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6 Plaintiff Joseph Ciampi, in pro se

FILED
JUL 22 2011
RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

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

11
12 JOSEPH CIAMPI

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

25 Defendants.

Case No. C 09-02655 LHK (PSG)

**PLAINTIFF'S [SUPPLEMENTAL TO]
MOTION FOR ORDER FOR NEW
JUDGE, AND TO STRIKE MOT. FOR
SUMM. JUDGE.....COURT DOC. 169
AND
RESPONSE TO ORDER DENYING
MOTION REQUESTING APPROPRIATE
ACTION REGARDING VIOLATIONS OF
THE LAW AND RULES COMMITTED
BY ATTORNEY STEVEN SHERMAN,
COURT DOC. 176**

**[TITLE 28 PART 1 CHAPTER 21 § 455.
(a) U.S. CODE];
FRCiv.P. 60(b)(3)(6);
FRCiv.P. 5(d)(2)(B);
Civil L.R. 5-1
RE: Court Docs. 123, 125, 155, 169 and 176**

26 Plaintiff Joseph Ciampi has filed a Motion Requesting Appropriate Action Regarding
27 Violations of the Law and Rules Committed by Attorney Steven Sherman. The Court has issued
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1 its Order regarding this Motion and Plaintiff has found several errors in the Order issued by the
2 Court in coming to its conclusions to which Plaintiff now addresses. Additionally, Plaintiff
3 incorporates this brief as a Supplement to his Motion requesting disqualification of Judge Koh
4 based upon the same errors and those already delineated.

5 **A. Claim 1**

6 Lines 14 through 16 of pg. 3 of Court Doc. 176 the Court states,
7 *"It seems that a packing slip had been taped to the Taser camera, and Mr. Sherman had*
8 *repeatedly pulled the slip off and stuck it back on during the inspection of the camera on*
9 *December 17, 2010."*

10 It's not a packing slip, it's a **"post-it."** And it was placed there to conceal the serial
11 number from Plaintiff, for there was no reason to having anything attached to the taser camera.

12 During the June 30, 2011 hearing, Plaintiff demonstrated that the "post-it" was not
13 causing the serial number to rub off.

14 Lines 17 through 21 of pg. 3 of Court Doc. 176 the Court states, *"At the motion hearing*
15 *Lieutenant Sandra Brown, of the Palo Alto Police Department, also stated that the V07-065373*
16 *Taser, which Defendants believe was not involved in the March 15, 2008 incident, had been in*
17 *use prior to the December 17, 2010 inspection, and that the serial number may have rubbed off*
18 *in the course of ordinary police work."*

19 The camera had been used continuously for two years up to the October 28, 2010
20 inspection and the serial number was intact. Please lease explain how two months of use would
21 cause the serial number to disappear when two years of use did not.

22 It's good to know that the Court has taken the word of Lt. Sandra Brown regarding the
23 use of Taser camera V07-065373 for Lt. Sandra Brown also stated that Taser camera V07-
24 065373 went to Taser International for repair during June 30, 2011 hearing completely
25 contradicting Andrew Hinz's December 21, 2010 Declaration in which he states that taser
26 camera V07-065373 was never sent to Taser International from the Palo Alto Police.
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C. Claim 3

Lines 16 through line 28 of pg. 5 and lines 1 through 10 of pg. 6 of Court Doc. 176 the Court completely ignores Plaintiff's complaint/allegation. Mr. Sherman stated and actually denied Plaintiff the MAV recordings containing the watermark because the Watermark on the MAV were proprietary in nature, lines 17 through 19 of Court Doc. 65, and therefore would not provide Plaintiff the MAV videos containing the Watermark, "*Other than the copies provided, (copies that do not contain the watermark or the original date of modification), he, (Plaintiff), is asking for trade secret information and will not be provided,*" lines 11-12 of pg. 4 of Court Doc. 65. (Parenthesis added)

Then Mr. Sherman actually falsely stated to Plaintiff and the court that he never made the statement that the MAV videos containing the watermark would not be provided to Plaintiff, lines 12 through 13 of Court Doc. 156 in order to cover up the false statement.

Additionally, Mr Sherman falsely states that a copy of the MAV recordings cannot be viewed on a computer, lines 15-16 of court Doc. 156.

Contrary to Courts determination, Plaintiff's allegation has absolutely nothing to do with the software used to analyze the watermark and therefore was and is unnecessary to cite. The entire dispute which resulted in the Defendants and Mr. Sherman filing court documents was solely about the Defs. and Mr. Sherman refusing to provide Plaintiff MAV recordings that contained the original date of modification and the watermark. For the court to claim that Plaintiff failed to properly cite Mr. Sherman demonstrates the fraudulent nature of the Court deliberately inaccurately citing Plaintiff. The court actually adds the unnecessary comments supplied by the Defendants to help confuse the issue even further.

On October 22, 2010 Steven Sherman stated,

"At this time, plaintiff's request to receive actual 'original MAV recordings containing the digital watermark' infringes on Kustom Signal's proprietary software and MAV system created for police use." "Other than the copies provided, (copies that do not contain the watermark or the original date of

1 *modification), he, (Plaintiff), is asking for trade secret information and will*
2 *not be provided.*” lines 17 through 19 of Court Doc. 65 & lines 11-12 of
3 pg. 4 of Court Doc. 65.

4 On May 12, 2011 Steven Sherman completely contradicts the above statements by falsely
5 stating that he never made them,

6 “***Response** - Another explanation is that Plaintiff misunderstood my*
7 *statement. I have never contended that the watermark itself is proprietary.*”

8 If Mr. Sherman never contended that watermark itself was proprietary, then **please**
9 **explain the reasoning why Mr. Sherman and the Defendants refused to provide Plaintiff**
10 **the MAV recordings containing the watermark?** (See Court Docs. 65, 72, 115, 127, 128, and
11 131?

12 If Mr. Sherman and the Defs. were not refusing to provide Plaintiff a copy of the MAV
13 videos containing the watermark, then please explain why there was a March 15, 2011 Hearing
14 over why Mr. Sherman was denying Plaintiff a copy of the MAV videos with the watermark?
15 (See Court Document 134).

16 If Mr. Sherman and the Defs. were not refusing to provide Plaintiff a copy of the MAV
17 videos containing the watermark, then please explain why the necessity of Judge Grewal’s Order
18 forcing Mr Sherman and the Defendants to provide copies of the MAV videos with the
19 watermark? (See Court Document 144).

20 The court has not addressed Plaintiff’s allegation and therefore Plaintiff requests that the
21 court actually address the allegation.

22 Currently, the court has made and entered a falsified conclusion based not on the facts
23 presented by Plaintiff but on some other information not related to Plaintiff’s allegation in order
24 to cover up Steven Sherman’s violations. The Court’s blatant refusal to address the facts of the
25 allegation further demonstrates the ongoing prejudice against Plaintiff and bias for Defendants.

26 **D. Claim 4.**
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1 Plaintiff proved that the taser gun activation data provided to the court has been falsified.
2 Exhs. 517, 517-19 of Court Doc. 133-5; Exh. 522-2 through 522-18 of Court Doc. 133-6; item 5
3 of Exh. 529-2 of Court Doc. 133-9; and Exhibits 620 through 631 of Court Doc. 160. Plaintiff
4 proved to the Court that Steven Sherman lied when he stated that only the 2008 data was
5 downloaded during the December 17, 2010 hearing. The court refuses to acknowledge these
6 facts. All the Court can do is attempt to change the facts. The Court does not even cite Mr.
7 Sherman's submission of the September 13, 2010 taser gun weapon summaries which were an
8 attempt to conceal the previously submitted falsified taser guns' weapon summaries. The
9 December 13, 210 weapon summaries submitted on May 12, 2011 are two more falsified weapon
10 summaries submitted by Attorney Steven Sherman bringing the total to four. Plaintiff has
11 proven that the Data Ports that contain the taser gun activation data have been tampered with and
12 thus the data surrounding the March 15, 2008 incident has also been falsified. Plaintiff has
13 proven that the data regarding the March 15, 2008 incident is not accurate and is contradicted by
14 the evidence. Plaintiff demonstrated during the June 30, 2011 hearing that Defs.' expert's,
15 Andrew Hinz's, report is contradicted by the videos and Defs' Temores' and Burger's testimony
16 provided during the December 2008 criminal proceedings as well as statements made on Def.
17 Burger's very own MAV recording. Plaintiff also demonstrated during the June 30, 2011
18 hearing that there is no possibility of human error in compiling the data since the data is directly
19 downloaded from the taser guns without any human input, see previously cited Exhs. and Exhs.
20 620-2 through 620-4 of Court Doc. 160. Thus the falsified data had to be an intentional act of
21 inputting the wrong data into the report.

22 This Court cannot refute Plaintiff's allegations or Plaintiff's evidence therefore this Court
23 simply ignores them.

24 **K. Claim 11**

25 Lines 24 through 26 of Court Doc. 176 the Court States:
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1 “However, given that the *Harper* case was mentioned very briefly in the course of a
2 hearing that ran for one hour and 28 minutes, it is quite likely that Mr. Sherman simply made an
3 honest mistake in his opposition brief.”

4 Plaintiff believes that he witnessed Mr. Sherman writing down the Harper case during the
5 April 21, Hearing just as the Court did when Plaintiff cited it during the hearing.

6 **L. Claim 12**

7 *Lines 12-13 of pg. 11 and lines 17 through 22 of Court Doc. 176 the Court States,*
8 *Plaintiff's twelfth allegation is moot because the Court did not receive any synched*
9 *recording.....Mr. Sherman was simply mistaken when he represented that a synched video had*
10 *been submitted. The Court finds it that Mr. Sherman seems to believe that he submitted an*
11 *exhibit that he did not in fact submit. As lead counsel, Mr. Sherman should be aware of the*
12 *exhibits submitted in support of Defendants' motions, and the Court admonishes Mr. Sherman*
13 *that he should take care to remain fully informed of the materials submitted to the Court as this*
14 *case progresses.”*

15 Plaintiff finds it troubling that the Court did not acknowledge that Mr. Sherman did not
16 provide the court the DA's/synched version when Mr. Sherman first adamantly stated that he did
17 during the April 21, 2011 hearing as documented from lines 1-1 of pg. 4 of Court Doc. 153; and
18 line 25 of pg. 39 and line 1 through 15 of pg. 40 of Court Doc. 150.

19 The Court claims that it did not receive the DA's/synched version of the MAV recordings
20 contrary to that which Mr. Sherman has asserted that he has during two different Court Hearings
21 and is willing to do again, lines 7 through 10 of pg. 2 of Court Doc. 174. The second time Mr.
22 Sherman asserted that he provided the DA's synched version of the MAV recording was after
23 Mr. Sherman was made aware of the fact that he failed to cite the exhibit as a part of his
24 Declaration.

25 Plaintiff finds the Court's response lacking any legitimacy for Plaintiff cannot verify
26 what the Court received or did not receive because the Court itself has violated F.R.Civ.P.
27 5(d)(d)(B) by not securing the exhibits with the Court Clerk for over five months after receiving
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1 the Exhibits. Given the Court's concealment of the evidence the Court's statement is
 2 meaningless for the Court could be hiding the exhibit and or could have destroyed the exhibit
 3 without anyone knowing. Given Mr. Sherman' adamant assertion on two separate occasions of
 4 stating that he provided the Court the evidence Plaintiff has to conclude that the Court is lying
 5 about not receiving the DA's synched version of the MAV videos. Plaintiff cannot prove this
 6 because the Court failed to secure any of the exhibits with the Court Clerk.

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 8 **M. Claim 13**

9 The Court fails to acknowledge the facts that Plaintiff presented to the Court and has
 10 justified its decision based solely on the erroneous explanations provided by the Defendants and
 11 their attorneys. Plaintiff proved that someone other than Brian Furtado created MAV videos of
 12 the March 15, 2008 incident on February 2, 2010 using the new system, lines 8 through 13 of pg.
 13 6 of Court Doc. 153 and Exhibit 611-1.

14 If Mr. Furtado had been in an auto accident and died on April 21, 2010 who was going to
 15 produce the MAV recording for Plaintiff in compliance with Judge Grewal's Order?

16 The Court's rational is just like the Defendants, lacking any credibility demonstrating that
 17 the Court is working on behalf of the Defendants in every decision to undermine truth, justice,
 18 the facts and the due administration of the laws all in violation of Plaintiff's Fourteenth
 19 Amendment Right to Due Process in this case.

20 **Summary:**

21 Lines 3 through 4 of pg. 10 of Court Doc. 176, the Court States,

22 *"Plaintiff has not shown that Mr. Sherman is involved in any conspiracy to falsify*
 23 *evidence or deceive the Court."*

24 Plaintiff has proven the Mr. Sherman has attempted to conceal why and how Taser
 25 camera V07-065373's serial number partially disappeared. Plaintiff has proven that Mr.
 26 Sherman has submitted falsified taser gun activation data in an attempt to conceal that Def.
 27 Temores' and Burger's taser guns' Data Ports have been tampered with in order to conceal that
 28 Plaintiff was shocked for a much longer duration than what Defs. have stated or what was

1 originally and authentically documented on the devices. Plaintiff has proven that Andrew Hinz
2 of Taser International has made false statements regarding the taser gun activation data and
3 videos, Item 12 of Exhs. 529-3 & 4 of Court Doc. 133-9. Plaintiff has proven that four taser
4 probes were fired during the incident from two separate firings; the second firing is not
5 documented on any of the MAV or taser videos or the taser gun data ports. This is a fact that
6 the Court cannot refute for it is verified by the Defendants themselves. Defs. have
7 acknowledged destroying Def. Temores' taser probes, taser cartridge and wires. Plaintiff has
8 proven that audio dialog is missing from Defs. Temores' and Burger's MAV recordings which
9 Mr. Sherman refuses to provide. Plaintiff has proven that video footage is missing from Defs.
10 Temores' and Burger's taser videos established by the same DA office that produced the synched
11 MAV recordings that Mr. Sherman continuously cites. (See Court Docs. 55, 132 and 133.)
12 Plaintiff has proven the Def. Temores' MAV video is not in chronological order. Plaintiff has
13 proven that Def. Burger's taser video is not in chronological order.

14 Plaintiff has proven that Temores' MAV video is missing three scenes of video footage
15 which Mr. Sherman refuses to provide. If the Court doesn't think they are missing, then
16 Plaintiff requests that the Court identify the exact scenes in Det. Temores' MAV video that
17 correspond to the three taser video scenes, Exh. 669-3 of Court Doc. 173 and Exhs. 512-11, 512-
18 12, and 512-13 of Court Doc. 133.

19 The Court's refusal to post the June 30, 2011 Hearing transcript to the Office of the Court
20 Clerk further demonstrates its prejudice against Plaintiff and bias for Defendants.

21 Plaintiff has not only proved just cause to having both the Defs. Motion for Summary
22 Judgment and the Court's Order regarding Motion for Summary Judgment stricken, but to have
23 Judge Lucy H. Koh disqualify herself from this case pursuant to TITLE 28 PART 1 CHAPTER
24 21 § 455. (a) U.S. CODE which requires a Judge to disqualify him or herself in any proceeding
25 which his/her impartiality might reasonably be questioned."

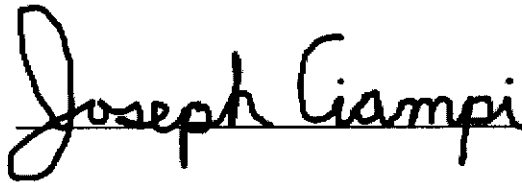
26 The refusal of Judge Koh to address or acknowledge the facts or the law presented to her
27 by Plaintiff validating Plaintiff's claims laid out in his complaint and supporting documents
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1 demonstrates that Judge Koh has come to her decisions fraudulently and has violated Plaintiff's
2 Fourteenth Amendment right to Due Process in this case. As such the Court should strike both
3 Defendants' Motion for Summary Judgment as well as Judge Koh's Order regarding the Motion
4 for Summary Judgment pursuant to F.R.Civ.P. 60(b)(3)(6).

5 Based upon the above reasons and facts Plaintiff has been denied due process by this
6 Court and requests that the Court bring in a neutral Judge to oversee the remainder of this case.

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8 Plaintiff

9 Dated: July 22, 2011

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11 Plaintiff JOSEPH CIAMPI in pro se
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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF SANTA CLARA

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

On July 22, 2011 I served **PLAINTIFF'S [SUPPLEMENTAL TO] MOTION FOR ORDER FOR NEW JUDGE, AND TO STRIKE MOT. FOR SUMM. JUDGE.....COURT DOC. 169 AND RESPONSE TO ORDER DENYING MOTION REQUESTING APPROPRIATE ACTION REGARDING VIOLATIONS OF THE LAW AND RULES COMMITTED BY ATTORNEY STEVEN SHERMAN, COURT DOC. 176** on the interested parties in this action by placing a true copy thereof, enclosed in a sealed envelope/package, addressed as follows:

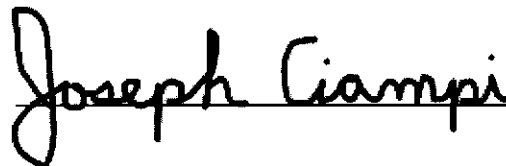
Steven A. Sherman, Esq. Bar No. 113621
FERGUSAN, PRAET & SHERMAN
A Professional Corporation
1631 East 18th Street
Santa Ana, California 92705-7101
(714) 953-5300 Telephone
(714) 953-1143 Facsimile
Ssherman@law4cops.com

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 July 22, 2011, at Palo Alto, California.



Plaintiff JOSEPH CIAMPI in pro se