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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

OMAR RODRIGUEZ; CINDY GUILLEN-GOMEZ; STEVE KARAGIOSIAN; ELFEGO RODRIGUEZ; AND JAMAL CHILDS, Plaintiffs, v. BURBANK POLICE DEPARTMENT; CITY OF BURBANK; AND DOES 1 THROUGH 100, INCLUSIVE, Defendants.	Case No. BC 414602 Date: June 8, 2011 (FSC) Time: 9:00 a.m. Location: 37 Judge: The Honorable Joanne O'Donnell **DEFENDANT CITY OF BURBANK'S NOTICE OF MOTION AND MOTION *IN LIMINE* NO. 1 FOR AN ORDER EXCLUDING *EVIDENCE OF OR ARGUMENT ABOUT (A) THE DISBANDING OF SED AND PLAINTIFF BEING RETURNED TO PATROL AND (B) PLAINTIFF NOT BECOMING AN FTO*; MEMORANDUM OF POINTS AND AUTHORITIES; AND SUPPORTING DECLARATION OF LINDA MILLER SAVITT**
BURBANK POLICE DEPARTMENT; CITY OF BURBANK, Cross-Complainants, v. OMAR RODRIGUEZ, an Individual; Cross-Defendant.	File Date: May 28, 2009 Trial Date: June 8, 2011 (Plff. Karagiosian); July 27, 2011 (Plff. O. Rodriguez) Discovery Referee: Hon. Diane Wayne, Ret

TO PLAINTIFF AND HER ATTORNEYS OF RECORD HEREIN:

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 ("Karagiosian"), and his counsel and his witnesses in this action, from arguing, suggesting, submitting evidence, or attempting to submit ***evidence that (a) the disbanding of SED and return of Karagiosian to Patrol and/or (b) the failure to return Plaintiff to his field training officer position (FTO) were harassing*** on the basis that such actions are timebarred. This Motion is made pursuant to California Evidence Code Sections 350 and 352 on the grounds that such evidence is irrelevant, would unfairly prejudice Burbank, would necessitate undue consumption of time, mislead the jury, and cause undue prejudice to Burbank.

As set forth in the Declaration of Linda Miller Savitt, Burbank's counsel has met and conferred with Karagiosian's counsel regarding the subject matter of this Motion, pursuant to Local Rule 8.92, but Karagiosian's counsel has declined to stipulate that such evidence or argument will not be presented at trial.

The Motion will be, and is, based upon this Notice of Motion and Motion, the accompanying Memorandum of Points and Authorities, the attached declaration of Linda Miller Savitt, the Court's ruling on the Karagiosian motion for summary judgment, the complete files and records in this action, and any other further oral and/or documentary evidence as may be presented at or before the hearing on this Motion.

Dated: May 2, 2011

BALLARD, ROSENBERG, GOLPER & SAVITT LLP
Linda Miller Savitt

By: Linda Miller Savitt
Linda Miller Savitt
Attorneys for Defendant CITY OF BURBANK

MEMORANDUM OF POINTS AND AUTHORITIES

I. PRELIMINARY STATEMENT

Plaintiff Steve Karagiosian's only remaining claim against Defendant City of Burbank is for harassment under the California Fair Employment and Housing Act ("FEHA"), the remainder of his claims having been summarily adjudicated against him.

By this motion *in limine*, Burbank seeks to exclude any evidence of two discrete allegations because (1) they are not harassing as a matter of law and (2) they were adjudicated to be legitimate and non-discriminatory. Such evidence is irrelevant as a matter of law and is unduly prejudicial to Burbank, likely mislead the jury, and consume an undue amount of trial time. *See* California Evidence Code Sections 350 and 352.

The two areas sought to be precluded are:

1) The disbanding of the SED Unit (Special Enforcement Division) and Plaintiff being returned to patrol;

2) The failure to return Plaintiff to his former Field Training Officer position.

II. ARGUMENT

A. Evidence Relating To These Discrete Incidents Are Irrelevant And Should Be Excluded

The Court has already found the two actions at issue in this motion to have been legitimate, non-pretextual, non-discriminatory acts. Thus, they cannot be the basis for harassment on the basis of ethnicity claim. Such actions were not because of Plaintiff's ethnicity. These actions are unrelated to any other act or comment Karagiosian complains about.

B. Such Evidence Should Also Be Excluded Because If Admitted, It Will Necessitate Undue Consumption Of Time, Mislead The Jury

Evidence Code Section 352 states that "[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 issues, or of misleading the jury."

Such evidence will consume an undue amount of trial time because Burbank will have to rebut Karagiosian's evidence by establishing, through witness testimony and otherwise, its legitimate, non-pretextual reasons for its decisions to disband SED and not return Karagiosian to an FTO position. In other words, there will be a series of "mini-trials" on the propriety of conduct for which Burbank cannot be held liable as a matter of law. This is precisely the type of evidence that Evidence Code Section 352 is intended to preclude.

III. CONCLUSION

For the foregoing reasons, Burbank respectfully request that this Court grant this motion *in limine*.

Dated: May 5, 2011

BALLARD, ROSENBERG, GOLPER & SAVITT LLP
Linda Miller Savitt

By: Linda Miller Savitt
Linda Miller Savitt
Attorneys for Defendant CITY OF BURBANK

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 the disbanding of SED and failure to return Steve Karagiosian to an FTO position.. A true and correct copy of this letter is attached as Exhibit A. 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.

Executed this May 5, 2011, at Glendale, California.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Linda Miller Savitt

BRGS | BALLARD ROSENBERG GOLPER & SAVITT, LLP

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ON BEHALF OF MANAGEMENT
AND RELATED LITIGATION

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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.

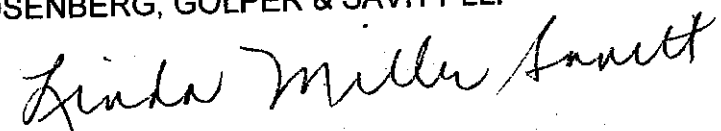
Agreed ___ Not Agreed ___

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

LMS:dmc
cc: Larry Michaels, Esq.
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