").
2. On May 11, 2011 the Court, Judge Lucy H. Koh, dismissed CIAMPI'S civil rights claims under 42 USC 1983 as well as some of CIAMPI'S state claims, Court Document 155. The Court, Judge Lucy H. Koh, maintained three (3) State Claims: assault and battery; Intentional Infliction of Emotional Distress; and Negligence. Pgs. 30 through 33 of Court Doc. 155.
3. Parties were preparing to go to trial on September 26, 2011 over only the three (3) remaining State Claims. On August 9, 2011 before Chief Magistrate Judge MARIA-ELENA JAMES Assistant City attorney Don Larkin and attorney Steven Sherman bound CITY to settle the case, C09-02655, which at that time entirely consisted of the three (3) State Claims and nothing more with CIAMPI for \$35,000.00. On August 9, 2011 before Chief Magistrate Judge MARIA-ELENA JAMES, CIAMPI bound himself to settle the case, C09-02655, which at that time consisted entirely of the three (3) State Claims with CITY for \$35,000.00.
4. In order to settle the case, Don Larkin and Steven Sherman bound CITY to pay CIAMPI the sum of \$35,000.00. Subsequent to the August 9, 2011 Settlement Hearing before Judge James, Attorney David Beauvais noticed a lien for \$20,000.00 of the settlement amount.
5. In order to avoid the costs, risks, and uncertainties of litigation to the above-referenced litigation the parties now desire to settle and compromise the existing claims of Case No. C09-02655 through this Settlement Agreement and General Release.
6. CIAMPI and CITY desire to fully and completely compromise Case No. C09-02655.

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AGREEMENT

NOW THEREFORE, the parties agree as follows:

1. **Agreement.** CITY and CIAMPI agree that the entirety of this agreement is solely between CITY and CIAMPI to settle Case No. C09-02655.

2. **Acknowledgement of Agreement.** On August 9, 2011 before Chief Magistrate Judge MARIA-ELENA JAMES in the United States District Court, Northern District, Case No. C09-02655 LHK (PSGx) Assistant City Attorney Don Larkin and attorney Steven Sherman bound CITY to settle the case, C09-02655 with CIAMPI for \$35,000.00. CITY bound itself to transfer the entire \$35,000.00 solely to CIAMPI. Attorney David Beauvais attached a lien to \$20,000.00 of the Settlement amount. On September 1, 2011, CITY and CIAMPI at the direction of Judge Maria-Elena James of the U.S. District Court Northern District of California agreed and agree to use the exact language of the Settlement Agreement that was put on the record on August 9, 2011. Additionally, due to the disputed lien, CITY and CIAMPI agreed and agree to place \$20,000.00 of the Settlement amount in an escrow account to be dispersed to David Beauvais and CIAMPI upon the Alameda County Bar Association's direction.

3. **Acknowledgment of parties present during Settlement Conference.** It is hereby acknowledged by CITY and CIAMPI that the only defendant parties present during August 9, 2011 Settlement Conference were Defendants CITY, OFFICER WAGNER, OFFICER BURGER AND OFFICER TEMORES. It is hereby acknowledged that former defendants, JOHNSON, BURNS, POWERS AND RYAN were not present during the Settlement Conference as their presence was not necessary for the civil rights actions pertaining to these defendants were dismissed by Judge Koh on May 11, 2011.

4. **Thrid Party Claims.** It is hereby acknowledged and agreed to by CITY and CIAMPI that there were no third parties present during the August 9, 2011 Settlement Conference. It is hereby acknowledged and agreed to by CITY and CIAMPI that no third party claims were settled during the August 9, 2011 Settlement Conference. It is hereby acknowledged and agreed to by CITY and CIAMPI that CIAMPI retains all of his rights to sue third parties. These third parties include but are not limited to; Taser Intenational, Andrew Hinz, Kustom Signals, Warren Page, Michael Gennaco and Steven Sherman.

5. **Payment to CIAMPI.** CITY shall pay the sum of FIFETEEN THOUSAND, DOLLARS AND 00/100 (\$15,000.00) by cashiers check payable to Joseph Ciampi immediately upon execution of this agreement by CIAMPI. CITY shall pay a sum of TWENTY THOUSAND, DOLLARS AND 00/100 (\$20,000.00) plus interest by two separate cashier's checks one payable to David Beauvais and the other payable to Joseph Ciampi immediately upon receiving the ALAMEDA COUNTY BAR ASSOCIATION'S decision to disperse the monies. CITY shall retain the disputed \$20,000.00 in an interest bearing escrow account until such time that the monies are to be

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dispersed. (Technically once CIAMPI signs the Settlement Agreement, the monies are David Beauvais' and CIAMPI's possession, as such Beauvais and CIAMPI have a right to earn interest on their possession).

6. **Dismissal.** Promptly upon receipt of the sum agreed herein as consideration for this compromise and release and execution of this settlement agreement, the parties shall dismiss with prejudice Case No. C09-02655. Each party will bear their own attorney's fees and costs. There will be a 1542 waiver, a full and complete dismissal. There will be no admission of fault, liability, or wrongdoing by either party.

7. **Compliance with agreement placed on the record.** This agreement is in complete compliance with the August 9, 2011 Settlement Agreement placed on the record. Nothing in this agreement exceeds anything or leaves out anything that was bound to by CITY and CIAMPI on August 9, 2011. In order to ensure that nothing more is added to the agreement and that nothing is left out of the agreement, this agreement shall incorporate the exact language used during the August 9, 2011 Settlement Agreement taken from the transcript and directed to by CHIEF MAGISTRATE JUDGE MARIA-ELENA JAMES during the September 1, 2011 Settlement Conference.

**BEGINNING OF AGREEMENT PLACED ON THE RECORD
line 16 of pg. 2 of the August 9, Settlement Transcript:**

MR. SHERMAN: "I'm sorry, your Honor." "Good morning again, Your Honor."
"Steven Sherman on behalf of the Palo Alto defendants, Officer Temores, Officer Burger, Officer Wagner, and the City."

THE COURT: "And, Counsel, you have authority to bind the City?"

MR. SHERMAN: "I do, Your Honor. But I also have Assistant City Attorney, Donald Larkin, with me."

THE COURT: "Is Mr. Larkin binding the City then?"

MR. LARKIN: "Yes, Your Honor."

THE COURT: "All right. Good morning. We have reached a settlement as follows. I ask both sides to listen carefully. The defendants will be paying the plaintiff the sum of \$35,000.00." "This is not a matter that needs to go to City counsel. So how long will it take you to – after the settlement's been signed – to get the payment to Mr. Ciampi?"

MR. SHERMAN: "I'd ask for two weeks, Your Honor. It shouldn't take that long."

THE COURT: "All right." "Each party will bear their own attorney's fees and costs. There will be a 1542 waiver, a full and complete dismissal. There will be no

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admission of fault, liability, or wrongdoing by either party. **I think that comprises the entire agreement; is that correct, Counsel and Mr. Ciampi?**

MR. CIAMPI: **"I believe so, yes, Your Honor. Thank you."**

MR. SHERMAN: **"I believe so, Your Honor. Thank you."**

THE COURT: **"Mr. Larkin, you've heard the agreement that was placed on the record. Did you understand it?"**

MR. LARKIN: **"Yes, Your Honor."**

THE COURT: "And you have the authority to bind the city?"

MR. LARKIN: "Yes, Your Honor."

THE COURT: "And do you bind the City?"

MR. LARKIN: "Yes, Your Honor."

THE COURT: "And, Mr. Ciampi, you've heard the agreement placed on the record." "Did you understand it?"

MR. CIAMPI: "Yes, Your Honor."

THE COURT: "And do you agree to be bound by it?"

MR. CIAMPI: "Yes, Your Honor."

END AGREEMENT:

Line 9 of pg. 4 of the August 9, 2011 Settlement Transcript.

8. **Entire Agreement.** The terms and conditions of this AGREEMENT shall constitute the entire agreement and settlement of Case No. C09-02655.

APPROVED AS TO FORM AND CONTENT:

CITY OF PALO ALTO

By: _____
MOLLY S. STUMP
City Attorney

Dated: _____, 2011

Joseph Ciampi v. City of Palo Alto, et al.
Ciampi Settlement Agreement

Page 4

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By: _____
JAMES KEENE
City Manager

Dated: _____, 2011

APPROVED AS TO FORM AND CONTENT:

By: Joseph Ciampi
JOSEPH ANTHONY CIAMPI
Plaintiff

Dated: September 9, 2011

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EXHIBIT 914

Hotmail - t.ciampi@hotmail.com - Windows Live - Windows Internet Explorer

http://by164w.bay164.mail.live.com/default.aspx#/mail/InboxLight.aspx?n=345095732!fid=2c879dbfe3f

Go g le Search More >>

bing News Autofill 72°F

PDFCreator eBay Amazon Options

Hotmail - t.ciampi@hotmail.com - Windows Live

Revised Settlement Agreement

Back to messages

Larkin, Donald
To Tony Ciampi

9/08/11
Reply

From: **Larkin, Donald** (Donald.Larkin@CityofPaloAlto.org)
Sent: Thu 9/08/11 12:24 PM
To: Tony Ciampi (t.ciampi@hotmail.com)

1 attachment (18.1 KB)

Hotmail Active View

REVISED ...pdf
Download (18.1 KB)

Download as zip

Tony,

Attached is a revised settlement, which is based entirely on the August 9, 2011 transcript and documents in the Court files. I have made references to the sections in the transcript that support each provision.

Unfortunately, the Alameda County Bar Association is unwilling to accept the \$20,000 in escrow. Instead they have asked that you or Mr. Beauvais name the City as a third-party in your arbitration matter so that we can be ordered to pay the appropriate amount to you and/or Mr. Beauvais.

Hotmail - t.ciampi@hotmail.com - Windows Live - Windows Internet Explorer

http://by164w.bay164.mail.live.com/default.aspx#/mail/InboxLight.aspx?n=345095732!fid=2c879dbfe3f

Go g le Search More >>

bing News Autofill 72°F

PDFCreator eBay Amazon Options

Hotmail - t.ciampi@hotmail.com - Windows Live

In your draft agreement, you suggested the City should arrange the fee arbitration with the Alameda County Bar Association. Because we are not a party to your fee agreement (nor is anyone in our office a member of that organization), we are unable to set up the arbitration. You may want to review the Bar Association's arbitration website: <http://www.acbanet.org/index.cfm?fuseaction=content.contentdetail&id=8774>

Please sign the attached agreement and return it to us at your earliest convenience. Once we have received the signed agreement, we will issue your check.

Regards,

Donald Larkin
Assistant City Attorney
City of Palo Alto
(650) 329-2171
donald.larkin@cityofpaloalto.org

EXHIBIT 915

CITY OF PALO ALTO CONTRACT NO.: C10133537

**AGREEMENT BETWEEN THE CITY OF PALO ALTO AND
MICHAEL GENNACO AND ROBERT MILLER
FOR PROFESSIONAL SERVICES
INDEPENDENT POLICE AUDITOR**

This AGREEMENT is entered into on this 3rd day of August, 2009, by and between the CITY OF PALO ALTO, a California chartered municipal corporation ("CITY"), and MICHAEL GENNACO AND ROBERT MILLER, located at 4900 S. Eastern Avenue, Suite 204, Commerce, CA ("CONSULTANT").

RECITALS

The following recitals are a substantive portion of this Agreement.

- A. CITY intends to contract for independent Police audit services ("Project") and desires to engage a consultant to provide said services in connection with the Project ("Services").
- B. CONSULTANT has represented that it has the necessary professional expertise, qualifications, and capability, and all required licenses and/or certifications to provide the Services.
- C. CITY in reliance on these representations desires to engage CONSULTANT to provide the Services as more fully described in Exhibit "A", attached to and made a part of this Agreement.

NOW, THEREFORE, in consideration of the recitals, covenants, terms, and conditions, this Agreement, the parties agree:

AGREEMENT

SECTION 1. SCOPE OF SERVICES. CONSULTANT shall perform the Services described in Exhibit "A" in accordance with the terms and conditions contained in this Agreement. The performance of all Services shall be to the reasonable satisfaction of CITY.

SECTION 2. TERM.

The term of this Agreement shall be from the date of its full execution through August 2, 2012 unless terminated earlier pursuant to Section 19 of this Agreement.

SECTION 3. SCHEDULE OF PERFORMANCE. Time is of the essence in the performance of Services under this Agreement. CONSULTANT shall complete the Services within the term of this Agreement and in accordance with the schedule set forth in Exhibit "A", attached to and made a part of this Agreement. Any Services for which times for performance are not specified in this Agreement shall be commenced and completed by CONSULTANT in a reasonably prompt and timely manner based upon the circumstances and direction communicated to the CONSULTANT. CITY's agreement to extend the term or the schedule for performance shall not preclude recovery of damages for delay if the extension is required due to the fault of CONSULTANT.

Professional Services
Rev. January 2009

C09 023

omissions or ambiguities discovered prior to and during the course of construction of the Project. This obligation shall survive termination of the Agreement.

SECTION 9. COST ESTIMATES. N/A.

SECTION 10. INDEPENDENT CONTRACTOR. It is understood and agreed that in performing the Services under this Agreement CONSULTANT, and any person employed by or contracted with CONSULTANT to furnish labor and/or materials under this Agreement, shall act as and be an independent contractor and not an agent or employee of the CITY.

SECTION 11. ASSIGNMENT. The parties agree that the expertise and experience of CONSULTANT are material considerations for this Agreement. CONSULTANT shall not assign or transfer any interest in this Agreement nor the performance of any of CONSULTANT's obligations hereunder without the prior written consent of the city manager. Consent to one assignment will not be deemed to be consent to any subsequent assignment. Any assignment made without the approval of the city manager will be void.

SECTION 12. SUBCONTRACTING. CONSULTANT shall not subcontract any portion of the work to be performed under this Agreement without the prior written authorization of the city manager or designee.

SECTION 13. PROJECT MANAGEMENT. CONSULTANT will assign Michael Gennaco as the Project Manager to have supervisory responsibility for the performance, progress, and execution of the Services to represent CONSULTANT during the day-to-day work on the Project. If circumstances cause the substitution of the project director, project coordinator, or any other key personnel for any reason, the appointment of a substitute project director and the assignment of any key new or replacement personnel will be subject to the prior written approval of the CITY's project manager. CONSULTANT, at CITY's request, shall promptly remove personnel who CITY finds do not perform the Services in an acceptable manner, are uncooperative, or present a threat to the adequate or timely completion of the Project or a threat to the safety of persons or property.

The City's project manager is Interim Police Chief Dennis Burns, Police Department, 275 Forest Avenue, Palo Alto, CA 94303, Telephone: 650-329-2103. The project manager will be CONSULTANT's point of contact with respect to performance, progress and execution of the Services. The CITY may designate an alternate project manager from time to time.

Professional Services
Rev. January 2009

SECTION 14. OWNERSHIP OF MATERIALS. Upon delivery, all work product, including without limitation, all writings, drawings, plans, reports, specifications, calculations, documents, other materials and copyright interests developed under this Agreement shall be and remain the exclusive property of CITY without restriction or limitation upon their use. CONSULTANT agrees that all copyrights which arise from creation of the work pursuant to this Agreement shall be vested in CITY, and CONSULTANT waives and relinquishes all claims to copyright or other intellectual property rights in favor of the CITY. Neither CONSULTANT nor its contractors, if any, shall make any of such materials available to any individual or organization without the prior written approval of the City Manager or designee. CONSULTANT makes no representation of the suitability of the work product for use in or application to circumstances not contemplated by the scope of work.

SECTION 15. AUDITS. CONSULTANT will permit CITY to audit, at any reasonable time during the term of this Agreement and for three (3) years thereafter, CONSULTANT's records pertaining to matters covered by this Agreement. CONSULTANT further agrees to maintain and retain such records for at least three (3) years after the expiration or earlier termination of this Agreement.

SECTION 16. INDEMNITY.

Agreement, regardless of whether or not it is caused in part by an Indemnified Party.

16.1. To the fullest extent permitted by law, CONSULTANT shall protect, indemnify, defend and hold harmless CITY, its Council members, officers, employees and agents (each an "Indemnified Party") from and against any and all demands, claims, or liability of any nature, including death or injury to any person, property damage or any other loss, including all costs and expenses of whatever nature including attorneys fees, experts fees, court costs and disbursements ("Claims") resulting from, arising out of or in any manner related to performance or nonperformance by CONSULTANT, its officers, employees, agents or contractors under this Agreement, regardless of whether or not it is caused in part by an Indemnified Party.

16.2. Notwithstanding the above, nothing in this Section 16 shall be construed to require CONSULTANT to indemnify an Indemnified Party from Claims arising from the active negligence, sole negligence or willful misconduct of an Indemnified Party.

16.3. The acceptance of CONSULTANT's services and duties by CITY shall not operate as a waiver of the right of indemnification. The provisions of this Section 16 shall survive the expiration or early termination of this Agreement.

SECTION 17. WAIVERS. The waiver by either party of any breach or violation of any covenant, term, condition or provision of this Agreement, or of the provisions of any ordinance or law, will not be deemed to be a waiver of any other term, covenant, condition, provisions, ordinance or law, or of any subsequent breach or violation of the same or of any other term, covenant, condition, provision, ordinance or law.

SECTION 18. INSURANCE.

18.1. CONSULTANT, at its sole cost and expense, shall obtain and maintain, in full

Professional Services
Rev. January 2009

or (b) at any time within a fiscal year in the event that funds are only appropriated for a portion of the fiscal year and funds for this Agreement are no longer available. This Section 24.8 shall take precedence in the event of a conflict with any other covenant, term, condition, or provision of this Agreement.

24.9. The individuals executing this Agreement represent and warrant that they have the legal capacity and authority to do so on behalf of their respective legal entities.

24.10 All unchecked boxes do not apply to this agreement.

IN WITNESS WHEREOF, the parties hereto have by their duly authorized representatives executed this Agreement on the date first above written.

CITY OF ALTO

[Signature] 8/18/09
Purchasing Manager

By: [Signature]

Name: MICHAEL TOWNSEND

Title: _____

APPROVED AS TO FORM:

[Signature]
Senior Asst. City Attorney
deputy

By: [Signature]

Name: Robert Miller

Title: _____

Attachments:

- EXHIBIT "A": SCOPE OF WORK
- EXHIBIT "B": COMPENSATION
- EXHIBIT "C": INSURANCE REQUIREMENTS

Professional Services
Rev. January 2009

EXHIBIT 916

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Ciampi v. City of Palo Alto

Back to messages

Cathy Sherman
To Tony Ciampi

1/31/11
Reply

From: **Cathy Sherman** (csherman@law4cops.com)
Sent: Mon 1/31/11 3:47 PM
To: Tony Ciampi (t.ciampi@hotmail.com)

2 attachments (total 228.9 KB)

Hotmail Active View

HINZ EXPE...pdf
Download (59.3 KB)

PAGE EXPE...pdf
Download (162.8 KB)

Download all as zip

Tony, attached please find our expert reports. Copies will also be mailed.

Cathy Sherman
Ferguson, Praet & Sherman
1631 E. 18th St.
Santa Ana, CA 92705-7101
714.953.5300 Telephone
714.953.1143 Facsimile
csherman@law4cops.com

916-2

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■ **Tony Ciampi** 3/25/11
To ssherman@law4cops.com, csherman@law4cops.com, abjpd1@juno.com Reply ▾

From: **Tony Ciampi** (t.ciampi@hotmail.com) ⓘ
Sent: Fri 3/25/11 12:29 PM
To: ssherman@law4cops.com; csherman@law4cops.com
Cc: abjpd1@juno.com

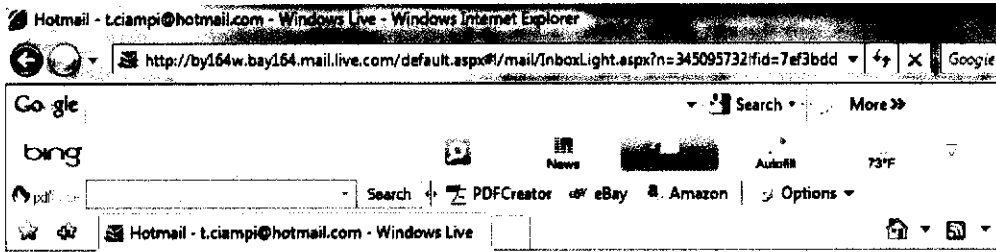
Steven Sherman,

Attn. Cathy:

Based upon the reports provided by the experts you intend to use during the trial, you have not provided the compensation you are providing to them, and so far you have not provided any exhibits that your experts intend to use during the trial, and given the statements made by Warren Page and Andrew Hinz you have not provided all of the data considered by Mr. Page and Mr. Hinz in formulating their opinions.

Please provide the missing information ASAP. If you do not intend to provide any more information, please let me know that as well.

916-3



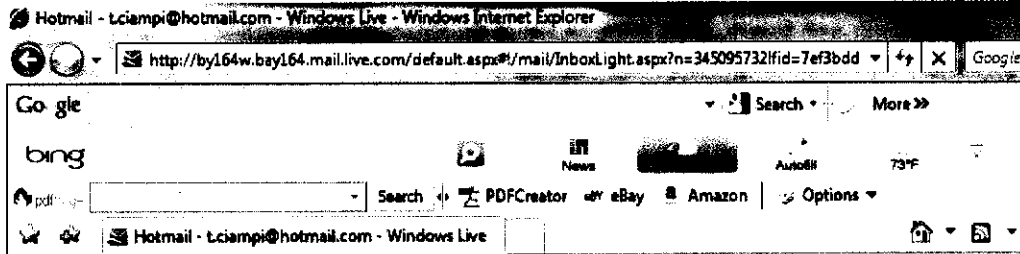
Joseph (Tony) Ciampi
 P.O. Box 1681
 Palo Alto, CA 94302
 650-248-1634

FRCiv.P Rule 26 (a)(2)

Witnesses Who Must Provide a Written Report. Unless otherwise stipulated or ordered by the court, this disclosure must be accompanied by a written report — prepared and signed by the witness — if the witness is one retained or specially employed to provide expert testimony in the case or one whose duties as the party's employee regularly involve giving expert testimony. The report must contain

a complete statement of all opinions the witness will express and the basis and reasons for them

the facts or data considered by the witness in forming them;



a complete statement of all opinions the witness will express and the basis and reasons for them

the facts or data considered by the witness in forming them;

any exhibits that will be used to summarize or support them;

(v) a list of all other cases in which, during the previous 4 years, the witness testified as an expert at trial or by deposition; and

(vi) a statement of the compensation to be paid for the study and testimony in the case

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□ Cathy Sherman

3/29/11
Reply ▾

To Tony Ciampi, Steven A. Sherman, Blakney Boggs

From: **Cathy Sherman** (csherman@law4cops.com) ⓘ

Sent: Tue 3/29/11 12:23 PM

To: Tony Ciampi (t.ciampi@hotmail.com)

Cc: Steven A. Sherman (ssherman@law4cops.com); Blakney Boggs (bboggs@law4cops.com)

📎 2 attachments (total 48.7 KB)

Hotmail Active View ^

CALLANAN ...PDF
Download (25.2 KB)



Page 2010...doc
View online
Download (23.5 KB)

Download all as zip

Tony, the Fee Schedule for Joe Callanan was provided with a copy of his report on September 24, 2010; however, I've attached an additional copy. As to Warren Page, a copy of his fee schedule is also attached and I should have the schedule for Mr. Hinz to you shortly.

Cathy Sherman
Ferguson, Praet & Sherman
1631 E. 18th St.
Santa Ana, CA 92705-7101
714.953.5300 Telephone
714.953.1143 Facsimile

Hotmail - t.ciampi@hotmail.com - Windows Live - Windows Internet Explorer

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[REDACTED]

Ciampi v. Palo Alto-Expert Testimony

4 messages 0 unread Show all

Back to messages

■ Tony Ciampi

4/11/11
Reply

To ssherman@law4cops.com, csherman@law4cops.com, abjpd1@juno.com

From: **Tony Ciampi** (t.ciampi@hotmail.com)

Sent: Mon 4/11/11 5:02 PM

To: ssherman@law4cops.com; csherman@law4cops.com

Cc: abjpd1@juno.com

4/11/11

Steven Sherman,

Attn. Cathy,

RE: Expert Reports--C09-02655

It has been two weeks and you have not sent me the fee schedule for Andrew Hinz of Taser International. The fee schedule that you sent for Warren Page has zero identifying characters or marks. I have absolutely no way to prove that the word document you sent me is legitamate. Please send me an official document.

Additionally, Mr. Page has made statements of facts in his Declaration regarding the analysis of the watermarks on the MAV videos. I have not been provided any documents or exhibits by which Mr. Page has used to base his conclusions. You need to send me those documents and all facts, data, documents and exhibits that Mr. Page intends to use during the trial as well as all statements he intends to make. Mr. Hinz has also made statements of facts in

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[REDACTED]

documents and all facts, data, documents and exhibits that Mr. Page intends to use during the trial as well as all statements he intends to make. Mr. Hinz has also made statements of facts in his reports and declarations. Once again, you have not provided me any of these documents and or exhibits that Mr. Hinz intends to rely on during the trial. Please send me all facts, data, documents and exhibits that Mr. Hinz intends to use during the trial in addition to all statements he intends to make.

FRCh.P Rule 26 (a)(2)

- (i) a complete statement of all opinions the witness will express and the basis and reasons for them
- (ii) the facts or data considered by the witness in forming them;
- (iii) any exhibits that will be used to summarize or support them;
- (v) a list of all other cases in which, during the previous 4 years, the witness testified as an expert at trial or by deposition; and
- (vi) a statement of the compensation to be paid for the study and testimony in the case

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[REDACTED]

(vi) a statement of the compensation to be paid for the study and testimony in the case

Joseph (Tony) Ciampi

P.O. Box 1681

Palo Alto, Ca 94302

650-248-1634

EXHIBIT 917

2010 Fee Schedule

Original Consultation Fee **No charge**

Case Review and Preparation Fee **\$500**

This basic fee will apply to all directed activities related to case review, video analysis, research, preparation, and document production. It is a basic flat fee. Included in this category are”

- Review of case documents and/or exhibits
- Teleconferencing, email exchanges and/or report writing
- Forensic analysis of audio/video recordings, and/or production of supporting documents

Deposition and/or Case Presentation fee **\$1000 per day**

This flat fee includes and scheduled depositions or testimony/appearances in court. This daily fee does not include collateral expenses such as travel, lodging, transportation, meals, parking, etc.

Directed Travel Expenses **Billed at cost**

All travel related expenses will be billed at cost and appropriate receipts or copies of receipts will be provided. Use of personal vewhicle will be billed at \$0.55 per mile. Typically a \$40.00 per day meal allowance will be charged for travel and/or work days.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

BEFORE THE HONORABLE
CHIEF MAGISTRATE JUDGE MARIA-ELENA JAMES

JOSEPH CIAMPI,)	
)	
Plaintiff,)	
)	No. C-09-2655 LHK (MEJ)
vs.)	
)	
CITY OF PALO ALTO, ET AL.,)	San Francisco, California
)	Tuesday, August 9, 2011
Defendants.)	
)	

TRANSCRIPT OF PROCEEDINGS

APPEARANCES:

FOR PLAINTIFF: P.O. BOX 1681
PALO ALTO, CALIFORNIA 94302

BY: Joseph Ciampi, pro se

FOR DEFENDANT: FERGUSON PRAET & SHERMAN, P.C.
1631 EAST 18TH STREET
SANTA ANA, CALIFORNIA 92705

BY: Steven A. Sherman,
Attorney at Law

ALSO PRESENT: Donald Larkin,
Assistant City Attorney

REPORTED BY: SARAH GOEKLER, CSR NO. 13446
Computerized Technology By Eclipse

1 Tuesday, August 9, 2011

11:54 a.m.

2 PROCEEDINGS

3 **THE CLERK:** Your Honor, we are calling civil 09-2655,
4 Joseph Ciampi versus City of Palo Alto, et al. And, Your
5 Honor, this matter is before you for a settlement conference.

6 Counsel and parties, please state your appearances
7 for the record.

8 **THE COURT:** You can come up to the microphone. The
9 plaintiff is on this side; the defendant on that side.

10 And state your appearance, please. .

11 **MR. CIAMPI:** Joseph Ciampi in pro se.

12 **MR. SHERMAN:** Good morning, Your Honor. Steven
13 Sherman on behalf of the Palo Alto defendants.

14 **THE COURT:** Could you come to this microphone. We're
15 recording this --

16 **MR. SHERMAN:** I'm sorry, Your Honor.

17 Good morning again, Your Honor. Steven Sherman on
18 behalf of the Palo Alto defendants, Officer Temores, Officer
19 Burger, Officer Wagner, and the City.

20 **THE COURT:** And, Counsel, you have the authority to
21 bind the City?

22 **MR. SHERMAN:** I do, Your Honor. But I also have
23 Assistant City Attorney, Donald Larkin, with me.

24 **THE COURT:** Is Mr. Larkin binding the City then?

25 **MR. LARKIN:** Yes, Your Honor.

1 **THE COURT:** All right. Good morning. We have
2 reached a settlement as follows. I ask both sides to listen
3 carefully:

4 The defendants will be paying to the plaintiff the
5 sum of 35,000. This is not a matter that needs to go to city
6 counsel.

7 So how long will it take you to -- after the
8 settlement's been signed -- to get the payment to Mr. Ciampi?

9 **MR. SHERMAN:** I'd ask for two weeks, Your Honor. It
10 shouldn't take that long.

11 **THE COURT:** All right. Each party will bear their
12 own attorney's fees and costs. There will be a 1542 waiver, a
13 full and complete dismissal. There will be no admission of
14 fault, liability, or wrongdoing by either party.

15 I think that comprises the entire agreement; is that
16 correct, Counsel and Mr. Ciampi?

17 **MR. CIAMPI:** I believe so, yes, Your Honor. Thank
18 you.

19 **MR. SHERMAN:** I believe so, Your Honor.

20 **THE COURT:** Then Mr. -- is it Mr. Larkin?

21 **MR. LARKIN:** Yes.

22 **THE COURT:** Mr. Larkin, you've heard the agreement
23 that was placed on the record. Did you understand it?

24 **MR. LARKIN:** Yes, Your Honor.

25 **THE COURT:** And you have the authority to bind the

1 City?

2 **MR. LARKIN:** Yes, Your Honor.

3 **THE COURT:** And you do so bind the City?

4 **MR. LARKIN:** Yes, Your Honor.

5 **THE COURT:** And, Mr. Ciampi, you've heard the
6 agreement place on the record. Did you understand it?

7 **MR. CIAMPI:** Yes, Your Honor.

8 **THE COURT:** And do you agree to be bound by it?

9 **MR. CIAMPI:** Yes, Your Honor.

10 **THE COURT:** All right. And, Counsel, you've
11 indicated you'll send the order for dismissal and the
12 settlement conference to Mr. Ciampi to be signed; is that
13 correct?

14 **MR. SHERMAN:** Yes, Your Honor. What I'll do is I'll
15 send Mr. Ciampi a request for dismissal of entire action with
16 prejudice as well as the settlement document.

17 I will not file the dismissal until we have the
18 settlement check to Mr. Ciampi. I would like to have it signed
19 back from him, but I will not file it.

20 **THE COURT:** So this is what happened, Mr. Ciampi.
21 You're going to get a settlement agreement, which is everything
22 we talked about today and an order of dismissal. You need to
23 sign the settlement agreement and sign the dismissal and send
24 it back to them. Once you've got your check, you can call them
25 and say you got the check, and they'll file the dismissal.

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Okay?

MR. CIAMPI: Okay. The -- I guess, some clarification on "without prejudice."

MR. SHERMAN: With prejudice.

MR. CIAMPI: Or "with prejudice."

THE COURT: Yes?

MR. CIAMPI: So there's nothing that will arise as to the City placing a counterclaim on me for anything?

THE COURT: No. You're done. This is it. Everything ends today, arising out of this incident. Nobody can do anything to anybody anymore.

MR. CIAMPI: Okay.

THE COURT: All right. Okay.

MR. SHERMAN: I'd like to thank you, again, for your extended time in this matter on behalf of both Mr. Ciampi and the City.

THE COURT: You're welcome. It was a pleasure on both sides.

(Conclusion of proceedings.)

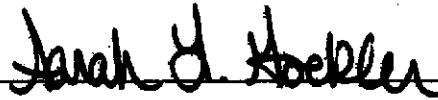
---o0o---

CERTIFICATE OF REPORTER

I, SARAH L. GOEKLER, a Certified Shorthand Reporter, hereby certify that the foregoing proceedings were taken in shorthand by me, a disinterested person, at the time and place therein stated, and that the said proceedings were thereafter reduced to typewriting, by computer, under my direction and supervision;

I further certify that I am not of counsel or attorney for either or any of the parties nor in any way interested in the event of this cause, and that I am not related to any of the parties thereto.

DATED: August 12, 2011.

A handwritten signature in cursive script, appearing to read "Sarah L. Goekler", is written over a horizontal line.

SARAH L. GOEKLER, CSR 13446

EXHIBIT 919

SETTLEMENT AGREEMENT AND GENERAL RELEASE

This Settlement Agreement and General Release ("AGREEMENT") is entered into by and between the City of Palo Alto ("CITY") and Joseph Ciampi ("CIAMPI").

RECITALS

1. CIAMPI commenced a civil action against the City of Palo Alto and others (collectively "CITY") in the United States District Court, Northern District, Case No. C09-02655 LHK (PSGx) seeking to recover damages for state torts, constitutional violations, wrongful prosecution, physical and psychological damages, attorney fees and other damages allegedly sustained as the result of, arising out of or relating to an incident that occurred on March 15, 2008 (the "INCIDENT").

2. [REDACTED]

3. [REDACTED]

4. [REDACTED]

AGREEMENT

NOW THEREFORE, the parties agree as follows:

1. **Payment to CIAMPI.** CITY shall pay to plaintiff the sum of THIRTY FIVE THOUSAND DOLLARS (\$35,000). FIFTEEN THOUSAND DOLLARS AND 00/100, (\$15,000) shall be paid by negotiable check payable to Joseph Ciampi immediately upon execution of this agreement by CIAMPI. CITY shall cause an additional TWENTY THOUSAND DOLLARS AND 00/100 (\$20,000) to be held in a [REDACTED] interest bearing escrow pending the outcome of a fee arbitration between CIAMPI and his prior counsel, David Beauvais. (see Transcript of Proceedings, August 9, 2011 ("CT") p. 3, 4-5 and Notice of Lien filed by David Beauvais on November 9, 2009).

2. **Fees and Costs.** Each party will bear their own attorneys' fees and costs. CT p. 3, 11-12.

3. **Waiver of Civil Code Section 1542.** CIAMPI understands that Civil Code of State of California Section 1542 provides:

"A general release does not extend to claims which the creditor does not know or suspect to exist in their favor at the time of executing the release, which, if known by them, must have materially affected their settlement with the debtor"

and that he is expressly waiving his rights under the aforesaid statute. Further, any rights under any similar law of any state or territory of the United States are hereby expressly waived. CT p.3, 12-13.

4. **Non-Admission of Liability.** There is no admission of fault, liability or wrongdoing by any party. [REDACTED]

5. [REDACTED] CT p. 3, 12-13;
4, 14-25.

6. **Release.** [REDACTED] CT p. 5, 9-10.

[REDACTED]

[REDACTED]

JOSEPH CIAMPI,
Plaintiff,

v.

CITY OF PALO ALTO, a government entity; [REDACTED]

[REDACTED] OFFICER KELLY BURGER, an individual; OFFICER

MANUEL TEMORES, an individual; OFFICER APRIL WAGNER, an individual;
[REDACTED]
Defendants,

[REDACTED]

[REDACTED]

7. **Entire Agreement.** The terms and conditions of this AGREEMENT shall constitute the entire agreement in compromise and settlement of the lawsuit as to CITY,
[REDACTED]

APPROVED AS TO FORM AND CONTENT:

CITY OF PALO ALTO

By:
MOLLY S. STUMP
City Attorney

Dated: _____, 2011

By:
JAMES KEENE
City Manager

Dated: _____, 2011

APPROVED AS TO FORM AND CONTENT:

By:
Joseph Anthony Ciampi
Plaintiff

Dated: _____, 2011

EXHIBIT 920

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Hotmail - t.ciampi@hotmail.com - Windows Live

Kaplan, Tracey
 To: t.ciampi@hotmail.com

4/23/11
 Reply

From: **Kaplan, Tracey** (TKaplan@mercurynews.com)
 Sent: Sat 4/23/11 8:49 AM
 To: t.ciampi@hotmail.com

Actually, i do care. I believe yr story. I tried to get the best private attorney in sj on factual innocence and justice layouts to take yr case. I wrote dolores carr A letter to try to get the crime lab results released. I told people abt the injustice u have suffered. I tried to work w u to write abt it in hopes of embarrassing carr to release/acknowledge the police misconduct and expose the potential for tinkering w taser results, which i think is a national concern. I just dont have time to deal w the mountain of email i get from people. If u let me know every oncr in a while what is going on believe me id be interested, really. Regardless of wht u may think of me, i truly tfuly hope u win because what was done to u is so wrong. And i know that because i confirmd yr test results e the lab and find yr story 100 pervent credible. Sent from my Verizon Wireless Phone

[REDACTED]

EXHIBIT 921

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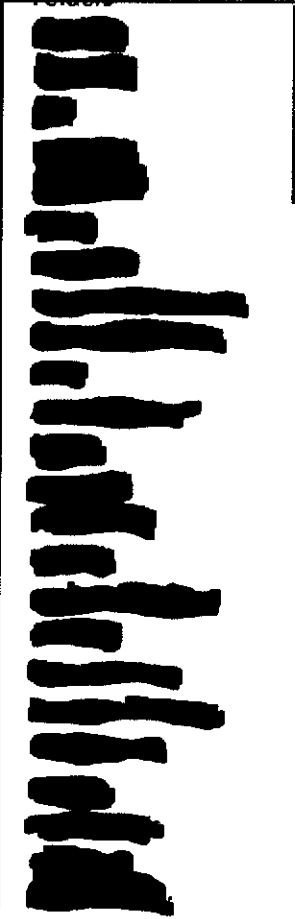
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Hotmail - t.ciampi@hotmail.com - Windows Live



Larkin, Donald 9/09/11
 To Tony Ciampi Reply

From: Larkin, Donald (Donald.Larkin@CityofPaloAlto.org)
 Sent: Fri 9/09/11 9:35 AM
 To: Tony Ciampi (t.ciampi@hotmail.com)

Tony,

Unfortunately, I am unable to accept your settlement agreement as drafted. At the August 9, 2011 settlement conference, the City agreed to pay \$35,000 in exchange for a full dismissal of the entire case with prejudice, a general release with a waiver of Civil Code section 1542 and no admission of liability. You asked Judge James about the meaning of these terms on the record in court. She explained that these terms mean, "You're done. This is it. Everything ends today, arising out of this incident. Nobody can do anything to anybody anymore." You replied, "Okay." Your proposed agreement does not adequately reflect this understanding.

Further, a dismissal of the City means a dismissal of all of the City's agents, servants, employees, directors, contractors, and representatives. As a municipal corporation, the City only acts through its agents, servants, employees, directors, contractors and representatives who are acting in the course and scope of their duties. A dismissal of the City necessarily includes each of these individuals. Finally, as attorneys for the City, Mr. Sherman and I are the authorized representatives of all of the City's agents, servants, employees, directors, contractors, and representatives. As such, while not all of the potential defendants were present in the room, they were all represented by counsel and would be bound by the terms of the Settlement Agreement.

I would again ask that you sign the settlement agreement that I provided yesterday so we can finally resolve this case.

Hotmail - t.ciampi@hotmail.com - Windows Live - Windows Internet Explorer

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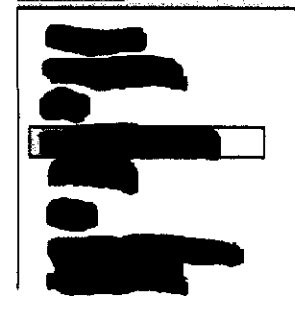
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Hotmail - t.ciampi@hotmail.com - Windows Live



I would again ask that you sign the settlement agreement that I provided yesterday so we can finally resolve this case.

Regards,

Donald Larkin
 Assistant City Attorney
 City of Palo Alto
 (650) 329-2171
 donald.larkin@cityofpaloalto.org

EXHIBIT 922

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[REDACTED]

C09-02655 City refuses to pay the settlement

Back to messages

SUM
3 messages 0 unread Show all

□ Larkin, Donald 9/09/11
To Tony Ciampi Reply

From: Larkin, Donald (Donald.Larkin@CityofPaloAlto.org)
Sent: Fri 9/09/11 5:45 PM
To: Tony Ciampi (t.ciampi@hotmail.com)

Tony,

You agreed to a "full and complete dismissal" of your lawsuit and to a general release of claims with a waiver of Civil Code section 1542. Your draft agreement makes numerous exceptions to the "full and complete dismissal" that you agreed to execute and ignores the provisions of Civil Code section 1542. The exceptions were not a part of the settlement and section 1542 was. Further, the clarifying statements made by the parties and the court are, in fact, a part of the record as reflected in the court transcript. The City is paying \$35,000 to end this matter completely. If you refuse to sign the settlement agreement (which contains only those terms that you agreed to on the record) we will have no choice but to file a motion to enforce the settlement agreement. If we have to do so, we will seek monetary sanctions to be deducted from the settlement amount.

Please inform me no later than 5:00 p.m. on Monday, September 12 whether you will be signing the City's revised settlement agreement. If I do not hear from you by then, I will prepare the City's motion.

Donald Larkin

Hotmail - t.ciampi@hotmail.com - Windows Internet Explorer

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Hotmail - t.ciampi@hotmail.com - Windows Live

[REDACTED]

Please inform me no later than 5:00 p.m. on Monday, September 12 whether you will be signing the City's revised settlement agreement. If I do not hear from you by then, I will prepare the City's motion.

Donald Larkin
Assistant City Attorney
City of Palo Alto
(650) 329-2171
donald.larkin@cityofpaloalto.org

EXHIBIT 922

1 Plaintiff Joseph Ciampi, in pro se
2 P.O. Box 1681
3 Palo Alto, California 94302
4 Phone (650) 468-3561
5 Email: t.ciampi@hotmail.com

6
7
8 Plaintiff Joseph Ciampi, in pro se

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

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)

**[PROPOSED] ORDER FOR
PLAINTIFF'S MOTION TO ENFORCE
SETTLEMENT AGREEMENT AND A
SECOND MOTION FOR SANCTIONS
AGAINST DEFENDANTS AND THEIR
ATTORNEYS**

FRCiv.P 71, 70(a), 37, 26 & 16(f)

JUDGE: LUCY H. KOH
United States Judge

&

JUDGE: MARIA-ELENA JAMES
Chief United States Magistrate Judge

RE: Court Docs. 189, 195 & 198

26 THE COURT FINDS that Plaintiff has shown sufficient reasons soundly based
27 upon the facts and the law why Plaintiff's motion should be granted.

28 IT IS HEREBY ORDERED, based upon the findings, that Plaintiff's motion to enforce
the Settlement Agreement is GRANTED.

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IT IS HEREBY ORDERED, that Defendant City of Palo Alto shall sign the written Settlement Agreement signed by Plaintiff Ciampi provided to them and pay Plaintiff Ciampi the sum of \$35,000.00 no later three days after the execution of this Order.

IT IS HEREBY ORDERED, that Defendant City of Palo Alto shall set up a third Settlement Conference including representatives from Taser International, Kustom Signals, Andrew Hinz, Warren Page and Michael Gennaco in order to settle any and all outstanding claims that Plaintiff Ciampi has with these NON-PARTIES.

IT IS HEREBY ORDERED, based upon the findings, that Plaintiff's motion for the court to order sanctions against Defendants and their attorneys is GRANTED. These sanctions shall consist of _____

IT IS SO ORDERED.

****END OF ORDER****

Dated: _____

Judge of the United States District Court for
The Northern District of California

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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 September 12, 2011 I served **PLAINTIFF'S MOTION TO ENFORCE SETTLEMENT AGREEMENT AND A SECOND MOTION FOR SANCTIONS AGAINST DEFENDANTS AND THEIR ATTORNEYS** on the interested parties in this action by placing a true copy thereof, enclosed in a sealed envelope/package, addressed as follows:

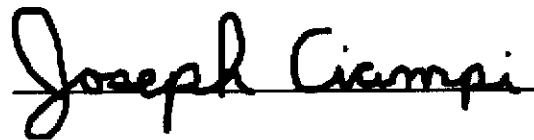
Steven A. Sherman, Esq. Bar No. 113621
FERGUSAN, PRAET & SHERMAN
A Professional Corporation
1631 East 18th Street
Santa Ana, California 92705-7101
(714) 953-5300 Telephone
(714) 953-1143 Facsimile
Ssherman@law4cops.com

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 September 12, 2011, at Palo Alto, California.



Plaintiff JOSEPH CIAMPI in pro se