LINDA MILLER SAVITT, SBN 094164
PHILIP L. REZNIK, SBN 204590
BALLARD, ROSENBERG, GOLPER & SAVITT LLP
500 North Brand Boulevard
Twentieth Floor
Glendale, CA 91203-9946
Tel. 818-508-3700; Fax: 818-506-4827

LAWRENCE A. MICHAELS, SBN 107260
SARAH T. WIRTZ, SBN 217434
VERONICA T. VON GRABOW, SBN 259859
MITCHELL SILBERBERG & KNUPP LLP
11377 West Olympic Boulevard
Los Angeles, California 90064-1683
Tel: 310-312-2000; Fax: 310-312-3100

CAROL A. HUMISTON, SBN 115592
Senior Assistant City Attorney
City of Burbank
275 East Olive Avenue
Burbank, California 91510
Tel: 818-238-5707; Fax: 818-238-5724
Attorneys for Defendant CITY OF BURBANK, including the Police Department of the City of Burbank

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CITY ATTORNEY
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BALLARD ROSENBERG GOLPER & SAVITT LLP
500 N. BRAND BLVD., TWENTIETH FLOOR
GLENDALE, CA 91203

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

OMAR RODRIGUEZ; CINDY GUILLEN-GOMEZ; STEVE KARAGIOSIAN; ELFEGO RODRIGUEZ; AND JAMAL CHILDS,

Plaintiffs,

-vs-

BURBANK POLICE DEPARTMENT; CITY OF BURBANK; TIM STEHR; KERRY SCHILF; JAMIE "J.J." PUGLISI; DAN YADON; KELLY FRANK; PAT LYNCH; MIKE PARRINELLO; AARON KENDRICK; DARIN RYBURN; AND DOES 1 THROUGH 100, INCLUSIVE.

Defendants.

CASE NO: BC 414602

Date: June 8, 2011 (FSC)
Time: 9:00 a.m.
Location: 37
Judge: Hon. Joanne O'Donnell

DEFENDANT CITY OF BURBANK'S NOTICE OF MOTION AND MOTION *IN LIMINE* NO. 5 FOR AN ORDER EXCLUDING EVIDENCE of OR ARGUMENT RE: ALLEGED PROFILING OF ARMENIAN CITIZENS OR SUSPECTS; MEMORANDUM OF POINTS AND AUTHORITIES; AND SUPPORTING DECLARATION OF LINDA MILLER SAVITT

Action filed: May 28, 2009
Trial: June 8, 2011 (Plff. Karagiosian)
July 27, 2011 (Plff. O. Rodriguez)
Disc. Referee.: Hon. Diane Wayne, Ret.

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TO PLAINTIFF AND HER ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that, on June 8, 2011, at 9:00 a.m., or as soon thereafter as the matter may be heard in Department 37 of this Court, located at 111 North Hill Street, Los Angeles, California, the Honorable Joanne O'Donnell presiding, Defendant City of Burbank, ("Burbank") will and hereby does move this Court *in limine* for an order precluding Plaintiff Steve Karagiosian ("Plaintiff"), and his counsel and his witnesses in this action, from arguing, suggesting, submitting evidence, or attempting to submit evidence of alleged ethnic profiling of Armenian citizens by Burbank police officers, on grounds that such evidence is irrelevant and inflammatory, as well as lacking foundation and based on hearsay, and allowing such evidence or argument would unfairly prejudice Burbank, confuse the jury as to the issues to be decided, and result in a substantial waste of time at trial.

As set forth in the Declaration of Linda Miller Savitt, Burbank's counsel has met and conferred with Plaintiff's counsel regarding the subject matter of this Motion, pursuant to Local Rule 8.92, but Plaintiff's counsel has declined to stipulate that such evidence or argument will not be presented at trial. The Motion is based upon this Notice, the attached Memorandum of Points and Authorities, the Declaration of Linda Miller Savitt, the complete files and records in this action, and any other further oral and/or documentary evidence presented at or before the hearing on this Motion.

DATED: May 6, 2011

BALLARD ROSENBERG GOLPER & SAVITT, LLP

By: Linda Miller Savitt
LINDA MILLER SAVITT
Attorneys for Defendant
CITY OF BURBANK, including the Police Department of the City of Burbank

BALLARD ROSENBERG GOLPER & SAVITT LLP
500 N. BRAND BLVD., TWENTIETH FLOOR
GLENDALE, CA 91203

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff's only remaining claim against Burbank is for harassment under the California Fair Employment and Housing Act ("FEHA"), the remainder of his claims having been summarily adjudicated against him. Burbank moves to exclude from trial the evidence, argument and questioning, purported evidence regarding alleged profiling of Armenian citizens by BPD officers in connection with traffic citations or other law enforcement endeavors.

Such evidence and argument is irrelevant, would inflame and confuse the jury, unfairly prejudice Burbank and result in a series of time-consuming "mini-trials" which would needlessly elongate the trial on Plaintiff's claims. Moreover, it is not relevant to any element of Plaintiffs' claims, and constitutes inadmissible character evidence.

There is no allegation or evidence suggesting that alleged profiling was ever directed at Plaintiff or that the alleged ethnically-motivated conduct was perpetrated by any of the officers who purportedly harassed Plaintiff, nor is there any evidence that the alleged practice was in any other way related to Plaintiff's employment, nor is there any evidence that he was even aware of the alleged conduct.

II. EVIDENCE AND ARGUMENT SUBJECT TO THIS MOTION

In opposition to each of the summary judgment motions against Plaintiff and his co-plaintiffs Childs and E. Rodriguez some or all of the following deposition testimony from BPD Officer Bruce Slor ("Slor") was offered in opposition to the motion:

> "Q Can you describe the conduct which you believed to be profiling of Armenians?
>
> A Yes.
>
> Q Please tell me what that conduct is?
>
> * * *
>
> THE WITNESS: I recall hearing and -- that we were stopping cars or to stop cars because of lack of license plates and tinted windows on expensive high-end cars because they -- because they were actual traffic violations, but also because they were -- you know, belonged to Armenians."

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GLENDALE, CA 91203

BY MR. GRESEN:

Q Were you ever involved in any of those stops personally?

A As a backup officer?

Q In any capacity?

A I could have been.

Q But do you recall specifically as you sit here today whether you were involved in any of those stops in any capacity?

A You couldn't avoid it, yes.

Q Do you recall the specifics of any of those stops?

A No, no. Well, off the top of my head, I recall certain events. Those events or areas -- like, cars leaving the Gitana parking structure seemed to be focused on.

Q By who?

* * *

THE WITNESS: By officers, because cars leaving that -- it was a -- there are areas -- there are businesses there that clubs – that attract a lot of people, many of them Armenian. They park their cars in the structure. Leaving that structure there, they have -- they're actually traffic violations that exist, but we seemed to be stopping them coming out of that structure."

Slor Depo. 56:10-57:16.

In each case, Defendant objected to this testimony on various grounds, including lack of foundation, lack of personal knowledge and lack of relevance and/or that the testimony is inadmissible hearsay. In each case, this Court sustained the objection, ruling that the testimony is inadmissible (*see* Court's rulings re: Childs MSJ, Def. Evid. Objs. nos. 159, 161-63; E. Rodriguez MSJ, Objs. nos. 139, 141-43; Karagiosian MSJ, Objs. no. 55.)

III. INSTANCES OF ETHNIC PROFILING OF CITIZENS BY UNSPECIFIED OFFICERS, WHICH HAVE NO CONNECTION TO PLAINTIFF, HAVE NO PROBATIVE VALUE IN DETERMINING HIS CLAIM OF HOSTILE WORK ENVIRONMENT HARASSMENT.

Evidence or argument regarding alleged profiling which was neither reported to or otherwise known by anyone in BPD management is legally irrelevant. Burbank cannot be

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liable for "profiling" of citizens under the Fair Employment and Housing Act, which is concerned with the duties of ***employers*** toward their ***employees***. Moreover, under FEHA, Burbank can only be held liable for acts of harassment which were either committed by a supervisor, or where it knew or "should have known of this conduct and fail[ed] to take immediate and appropriate corrective action." Gov. Code, § 12940(j)(1). Plaintiff clearly cannot make a showing that Burbank knew or should have known about vague, unreported allegations of profiling by unspecified officers at an unspecified time.

Nor is there any evidence suggesting that Plaintiff was present or otherwise involved in any alleged profiling against Armenians. Thus, it is in no way probative as to Plaintiff's work environment. *See, Beyda v. City of Los Angeles* (1998) 65 Cal.App.4th 511, 521 (trial court properly excluded evidence of alleged harassment which was outside plaintiff's presence and beyond her personal knowledge); *Fisher v. San Pedro Peninsula Hospital* (1989) 214 Cal.App.3d 590, 610-611 (plaintiff who was not personally subjected to harassing conduct "must establish that she personally witnessed the harassing conduct and that it was in her immediate work environment").

Moreover, how suspects are tracked down is so fact intensive and legally complex, such testimony would be highly inflammatory, time consuming and irrelevant.

A. ANY MINIMAL PROBATIVE VALUE IS FAR OUTWEIGHED BY THE RISK OF JURY CONFUSION, UNDUE PREJUDICE AND WASTING TIME AT TRIAL.

Under Evidence Code section 352, "[t]he court in its discretion may exclude evidence if its probative value is substantially outweighed by the probability that its admission will (a) necessitate undue consumption of time or (b) create substantial danger of undue prejudice, of confusing the issue, or of misleading the jury." In this context, "prejudice" means "evidence which uniquely tends to evoke an emotional bias against the defendant ... and which has very little effect on the issues." *Vorse v. Sarasy* (1997) 53 Cal.App.4th 998, 1008.

Jurors' passions obviously would be inflamed by allegations of "racial profiling." This must be weighed against the fact that there is absolutely no evidence suggesting that these allegations have anything to do with Plaintiff' employment or that Plaintiff was even aware

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GLENDALE, CA 91203

of the alleged conduct. The mere suggestion of such incendiary racial allegations would gravely endanger, and likely irreparably destroy, Burbank's right to a fair trial in this case. Such a bell cannot be "un-rung."

Introduction of such irrelevant and inadmissible evidence could only confuse and mislead the jury as to the material issues in this case - *i.e.*, whether the ***Plaintiff*** was subjected to unlawful conduct, not whether BPD officers acted inappropriately towards the public outside his presence.

Allowing such evidence would also waste a substantial amount of time at trial,. Burbank would be required to rebut any purported evidence of profiling, which would be next to impossible when there is no evidence as to the identity of the officers purportedly engaged in this conduct, or when the conduct allegedly occurred. Burbank would be put in the untenable position of trying to "prove a negative" - *i.e.*, that there was no racial profiling. Given the total absence of evidence that Plaintiff knew anything of alleged profiling or had anything to do with it, a "trial within a trial" as to each unproven profiling allegation would substantially, and unnecessarily, prolong the trial of Plaintiff' claims.

IV. THE ALLEGED CONDUCT CONSTITUTES INADMISSIBLE CHARACTER EVIDENCE.

Evidence Code section 1101(a) provides that "evidence of a person's character or a trait of his or her character (whether in the form of an opinion, evidence of reputation, or evidence of specific instances of his or her conduct) is inadmissible when offered to prove his or her conduct on a specified occasion." The term"person" is specifically defined to include "a natural person, firm, association, organization, partnership, business trust, corporation, limited liability company, ***or public entity***" Evid. Code § 175 (emphasis added).

In its Comment on *Evidence Code* ¶ 1101, the Law Revision Commission stated:

> "Section1101 excludes evidence of character to prove conduct in a civil case for the following reasons. *First*, character evidence is of slight probative value and may be very prejudicial. *Second*, character evidence tends to distract the trier of fact from the main question of what actually happened on the particular occasion and permits the trier of fact to reward the good man and to punish the bad man because of their respective

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GLENDALE, CA 91203

characters. *Third*, introduction of character evidence may result in confusion of issues and require extended collateral inquiry.

The Court of Appeal has held that evidence of a person's prior acts of purported harassment is inadmissible to prove that harassment of the plaintiff on a particular occasion. "When offered on the theory that respondents are likely to have committed the conduct at issue simply because they did the same thing before, the evidence goes to propensity, and is inadmissible under Evidence Code section [1101(a)]." *Beyda, supra*, 65 Cal.App.4th at 518.

Here, Plaintiff has attacked the character of the entire City of Burbank and the BPD. He intends to raise allegations of the targeting of Armenians in issuing traffic citations (perpetrated by unspecified officers at an unspecified time) as purported proof that specific BPD officers harassed Plaintiff on the basis of his Armenian ethnicity during the specific time frame relevant to Plaintiff's claims. Such evidence is plainly inadmissible for this purpose under § 1101(a).

V. CONCLUSION

For the reasons stated above, Burbank respectfully asks this Court to grant its Motion *in Limine* No. 5.

DATED: May 6, 2011

BALLARD ROSENBERG GOLPER & SAVITT, LLP

By: Linda Miller Savitt
LINDA MILLER SAVITT
Attorneys for Defendant
CITY OF BURBANK, including the Police Department of Burbank of Burbank

BALLARD ROSENBERG GOLPER & SAVITT LLP
500 N. BRAND BLVD., TWENTIETH FLOOR
GLENDALE, CA 91203

DECLARATION OF LINDA MILLER SAVITT

I, LINDA MILLER SAVITT, hereby declare as follows:

1. I am an attorney at law duly licensed to practice law in the State of California and before this Court. I am, through my professional corporation, a partner in the law firm of Ballard, Rosenberg, Golper & Savitt LLP, attorneys of record for Defendant City of Burbank. I have personal knowledge of these facts and, if called and sworn as a witness, could and would competently testify thereto.

2. Burbank will be unduly prejudiced if the evidence upon which the instant motion is based is admitted, because it is likely that a jury would be misled into basing any award for damages on claims of alleged conduct that was perfectly legitimate and so adjudicated. In addition, this irrelevant evidence will consume an undue amount of trial time, necessitating a series of "mini-trials" on the propriety of conduct for which Burbank cannot be held liable.

3. On April 26, 2011, I sent a letter to Karagiosian's counsel, Solomon Gresen, by mail and fax in an effort to meet and confer with him about Burbank's motions *in limine*. In that letter, I notified him of Burbank's intent to file a motion in limine seeking an order precluding Karagiosian, his counsel and his witnesses in this action from arguing, suggesting, submitting evidence, or attempting to submit evidence of evidence or argument regarding racial profiling of Armenian citizens or suspects. A true and correct copy of this letter is attached as Exhibit A.

4. As of the date below, Mr. Gresen has declined to respond or stipulate that such evidence will not be mentioned or displayed in the presence of the jury unless and until it is admitted into evidence.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 6th day of May, 2011, at Glendale, California.

Linda Miller Savitt

BALLARD ROSENBERG GOLPER & SAVITT LLP
500 N. BRAND BLVD., TWENTIETH FLOOR
GLENDALE, CA 91203

BRG&S BALLARD ROSENBERG GOLPER & SAVITT, LLP

LABOR AND EMPLOYMENT LAW
ON BEHALF OF MANAGEMENT
AND RELATED LITIGATION

500 NORTH BRAND BOULEVARD
TWENTIETH FLOOR
GLENDALE, CALIFORNIA 91203-9946

TELEPHONE: 818-508-3700
FACSIMILE: 818-506-4827
E-MAIL: Lsavitt@brgslaw.com

Via Facsimile and Mail

April 26, 2011

Solomon E. Gresen, Esq.
Law Offices of Rheuban & Gresen
15910 Ventura Blvd., Suite 1610
Encino, CA 91436

Re: Karagiosian v. Burbank Police Department, et al.

Dear Mr. Gresen:

Pursuant to Local Rule 8.92, the purpose of this letter is to meet and confer with respect to several motions *in limine* Burbank intends to file in this matter.

Absent your agreement that the evidence that is the subject of such motions will not be offered at trial, Burbank intends to file the following motions:

(1) motion *in limine* to exclude evidence or argument relating to the disbanding of SED since the Court has already ruled that this was not discrimination;

Agreed ___ Not Agreed ___

(2) motion *in limine* to exclude evidence or argument relating to Karagiosian not being returned to FTO in light of the ruling on the MSJ;

Agreed ___ Not Agreed ___

(3) motion *in limine* to exclude evidence or argument relating to statements made by Juli Scott during her September 2009 training; (The Court previously granted this in Guillen)

Agreed ___ Not Agreed ___

(4) motion *in limine* to exclude evidence regarding discipline of Chief Stehr over 20 years ago;

Agreed ___ Not Agreed ___

(5) motion *in limine* to exclude evidence or argument regarding racial profiling of Armenian citizens or suspects;

Agreed ___ Not Agreed ___

(6) motion *in limine* to exclude evidence or argument relating to any protected classification of which Karagiosian was not a member, including African-Americans and women;

Agreed ___ Not Agreed ___

(7) motion *in limine* to exclude any reference to the size of Burbank's law firms, the costs of Burbank's defense, or the number of attorneys retained by Burbank; (You previously agreed to this in the Guillen matter)

Agreed ___ Not Agreed ___

(8) motion *in limine* to exclude evidence or argument about statistics relating to the numbers of Armenians at the Burbank Police Department or other law enforcement agencies;

Agreed ___ Not Agreed ___

(9) motion *in limine* to exclude evidence or argument relating to discipline imposed against Burbank Police Department members for anything other than harassment of Karagiosian;

Agreed ___ Not Agreed ___

(10) motion *in limine* to exclude evidence or argument relating to "no humans involved" as not ethnically based;

Agreed ___ Not Agreed ___

(11) motion *in limine* to exclude evidence or argument relating to Karagiosian's 3-10-10 reprimand for testifying he taped every single traffic stop;

Agreed ___ Not Agreed ___

(12) motion *in limine* to exclude evidence or argument relating to ethnic comments made by the Sheriff's Department;

Agreed ___ Not Agreed ___

(13) motion *in limine* to exclude evidence or argument relating to Bruce Slor's testimony re:

(a) Kerry Schilf having a nickname of Hitler;

(b) comments made about Armenians for which he has no foundation for, which are hearsay, and for which he does not know who said them;

(c) can't recall comments being made to Karagiosian; and

(d) racial profiling of suspects.

Agreed ___ Not Agreed ___

Please give me a call to discuss the above-referenced motions. I am hopeful that you will stipulate to exclude the evidence described above, thereby preventing unnecessary motions.

Alternatively, you can check the Agreed boxes next to each one.

Very truly yours,

BALLARD, ROSENBERG, GOLPER & SAVITT LLP

Linda Miller Savitt

Linda Miller Savitt

LMS:dmc
cc: Larry Michaels, Esq.
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