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RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
N.D. CA - SAN JOSE

6 Plaintiff Joseph Ciampi, in pro se

7
8 UNITED STATES DISTRICT COURT

9 FOR THE NORTHERN DISTRICT OF CALIFORNIA

10 (SAN JOSE DIVISION)

CIAMPI

11 JOSEPH CIAMPI

Case No. C 09-02655 LHK (PSG)

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14 Plaintiff,

**PLAINTIFF'S MOTION FOR LEAVE TO
FILE MOTION FOR
RECONSIDERATION**

15 v.

**RE: Court Doc. 155
ORDER GRANTING IN PART AND
DENYING IN PART DEFENDANTS'
MOTION FOR SUMMARY JUDGMENT**

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: The Honorable Judge Koh

25 Defendants.

26 On May 13, 2011 Plaintiff filed a brief with the court requesting clarification of the May
27 11, 2011 court's order, Court Document 159. On May 20, 2011 the court issued an Order
28 denying Plaintiff's request for clarification and construing Plaintiff's request as a Motion for

1 Leave to file a motion for reconsideration. Therefore Plaintiff will avoid the specific requests in
2 his Request for Clarification in order not to violate Civil L.R. 7-9 (c) which states not to use
3 repetitive arguments.

4 Plaintiff puts forth the Motion for Leave on two parts:

5 **One**, the emergence of new material facts occurring after the order, Civil L.R. 7-9 (b)(2).
6 On May 12, 2011, Defendants and their attorney submitted their response to Plts' Mot. for App.
7 Act. Reg. The Viols. of Law and Rls. Comm. By Steven A. Sherman, Court Docs. 156 and 157
8 one day after the court's ruling on Mot. For Summ. Judg. Defendants' arguments in Court Docs.
9 156 and 157 have given rise to contradictions to earlier statements. Additionally, Defendants
10 have submitted two new taser gun activation reports, Court Doc. 156-1 which Plaintiff has
11 demonstrated have been falsified, line 7 of pg. 7 of Court Doc. 160 through 26 of pg. 11 of Court
12 Doc. 160.

13 **Two**, A manifest failure by the Court to consider material facts or dispositive legal
14 arguments which were presented to the Court before such interlocutory order, Civil L.R. 7-9
15 (b)(3).

16 There appears to be direct contradictions in the Defendants' statements during the April
17 21, 2011 hearing that were not considered by the court. There appears to be direct
18 contradictions in court's ruling and the arguments presented during the April 21, hearing and the
19 court's order issued on May 11, 2011.

20 Plaintiff argued that it is not necessary to be an expert to submit photographs into
21 evidence during the April 21, 2011 Hearing.

22 Plaintiff argued the Brady v. Maryland law substantiating Plaintiff's 14th Amendment
23 violations, however the court did address this issue in the court's order with the exception of
24 ruling against Plaintiff's use of exhibits. Plaintiff provides the following basis for leave to file a
25 motion for reconsideration:

26 **FOURTH AMENDMENT**

1 **a. Initial Attempt to Remove Plaintiff from the Van**

2 Lines 17-19 pg. 16 court doc 155, The Court agrees with Plaintiff, and with the state
3 court, that by circumventing his right to refuse a consensual encounter, the ruse intruded upon
4 Plaintiff's reasonable expectation of privacy and violated his Fourth Amendment rights.

5 Lines 9-16 pg. 18 court doc 155, Because the police had not lawfully detained Plaintiff's
6 van prior to the attempted extraction, the Court does not agree that *Mimms* and *Wilson* would
7 justify removal of Plaintiff by ruse or by force. Nor does Plaintiff's refusal to speak to the police,
8 without more, furnish reasonable grounds to detain Plaintiff and remove him from his car. *See*
9 *Florida v. Royer*, 460 U.S. at 498. Nonetheless, the Court agrees that the "**weighty interest in**
10 **officer safety**" during vehicle stops, the lesser protection accorded to readily mobile vehicles,
11 and the unsettled scope of case law on unlawful ruses, taken together, is sufficient to demonstrate
12 that the law was not clearly established at the time of Plaintiff's seizure.

13 Lines 26-28 pg. 18 and Lines 1- 5 of pg. 19 of court doc 155, the Court agrees with the
14 determination of the state criminal court that by circumventing Plaintiff's right to refuse a
15 consensual encounter, the ruse employed by Defendant Temores intruded upon Plaintiff's
16 reasonable expectation of privacy and violated his Fourth Amendment rights. **However, because**
17 **the law regarding the use of ruses during vehicle contacts was not clearly established at the**
18 **time of the March 15, 2008 incident**, the Court finds that Defendants are entitled to qualified
19 immunity on this claim. For this reason, the Court GRANTS Defendants' motion for summary
20 adjudication as to this specific issue.

21 The court has concluded that Plaintiff's detainment was unlawful, yet because of officer
22 safety and the unsettled case law on using ruses when officer safety is an issue during vehicle
23 stops, the court has overturned Judge Barrett's decision.

24 Here the court has established that the ruse used applies to officer safety while Plaintiff is
25 still inside the vehicle prior to Plaintiff exiting the vehicle for the first time.

26 Plaintiff provides the following dialog between the court and the Defendants' attorney
27 obtained from the April 21, 2011 hearing transcript Court Doc. 150.

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BEGINNING OF TRANSCRIPT COURT DOC. 150: (Parenthesis Plaintiff's)

The Court: "What's the basis for Officer Wagner to open the van door?"

Page 47 Lines 19-20

Sherman: "The door was slightly ajar It was – it was – she didn't open the door I mean, I understand when you call it opening. The door is slightly cracked. There's no response going on." Page 47 Lines 21-25

(Lines 10-11 of pg. 33 of Court Doc. 125, Exh. 2, the police report, Def. Wagner states that she looked inside the van after opening the door contradicting Defs' statement).

Sherman: "I think she grabs the door to see what's going on, and then when it is pulled shut and locked from inside, that of course causes different concerns as well because now we have a situation when they have been (calling) out to anyone, any individual, and there's been no response or (reply) in any way. All of a sudden, there is an action to – Or there's a reaction to an action." Page 48 Lines 1-9

The Court: "All right. But then doesn't that mean there's no consent, stop talking to me?" Page 48 Lines 10-11

The Court: "I mean, what's the suspicion?" Page 48 Line 14

The Court: "At what point is there reasonable Suspicion? It starts off with a consensual encounter." Page 48 Lines 17-19

Sherman: Yes. Page 48 Line 20

The Court: "Okay she, (Def. Wangner), opens the door because there's no response." Page 48 Lines 21-22

Sherman: "Right and the door closes." Page 48 Lines 23-24

The Court: "The door closes." Page 48 Line 25

Sherman: "The next thing, Mr. Ciampi exits from the van." Page 49 Lines 1-2

The Court: "Okay now that's only after they tell him that they're getting a tow-truck to remove his car for violating a city ordinance which doesn't exist; right?" Page 49 Lines 3-6

1 **Sherman: Yes.** Page 49 Line 7

2 **Sherman:** (Defendants' state that there was justification to detain the occupants of the van
3 because the van was registered to a female and the officers expected to hear a females voice
4 when they inquired of the occupants, **but were instead confronted with a males voice**).

5 Pages 51-52

6 **The Court: "Right, but I would bet you that if you had gone to a judge and tried to get a**
7 **warrant, at that point you couldn't."** Page 54 Lines 9-11

8 (Based upon Def. Temores' MAV recording, Plaintiff Ciampi did not exit the vehicle for 100
9 seconds after Def. Wagner opened the door contradicting Defs.' statement at pg. 49 lines 3-6 of
10 Court Doc. 150).

11 **END TRANSCRIPT**

12 In the court's order the court has concluded that the unsettled law surrounding officer
13 safety during vehicle stops provides officers the right to detain the occupants by stating that they
14 are violating a non-existent ordinance in order to ensure officer safety. During the April 21,
15 2010 hearing the court concluded based upon the circumstances after Plaintiff had shut the door
16 and prior to exiting the first time that the Defendants could not have obtained a warrant and the
17 act of shutting the door means no consent.

18 Officer safety implies that criminal activity, (the threat of assault), is afoot which would
19 give rise to reasonable suspicion, however the court found, (just like the court found during the
20 Preliminary Examination), "Here, Plaintiff was suspected of no criminal activity and therefore
21 had a right to remain in his van and refuse a consensual contact with Defendants Temores and
22 Wagner. See Florida v. Royer, 460 U.S. 491, 497-98 (1983)," Page 16 lines 11-13 of Court Doc.
23 155, **the court's decision.**

24 **BEGINNING TRANSCRIPT OF TEMORES' TESTIMONY ON 12/04/08:**

25 **Lines 22-28 of pg. 78 and lines 1-2 of pg. 79 the Pre-Trial Trans., Exh 5, pgs. 131 & 132 of**
26 **Court Doc. 125.**

27 Beauvais: Why didn't you leave the scene when he told you that he didn't want to
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talk to you?

Temores: I wanted to find out who he was.

Beauvais: Did you ask him who he was?

Temores: He didn't want to talk to me.

Beauvais: Why did you want to find out who he was?

Temores: To make sure he wasn't some sort of 290 registrant or some pervert, beause the call was initially that he was looking at two females. <

Lines 23-28 of pg. 79 of the Pre-Trial Trans., Exh 5, pg. 132 of Court Doc. 125

Beauvais: Mr. Ciampi didn't consent to furnishing you with any information, did he?

Temores: He wanted us to leave.

Beauvais: Right. So my question to you is is it your understanding from your training that you cannot demand and get information about a person's identity who does not want to give it to you when that person is not suspected of any crime?

Temores: **That would be correct.**

Beauvais: Thank you. Now, it was for that reason that he had refused to interact with you that you called the tow truck; right?

Temores: I wanted him to exit the van, come out and talk to us.

Beauvais: Right. And what were you going to say to him once he got out?

Temores: Find out what he was doing.

END TRANSCRIPT

Def Temores testified during the Preliminary Examination that he wanted to find out who Plt. was and what he was doing because the call was about a man watching females not because of officer safety.

Now Def. Temores is claiming he needed to find out who Plt. was due to officer safety. Def. Temores is contradicting his testimony given under penalty of perjury.

1 How does the act of unlawfully detaining Plaintiff ensure officer safety? If the officers'
2 safety were in jeopardy, if it truly was an issue, then Defs. would not have remained outside the
3 vehicle in a vulnerable position. If the officers' safety were in jeopardy they would have drew
4 their weapons as the two Palo Alto Police Officers did on September 11, 2204, Exh. 549-2 and
5 550-1A and 1B of Court Doc. 133. Defs. did not feel that their safety was an issue prior to
6 Plaintiff exiting the vehicle.

7 (What happens next? The occupant comes out the vehicle, then what? Has officer safety
8 been relieved by the occupant exiting the vehicle. Now what, the occupant isn't violating any
9 laws. The officers order the occupant to produce identification and occupant refuses. What
10 happens now? Do the officers go away?)

11 "Ciampi refused to identify himself and continued to be completely uncooperative and
12 used angry words. Officer Burger then arrived at the scene." Def. Wagner lines 28-29 of of pg.
13 33 of Court Doc. 125, Exh. 2, the police report.

14 "I asked for identification again, which Ciampi said he did not have to give, since he was
15 doing nothing wrong." Def. Wagner lines 36-37 of pg. 33 of Court Doc. 125, Exh. 2, the police
16 report.

17 So after telling the officers to cite the fictional ordinance or leave, they decide to
18 unlawfully arrest Plaintiff for being under the influence of drugs to which there was no probable
19 cause, nor reasonable suspicion to detain.

20 Defs. change it from an arrest to a detainment and accomplish this by editing the audio
21 recordings to which Plt. has proven has been tampered with.

22 **CONCLUSION:** The court has concluded that Defs. were entitled to detain Plt. by stating to
23 Plt. the Plt. was violating a non-existent ordinance and to use the subsequent ruse of towing Plt.'
24 vehicle for violating the fictional ordinance to ensure "officer safety." The issue of safety in
25 determining this specific issue occurs after Plt. shuts the door to his vehicle and prior to Plt.
26 exiting the vehicle for the first time, line 14 of pg. 15 through line 4 of page 19 of of Court Doc.
27 155. Def. Temores testified on Dec 4, 2008 that he needed to extract Plt. from the vehicle
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1 because the call was about a man watching two females, not because of officer safety as
 2 inaccurately determined by the court. Additionally Defs. have not presented any evidence that
 3 they felt threatened in anyway prior to Plt. exiting the vehicle. The court concluded during the
 4 April 21, 2011 hearing that Defs. could not have obtained a warrant after Plt. shut the door and
 5 refused to exit the vehicle.

6 Having laid the foundation Plaintiff's argument is this: By not incorporating Def.
 7 Temores' testimony and admission that the ruse used to force Plt. from the vehicle was not for
 8 "officer safety," the court inaccurately determined and applied the facts, resulting in an incorrect
 9 finding and order. Therefore Plt. requests that the court grant Plt. Leave to file Motion for
 10 Reconsideration in order for the court to reverse its order regarding this specific issue pursuant to
 11 Civil L.R. 7-9(b)(3).

12
 13 **b. Seizure of Plaintiff upon Retreat Into Van**

14 (Reasonable Suspicion of Illegal Drug Use)

15 "The Court finds that Defendants were faced with an individual who had appeared
 16 unusually agitated since the beginning of the encounter." Page 21 lines 4-5 of Court Doc.
 17 155, **the court's decision**

18 **The Court:** "Okay now that's only after they tell him that they're getting a tow-truck to
 19 remove his car for violating a city ordinance which doesn't exist; right?:

20 Page 49 Lines 3-6 Court Doc. 150

21 **Sherman:** "Yes." Page 49 Line 7 Court Doc. 150

22 (The Court finds...an individual), "...who exhibited tensed and twitching muscles that could be
 23 consistent with use of a controlled substance." Page 21 lines 5-6 of Court Doc. 155, **the court's**
 24 **decision**

25 **The Court:** And when you watch the video, Mr. Ciampi seems very articulate and
 26 coherent. He's trying to Call his lawyer. Page 37 Lines 23-25 Court Doc. 150

1 **The Court:** He (Ciampi) seems awfully coherent and articulate I frankly don't think the
2 officers' Testimony about the pupils is very credible they're both kind of all over the map on
3 that. Page 39 Lines 2-6 Court Doc. 150

4 "...And (The Court finds...an individual), who had "fresh and old" sores on his arms
5 that appeared similar to sores Defendants had observed on individuals suspected of illegal drug
6 use." Page 21 lines 4-8 of Court Doc. 155, **the court's decision**

7 "I could see that he had what I recognized as pop-marks all over his arm. Pop-marks are
8 commonly associated with Herion addicts who inject Herion into the skins surface because most
9 of their veins have collapsed." Def. Temores' statement, lines 1-4 of pg. 30 of Court Doc. 125,
10 Exh. 2.

11 As is clearly seen in the photo taken by the Palo Alto Police of Plts' arm on the day of the
12 incident, March 15, 2008, Exhs. 514-9 &10 of Court Doc. 133-4, as well as what is seen in Def.
13 Burger's taser video, Plt. did not have any sores on the inside of his arms as asserted to by Def.
14 Temores.

15 Defs. did not produce any evidence that the sores on Plts. Arms are similar to that of
16 illegal drug use investigated previously, so the court must take their word for it.

17 **The Court:** "He (Ciampi) seems awfully coherent and articulate I frankly don't think
18 the officers' Testimony about the pupils is very credible they're both kind of all over the map
19 on that." Page 39 Lines 2-6 Court Doc. 150

20 One day after the court issued its ruling on the Mot. for Summ. Judg., Defs. went on
21 record stating that pock-marks are caused by acne and chicken pocks not drug use contradicting
22 all of the previous assertions that pock-marks are caused by drug use lines 24-26 of pg. 10 of
23 Court Dco. 156. This is new information obtained after the court's ruling pursuant to Civil L.R.
24 7-9(b)(2).

25 **Sherman:** "As soon as the word "550" is uttered by Burger, Mr. Ciampi retreats into the
26 van." Page 49 Lines 22-23 Court Doc. 150

1 (Defendants' assertion that Plt. retreated as soon as he heard the word "550" is
 2 contradicted by Def. Burger's edited MAV recording in which Plaintiff is heard twice asking,
 3 "550 for what," "550 for what." Plaintiff does not introduce this evidence as an expert but solely
 4 as a witness in compliance with FRE 701)

5 **Sherman:** "But with regard to the time period of observations of the 11550, that was a
 6 short period of time in which there is bound to be discrepancies, or allowed to be discrepancies
 7 of the officers' observations." Page 41 Lines 22-25 Page 42 Line 1 of Court Doc. 150

8 **Sherman:** "Officer Temores encountered a hostile individual and had a split second to
 9 determine whether there was an additional reason for Plaintiff to be exhibiting that type of
 10 hostility." Page 11 Lines 23-25 Court Doc. 156.

11 Defs. admit to not having enough time to know what the facts are, so they make them up.
 12 Just as the pupil size is not credible, nor are the sores on the arms, nor are the tense and twitching
 13 muscles, nor is the act of retreating into the van upon hearing "550." Defs. are essentially
 14 making up whatever they can to justify a detainment.

15 "Accordingly, the Court GRANTS Defendants' motion for summary adjudication on this
 16 claim, on grounds that Defendants had reasonable suspicion to justify a brief, investigatory
 17 detention of Plaintiff." Page 21 Lines 24-25 Court Doc. 155 **the court's decision.**

18 **The Court:** "There does appear to be a factual dispute As to whether the officers had
 19 reasonable suspicion that Mr. Ciampi was under the influence of a controlled substance."
 20 Page 38 Lines 1-4 Court Doc. 150

21 **CONCLUSION:**

22 Place a long sleeve shirt on Plt. Ciampi covering up the sores on his skin and Defs. do not
 23 have one articulable fact to detain Plt. Ciampi. The only articulable fact that Defs. have are the
 24 sores on Plts' skin which defendants have not produced any evidence indicating that they are
 25 indicative of drug use. When factoring in Def. Temores' false statement that Plts' veins had
 26 collapsed due to drug use in conjunction with the false statements that Plt. was trembling, tensing
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1 and twitching his muscles, the statements of contradictory pupil size and the fact that Plts'
2 umbrage was due to the fact of being provoked there is no basis to detain Plaintiff.

3 Having laid down the foundation, Plaintiff's argument is this:

4 The court found Plt. was unusually agitated from the beginning of the encounter,
5 however the court also found that this agitation did not occur until after Defs. stated they were
6 going to tow Plts.' vehicle for violating a non-existent ordinance.

7 The court found that Plt. was tensing and twitching his muscles, yet Defs' own video
8 demonstrates the opposite as such the court rendered an inaccurate basis to one of its articulable
9 facts.

10 The court found that Plt. had sores on his arms that are similar to those of illegal drug
11 use. The court has no evidence that the sores are similar to illegal drug use and in fact Plt has
12 provided evidence which demonstrates that Plts' sores are not similar to illegal drug use. Thus,
13 the court rendered an inaccurate basis to one of its articulable facts.

14 The fact that the court's finding during the April 21, 2011 hearing are in conflict with the
15 court's findings in the court's order, Court doc. 155, demonstrates that there is a genuine dispute
16 to the material facts regarding Defs.' detention of Plt. based upon Plt. being under the influence
17 of illegal drugs as such there is sufficient evidence for a reasonable trier of fact to decide in favor
18 of Plt. Therefore Plt. requests that the court grant Plt. Leave to file Motion for Reconsideration in
19 order for the court to reverse its order regarding this specific issue pursuant to Civil L.R. 7-
20 9(b)(2)(3).

21 **FOURTEENTH AMENDMENT**

22 Plaintiff argued that his Fourteenth Amendment Rights were violated, Brady v.
23 Maryland, 373 U.S. 83 (1963) Pp 8, 866-88, "Suppression by the prosecution of evidence
24 favorable to an accused who has requested it violates due process where the evidence is material
25 either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution,"
26 Pp. 8 866-88, lines 7-10 of pg. 23 of Court Doc. 132. By Defendants submitting false
27 statements of fact into evidence, falsifying audio/video recordings, falsifying taser gun activation
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1 data and intentionally destroying evidence Defs. denied Plt. favorable evidence which resulted in
2 damages giving rise to a a 42 U.S.C. 1983 claim

3 Plt. has a motion for sanctions pending before the court with a hearing date of June 30,
4 2011. Defs. and their attorney filed their response, Court Doc. 156 on May 12, 2011 one day
5 after the court issued its order on May 11, 2011. The emergence of new material facts within
6 Defs. response which prove Plts. allegations of tampering in order to deny Plt. his Fourteenth
7 Amendment Rights. Therefore, Plaintiff requests that the court **grant Plt. Leave to file a**
8 **Motion for Reconsider** its decision granting Defs. Mot. for Summ. Judg. regarding Plts.' action
9 under 42 U.S.C. 1983, in light of these new material facts pursuant to Civil L.R. 7-9(b)(2).

10 Specifically, Defs. submitted falsified taser gun weapon summary logs, line 25 of pg. 8
11 through line 28 of pg. 9 of Court Doc. 156, Steven Sherman's Declaration and Exh. 1 of Court
12 Doc. 156. Plt. verifies that these logs have been falsified, line 6 of pg. 6 through line 26 of pg.
13 11 of Court Doc. 160 and Exhibits 621 through 627, 630 and 631 of Court Doc. 160. The
14 evidence not only points to Steven Sherman submitting falsified reports but also Defs. Burns and
15 Powers. Given that Defs. expert from Taser International, Andrew Hinz, has submitted his
16 reports after viewing and inspecting the data, the taser guns and the taser cameras stating in his
17 reports and declarations, (Court Docs. 108-1, 108-2, Exh. 13 of Court Doc. 125 and Court Doc.
18 129-1), that nothing is wrong infers strong evidence that Mr. Hinz has knowledge of the
19 tampering and has concealed this fact from the court.

20 One day after the court issued its ruling on taser gun activation data.

21 The court disregarded Plts' Fourteenth Amendment violation concurring with Defs.
22 objections that Plt. is not an expert and therefore Plt. cannot provide his opinions, line 2 of Court
23 Doc. 155.

24 Lines 6 through 13 of Court Doc. 155 the Court states:

25 "Pursuant to Federal Rule of Evidence 701, a lay witness may testify only as to those opinions or
26 inferences which are "(a) rationally based on the perception of the witness, (b) helpful to a clear
27 understanding of the witness' testimony or the determination of a fact in issue, and (c) not based
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1 on scientific, technical, or other specialized knowledge within the scope of Rule 702.” Fed. R.
2 Evid. 701. Accordingly, lay witness opinions are admissible only to the extent that they are
3 “based upon . . . direct perception of the event, are not speculative, and are helpful to the
4 determination” of factual issues before the jury. United States v. Freeman, 498 F.3d 893, 905 (9th
5 Cir. 2007).”

6 **ONE:**

7 The court improperly included several violations of Plts. 14 Amendment Rights into to the
8 courts decision that are not subject to the court’s reasoning to deny Plts’ 14th Amendment Right
9 claim.

- 10 a) Evidence of the destruction of Def. Temores’ taser probes is a violation of Plts.’ 14th
11 Amendment Rights.
12 b) Evidence of denying Plt. the toxicology report is a violation of Plts.’ 14th Amendment
13 Rights.
14 c) Evidence of making false statements on the police report is a violation of Plts’ 14th
15 Amendment Rights.
16 d) Evidence of making false statements during the Preliminary Examination violates Plts.’
17 14th Amendment Rights.
18 e) Evidence of making false statements in the Use of Force report is a violation of Plts. 14th
19 Amendment Right.
20 f) Evidence of falsifying data on the taser gun weapon summary logs.

21 For these reasons Plt. requests the court grant Leave to file Motion for Reconsideration in
22 order for the court to reverse its order regarding this specific issue pursuant to Civil L.R. 7-
23 9(b)(3).

24 **TWO:**

25 FRE 801 (c) states: "Hearsay" is a statement, other than one made by the declarant while testifying at the trial or
26 hearing, offered in evidence to prove the truth of the matter asserted.
27
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1 Hearsay is not admissible, FRE 802, with the exception regarding this instance that FRE
2 803 (8), "Public records and reports," provides. However this rule does not apply if the sources
3 of information or other circumstances indicate a lack of trustworthiness.

4 Defendants refuse to identify the dispatcher who entered the information on the CAD
5 report. Plt. proved that Def. Burger's knowledge or not of the information provided on the CAD
6 was not relevant to the incident, Def. Wagner had no knowledge of the CAD report and that Def.
7 Temores made false statements during the Preliminary Examination regarding the information of
8 the call for service, line 10 of pg. 8 through line 23 of pg. 10 of Court Doc. 132. Additionally,
9 Plt. has pointed out numerous instances of tampering and destruction of evidence casting doubt
10 onto

11 If the CAD report were legitimate, Defs. would have identified the author of the
12 statement, "*Makes his wife and young daughters uncomfortable by they way he watches them,*"
13 contained within the CAD report.

14 The pivotal question that Defs. are not answering is why didn't the Defs. state to Plaintiff why they wanted
15 to talk to Plaintiff, (that they got a call about him watching a woman and her daughter?). Had the Defs. stated to Plt.
16 why they claimed they were contacting Plt., Plt would have cooperated with the Defs. legitimate investigation. The
17 reason why the Defs. never state to Plaintiff why they claim they wanted to talk to Plt. is because they had no
18 information about the call for service when contacting Plt. Ciampi.

19 According to the court's decision, (pgs. 9-12 of Court Doc. 155), Defendants are
20 permitted to enter into evidence a CAD report that has no chain of custody log, no authentication
21 of an author of either the print-out or its contents, (lines 11-12 of pg. 13 of Court Doc. 155), yet
22 Plt. is not permitted to enter into evidence a letter from the City's Asst. Attorney, (Exh. 503-4,
23 pg. 4 of Court Doc. 133-2), containing the City's emblem and the attorney's signature,
24 "DONALD A. LARKIN," which verifies that the City was violating Cal. PC 1054.1(c)(e)(f) and
25 thus violated Plts.' 14th Amend. Right to due process through Brady v. Maryland.

26 By way of example, the court had excluded all of Plts' similar evidence based upon the
27 above reasoning which demonstrates a contradicting application of the law and rules.
28

1 For these reasons the court should grant Plts. request for Leave to file Motion for
2 Reconsideration in order for the court to reverse its order regarding this specific issue pursuant to
3 Civil L.R. 7-9(b)(3).

4 **THREE:**

5 According to http://teacher.scholastic.com/activities/athens_games/tguide/studylist.pdf:

6 "Photo" mean light in greek.

7 "Graph" means to - to write, record, or draw in Greek

8 According to, <http://www.allwords.com/word-photography.html>, photographs are:
9 From the Greek words phos ("light"), and graphis ("stylus", "paintbrush") or graphí, together
10 meaning "drawing with light" or "representation by means of lines", "drawing".

11 "Photographs" include still photographs, X-ray films, video tapes, and motion pictures."
12 FRE 1001(2)

13 Defendants entered into evidence four audio/video recordings, Exhs. 12, 14 and 15 of
14 Court Doc. 125. Defs. do not need an expert to enter the recordings into evidence and or for the
15 court to accept the recordings as evidence. At 30 frames a second according to the
16 manufacture's specifications, Defs. entered appx. 72,000 photographs in Exh. 14 alone.

17 The photographs entered into evidence by Defs. captured physical evidence of the March
18 15, 2008 incident. Defs. are allowed to present this physical evidence to the court and the trier of
19 fact without the necessity of an expert. The court and trier of facts are to draw conclusions of the
20 incident based upon the physical evidence captured within the photographs submitted to the
21 court by Defs. The court has accepted Defs. recordings as evidence.

22 Plaintiff has submitted the exact same photographs as Defs. have as Exhs. 512 and 513
23 of Doc. 133 however the court has refused to accept Plts.' Photographs as evidence, Exhs. 640-2
24 and 640-3. The courts decision denying Plts' evidence is in contradiction to the courts
25 acceptance of the Defs.' evidence conveys a bias for Defs. and a prejudice toward Plt. and
26 having that affect.

1 The whole purpose of submitting photographs into evidence is to convey an opinion, or
2 inference, (or conclusion), of the physical evidence obtained on the photographs.

3 “Except as provided in subdivision (b), testimony in the form of an opinion or inference
4 otherwise admissible is not objectionable because it embraces an ultimate issue to be decided by
5 the trier of fact.” Fed. R. Evid. 704(a)

6 The above rule is put into practice by the Defendants and the Court:

7 “Plaintiff’s exhibit series 600-603 deal with an allegation of evidence tampering. Exhibits
8 600 through 602 are the precursors to Exhibit 603 which depicts two out-of-focus photographs.

9 **In looking at the photographs**, it is very evident from the **light reflected off** the piece of metal
10 located above the label that **the camera angle was different when each photograph was**
11 **taken. The photograph labeled October 28, 2010, indeed shows a label**, however, the
12 photograph also seems to show camera flash reflecting off of the label and **the light from that**
13 **flash hitting reflective metal at the far right**. This would tend to indicate that the picture was
14 taken from an angle. In second photograph dated December 17, 2010, **it appears** the photo was
15 taken more head-on and as such, light is reflected fully across the top of the reflective metal
16 rather than only on the right. This also yields a clearer copy of the label’s text.” Lines 1-13 of
17 pg. 3 of Court Doc. 156.

18 “Using Plaintiff’s date order and in viewing Exhibit 603-2, **it would appear** that **the**
19 **photo identified as being taken December 17, 2010, does indeed have a lighter serial**
20 **number** than the photo above it taken October 28, 2010. As such, my statement was a
21 truthful observation - ink may be lifting off the serial number..” Lines 25-28 of Court Doc. 156.

22 The photograph identified by Defs. from the December 17, 2010 inspection is not a still
23 photograph but a still-frame taken from a video verifying that still-frames and photographs are
24 the same, lines 6-13 of pg. 3 and Exh. 631 of Court Doc. 160.

25 Defs. not only submit their opinions of physical evidence as captured onto photographs into
26 evidence but contradict their objections submitted to the court prior to the court issuing its order
27 of Plt. doing the same.
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Defendants also enter into evidence their observation of an audio recording:

Sherman: *“You can actually even hear it being said On the audio because now it picks up because Burger is now arriving, and whether there are – whether one officer believes the officer’s (sic) eyes are Dilated or one officer believes that the pupils are accentuated, and that differs with what the Paramedics view,…”* Page 41 Lines 3-9 of Court Doc. 150.

The court makes its own observations of the physical evidence contained on the videos:

The Court: *“And when you watch the video, Mr. Ciampi seems very articulate and coherent. He’s trying to Call his lawyer.”* Page 37 Lines 23-25 of Court Doc. 150

The Court: *“There does appear to be a factual dispute As to whether the officers had reasonable suspicion that Mr. Ciampi was under the influence of a controlled substance.”* Page 38 Lines 1-4 of Court Doc. 150

The Court: *“He (Ciampi) seems awfully coherent and articulate I frankly don’t think the officers’ Testimony about the pupils is very credible they’re both kind of all over the map on that.”* Page 39 Lines 2-6 of Court Doc. 150

Plaintiff could not find it, but Plt. believes that the court also commented during the April 21, 2011 hearing that the court could not see any sores on Plt’s arms as depicted from the taser videos.

The court also made the observation of the physical evidence from the vidoes, *“Defendant Burger then pulled Plaintiff from the van and moved him against a residential fence.”*³ *“....The video provided by Defendants also appears to show Defendant Burger pulling Plaintiff from the van and forcing him back against the fence. See Sherman Decl. Ex. 14 at 10:10:20-27”* Lines 20-21 of pg. 5 of Court Doc. 155.

Additionally, Plts’ objections of Plt. entering photographs of the incident taken by Defs. own cameras larger than Defs’ photographs is without merit. Defs.’ have already manipulated and skewed the perception of reality by reducing the appearance of the physical evidence contained on their photographs, Exh. 64-3. This is done on purpose so as to conceal physical

1 evidence from the court and trier of facts. Why not reduce the photographs even further to 2
2 centimeters? Exhibit 640-3.
3 Should Defs object to Plt. submitting photographs of the incident that more accurately convey
4 the actual dimensions of the physical evidence, Plt. will argue the same point requiring that all
5 photographs and videos be projected to the trier of facts at the exact same dimensions of the
6 actual scene. Instead of a 2 inch tall Plt. Ciampi, Defs. will have to project Plt. Ciampi at 5 feet-
7 8 inches.

8 As confirmed by the United States Supreme Court in MELENDEZ-DIAZ v.
9 MASSACHUSETTS certiorari to the appeals court of Massachusetts,
10 Argued November 10, 2008--Decided June 25, No. 07-591. 2009, "In all criminal
11 prosecutions the accused shall enjoy the right....to be confronted with the witnesses against
12 him," Exhibits 641-2 through 641-4.

13 The videos, the photographs entered into evidence by Defs. are the same photographs
14 used to prosecute Plt. during plts.' criminal prosecution. These photographs are a part of the
15 testimony of Defs. in this civil case and were apart of their testimony during the criminal case.

16 The evidence that Plt. has compiled for his civil case is the same evidence that Plt. would
17 have used to confront his accusers, the Defs., testimony in his criminal case.

18 If this court had adjudicated Plts.' criminal case, this court would have denied Plt. the
19 right to confront his accusers' testimony simply because Plt. does not have the financial
20 resources required to retain experts that would present the same evidence that Plt. is presenting in
21 this case. Based upon the rational for denying Plt. the right to submit evidence in this pending
22 civil case, if this court had adjudicated Plts.' Criminal case this court would have allowed Defs.
23 to use falsified videos in order to incriminate Plt. of a crime without being confronted by Plt.

24 Though the Sixth Amendment does not apply to a civil case, the legal reasoning used by
25 the court to deny Plt. the right to submit evidence would be just as applicable to a criminal case,
26 that being Plt. is not an expert, revealing that the court's decision is an incorrect determination
27 and in practicality violates the Sixth Amendment.
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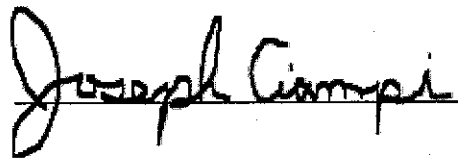
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According to the court's logic, Defendants are allowed to enter into evidence to support Defs' testimony taser gun activation data, yet Plt. is not allowed to confront that testimony in violation of the 6th Amendment.

Since Plaintiff is not offering into evidence scientific, technical or other specialized knowledge, Plaintiff's evidence should be acceptable to the court. Defendants have presented expert testimony which is great, however that does not negate Plaintiff's right to submit his own evidence within his own rationally based perception and expose the flawed results of the Defs. and their experts.

Plaintiff's argument is this: The court is allowing Defs. to submit evidence while denying Plt. to submit the exact same evidence with a different conclusion therefore for this reason and all the above reasons cited Plt. requests Leave to file Motion for Reconsideration in order for the court to reverse its order regarding this specific issue pursuant to Civil L.R. 7-9(b)(2)(3).

Plaintiff



Dated: May 23, 2011

Plaintiff JOSEPH CIAMPI in pro se

EXHIBIT 640

ACCORDING TO THE COURT'S DECISION AND ORDER

Plaintiff cannot identify the shoe behind Plt. Ciampi as identified by Def. Temores' taser video, Def. Temores' testimony for the tier of facts.

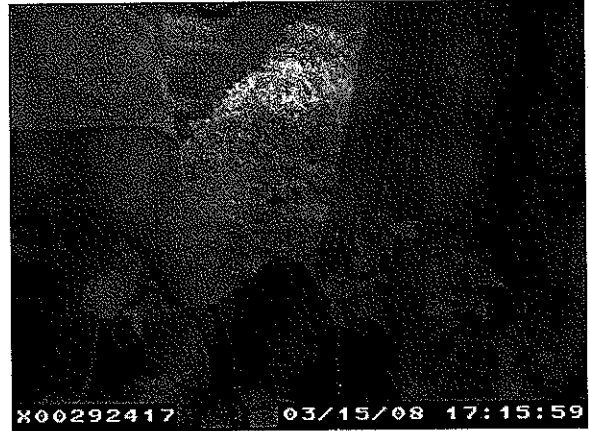


Plaintiff cannot identify that the shoe in Def. Temores' MAV recording, Def. Temores' testimony, is never seen behind Plt. Ciampi during the incident to the trier of facts.



ACCORDING TO THE COURT'S DECISION AND ORDER

The Defendants are allowed to show the photograph on the left to the trier of facts for 1/10 of second, yet Plaintiff is not allowed to show the identical photograph on the right for 20 seconds.



The Defendants are allowed to show the photograph on the left to the trier of facts for 1/30 of second, yet Plaintiff is not allowed to show the identical photograph on the right for 20 seconds.



Plaintiff is 5'8" tall, Defs. are allowed to reduce his physical appearance to 2 inches when presenting their evidence to the trier of facts, yet Plt. is not permitted to enter into evidence a photograph depicting a greater degree and more accurate account of the actual size of Plt.



EXHIBIT 641

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Jump to: [Opinion] [Concurrence] [Dissent]

MELLENDEZ-DIAZ v. MASSACHUSETTS

certiorari to the appeals court of massachusetts

No. 07-591. Argued November 10, 2008--Decided June 25, 2009

At petitioner's state-court drug trial, the prosecution introduced certificates of state laboratory analysts stating that material seized by police and connected to petitioner was cocaine of a certain quantity. As required by Massachusetts law, the certificates were sworn to before a notary public and were submitted as prima facie evidence of what they asserted. Petitioner objected, asserting that *Crawford v. Washington*, 541 U. S. 36, required the analysts to testify in person. The trial court disagreed, the certificates were admitted, and petitioner was convicted. The Massachusetts Appeals Court affirmed, rejecting petitioner's claim that the certificates' admission violated the Sixth Amendment.

Held: The admission of the certificates violated petitioner's Sixth Amendment right to confront the witnesses against him. Pp. 3-23.

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II

The Sixth Amendment to the United States Constitution, made applicable to the States via the Fourteenth Amendment, *Pointer v. Texas*, 380 U. S. 400, 403 (1965), provides that "[i]n all criminal prosecutions, the accused shall enjoy the right ... to be confronted with the witnesses against him." In *Crawford*, after reviewing the Clause's historical underpinnings, we held that it guarantees a defendant's right to confront those "who bear testimony" against him. 541 U. S., at 51. A witness's testimony against a defendant is thus inadmissible unless the witness appears at trial or, if the witness is unavailable, the defendant had a prior opportunity for cross-examination. *Id.*, at 54.

Our opinion described the class of testimonial statements covered by the Confrontation Clause as follows:

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Confrontation is designed to weed out not only the fraudulent analyst, but the incompetent one as well. Serious deficiencies have been found in the forensic evidence used in criminal trials. One commentator asserts that "[t]he legal community now concedes, with varying degrees of urgency, that our system produces erroneous convictions based on discredited forensics." Metzger, *Cheating the Constitution*, 59 Vand. L. Rev. 475, 491 (2006). One study of cases in which exonerating evidence resulted in the overturning of criminal convictions concluded that invalid forensic testimony contributed to the convictions in 60% of the cases. Garrett & Neufeld, *Invalid Forensic Science Testimony and Wrongful Convictions*, 95 Va. L. Rev. 1, 14 (2009). And the National Academy Report concluded:

"The forensic science system, encompassing both research and practice, has serious problems that can only be addressed by a national commitment to overhaul the current structure that supports the forensic science community in this country." National Academy Report P-1 (emphasis in original).⁶

Like expert witnesses generally, an analyst's lack of proper training or deficiency in judgment may be disclosed in cross-examination.

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computerized matching systems, "forensic analysts in crime laboratories typically do not utilize this feature of the instrument, but rely exclusively on their subjective judgment").

The same is true of many of the other types of forensic evidence commonly used in criminal prosecutions. "[T]here is wide variability across forensic science disciplines with regard to techniques, methodologies, reliability, types and numbers of potential errors, research, general acceptability, and published material." National Academy Report S-5. See also *id.*, at 5-9, 5-12, 5-17, 5-21 (discussing problems of subjectivity, bias, and unreliability of common forensic tests such as latent fingerprint analysis, pattern/impression analysis, and toolmark and firearms analysis). Contrary to respondent's and the dissent's suggestion, there is little reason to believe that confrontation will be useless in testing analysts' honesty, proficiency, and methodology—the features that are commonly the focus in the cross-examination of experts.

D

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Amendment.

E

Respondent asserts that we should find no Confrontation Clause violation in this case because petitioner had the ability to subpoena the analysts. But that power--whether pursuant to state law or the Compulsory Process Clause--is no substitute for the right of confrontation. Unlike the Confrontation Clause, those provisions are of no use to the defendant when the witness is unavailable or simply refuses to appear. See, e.g., Davis, 547 U. S., at 820 ("[The witness] was subpoenaed, but she did not appear at ... trial"). Converting the prosecution's duty under the Confrontation Clause into the defendant's privilege under state law or the Compulsory Process Clause shifts the consequences of adverse-witness no-shows from the State to the accused. More fundamentally, the Confrontation Clause imposes a burden on the prosecution to present its witnesses, not on the defendant to bring those adverse witnesses into court. Its value to the defendant is not replaced by a system in which the prosecution presents its evidence via ex parte affidavits and waits for the defendant to subpoena the affiants if he chooses.

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* * *

This case involves little more than the application of our holding in Crawford v. Washington, 541 U. S. 36. The Sixth Amendment does not permit the prosecution to prove its case via ex parte out-of-court affidavits, and the admission of such evidence against Melendez-Diaz was error.¹⁴ We therefore reverse the judgment of the Appeals Court of Massachusetts and remand the case for further proceedings not inconsistent with this opinion.

It is so ordered.

LUIS E. MELENDEZ-DIAZ, PETITIONER v.
 MASSACHUSETTS

on writ of certiorari to the appeals court of
 massachusetts

[June 25, 2009]

Justice Thomas, concurring.

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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**
) **FOR LEAVE TO FILE**
) **MOTION FOR**
) **RECONSIDERATION**
) **RE: Court Doc. 155**
) **ORDER GRANTING IN PART**
) **AND**
) **DENYING IN PART**
) **DEFENDANTS' MOTION FOR**
) **SUMMARY JUDGMENT**

In support of Plaintiff's Motion for Leave to File Motion for Reconsideration

1. I am the Plaintiff in the above-entitled action. I was born in San Francisco, California.

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2. I have personal knowledge of all facts stated in this declaration and if called to testify, I could and would testify competently thereto. All exhibits and facts attached herein are based upon the information provided to me by Defendants and other sources.

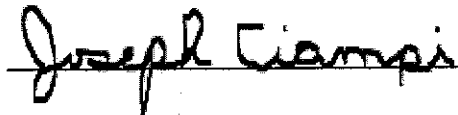
EXHIBITS

3. Attached hereto as Exhibit "640" are photographs, still-frames, from Defendant Temores' Taser and MAV videos.

4. Attached hereto as Exhibit "641" is a true and correct of a website's, "caselaw.lp.findlaw.com," documentation of the U.S Supreme Court's decision in the Melendez-Diaz v Massachusetts case.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 7th day of September at Palo Alto, California

Dated: May 23, 2011



Plaintiff Joseph Ciampi in pro se

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

6 Plaintiff Joseph Ciampi, in pro se

7
8 UNITED STATES DISTRICT COURT
9 FOR THE NORTHERN DISTRICT OF CALIFORNIA
10 (SAN JOSE DIVISION)
11

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 (PVT)

**[PROPOSED] ORDER FOR PLAINTIFF'S
MOTION FOR LEAVE TO FILE
MOTION FOR RECONSIDERATION**

Judge: The Honorable Judge Koh

26 **THE COURT FINDS** that Plaintiff has shown sufficient reasons why Plaintiff's Motion
27 for Leave to file Motion for Reconsideration should be granted.
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IT IS HEREBY ORDERED, based upon the findings, that Plaintiff's motion for Leave to file Motion for Reconsideration is GRANTED. It is so ORDERED.

****END OF ORDER****

Dated: _____

The Honorable Lucy H. Koh
Judge of the United States District Court for
The Northern District of California

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 May 23, 2011 I served **PLAINTIFF'S MOTION FOR LEAVE TO FILE MOTION FOR RECONSIDERATION RE: Court Doc. 155 ORDER GRANTING IN PART AND DENYING IN PART 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 May 23, 2011, at Palo Alto, California.



Joseph Ciampi in pro se