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FILED
2011 AUG -8 P 1:50

6 Plaintiff Joseph Ciampi, in pro se

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
SANTA CLARA COUNTY, CALIFORNIA

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

11
12 *CLHK*

13 JOSEPH CIAMPI

Case No. C 09-02655 LHK (PSG)

14 Plaintiff,

PLAINTIFF'S SECOND MOTION TO STRIKE DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

15 v.

Civ. L.R. 7-2(d)

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.

RE: Court Docs. 123, 125 & 155

Honorable Judge Lucy H. Koh

DATE: September 14, 2011

Time: 2:00 pm

Court Room: 5

25 Defendants.

26 TO EACH PARTY AND THEIR COUNSEL OF RECORD YOU ARE HEREBY
27 NOTIFIED THAT Plaintiff Joseph Ciampi moves the court to Strike Defendant's Motion for
28 Summary Judgment.

1 Civil Local Rule 7-2 (d) states that, "Each motion must be accompanied by affidavits or
2 declarations pursuant to Civil L.R. 7-5."

3 On November 17, 2010 the court set the deadline for filing dispositive motions for
4 February 10, 2010, Court Document 84.

5 On February 10, 2010 Defendants filed a Motion for Summary Judgment with the court,
6 Court Document 123. This motion was not accompanied with any affidavits or declarations and
7 therefore is procedurally deficient and therefore should be stricken along with the Court's order
8 regarding the same.

9 On February 14, 2010 Defendants' attorney Steven Sherman filed a Declaration in
10 support of Defendants' Motion for Summary Judgment with the court, Court Document 125,
11 however this declaration exceeded the February 10, 2011 deadline and must be stricken.

12 Additionally, Steven Sherman's Declaration, court document 125, cites numerous
13 exhibits which have not been filed with the court as of August 7, 2011 and therefore Steven
14 Sherman's Declaration lacks any factual foundation and is in and of itself procedurally deficient.

15 In Summary, Defendants' Motion for Summary Judgment failed to meet the requirements
16 of Civil Local Rule 7-2(d) by not being supported by any affidavits or Declarations within the
17 deadline and therefore must be stricken along with the court's Order Granting in Part and
18 Denying in Part Defendants' Motion for Summary Judgment, Court Document 155.

19 The court's order to strike Defs.' Mot. for Summ. Judg. based upon the procedural
20 deficiency would be consistent with the court's ruling against Plaintiff in Court Document 164
21 lines 22-24 of pg. 1, "*The Court construed Plaintiff's request as a motion for leave to file a*
22 *motion for reconsideration, and denied Plaintiff's request, finding that he had not met the*
23 *standard for leave to file a motion for reconsideration set forth in Civil Local Rule 7-9(b),"* and
24 Court Document 155 lines 2-6 of pg. 37, "*Additionally, **Plaintiff's motions are untimely and***
25 ***procedurally improper.** See Civ. L.R. 7-3(d) (governing supplemental material filed*
26 *after a reply); Civ. L.R. 7-9 (governing motions for reconsideration of an interlocutory order).*
27 Accordingly, the Court DENIES Plaintiff's request for leave to file the proposed motions for
28 reconsideration."

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Should the court refuse to consider Plaintiff's Motion to Strike Defs.' Mot. for Summ. Judgment and enforce the Civil Local Rules by striking Defs.' Mot. for Summ. Judg., the court would be demonstrating and inconsistent application of Civil Local Rules by applying them to Plaintiff without applying them to the Defendants. This act would be prima facie evidence that the court is not impartial and therefore should disqualify itself pursuant to: TITLE 28 PART 1 CHAPTER 21 § 455. (a) U.S. CODE.

Plaintiff

Dated: August 8, 2011



Plaintiff JOSEPH CIAMPI in pro se

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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF SANTA CLARA

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

On August 8, 2011 I served **PLAINTIFF'S SECOND MOTION TO STRIKE DEFENDANTS' MOTION FOR SUMMARY JUDGMENT** on the interested parties in this action by placing a true copy thereof, enclosed in a sealed envelope/package, addressed as follows:

Steven A. Sherman, Esq. Bar No. 113621
FERGUSAN, PRAET & SHERMAN
A Professional Corporation
1631 East 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 August 8, 2011, at Palo Alto, California.



Plaintiff JOSEPH CIAMPI in pro se