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(SPACE BELOW FOR FILING STAMP ONLY)
CITY ATTORNEY
2011 AUG 19 PM 1:01

**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
[*Assigned to Hon. Joanne O'Donnell, Dept. 37*]

**DEFENDANT CITY OF BURBANK'S NOTICE OF MOTION AND RENEWED MOTION *IN LIMINE* NO. 6 TO EXCLUDE TESTIMONY OF OLIVER "LEE" DRUMMOND; MEMORANDUM OF POINTS AND AUTHORITIES; DECLARATION OF PHILIP L. REZNIK**

Date: August 31, 2011
Time: 9:00 am
Dept. 37

Trial: August 31, 2011 (Pltf. Guillen)
February 15, 2012 (Pltf. Karagiosian)

Action filed: May 28, 2009

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8/15

**TO PLAINTIFF CINDY GUILLEN-GOMEZ AND HER ATTORNEYS OF RECORD HEREIN:**

**PLEASE TAKE NOTICE** that, on August 31, 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 renew its motion *in limine* for an order precluding Plaintiff Cindy Guillen-Gomez ("Guillen"), and her counsel and her witnesses, from offering or attempting to offer into evidence any opinion testimony from her designated expert witness Oliver "Lee" Drummond ("Drummond"). This motion is made pursuant to California Evidence Code Sections 350, 352, and 801, on grounds that:

(1) The opinions Drummond will present are not "sufficiently beyond common experience" such that expert testimony would assist the jury in this case, and thus is properly excluded pursuant to Evidence Code § 801. *See also, Kotla v. Regents of the University of California* (2004) 115 Cal.App.4th 283, 289-92l; *Downer v. Bramet* (1984) 152 Cal. App. 3d 837. 841-42; *Lipsett v. University of Puerto Rico* (D. P.R.1990) 740 F. Supp. 921, 925; and

(2) Drummond's testimony has no probative value, and will also unnecessarily consume trial time, confuse the issues, mislead the jury, and unduly prejudice Burbank. Cal. Evid. Code §§350 and 352.

The motion will be, and is, based upon this Notice of Motion, the accompanying Memorandum of Points and Authorities, the attached Declaration of Philip L. Reznik and attached deposition testimony of Oliver Lee Drummond, any Reply brief filed by Burbank, 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: August 15, 2011

BALLARD ROSENBERG GOLPER & SAVITT, LLP

By: _____
PHILIP L. REZNIK
Attorneys for Defendant



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## MEMORANDUM OF POINTS AND AUTHORITIES

## I. INTRODUCTION

At the Final Status Conference herein on April 4, 2011, this Court deferred decision on Defendant and Cross-Complainant City of Burbank's Motion *in Limine* No. 6 to preclude Plaintiff Cindy Guillen-Gomez ("Guillen"), her counsel, and her witnesses from offering or attempting to offer into evidence any opinion testimony from her designated expert witness Oliver "Lee" Drummond ("Drummond"). Burbank hereby renews that motion.

Drummond's purported "expert" testimony should be excluded for two separate and independent reasons. First, the opinions he intends to present to the jury are not "sufficiently beyond common experience" such that expert testimony would assist the jury in making the factual determinations that it must make in this case. The law is clear that no expert can tell the jury how the law should apply to the facts of a particular case. See Cal. Evid. Code § 801; *Kotla v. Regents of the University of California* (2004) 115 Cal.App.4th 283, 289-921. Second, in addition to being irrelevant, it will also unnecessarily consume trial time, confuse the issues, mislead the jury and unduly prejudice Burbank. Accordingly, Drummond's testimony should be excluded pursuant to Cal. Evid. Code §§ 801, 350 and 352.

## II. OPINIONS DRUMMOND INTENDS TO OFFER

On August 8, 2011, Burbank's counsel deposed Guillen's designated expert, Oliver Lee Drummond, a former police chief. Therein, Drummond testified that he had formed the following opinions:

1. That a "negative and abusive work environment existed for female and minority officers [at Burbank Police Department]" (*See* Exh. A at 5:13-7:6);
2. That the incidents of improper conduct or comments alleged by Guillen, if viewed in their totality, constitute sexual harassment (Exh. A at 5:13-7:6, 7:15-19, 78:20-79:14);
3. That Burbank supervisors failed to report inappropriate conduct (Exh. A at 32:25-34:16, Depo. Exh. 319, 42:5-20, 44:24-45:23);

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4. That Burbank failed to properly investigate a sexual harassment complaint Guillen made in 2004 or a retaliation complaint she made in 2009, and failed to advise her of the results of these investigations (Exh. A at 43:14-44:4; 44:24-45:23; 69:25-70:5, 84:17-85:2);

5. That Burbank failed to provide adequate sexual harassment training (Exh. A at 70:6-12);

6. That Burbank failed to provide Guillen with adequate training regarding changes to its Mobile Data Terminal ("MDT") system which were implemented while she was out on maternity leave (Exh. A at 70:13-18);

7. That Burbank violated its own police department "mission statement" and "there was a failure of leadership" because "There appears to be a lack of respect, courtesy -- a lack of courtesy. Accountability." (Exh. A at 86:6-21);

8. That "the police chief is accountable for the condition of the department" (Exh. A at 87:18-20);

9. That "there appears to be unprofessional conduct in reference to sexual harassment, gender bias [and] discrimination" (Exh. A at 87:20-22, 92:14-93:10);

10. That Burbank failed to prevent sexual and gender-based harassment and pregnancy discrimination against Guillen by "maintain[ing] good order"(Exh. A at 95:20-97:4);

11. That Burbank failed to prevent sexual and gender-based harassment and pregnancy discrimination against Guillen by"adhere[ing] to standard and customary internal affairs and administrative investigative practices" (Exh. A at 95:20-97:4);

12. That staff officers and the Chief of Police either knew or should have known that Guillen was being subjected to sexual and gender-based harassment and pregnancy discrimination (Exh. A at 95:20-97:4, 96:18-97:4); and

13. That Burbank failed to prevent sexual and gender-based harassment and



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pregnancy discrimination against Guillen by failing to follow the recommendation of a diversity consultant in early 2009 to conduct further diversity training ( Exh. A at 77:3-11, 95:20-99:22).

As discussed below, these are not appropriate areas for expert testimony.

## III. ARGUMENT

Items 1, 2, 9, 10, 11 and 13, above, are simply opinions about the ultimate issues to be decided by the jury in this case, *i.e.*, whether Guillen was subjected to sexual and gender-based harassment and pregnancy discrimination. These are matters for the jury to decide. The remaining items are factual issues which the jury will be in a ***better*** position to determine than Drummond because it will be presented with evidence and witnesses introduced by both parties, as opposed to a few depositions "cherry-picked" by Guillen's counsel. While his testimony would have little or no probative value, allowing him to testify would create a substantial risk that the jury will be unduly influenced by his status as a former police chief, and will allow his opinions to supplant their own. His testimony is unhelpful and prejudicial. The Court should exclude it pursuant to Evidence Code §§ 801 and 352.

### A. Drummond's Proposed Testimony Is Improper Opinion Testimony Not Permitted under *Evidence Code* § 801(a).

*Evidence Code* § 801(a) states, in pertinent part:

> "If a witness is testifying as an expert, his testimony in the form of an opinion is limited to such an opinion as is:
>
> (a) Related to a subject that is ***sufficiently beyond common experience*** that the opinion of an expert would assist the trier of fact . . ."

(emphasis added).

The "decisive consideration in determination of the admissibility of expert opinion evidence is whether the subject of inquiry is one of such common knowledge that men of ordinary education could reach a conclusion as intelligently as the witness or whether, on the other hand, the matter is sufficiently beyond common experience that the opinion of an expert would assist the trier of fact." *People v. Cole* (1956) 47 Cal.2d 99, 103. An expert's testimony may ***not*** supplant this province of the jury. *Summers v. A.L. Gilbert Company*



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(1999) 69 Cal.App.4th 1155, 1183 ("when an expert's opinion amounts to nothing more than an expression of his or her belief on how a case should be decided, it does not ***aid*** the jurors, it ***supplants*** them") (italics in original). *See also, Brink v. Union Carbide Corp.* (S.D.N.Y. 1997) 41 F. Supp. 2d 402, 405 (finding that age discrimination cases can be evaluated by a jury without the assistance of a human resources expert); *Lipsett v. University of Puerto Rico* (D.P.R. 1990) 740 F.Supp. 921, 925 (excluding "hostile work environment"experts).

Guillen intends to have Drummond testify regarding the adequacy of Burbank's sexual harassment and diversity training and the manner in which it investigates alleged misconduct. However, expert testimony regarding these subjects is neither necessary nor appropriate. These subjects are not sufficiently outside the common experience of the jury to be the proper subjects of expert testimony. Drummond's opinions regarding these subjects consist merely of inferences and conclusions which can be drawn just as easily and intelligently by the jurors. Moreover, if the jury finds there was no harassment of Guillen, there is no basis for Guillen's failure to prevent claim, *Scotch v. Art Institute of California* (2009) 173 Cal. App.4th 986, 1001; *Trujillo v. North County Transit District* (1998) 63 Cal. App.4th 280, 289.

In fact, the jury is in a ***much better position than Drummond*** to make factual determinations, because Drummond's testimony is based solely on a limited review of:

1) the depositions of Guillen and another plaintiff in this case, Steve Karagiosian, and of a consultant who conducted diversity training in late 2008-early 2009;
2) the deposition of former police chief Stehr in another case (which Drummond did not bring to his deposition and is purportedly subject to a protective order)(additionally, as the Court may recall, Plaintiff did not take Stehr's deposition in this case and refused to allow a trial deposition to be taken); and
3) discussions with Plaintiff's counsel.

In contrast, the evidence presented to the jury at trial will include testimony from other officers and employees who were directly involved in the events on which Guillen bases her



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claims, allowing the jury to base its findings on the totality of the circumstances surrounding those events.[1] Thus, the jury will be in a better position to determine whether Guillen was subjected to a hostile work environment or discriminated against because of her pregnancy. Likewise, whether the evidence demonstrates a failure by Burbank to take reasonable steps to prevent or remedy any harassment or discrimination Guillen was subjected to is for the jury to decide, with the guidance of the Court's instructions as to applicable law.

**B. The Jury Does Not Need Drummond to Determine Whether Guillen was Subjected to a Gender-Based Hostile Work Environment or Pregnancy Discrimination, and his Testimony would Only Confuse the Jury and Cause Undue Prejudice.**

Allowing Guillen to present Drummond's testimony on these matters would not only be unhelpful, it would create a substantial risk that jurors will be confused and unduly influenced by Drummond's status as a former police chief, and feel that they must adopt his opinions as their own.

In *Kotla supra*, 115 Cal.App.4th 283 (2004), the California Court of Appeal ***reversed a jury verdict*** in favor of the plaintiff who alleged that she suffered retaliation for assisting a co-employee in her lawsuit against their employer. In remanding the matter for a new trial, the Court held that the trial court had erred in permitting the plaintiff's expert witness to testify as to his opinion that certain facts were "indications" of retaliation. The expert, Dr. Jay Finkelman, held a Ph.D. in industrial psychology and had significant experience consulting corporate human resource departments. He also oversaw and/or personally conducted numerous workplace investigations and taught academic courses on retaliation and unlawful retaliation, and was widely published on human resources issues. *Id.* at 289-90.

The defense filed a motion *in limine* to preclude Finkelman from offering opinion testimony that Kotla's termination was retaliatory because such testimony would "supplant the jury's role of fact finder." The trial court ruled that Finkelman could not testify about the

[1] The declaration testimony of some of these witnesses were part of Burbank's evidence in support of its summary judgment motion against Guillen, and were readily available to Plaintiff's counsel. However, this clearly-relevant testimony was apparently not provided to Drummond, who saw the declarations for the first time at his deposition.



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"ultimate issue" of whether the employer had retaliated against Kotla, but allowed him to testify that certain facts in evidence were "indications" or "evidence" of retaliation on the part of the employer. *Id.* at 290.

The Court of Appeal reversed and remanded the case for a new trial, concluding that Finkelman's testimony "improperly invaded the province of the jury to draw conclusions from the evidence. . ." *Id.* at 291 (emphasis added). Further, the trial court was held to have ***abused its discretion*** by permitting Finkelman to testify that certain facts in evidence were "indicators" of retaliation. *Id.* The court reasoned that this testimony was inadmissible under *Evidence Code* § 801 because it did not assist the jury in its fact finding process, and the testimony created ***"an unacceptable risk that jurors gave unwarranted deference to the expert witness's purported expertise when in reality he was in no better position than they were to evaluate the evidence."*** *Id.* at 284. Moreover, the prejudice suffered by the employer merited a new trial. *Id.* at 294-95.

Like Finkelman's testimony in *Kotla*, Drummond's proposed opinion testimony regarding the existence of a "hostile work environment" or pregnancy discrimination presents the same inherent danger of prejudice.

*Kotla* cited with approval to the federal district court decision in *Lipsett v. University of Puerto Rico* (D.P.R. 1990) 740 F.Supp. 921, wherein the court denied the plaintiff's motion to qualify two purported sexual harassment experts for trial, stating:

> "[E]xpert testimony on these matters usurps the prerogative of the jury as the fact finder and would not assist the jury in understanding the evidence or determining a main issue of fact in this case, namely, whether the working environment at the University of Puerto Rico Medical School Surgery Program was so heavily charged with sexism that it was intimidating, hostile, and offensive. . . . [W]e find that the jury does not need additional enlightenment on this particular issue: this subject does not lend itself to expert testimony because it deals with common occurrences that the jurors have knowledge of through their experiences in everyday life and their attitudes toward sexual matters. ***The jury, using its own judgment, must decide whether the totality of the circumstances which has been presented during the trial is enough to constitute a hostile work environment.***



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*Id.* at 925 (internal quotation omitted, emphasis added).

Here, Guillen wishes to present precisely the same sort of expert testimony from Drummond that the *Kotla* and *Lipsett* courts held inadmissible. Testimony from Drummond that there was a general hostile work environment for female officers at the Burbank Police Department would usurp the prerogative of the jury to use its own judgment to determine whether Guillen has met her burden to prove that to be the case.

### C. The Jury Does not Need Drummond to Determine Whether Burbank Failed to Take Reasonable Steps to Prevent a Gender-Based Hostile Work Environment or Pregnancy Discrimination Against Guillen, Drummond's Testimony will Only Confuse the Jury and Cause Undue Prejudice.

Admitting Drummond's purported "expert testimony" as to Guillen's "Failure to Prevent" claim would likewise confuse the jury as to its proper role as the finder of fact and mislead jurors to believe that they must apply the "expert's" opinions as to whether Burbank took reasonable steps to prevent discrimination against, or harassment of, Guillen. If Burbank did not follow whatever Drummond claims to be "standard and customary internal affairs and administrative investigative practices", the jury may improperly hold Burbank liable for not following these purported "standard practices," even jurors do ***not*** believe that the particular conduct and comments Guillen complains of rise to the level of unlawful discrimination or harassment. Thus, Drummond's proffered testimony would create a substantial danger of unfair prejudice against Burbank. Accordingly, the Court should exclude his testimony pursuant to Evidence Code § 352.

## IV. CONCLUSION

For the foregoing reasons, Burbank respectfully request that this Court grant this renewed motion *in limine* precluding the testimony of Guillen's designated expert, Oliver "Lee" Drummond.

DATED: August 15, 2011

BALLARD ROSENBERG GOLPER & SAVITT, LLP

By: PHILIP M. REZNIK
Attorneys for Defendant
of the City of Burbank



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DATED: August 15, 2011

BALLARD ROSENBERG GOLPER & SAVITT, LLP

By: PHILIP L. REZNIK

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## DECLARATION OF PHILIP L. REZNIK

I, PHILIP L. REZNIK, hereby declare as follows:

1. I am a member of the bar of the state of California, licensed to practice law in courts therein, and an associate in the law firm of Ballard, Rosenberg, Golper & Savitt, LLP, attorneys of record for Defendant and Cross-Complainant City of Burbank, including the Police Department of the City of Burbank (erroneously sued as an independent entity named "Burbank Police Department") ("Burbank"). I have personal knowledge of these facts and, if called and sworn as a witness, could and would competently testify thereto.

2. One August 8, 2011, I deposed Plaintiff City Guillen-Gomez' designated expert, retired police chief Oliver Lee Drummond, regarding Guillen's claims. True and correct excerpts from the Court Reporter's transcript of that deposition are attached hereto as Exhibit A.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 15th day of August, 2011 at Glendale, California.

PHILIP L. REZNIK, declarant

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1 SUPERIOR COURT OF THE STATE OF CALIFORNIA
2 FOR THE COUNTY OF LOS ANGELES
3 _____
4 OMAR RODRIGUEZ; CINDY )
5 GUILLEN-GOMEZ; STEVE )
6 KARAGIOSIAN; ELFEGO )
7 RODRIGUEZ; AND JAMAL CHILDS, )
8 Plaintiffs, )
9 vs. ) No. BC414602
10 BURBANK POLICE DEPARTMENT; )
11 CITY OF BURBANK; TIM STEHR; )
12 KERRY SCHILF; JAMIE "J.J." )
13 PUGLISI; DAN YADON; KELLY )
14 FRANK; PAT LYNCH; MIKE )
15 PARRINELLO; AARON KENDRICK; )
16 DARIN RYBURN; AND DOES 1 )
17 THROUGH 100, INCLUSIVE, )
18 Defendants. )
19 _____)
20 Deposition of OLIVER LEE DRUMMOND, taken
21 at 500 North Brand Boulevard, Twentieth
22 floor, Glendale, California, commencing
23 at 2:10 p.m., Monday, August 8, 2011,
24 before Susan C. Campana, CSR No. 9573, RPR.
25 PAGES 1 - 121



Veritext National Deposition & Litigation Services
866 299-5127

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25

1 MR. GRESEN: So how do you know her?
2 THE WITNESS: Both. "GG" is Gomez in my notes.
3 MR. REZNIK: I'll call her "Officer Guillen" for
4 purposes of this deposition.
5 MR. GRESEN: I don't think that will cause any
6 confusion.
7 MR. REZNIK: Okay. I have here a check. It's for
8 $1,200 to cover three hours. I'm going to try to be done
9 in that amount of time.
10 THE WITNESS: Okay.
11 MR. REZNIK: If we have to go extra, then we'll have
12 to go extra, and you can bill us.
13 Q. Chief Drummond, we went over your background,
14 both your professional background and your background as
15 an expert, during the deposition of -- your deposition
16 for the separate trial involving Detective Karagiosian.
17 And so I'm not going to go through that again. If we
18 need information about your background, we can just use
19 that. And I've spoken to counsel about it.
20 So out of -- we have here Exhibit 304 from your
21 previous deposition, and that is a -- I believe we called
22 this a preliminary outline of your opinions.
23 If you can take a look at that and tell me if
24 any of these opinions you've outlined here that are
25 generally about the department have changed since the

1 last depo, anything you've seen.
2 MR. GRESEN: Just so we're clear, are you asking him
3 if his opinions with respect to the Karagiosian case have
4 changed?
5 MR. REZNIK: No, no. I am saying with respect to --
6 maybe we should go through these one at a time.
7 There are comments here that are general
8 comments about the department that are not specific to
9 either Detective Karagiosian or Officer Guillen.
10 MR. GRESEN: Well, just so you know, I don't know
11 that I agree with that because even though they may look
12 general, I don't know to what this witness was referring.
13 And, for example, under the first one, if he was
14 referring to a particular incident, I don't know. I
15 suppose you can get that. But I don't know that they're
16 general or specific.
17 MR. REZNIK: Let's try not being so compound.
18 MR. GRESEN: Yeah. I'm sorry.
19 MR. REZNIK: We'll go through it one at a time.
20 Q. You express the opinion that the Burbank Police
21 Department -- the first line there says, "Negative and
22 abusive work environment existed," I guess, "for" and
23 female is crossed out, but we'll say, "for female and
24 minority officers."
25 Is that still your opinion?

1 A. Well, the reason I marked out "female" is
2 because it was in specific reference to Karagiosian.
3 Q. Right.
4 A. And in reference to at least the plaintiff,
5 Guillen, I would add not only the abusive work
6 environment, but hostile work environment.
7 Q. And what is -- how do you distinguish between
8 abusive and hostile?
9 A. I -- my understanding is the definition of
10 sexual harassment falls in the arena of hostile work
11 environment in addition to others. But that's one of the
12 standard definitions that I'm familiar with.
13 Q. Okay. Now, let me ask you, in connection
14 with -- let me back up.
15 It's your testimony that you believe that
16 there's a -- that Officer Guillen suffered a hostile
17 environment because she's female.
18 Would that be --
19 A. Yes, sir.
20 Q. Okay. What is the factual basis that leads you
21 to that conclusion?
22 A. It started with the comment about one of the
23 supervisors making the comment, quote -- at least as near
24 as I can recall the quote, that he, meaning Tracy
25 Sanchez, the sergeant, was going to fuck her in the ass,

1 sued the City, and she represented the City. And --
2 Q. The City of Glendale?
3 A. The City of Glendale.
4 And it was alleged that TS, meaning the chief,
5 and the city attorney, and I believe that was the
6 assistant city attorney, Scott, had asked her to change
7 the disposition of her investigation. That's according
8 to Karagiosian. I could not corroborate that.
9 However, I was informed that she had been
10 admonished by the judge after a judgment had been awarded
11 of 3.7 -- correction, $3.5 million, that one of the
12 jurors complained to the judge that she had referred to
13 the four female officers as "whores," and that some
14 additional sanction in addition to her being admonished
15 in that case was fairly common knowledge among
16 Karagiosian and other officers that had knowledge of the
17 Glendale case.
18 And that was their foundation for not wanting to
19 cooperate with that attorney in the investigation.
20 Q. Do you know the basis of his purported knowledge
21 regarding the Glendale case?
22 A. He told me he had been following the case.
23 Q. Okay. Do you know Irma Rodriguez Moisa?
24 A. I do not.
25 Q. There's nothing highlighted on the rest of

1 Tab 1. So I'm going to go to Tab 2.
2 These are typewritten -- well, the first page is
3 typewritten notes -- I'm sorry. I skipped something.
4 Tab 2. This says, "Opinions/Conclusions
5 (Draft)."
6 Can you tell me what this is and also how it
7 relates to the following pages after Tab 2.
8 MR. GRESEN: Compound.
9 Go ahead.
10 Q. BY MR. REZNIK: Okay. Can you tell me what this
11 is.
12 A. Yes.
13 If I had time in the Karagiosian case, I would
14 have typed these so it would have been clear, just as we
15 started off this deposition to have to clarify that.
16 Q. Okay.
17 A. I've tried to clarify that with Guillen-Gomez
18 for Mr. Gresen's information in areas that I believe I
19 could opine on regarding the Gomez case. And these are
20 areas that I -- that I identified to him that we could
21 further discuss.
22 Q. So are these areas that you intend to give
23 expert testimony on at trial -- in the upcoming trial?
24 A. I would be prepared --
25 MR. GRESEN: Foundation.

1 Go ahead.
2 THE WITNESS: I would be prepared to do so, but it
3 would be up to Mr. Gresen what he would want to focus on.
4 Q. BY MR. REZNIK: Now, this says,
5 "Opinions/Conclusions (Draft)."
6 Can you tell me when you drafted this?
7 A. After I had been noticed of this deposition.
8 MR. REZNIK: Okay. I am going to enter this as an
9 exhibit, but I first want to figure out what the other
10 things under Tab 2 are and figure out what to do with
11 them. But let me enter -- let's call this Exhibit 319.
12 (Discussion held off the record.)
13 MR. REZNIK: So we are marking your -- this one page
14 entitled "Opinions/Conclusions (Draft) Cindy
15 Guillen-Gomez," we're going to mark that as Exhibit 319.
16 (Exhibit No. 319 was marked for identification.)
17 Q. BY MR. REZNIK: Before we talk more about that,
18 can you tell me what -- there appears to be one, two --
19 two pages of typed-out notes followed by some handwritten
20 notes.
21 Can you tell me what the typed part is here that
22 says, "Cindy Guillen Gomez versus BPD" at the top?
23 A. This was a preliminary analysis based upon notes
24 I had taken from my handwritten notes in reviewing the
25 depositions. And then I later took those handwritten

1 A. Right.
2 And I don't have -- I have not received any
3 timeline yet either. The timeline, you'll note, is very
4 rough just based upon my notes.
5 Q. Okay. The -- let's move on to the meat of your
6 opinions. And Exhibit 319 is the opinions that you are
7 prepared to give. It's actually very short titles of the
8 headings suggesting the opinions that you're going to
9 give.
10 But let's start with the first line, which is
11 "Failure to Act, (Investigate, Correct)."
12 What are your -- what opinions are you going to
13 offer in connection with the trial and Cindy Guillen's
14 claims in relation to failure to act and what you mean by
15 that?
16 A. Well, first of all, all of these opinions
17 reflect upon the previous administration.
18 Q. Okay.
19 A. The failure to act were situations where
20 supervisors have a duty to report and they fail to do so.
21 Q. Okay. Let's --
22 MR. GRESEN: Before you break it down one by one, can
23 you let him finish answering that question. Because we
24 have an incomplete answer, and then you break it down,
25 and maybe it never gets completed.

1 MR. REZNIK: I can do that.
2 MR. GRESEN: Okay.
3 MR. REZNIK: I'm mindful of the time, and I don't
4 mean to interrupt.
5 MR. GRESEN: I just hate it because then later at a
6 trial, I see, "Well, you only said one thing." "Well, we
7 got interrupted and taken off."
8 I just -- you asked him a broad question. He
9 can give you the categories first and then go through it.
10 Well, you know what? Do it however you like.
11 Sorry.
12 MR. REZNIK: Well, I -- I don't want him to go
13 through the whole thing, but I would like --
14 Q. Do you have -- in terms of failure to act, you
15 mentioned a duty to report.
16 Are there other aspects of that opinion?
17 A. Yes.
18 Notification to the complainant, Guillen in this
19 case, was never given verbally or in writing if, in fact,
20 any investigations were conducted. The only indication
21 that any investigation occurred was that by Sergeant Dunn
22 that had questioned Guillen. And I don't know if that
23 was a formal, taped interview or not. The policy of the
24 department is that those interviews shall be taped.
25 Q. I know I said I wouldn't interrupt. But you

1 said "Sergeant Dunn." I think you meant Sergeant Gunn.
2 A. Gunn, yes. There's so many -- believe me,
3 working -- it's difficult to keep the correct names. I
4 apologize.
5 Q. Let me ask you about -- because you're talking
6 in generality about failure to report and failure to
7 notify a complainant. I think we need to talk about
8 specifically what -- what -- who failed to report what.
9 So when you say that there was a failure to --
10 let me back up. Let's start with failure to act.
11 Is there any aspect of that beyond failure to
12 investigate and failure to report and failure to notify a
13 complainant of a result of an investigation?
14 A. Are you asking for names?
15 Q. No, no. I'm -- I'm asking, when you say
16 "failure to act," and I asked, you know, failure to do --
17 what action you're talking about, you said failure to
18 report misconduct, failure to investigate, and failure to
19 notify the complainant. Let's actually start with
20 specifics.
21 What are the facts -- let me back up.
22 MR. GRESEN: You notice, I'm not even objecting here.
23 MR. REZNIK: I'll hoist myself on my own petard.
24 Q. Let me ask again, what is your opinion regarding
25 failure to act? And I will let you express your full

1 opinion.

2 A. Initially where there was an inappropriate

3 comment made by a supervisor, witnessed by another

4 supervisor, that being Sorkness that witnessed the

5 statement made by Sanchez, and no action was taken.

6 There was an expectation by Guillen that there would be.

7 Then Sorkness began stalking, for lack of a

8 better term, and annoying Guillen. And she took

9 exception to that and reported it to Sergeant Yadon. And

10 she had an expectation that Yadon would either initiate

11 or report to have an investigation initiated. I believe

12 that was what was connected with Sergeant Gunn in

13 interviewing. And there does not appear to be any

14 formal, tape-recorded statement from Guillen. Apparently

15 it was informal.

16 Not only by practice, but by law, the Penal Code

17 requires that upon completion of a complaint

18 investigation, that the complainant be notified within 30

19 days of that disposition. And that -- I have found no

20 evidence that that was done regarding those incidents or

21 regarding the incident in 2009 when she requested, in

22 writing, an investigation into her allegations of

23 misconduct against the assistant city attorney.

24 Q. Other than the incident involving Sergeant Yadon

25 and -- I'm sorry, involving Sergeant Sanchez and Sorkness



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1 THE WITNESS: Well, she states in the third
2 paragraph, "People were looking over at me since I was
3 the only one in the class that had filed a lawsuit
4 against the City and the police department, specifically
5 for sexual harassment."
6 Q. BY MR. REZNIK: Okay. But is she -- is she
7 saying there that the -- that Juli Scott sexually
8 harassed her?
9 A. No. She's stating --
10 MR. GRESEN: The document speaks for itself.
11 You may answer.
12 THE WITNESS: No. She's stating that Scott was
13 retaliating against her.
14 Q. BY MR. REZNIK: Okay. So this is a retaliation
15 complaint.
16 Do you know if that was investigated?
17 A. I do not.
18 Q. Okay. Going back to Exhibit 319 --
19 Well, have we discussed all the instances where,
20 in your opinion, there was a failure to act or
21 investigate in connection with an incident involving
22 Cindy Guillen?
23 A. I believe there's an obligation by
24 administration to follow up.
25 MR. REZNIK: Move to strike as unresponsive.



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1 Q. Are there any other incidents, other than what
2 we've discussed, that lead you to the conclusion that
3 there were failures to act or investigate in connection
4 with incidents involving Cindy Guillen?
5 A. No. I think we've covered those.
6 Q. Okay. The next item is "Failure to Train."
7 Can you tell me what your opinion is regarding
8 failure to train.
9 A. There are two areas there.
10 First of all, in the area of sexual harassment,
11 there hadn't been any training for, I believe, a
12 nine-year period.
13 And secondly, the area of failure to train is
14 that the computer system was changed over while Guillen
15 was on maternity leave. And when she returned, she
16 didn't receive adequate training for a number of months,
17 to where she was incapable of using the new computer
18 system.
19 Q. Do you know when she came back from maternity
20 leave?
21 A. In November of 2009.
22 Q. Okay. And --
23 A. 2008. November of 2008.
24 Q. All right. And was she on -- was she on limited
25 duty when she came back?

1 Burbank?
2 A. I don't know.
3 Q. Okay. Are there any instances of failure to --
4 any failures in training other than what we have
5 discussed, in your opinion?
6 A. The fact that Professor Nahabedian brought, in
7 her opinion in discussing with administration, that there
8 needed to be additional training. That was her
9 recommendation. And I -- I know of no additional
10 training after August 8th or any further follow-up with
11 Professor Nahabedian.
12 Q. I'm going to move on.
13 So the -- so that I understand it, you believe
14 that the failure to hire Professor -- strike that.
15 Is it your opinion that -- strike that.
16 Let's move on to the next opinion you have
17 there. "Failure to Maintain Good Order and Discipline."
18 Can you tell me what your opinion is in that
19 regard.
20 A. That would relate to the overall situation
21 within the department, not only with Guillen and her
22 concerns with sexual harassment, but it also would
23 involve concerns that we discussed in the Karagiosian
24 matter.
25 Q. Okay. Other than incidents that we've already

1 discussed, are there any other incidents -- is there any
2 other basis for your opinion that there was a failure to
3 maintain good order and discipline?
4 A. Yes. The Dunn matter.
5 Q. And what was the Dunn matter?
6 A. There was a failure to act -- to investigate
7 criminal acts within the department.
8 Q. And are those in any way related to Cindy
9 Guillen and her claims?
10 A. No.
11 Q. Okay.
12 A. I don't believe so.
13 Q. Are there any other incidents related to Cindy
14 Guillen and her claims that have led you to believe there
15 was a failure to maintain good order and discipline?
16 MR. GRESEN: Other than what he said or --
17 Q. BY MR. REZNIK: Other than what you've already
18 said.
19 A. No.
20 Q. Okay. "Sexual Harassment." Well, I'll let you
21 summarize -- what is your opinion as to "Sexual
22 Harassment," and is it different than what we've
23 already --
24 A. No. I think we've discussed that, starting with
25 the comments by Sergeant Sanchez and moving up to the

1 chief's comments about, "Don't get fat." But I believe
2 we've put all of those on the record already.
3 Q. So just -- I want to be clear on this.
4 So you believe that the chief saying to her that
5 she shouldn't gain too much weight while she's on
6 pregnancy leave is sexual harassment?
7 MR. GRESEN: Misstates what the chief said.
8 You may answer.
9 MR. REZNIK: I'm asking him so he can correct me.
10 THE WITNESS: I indicated it was inappropriate. But
11 given the context of other comments that have been made
12 about her pregnancy and her sensitivity towards it, if
13 you look at the totality of these incidents, I believe it
14 falls into the area of sexual harassment.
15 Q. BY MR. REZNIK: Okay. The next item here says
16 "Gender Bias (Statements)."
17 Other than sexual harassment -- is there a
18 distinction in your mind between the gender bias here and
19 the sexual harassment?
20 A. Yes.
21 Q. Okay. What is that?
22 A. The comments about females not being detectives.
23 The comments that females should not be in law
24 enforcement -- correction, worthless in law enforcement.
25 The comment made that Guillen was lazy by the motor

1 A. Because she's the only female motor officer
2 that's had this image projected in a computer. I was
3 told no other male -- and I don't know if there are any
4 other females. But apparently the female motor officer
5 was the target of this joke. I'm assuming it was a joke
6 or an insult.
7 Q. Okay. So it was based on the fact that she --
8 your understanding is she's the only female motor
9 officer.
10 Are there any other instances of gender -- any
11 other incidents that you believe are evidence of gender
12 discrimination?
13 A. Not that I believe. But Guillen has indicated
14 that she believes there was gender bias in certain
15 assignments. But I -- I didn't find anything that would
16 support an opinion on that -- my opinion.
17 Q. Okay. The next line here on your opinions --
18 your draft opinions and conclusions says "Ignored
19 Standard and Customary IA Practice and Procedure."
20 Now, you have already discussed not reporting
21 back to her in the 2004 complaint she made about
22 Sorkness.
23 Other than that -- or other than anything we've
24 discussed already, are there other incidents in which you
25 believe that the standards of customary IA practice and

1 procedure were ignored?
2 A. Not in reference to Guillen.
3 MR. GRESEN: Just so we're clear, that was outside of
4 what we've already discussed; correct? That question
5 that you just asked.
6 MR. REZNIK: Right.
7 MR. GRESEN: Okay.
8 MR. REZNIK: Well, now I have to ask that since you
9 asked that.
10 Q. I think the only time we talked about IA
11 procedure was the failure to get back to her about her
12 Sorkness complaint.
13 MR. GRESEN: That misstates the testimony.
14 THE WITNESS: Well, that's part of it.
15 Q. BY MR. REZNIK: Correct me if I'm wrong.
16 A. That's part of it. That's an indicator that I
17 noted. And as well as the failure to initiate an
18 investigation based upon her complaint to Yadon. But
19 that's more of a failure to act. But it would be
20 standard and customary practice that if a sergeant
21 reports the alleged conduct of Sorkness, that there
22 should have been an administrative investigation into
23 those allegations.
24 Q. Okay. And there may have been, as far as you
25 know?

1 A. I have no evidence of it.
2 Q. Okay. Other than that, were there other
3 examples of ignoring standard and customary IA practice
4 that you saw?
5 A. Not in reference to Guillen.
6 Q. Okay. The next one says "Violation of BPD
7 Mission Statement," the Burbank Police Department mission
8 statement.
9 A. Yes.
10 Q. Can you tell me what opinion you're going to
11 give on that subject.
12 A. I need to refer to the document, which is
13 Tab 30.
14 Specifically the mission statement shows a
15 triangle. It states "Serving our community." And it
16 indicates integrity and leadership, respect, courtesy,
17 tolerance, accountability, fairness. And I believe that
18 if that is the mission statement, that there was a
19 failure of leadership. There appears to be a lack of
20 respect, courtesy -- a lack of courtesy. Accountability.
21 There does not appear to be accountability.
22 Q. I'm sorry, Chief. Where are -- I'm looking at
23 Tab 30 here, and I see the --
24 Where are you looking in terms of a reference to
25 accountability?

1 A. It probably didn't copy.
2 Do you see the highlighted areas?
3 Q. Oh. It didn't copy. Okay. We have to make
4 sure this is the one that goes in.
5 So there are words surrounding the central logo
6 that says "Serving our community." "Courage, vision,
7 integrity," and there are other --
8 MR. GRESEN: Before you hand away my only original,
9 would you see if you can copy it again and maybe get it a
10 little darker.
11 MR. REZNIK: Sure. But it's really light.
12 Q. I'm sorry. I interrupted you.
13 A. That's basically it.
14 Q. Okay. And then the last one here is "Failure of
15 Leadership."
16 What opinions do you intend to offer regarding
17 failure of leadership?
18 A. Well, again, it comes back to accountability. I
19 believe the police chief is accountable for the condition
20 of the department. There appears to be unprofessional
21 conduct in reference to sexual harassment, gender bias,
22 discrimination, and other issues that we've discussed
23 with Karabedian (sic), regarding Guillen's concerns, and
24 again, coupled back to the Dunn matter.
25 Q. Okay. Essentially -- you've mentioned the Dunn

1 professional leadership.
2 MR. REZNIK: I think that's enough. Especially --
3 it's not really a -- whether or not the --
4 MR. GRESEN: You don't have to --
5 MR. REZNIK: It's not a core issue that the jury has
6 to decide, whether there was a failure of leadership.
7 Okay. Let's see what else I've got here. Give
8 me a moment here.
9 MR. GRESEN: Do you want to take a few minutes?
10 MR. REZNIK: Let me have a few minutes.
11 MR. GRESEN: I have a little bit of rehab.
12 MR. REZNIK: Okay.
13 (A recess was taken.)
14 MR. REZNIK: Let's go back on the record.
15 Q. Chief Drummond, are you -- well, let me first
16 take a look at Exhibit 319, which is the broad categories
17 of your subject matter of your opinion.
18 As to Cindy Guillen's gender and -- as to her
19 gender-related claims, are there any additional opinions
20 beyond what you have given in this deposition that you
21 intend to present?
22 MR. GRESEN: For clarification, just because we have
23 talked about gender, we've talked about sex --
24 MR. REZNIK: Both.
25 MR. GRESEN: -- we've talked about pregnancy within

1 this whole deposition. By "gender," are you including
2 sex and pregnancy --
3 MR. REZNIK: Yes.
4 MR. GRESEN: -- or do you mean to exclude them?
5 MR. REZNIK: I am including sex harassment and
6 pregnancy discrimination as part of gender
7 discrimination.
8 MR. GRESEN: Do you understand?
9 THE WITNESS: I think so. I can't think of anything
10 else to add.
11 Q. BY MR. REZNIK: Okay. The reason I ask is
12 because it says "Opinion/Conclusions (Draft)," and I
13 don't know -- I guess I do know when you drafted it. You
14 drafted this very recently, I think you told me.
15 A. Yes. After my notice.
16 Q. Okay.
17 A. Approximately -- I have it on the computer. I
18 could give you the exact date.
19 Q. Well, the exact date doesn't matter.
20 A. Within the last month.
21 Q. You haven't changed your opinion or formed
22 additional opinions about her gender discrimination
23 claims since you wrote this?
24 A. No.
25 Q. Okay. So let me talk -- well, let me ask you,

1 Q. In what way?
2 MR. REZNIK: Let me make an objection.
3 Vague and ambiguous.
4 MR. GRESEN: You can follow up.
5 MR. REZNIK: Yeah. I'm just not sure what you mean
6 by "cases." Cases related to this case, coplaintiffs, or
7 any of these cases?
8 MR. GRESEN: I'm talking about any materials he's
9 read with respect to his review of the Cindy
10 Guillen-Gomez case, the Steve Karagiosian case, and/or
11 the Christopher Dunn case concerning race-based
12 activities, acts, or practices within the department.
13 That's what I'm asking about. Just the other stuff that
14 he's read.
15 THE WITNESS: Yes.
16 Q. BY MR. GRESEN: In what way has it affected your
17 opinion?
18 A. That all of these issues, and more, exist that
19 should have been addressed by administration.
20 Q. In your -- do you have any opinion -- an expert
21 opinion as to whether any additional reasonable steps
22 could have been taken to prevent harassment within the
23 department between 2004 when the issue with Sorkness
24 and --
25 Is it Gonzalez?

1 MR. REZNIK: Sanchez.
2 Q. BY MR. GRESEN: -- Sanchez arose through the day
3 of the filing of the complaint?
4 MR. REZNIK: Objection. Vague and ambiguous.
5 We're talking now again about gender
6 discrimination?
7 MR. GRESEN: No. I'm saying any steps that should
8 have been taken to prevent discrimination in general
9 since that date that were not taken.
10 THE WITNESS: Well, not only discrimination.
11 There -- there is an environment that is not conducive to
12 professional law enforcement under the previous
13 administration.
14 Q. BY MR. GRESEN: And what facts do you base your
15 opinion on?
16 A. Well, they failed to prevent what has occurred
17 in all of these issues.
18 Q. In your professional experience, what steps
19 should they have taken to prevent these issues from
20 occurring?
21 A. Well, first of all, to maintain good order and
22 discipline. Secondly, to adhere to standard and
23 customary internal affairs and administrative
24 investigative practices. That training issues should
25 have been identified. And that not only the chief, but

1 staff officers in general either knew or should have
2 known that these things were occurring that were not --
3 that would not be acceptable in a professional
4 environment.
5 Q. Is it your expert opinion that additional
6 training would be required?
7 A. Absolutely.
8 Q. Why?
9 A. Well, not all problems are resolved through
10 discipline. As a matter of fact, the -- the primary
11 reason for maintaining professional standards and
12 reviewing from an internal affairs standpoint --
13 A chief has an obligation to, one, ensure that
14 due process is afforded and, two, to establish whether or
15 not the behavior or conduct was in or out of policy, and
16 finally to address corrective action, and does that
17 corrective action mean administering discipline or
18 identifying training needs.
19 And over my three and a half decades in public
20 service, many of the issues that were brought to the
21 attention through complaint were addressed through
22 training.
23 Frankly, my personal experience -- and I'll use
24 the city of Sanger as an example. There were significant
25 issues in reference to discrimination, and those were

1 addressed through bringing in two diversity experts -- I
2 mentioned that briefly in my comments in the Karagiosian
3 deposition -- to do diversity training. Not just
4 discrimination training, but diversity training. It goes
5 beyond race, but to include age, gender, culture,
6 other -- other diversity issues in the workplace.
7 So things that have been brought to my attention
8 in the Burbank Police Department initially should have
9 been addressed by training. That would be the most
10 proactive and desirable way to address many of these
11 problems when they first were identified.
12 Q. Well, isn't it true that the City hired
13 Ms. Nahabedian to perform diversity training?
14 A. Well, I think that was only preliminary.
15 Q. Okay.
16 A. And her training -- if I --
17 Q. Well, let me ask the questions.
18 Did they hire her, to your knowledge?
19 A. I believe so.
20 Q. Okay. Did she -- did she present the City, to
21 your knowledge, with any opinions or conclusions?
22 A. She did.
23 Q. Okay. And were those opinions and conclusions
24 followed by the City?
25 A. They were not.

1 Q. Okay. What is your professional opinion of the
2 effect of the City's failure to follow Ms. Nahabedian's
3 recommendations?
4 A. That's why we're here today.
5 Q. Okay. Can you be more specific? Well, let me
6 ask it this way.
7 Do you have an expert opinion of what should
8 have been done following the receipt of Ms. Nahabedian's
9 opinions?
10 A. I believe there should have been significant
11 concern regarding vicarious liability for all individuals
12 within the chain of command. I believe that there should
13 be -- there should have been at least requests for
14 proposals of various experts. And this is fairly common.
15 They can look to the Los Angeles Police Department, from
16 one of the largest agencies in the state, the highway
17 patrol, all the way down to the city of Sanger.
18 Q. Is that for trainers?
19 A. That's for -- I mean for individuals that have a
20 professional reputation of coming in and training law
21 enforcement personnel in reference to diversity and
22 discrimination and sexual harassment issues.
23 Q. In your professional experience, when the
24 training is conducted and completed according to the
25 recommendations of the people who are performing the

1 I declare under penalty of perjury that the
2 foregoing is true and correct.
3 Executed this _____ day of _____,
4 2011, at _____, California.
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8 _____
9 OLIVER LEE DRUMMOND
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STATE OF CALIFORNIA )
) ss.
COUNTY OF LOS ANGELES )

I, Susan C. Campana, a certified shorthand reporter in and for the state of California do hereby certify:

That the foregoing proceedings were taken before me at the time and place therein set forth, at which time the witness was put under oath by me;

That the deposition was recorded stenographically by me and was thereafter transcribed into typewriting under my direction and supervision and contains a true and correct transcript of my shorthand notes so taken.

I further certify that I am not related to any party to said action, nor in any way interested in the outcome thereof.

IN WITNESS WHEREOF, I have hereunto subscribed my name this 15th day of August.

Susan C. Campana

SUSAN C. CAMPANA, CSR NO. 9573



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**OPINIONS/Conclusions (DRAFT)** **Cindy GUILLEN-GOMEZ**

**Failure to Act** (Investigate, Correct)

**Failure to Train**

**Failure to Maintain Good Order & Discipline**

**Sexual Harassment**

**Gender Bias** (Statements)

**Ignored Standard & Customary IA Practice & Procedure**

**Violation of BPD Mission Statement**

**Failure of Leadership**

## PROOF OF SERVICE

I am a citizen of the United States, and am employed in the County of Los Angeles in the office of a member of the bar of this Court at whose directions this service was made. I am over the age of 18, and not a party to the within action. My business address is Ballard, Rosenberg, Golper & Savitt, 500 North Brand Boulevard, Twentieth Floor, Glendale, California 91203-9946.

On August 16, 2011, I served the foregoing document described as: **DEFENDANT CITY OF BURBANK'S NOTICE OF MOTION AND RENEWED MOTION *IN LIMINE* NO. 6 TO EXCLUDE TESTIMONY OF OLIVER "LEE" DRUMMOND; MEMORANDUM OF POINTS AND AUTHORITIES; DECLARATION OF PHILIP L. REZNIK** on the interested parties in this action, by placing a true copy thereof in a sealed envelope addressed as follows:

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____ **VIA FACSIMILE**; and

X **(BY FEDEX)** I am "readily familiar" with the firm's practice of collection and processing correspondence for delivery by Federal Express. Under that practice, in the ordinary course of business, it would be deposited with Federal Express on that same day with directions for next day delivery, with the Federal Express fees guaranteed to be paid by Ballard, Rosenberg, Golper & Savitt, LLP.

____ **(BY ELECTRONIC MAIL)** I sent the above-mentioned documents via electronic mail addressed as set forth above.

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

X **(BY MAIL)** and personally placing such envelope with postage fully prepaid for collection and mailing on the above-referenced date following the ordinary business practices of this office. I am readily familiar with our office's practice for collection and processing of correspondence for mailing with the United States Postal Service. In the ordinary course of business, correspondence, including said envelope, will be deposited with the United States Postal Service at Glendale on the above-referenced date.

____ **(BY PERSONAL SERVICE)** I delivered such envelope(s) by hand to the above-addressee(s).

I declare under penalty of perjury that the foregoing is true and correct under the laws of the State of California. Executed on August 16, 2011 at Glendale, California.

Leslie Rehels

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