HON. DIANE WAYNE, Ret.
JAMS
707 Wilshire Blvd.
46th Floor
Los Angeles, CA 90017
Tel: 213-620-1133
Fax: 213-620-0100

CITY ATTORNEY
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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES
CENTRAL DISTRICT

OMAR RODRIGUEZ; CINDY GUILLEN-GOMEZ; STEVE KARAGIOSIAN; ELFEGO RODRIGUEZ; AND JAMAL CHILDS,	§	CASE NO.: BC 414 602
	§	Assigned to: Hon. Joanne B. O'Donnell
Plaintiffs,	§	
	§	JAMS Reference No. 1220040470
v.	§	Hon. Diane Wayne (Ret.), Discovery Referee
BURBANK POLICE DEPARTMENT; CITY OF BURBANK,	§	**12th Report & Recommendation of the Discovery Referee**
Defendants.	§	

12th Report of the Discovery Referee

I. Procedural History

An in-person hearing was held March 11, 2011, followed by telephonic hearings held May 10 and June 28, 2011. The Plaintiffs Omar Rodriquez, Cindy Guilen-Gomez and Steve Karagiosian (collectively, the "Plaintiffs") were represented by LAW OFFICES OF RHEUBAN & GRESEN and Solomon E.

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Gresen, Esq. The Defendants Burbank Police Department and the City of Burbank (collectively, "Defendants") were represented by BALLARD, ROSEN, GOLPER & SAVITT LLP and Phillip L. Reznik, Esq. and MITCHELL SILBERBERG & KNUPP LLP and Lawrence A. Michaels and Veronica T. Von Grabow.

II. Legal History

The Plaintiffs, three current police officers of the Burbank Police Department, filed a Complaint on May 28, 2009. The Complaint alleged that over a period of years the Plaintiffs were discriminated against, variously, based on their race, sex, pregnancy and/or ethnicity. The Complaint also alleged that the Plaintiff's were retaliated against for opposing such alleged discrimination and harassment. The Plaintiff's assert that they suffered adverse employment decisions including: imposition of discipline, demotion, failure to obtain promotions, and failure to obtain specific work assignments. The Defendants deny all allegations.

On October 2, 2009, in Department 37, the Honorable Judge Joanne B. O'Donnell, Judge of the Superior Court, appointed Diane Wayne, Judge (Ret.), as the Discovery Referee pursuant to *Civil Code of Procedure §§ 639(a)(5), 640* and *645.1.* All discovery disputes have been assigned to the Discovery Referee.

III. Recommendation:

At the hearing, the following Motions were considered:

1. The Defendants' Motion To Compel Further Responses by O. Rodriguez, Karagiosian and Guillen-Gomez to Special Interrogatories Set Three and for Monetary and Terminating Sanctions.

This Motion to Compel seeks further responses to two Special Interrogatories the Defendants propounded on the Plaintiffs: Special Interrogatories 10 and 11 (the "Interrogatories"). The Interrogatories relate to

"RETURNED/DESTROYED DOCUMENTs[1]." Specifically, Special Interrogatory 10 asks: "IDENTIFY each SOURCE from which YOU or YOUR AGENT obtained originals or copies of any RETURNED/DESTROYED DOCUMENT." Further, Special Interrogatory 11 asks: " [i]f YOU or YOUR AGENT obtained originals or copies of any RETURNED/DESTROYED DOCUMENTs directly from a physical location where those documents were stored, without the involvement of any natural person as an intermediary, describe in full and complete detail how YOU or YOUR AGENT obtained physical custody of each such document."

In response, the Plaintiffs asserted that the Defendants must provide them with a list of all "RETURNED/DESTROYED DOCUMENTS." The Plaintiffs claimed that this list is necessary to refresh their recollection and that they could not provide an answer to the Interrogatories with it. They also objected to the Interrogatories on the grounds of: Attorney-Client Privilege and compound questioning. The purpose of this motion was to seek information on how the Plaintiffs received those documents. This Referee recommended that further answers were required and the Court adopted the ruling on April 21, 2011.

"Unless otherwise limited by order of the court . . . any party may obtain discovery regarding any matter, not privileged, that is relevant to the subject matter involved in the pending action or to the determination of any motion made in that action, if the matter either is itself admissible in evidence or appears reasonably calculated to lead to the discovery of admissible evidence." *Cal. Code Civ. P.* § 2017.010. "For discovery purposes, information should be regarded as 'relevant to the subject matter' if it might reasonably assist a party in evaluating the case, preparing for trial, or facilitating settlement thereof." *Lipton v. Superior Court*, 48

[1] Documents that the Plaintiffs either destroyed or returned to Defendant City of Burbank as a result of: (1) Defendant's *Ex Parte* Application For Temporary Restraining Order And Order To Show Cause Re: Preliminary Injunction filed on August 6, 2009; (2) related and supplemental papers filed with the Court; (3) Judge Chalfant's Order dated August 27, 2009; and/or (4) Judge Chalfant's Order dated October 13, 2009.

Cal. App. 4th 1599, 1611 (1996); *Gonzalez v. Superior Court*, 33 Cal. App. 4th 1539, 1546 (1995). Furthermore, information that is reasonably calculated to lead to the discovery of admissible evidence does not require that it necessarily be admissible at trial; rather, the test is whether the information sought might reasonably lead to other evidence that would be admissible. *See Davies v. Superior Court*, 36 Cal. 3d. 291, 301 (1984); *Lipton*, 48 Cal. App. 4th at 1611-12. Importantly, "[e]ach answer in a response to interrogatories shall be as complete and straightforward as the information reasonably available to the responding party permits." *Cal. Code Civ. P.* § 2030.220(a).

In the instant case, the Interrogatories seek information "that is relevant to the subject matter" and is both "itself admissible in evidence [and] appears reasonably calculated to lead to the discovery of admissible evidence." *Cal. Code Civ. P.* § 2017.010. Further, the Interrogatories are not precluded by the limitations imposed by the Court or the Attorney-Client Privilege. Plaintiff argues that Judge O'Donnell's October 2, 2009 Order[2] limiting certain discovery applies to these Interrogatories. However, the Interrogatories only ask about the original, third-party "SOURCE[s]" from which the Plaintiffs and/or their counsel obtained any of the "RETURNED/DESTROYED DOCUMENT[s]."

Despite the Order of this Court the further answers are inadequate and not verified. In fact, Plaintiffs Guillen and Karagiosian have not provided any answers. The purported responses by Rodriguez only provide that he received the information while employed by the Burbank Police Department not "how" he received them. Additionally, Rodriguez has provided inconsistent answers in his deposition. Defendants are entitled to the information.

[2] " . . . to the extend that plaintiff provided any or all of the documents to his attorney, such information is entitled to the attorney-client privilege. The fact of transmission triggers the privilege."

agreed to reschedule the deposition of one of their witnesses who be out of town for the trial (which had been recently rescheduled). Plaintiffs refused.

The motion was subsequently dismissed before it could be heard and Defendants seek sanctions for having to oppose a frivolous motion pursuant to *Civil Code* Section 2023.010.

The filing of the Motion was clearly a pretext for unilaterally effecting a last-minute cancellation of the deposition in a misuse of the discovery process. It is way too late in this proceeding to engage in this kind of activity.

Defendants seek monetary sanctions as a result of the time expended in pursuing this motion. Defendants are awarded sanctions in the amount of $15000.00.

IT IS SO RECOMMENDED.

Date: June 30, 2011

Hon. Diane Wayne (Ret.)
Discovery Referee

All matters set forth in the above report of Referee having been considered; the Court hereby approves and adopts said Report as the decision of the court, including the findings and recommendations therein.

Date: July ____, 2011

Hon. Joanne B. O'Donnell,
Judge of the Superior Court

PROOF OF SERVICE BY EMAIL & U.S. MAIL

Re: Rodriguez, Omar, et al. vs. Burbank Police Department, et al.
Reference No. 1220040470

I, Christina Dobszewicz, not a party to the within action, hereby declare that on July 06, 2011 I served the attached 12TH REPORT & RECOMMENDATION OF THE DISCOVERY REFEREE on the parties in the within action by Email and by depositing true copies thereof enclosed in sealed envelopes with postage thereon fully prepaid, in the United States Mail, at Los Angeles, CALIFORNIA, addressed as follows:

Solomon Gresen Esq.
Rheuban & Gresen
15910 Ventura Blvd.
Suite 1610
Encino, CA 91436
seg@rglawyers.com

Lawrence Michaels Esq.
Mitchell, Silberberg & Knupp, LLP
11377 W. Olympic Blvd.
Los Angeles, CA 90064-1683
LAM@MSK.com

Linda Savitt Esq.
Ballard Rosenberg Golper & Savitt LLP
500 North Brand Blvd.
20th Floor
Glendale, CA 91203-9946
lsavitt@brgslaw.com

Steven Rheuban Esq.
Rheuban & Gresen
15910 Ventura Blvd.
Suite 1610
Encino, CA 91436
svr@rglawyers.com

Hon. Joanne O'Donnell
Los Angeles Superior Court
Stanley Mosk Courthouse
111 N. Hill St.
Los Angeles, CA 90012
<<<VIA US MAIL ONLY

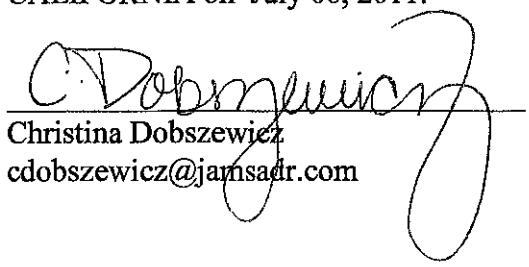
Ms. Carol Humiston
Office of the City Attorney - Burbank
275 E. Olive Avenue
Burbank, CA 91510
chumiston@ci.burbank.ca.us

Ms. Linda Rosoff
Burbank City Attorney's Office
275 E Olive Ave
Burbank, CA 91502
lrosoff@ci.burbank.ca.us

John Manier Esq.
Ballard Rosenberg Golper & Savitt LLP
500 North Brand Blvd.
20th Floor
Glendale, CA 91203-9946
jmanier@brgslaw.com

Melanie Smith Esq.
Stone Busailah LLP
200 East Del Mar Blvd
Suite 350
Pasadena, CA 91105
m.smith@police-defense.com

I declare under penalty of perjury the foregoing to be true and correct. Executed at Los Angeles, CALIFORNIA on July 06, 2011.



Christina Dobszewicz
cdobszewicz@jamsadr.com