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Attorneys for Defendant CITY OF BURBANK

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

OMAR RODRIGUEZ; CINDY KARAGIOSIAN-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 Time: 9:00 a.m. Location: 37 Judge: The Honorable Joanne O'Donnell **DEFENDANT CITY OF BURBANK'S OPPOSITION TO PLAINTIFF KARAGIOSIAN'S MOTION *IN LIMINE* NO. 2 TO EXCLUDE DOCUMENTS, TESTIMONY AND OTHER EVIDENCE REGARDING LAWSUITS FILED BY CHRISTOPHER DUNN**
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); Discovery Referee: The Hon. Diane Wayne, Ret.

5125

Attached to Karagiosian's motion is a March 31, 2011 letter which Plaintiffs' counsel sent Defendant's counsel ***in regards to trial on the claims of plaintiff Cindy Guillen-Gomez*** which is attached to a declaration in which Plaintiffs' counsel falsely identifies the letter as pertaining to the instant motion *in limine* ***filed by Plaintiff Steve Karagiosian,*** in order to deceive the Court into thinking that Karagiosian properly complied with Local Rule 8.92 before filing this motion. (Cischke Decl. ¶ 4, Exh. A.) The Court can and should deny the motion of the basis of this fraudulent misrepresentation to the Court alone.

Karagiosian's co-Plaintiff herein, Cindy Guillen-Gomez, initially filed a nearly identical motion *in limine,* but then withdrew it. (Reznik Decl. ¶ 2, Exh. 1.) It is not clear why Karagiosian feels that the motion has any more merit in connection with Karagiosian claims than it had in connection with Guillen's claims. He concedes in his Motion that the existence of Dunn's lawsuit is relevant for impeachment.[1] However, ***depending on the testimony offered by witnesses at trial,*** evidence relating to the ***facts presented and claims made*** by Dunn in his litigation may also be relevant to impeach Dunn and other witnesses, and should not be excluded.

I. THIS MOTION IN LIMINE SHOULD BE DENIED BECAUSE KARAGIOSIAN SUBMITTED A FRAUDULENT DECLARATION REGARDING COMPLIANCE WITH LASC LOCAL RULE 8.92[2]

Attached to Karagiosian's motion is a March 31, 2011 letter which Plaintiffs' counsel sent

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1 *See* Motion 3:5-6 ("[o]ther than the evidence of the mere existence of such suits for impeachment purposes… any further evidence regarding the lawsuits… is not relevant…."); and Motion, 4:6-7 ("[e]vidence of the mere fact of lawsuits filed by Officer Dunn would be admissible in order to impeach Dunn if, and only if, he testifies herein").

2 Los Angeles Superior Court Local Rule 8.92 states in relevant part:

(a) Motions made for the purpose of precluding the mention or display of inadmissible and prejudicial matter in the presence of the jury shall be accompanied by a declaration that includes the following: . . .

(2) A representation to the court that the subject of the motion has been discussed with opposing counsel, and that opposing counsel has either indicated that such matter will be mentioned or displayed in the presence of the jury before it is admitted in evidence or that counsel has refused to stipulate that such matter will not be mentioned or displayed in the presence of the jury unless and until it is admitted in evidence.

Defendant's counsel ***in regards to trial on the claims of plaintiff Cindy Guillen-Gomez*** which is attached to a declaration in which Plaintiffs' counsel falsely identifies the letter as pertaining to the instant motion *in limine* ***filed by Plaintiff Steve Karagiosian,*** in order to deceive the Court into thinking that Karagiosian properly complied with Local Rule 8.92 before filing this motion. (Cischke Decl. ¶ 4, Exh. A.) The Court can and should deny the motion of the basis of this fraudulent misrepresentation to the Court alone.

II. EVIDENCE SHOULD NOT BE EXCLUDED UNDER CALIFORNIA EVIDENCE CODE SECTION 350 AS IRRELEVANT

Burbank presently intends to offer evidence relating to the facts presented and claims made by Dunn in his litigation for impeachment purposes only. Karagiosian argues that information about Dunn's facts and claims (other than the existence of his lawsuit) is not relevant for impeachment purposes. However, that is not a determination that any party or this Court can make at this time. No one can predict how trial witnesses will testify or what subjects they will ultimately testify about, and (as a result) what evidence will be relevant for impeachment. For that reason, a motion *in limine* to exclude impeachment evidence as irrelevant is improper. *See Kelly v. New West Fed. Savings*, 49 Cal. App. 4th 659, 671 (1996) *citing People v. Jennings*, 46 Cal. 3d 963, 975 fn. 3 (1988) ("'Until the evidence is actually offered, and the court is aware of its relevance in context, its probative value, and its potential for prejudice, matters related to the state of the evidence at the time an objection is made, the court cannot intelligently rule on admissibility'"); *see also People v. Mendoza*, 24 Cal. 4th 130, 171 (2000) (evidence which tends to prove or disprove the credibility of witnesses is relevant).

III. THE EVIDENCE SHOULD NOT BE EXCLUDED UNDER CALIFORNIA EVIDENCE CODE SECTION 352

Contrary to Karagiosian's assertions, any probative value evidence about Dunn's facts and claims may have for impeachment is not "substantially outweighed by the probability that its admission will necessitate undue consumption of time and/or create substantial danger of undue prejudice, of confusing the issues, or of misleading the jury." Cal. Evid. Code § 352. The parties will not have to "present evidence supporting their positions" in Dunn's lawsuits if this evidence is

allowed. Motion, 4:8-12. Burbank would offer the evidence for impeachment purposes only, and such evidence could be restricted to its proper scope and the jury could be instructed accordingly. *See* Cal. Evid. Code § 355.

For the foregoing reasons, Burbank respectfully requests that this Court deny Karagiosian's Motion *In Limine* No. 2.

Dated: May 25, 2011

BALLARD, ROSENBERG, GOLPER & SAVITT LLP

By: _____
PHILIP L. REZNIK
Attorneys for Defendant CITY OF BURBANK

Decl. Of

DECLARATION OF PHILIP L. REZNIK

I, PHILIP L. REZNIK, hereby declare:

1. I am an attorney at law, licensed to practice in all Courts of the State of California, and an associate in the law firm of Ballard, Rosenberg, Golper & Savitt, LLP, attorney of record for defendant CITY OF BURBANK herein. I have personally knowledge of the following facts and, if asked, could and would testify competently thereto.

2. Attached hereto as Exhibit 1 is a copy of the Court's April 14, 2011 Minute Order in regards to trial on the claims of plaintiff Cindy Guillen-Gomez herein.

I declare, under penalty of perjury, under the laws of the State of California, that the foregoing facts are true.

Signed this 25th day of May, 2011, at Glendale, California.

PHILIP L. REZNIK, declarant

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 04/14/11 | DEPT. 37

HONORABLE JOANNE O'DONNELL JUDGE | E.T. ESPINOZA DEPUTY CLERK

HONORABLE # JUDGE PRO TEM | ELECTRONIC RECORDING MONITOR

G.S. HIRONAKA, C/A Deputy Sheriff | C. KWON-CHANG, # 12143 Reporter

10:00 am BC414602

OMAR RODRIGUEZ ET AL
VS
BURBANK POLICE DEPARTMENT ET AL

170.6 DAVID P. YAFFE
R/F 7-27-09 Denied as to BC4179

Plaintiff Counsel: SOLOMON GRESEN (X)

Defendant Counsel: LAWRENCE MICHAELS (X)
LINDA SAVITT (X)
VERONICA VON GRABOW (X)

NATURE OF PROCEEDINGS:

but not disclosed during discovery is denied.

6. Documents, testimony and other evidence regarding Plaintiff's 2004 discipline for walking too close to a car is granted.

7. Documents, testimony and other evidence regarding Plaintiff's 2001 cervical cancer is denied.

Prevent all witnesses from wearing police uniforms in the presence of the jury is denied.

Defendant's motions in limine for an order to exclude:

1. Evidence of or argument about Guillen's failures to promote to detective is denied.

2. Evidence of or argument about Guillen's failure to be assigned to the special enforcement detail is denied.

3. Evidence or argument of comments for which Plaintiff Guillen has not laid a foundation is denied. Counsel will refile this motion in limine.

4. Evidence or argument of statements made by Juli Scott during her September 2009 sexual harrasment training is granted.

5. Evidence or argument of statements made to

MINUTES ENTERED
04/14/11
COUNTY CLERK

04/18/11

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 04/14/11 | DEPT. 37

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LINDA SAVITT (X)
VERONICA VON GRABOW (X)

NATURE OF PROCEEDINGS:

Guillen's Newport Beach Police Department background investigator is granted.

6. Order excluding the testimony of Oliver "Lee" Drummond will be ruled on at the time of trial.

7. Any testimony of R. William Mathis, Ph.D. is denied.

8. Evidence or argument relating to any protected class of which Guillen is not a member, including African-Americans and Armenians is granted.

9. Evidence or argument of comments supporting Guillen's claim that she was harrassed based on pregnancy is denied.

10. Evidence or argument relating to discipline imposed against Burbank Police Department members for anything other than harrasment of Guillen is granted.

11. Evidence of or argument about Guillen's reprimand for carelessness is granted.

12. Evidence or argument of any statistics relating to the numbers of Hispanic and/or female officers is granted.

13. Evidence or argument that the Burbank Police

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04/14/11
COUNTY CLERK

04/18/11