

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

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6 Plaintiff Joseph Ciampi, in pro se

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

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

Autth

12 JOSEPH CIAMPI

Case No. C 09-02655 LHK (PSG)

14 Plaintiff,

**[SUPPLEMENTAL BRIEF IN
SUPPORT OF]
PLAINTIFF'S MOTION FOR ORDER
FOR NEW JUDGE, AND TO STRIKE
DEFENDANTS' MOTION FOR
SUMMARY JUDGMENT, AND TO
STRIKE THE COURT'S ORDER
GRANTING IN PART AND DENYING IN
PART DEFENDANTS' MOTION FOR
SUMMARY JUDGMENT...**

15 v.

RE: Court Doc. 169

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.

23 Defendants.

26 Given that there are still 37 days until the hearing date set for the court to consider
27 Plaintiff's Motion, Plaintiff submits the following evidence in support of his Motion in
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1 compliance with Civil L.R. 7-2 (a) which states that the Motion must be filed and calendared not
2 less then 35 days after service of the Motion.

3
4 **ONE:** Lines 22 through 28 of pg. 13 of Court Document 155 the Court's Order Granting
5 in Part and Denying in Part Defendants' Motion for Summary Judgment, Judge Koh stated,
6 "*The SAC also alleges violations of Plaintiff's right to due process and equal protection, **but***
7 ***does not indicate the basis for these claims.** In his opposition brief and at the motion hearing,*
8 *Plaintiff indicated that the basis for his due process claim is the withholding of material,*
9 *exculpatory evidence, in violation of Brady v. Maryland, 373 U.S. 83 (1963), alleged to have*
10 *occurred during his criminal case. As pled in the SAC, however, Plaintiff's § 1983 claim merely*
11 *states that defendants' conduct "constitutes a deprivation of Plaintiff's right to be free from an*
12 *unlawful entry ,an unlawful arrest, and unreasonable searches and seizures, and the right to be*
13 *free from interference with the zone of privacy," and "further constitutes obstruction of justice*
14 *with the malicious intent to deprive Plaintiff of his rights to due process and equal protection of*
15 *the law." SAC ¶ 53. These vague allegations regarding obstruction of justice and deprivation of*
16 *due process are not sufficient to plead a § 1983 claim based on alleged Brady violations.'"*

17 The above statements made by Judge Koh are deliberate false statements for she
18 deliberately neglects to cite ¶¶ 37 through 46 of Plaintiff's Second Amended Complaint, (SAC),
19 which delineates with specificity the falsification and destruction of the evidence by Defendants
20 in order to deny Plaintiff his rights to due process via the Fourteenth Amendment of the United
21 States Constituion: "false statements in the police report; falsified taser gun activation data
22 submitted to the Santa Clara County District Attorney; false testimony provided during the
23 criminal Preliminary Examination; the editing and falsification of the MAV and Taser recordings
24 and thus the suppression of the unadulterated recordings; and the removal and destruction of Def.
25 Temores' taser probes, tase cartridge, taser wires, blast doors and AFIDS.

26 **TWO:** Lines 9-12 of pg. 19 of Court Document 155 the court states that: "After
27 Burger arrived, the Defendants began to express concerns that Plaintiff was under the influence
28 of a controlled substance, and Plaintiff, **fearful that he would be arrested** and his possessions

1 confiscated, retreated into his van to make a call on his cell phone.” This is an inaccurate and
2 false determination of the facts.

3 The facts presented to the court verify that Defendant Burger stated to Plaintiff Ciampi
4 that Ciampi was under arrest ¶26 of the SAC and ¶ 69 of Court Document 133. Since
5 Defendants did not have probable cause to arrest Plaintiff Ciampi, this arrest was unlawful. This
6 unlawful arrest is established by Plaintiff Ciampi asking Defendants Burger, Temores and Wager
7 what he was being arrested for numerous times as documented on Defendants’ own exhibit,
8 exhibit 15 of Steven Sherman’s Declaration to the Court, ¶18 of Court Document 125, Burger’s
9 MAV recording.

10 The fact that Judge Koh disregarded this fact proves that Judge Koh is not impartial and
11 should disqualify herself from the case striking her erroneous order granting Summary Judgment
12 to the Defendants.

13 As pointed out to the court, the reason why Def. Burger is not heard stating that Plt.
14 Ciampi is under arrest on Exh. 15 of Court Doc. 125, Burger’s MAV recording, is because the
15 dialog has been removed from the recording just like the dialog of, “*you’re not making it easy,*”
16 was removed from Burger’s MAV recording, Item #6 of Exhibit 529-2 of Court Doc. 133-9 and
17 Exhibit 48 of Court Document 55. The dialog, “*you’re not making it easy,*” was recorded onto
18 Def. Burger’s taser recording, Exh. 12 of Court Document 125 at the same time and from the
19 same location as Def. Burger’s MAV recording recorded, “*or I’m going to taser you.*”

20 See: http://www.freewillbill.com/uploads/3/8/5/2/3852497/audio_editing.pdf

21 This verifies that Def. Burger’s MAV recording has been tampered with by removing the
22 dialog, “*you’re not making it easy,*” from the recording. Since Burger’s MAV recording
23 matches up with Def. Temores’ MAV recording, the corresponding sequence has also been
24 removed from Def. Temores’ MAV recording verifying that Def. Temores’ MAV recording has
25 also been tampered with.

26 **THREE:** Contrary to the Court’s order, the above evidence is prima facie evidence not
27 requiring any so called expert to prove or disprove. All that is needed is a stop-watch and an
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1 ability to hear the dialog on both recordings; anything and everything that a jury of one's peers
2 would be required to do and be able to do.

3 The Court stated, "*Accordingly, lay witness opinions are admissible only to the extent*
4 *that they are "based upon . . . direct perception of the event, are not speculative, and are helpful*
5 *to the determination" of factual issues before the jury. United States v. Freeman, 498 F.3d 893,*
6 *905 (9th Cir. 2007),"* lines 10-13 of pg. 11 of Court Document 155.

7 Additionally the Court stated, "*The Court finds, further, that analysis of video and audio*
8 *recordings for evidence of tampering or alteration requires technical or specialized knowledge*
9 *and is not a proper subject of lay opinion. Cf. United States v. Rearden, 349 F.3d 608, 613 (9th*
10 *Cir. 2003) (discussing expert testimony offered to show that images were not manipulated or*
11 *altered); Davis v. Clearlake Police Dept., No. C-07-03365 EDL, 2008 WL 4104344 at *10 (N.D.*
12 *Cal. Sept. 3, 2008) (sustaining objection to letter offered to support argument that audio*
13 *recording was altered as improper expert testimony). Accordingly, Defendants' objection to this*
14 *evidence is sustained,"* lines 24-28 of pg. 11 and lines 1-2 of pg. 12 of Court Document 155.

15 Plaintiff did not purchase nor offer into evidence videos and taser gun activation data
16 during Plaintiff's criminal case, Defendants did. Supported by significant evidence and
17 Plaintiff's own recollection of the events that happened during the March 15, 2008 incident,
18 Plaintiff asserts that the MAV videos, the Taser videos and the taser guns' activation data have
19 been falsified by the Defendants in order to deprive Plaintiff his Fourteenth Amendment Rights
20 to Due Process. The Court has ruled that Plaintiff must be an expert or obtain an expert
21 supporting Plaintiff's allegations in order for the Court to consider Plaintiff's claims. This
22 requirement by the Court is a violation of Plaintiff's Fourteenth Amendment Right to Due
23 Process. The court's ruling is allowing for the state to use evidence which citizens cannot
24 challenge or refute unless said citizens acquire the acceptable expertise to challenge the
25 evidence. If citizens do not or cannot obtain the expertise acceptable to the Court, the state and
26 its agents are free to use falsified evidence to incriminate citizens of crimes without ever being
27 challenged. In layman's terms, that would be called a, "rigged-game," denying any opportunity
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1 to the accused to challenge the accusers and their evidence used to incriminate the accused which
2 is a violation of the Sixth Amendment of the United States Constitution, "MELENDEZ-DIAZ v.
3 MASSACHUSETTS certiorari to the appeals court of Massachusetts Argued November 10, 2008-
4 -Decided June 25, 2009 No. 07-591," See:

5 <http://caselaw.lp.findlaw.com/scripts/getcase.pl?court=US&vol=000&invol=07-591>

6 &

7 <http://docs.justia.com/cases/supreme/slip/557/07-591/opinion.pdf>

8 As such, the Court's ruling denying Plaintiff Ciampi the opportunity to challenge the
9 falsified evidence is contrary to everything that the United States Constitutions supports and that
10 which our justice system stands for and what Judge Koh asserted to Senator Jeff Sessions during
11 Judge Koh's Senate Confirmation Hearings.

12 ONE: Jude Koh falsely stated that Plaintiff Ciampi did not indicate the basis for his
13 Fourteenth Amendment claims in his SAC.

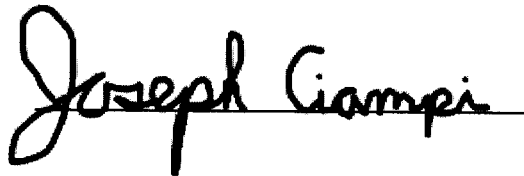
14 TWO: Judge Koh inaccurately and falsely cited Plaintiff's statements from Plaintiff's
15 SAC and Plts.' Declaration in Opp. To Defs.' Mot. for Summ. Judge.

16 THREE: Judge Koh's ruling has violated the Sixth Amendment of the United States
17 Constitution which requires that all citizens have the right to confront the witnesses against them.

18 Based upon the above reasons and facts Plaintiff has been denied due process by this
19 court and requests that the court strike the Court's order Court Doc. 155 and disqualify Judge
20 Koh and bring in a neutral Judge to adjudicate the remainder of this case.

21
22 Plaintiff

23 Dated: August 8, 2011

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26 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 **[SUPPLEMENTAL BRIEF IN SUPPORT OF PLAINTIFF'S MOTION FOR ORDER FOR NEW JUDGE, AND TO STRIKE DEFENDANTS' MOTION FOR SUMMARY JUDGMENT, AND TO STRIKE THE COURT'S ORDER GRANTING IN PART AND DENYING IN PART DEFENDANTS' MOTION FOR SUMMARY JUDGMENT...RE: Court Doc. 169]** on the interested parties in this action by placing a true copy thereof, enclosed in a sealed envelope/package, addressed as follows:

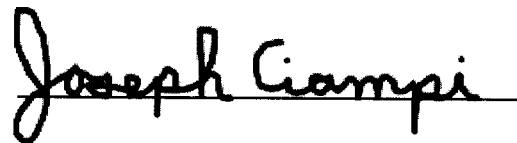
Steven A. Sherman, Esq. Bar No. 113621
FERGUSAN, PRAET & SHERMAN
A Professional Corporation
1631 East 18th Street
Santa Ana, California 92705-7101
(714) 953-5300 Telephone
(714) 953-1143 Facsimile
Ssherman@law4cops.com

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