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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. 3 TO EXCLUDE DOCUMENTS, TESTIMONY AND OTHER EVIDENCE REGARDING INVESTIGATIONS INTO ARRESTS MADE AT THE PORTO'S BAKERY**
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.

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.

Moreover, on April 14, 2011, the Court properly denied a nearly identical Motion *In Limine* No. 3 filed by Plaintiff Karagiosian's co-plaintiff, Cindy Guillen Gomez, to exclude evidence regarding the Porto's Bakery investigations. (Reznik Decl. ¶ 2, Exh. 1.) ***There is no reason for the Court to rule any differently in the case of Karagiosian's motion than it did on Guillen's motion.*** Depending on the testimony offered by witnesses at trial, evidence relating to the Portos' investigations ***is*** admissible, and (depending on the testimony offered by witnesses at trial) may be relevant on cross-examination and for impeachment purposes.

I. THIS MOTION IN LIMINE SHOULD BE DENIED BECAUSE KARAGIOSIAN SUBMITTED A FRAUDULENT DECLARATION REGARDING COMPLIANCE WITH LASC LOCAL RULE 8.92[1]

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

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1 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.

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 RELATING TO INVESTIGATIONS INTO THE ARRESTS MAY BE RELEVANT

A witness who testifies to another's good reputation for honesty or integrity or expresses such an opinion may be cross-examined about specific acts by that person inconsistent with such opinion and reputation. *See People v. Hurd*, 5 Cal. App. 3d 865, 877-881 (1970), *superseded on other grounds, People v. Tobias,* 25 Cal. 4th 327 (2001) (permissible to ask a character witness whether he heard of the defendant's prior arrest for theft when the witness testified the defendant was "honest," "upright," and "fair"); The Rutter Group, California Practice Guide, *Civil Trials and Evidence*, 8:2951 (2010).

Specific conduct may also be admissible for impeachment purposes--to prove that a witness has some motive, bias, or interest that might induce false testimony. *See* Cal. Evid. Code § 780(f) (court and jury can consider "bias, interest, or other motive" in determining the credibility of a witness); *People v. Mickle*, 54 Cal. 3d 140, 168 (1991) ("[e]vidence tending to show a witness has some motive, bias, or interest that might induce false testimony has long been a permissible form of impeachment"); *People v. Watson*, 43 Cal. 4th 652, 685-686 (2008) (evidence may be offered for "impeachment of witness with existence or nonexistence of bias, interest or motive"); The Rutter Group, California Practice Guide, Civil Trials and Evidence, 8:2952 (2010).

At this point, no party nor this Court can determine whether evidence relating to investigations into the arrests is relevant. 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 cross-examination and impeachment. For that reason, a motion *in limine* to exclude evidence relating to investigations into arrests made as a result of the Porto's Bakery robbery 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. EVIDENCE RELATING TO INVESTIGATIONS INTO THE ARRESTS SHOULD NOT BE EXCLUDED UNDER CALIFORNIA EVIDENCE CODE SECTION 352

Although it is unclear, Karagiosian seems to be arguing that this evidence should be excluded under California Evidence Code Section 352.

To the extent Karagiosian is arguing that this evidence will necessitate an undue consumption of time or confuse the jury, Burbank would offer the evidence for cross-examination and 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.

IV. THE EVIDENCE IS NOT EXCLUDABLE UNDER EVIDENCE CODE § 1101

Plaintiff also lacks any basis for claiming that evidence regarding the Porto's Investigations is inadmissible under Evidence Code § 1101. That statute 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." (Emphasis added.) Karagiosian fails to specify what "character" or "character trait" is even subject to his motion, let alone what conduct such evidence might be offered to prove. Moreover, subsection (c) of § 1101 specifically states: "***Nothing in this section affects the admissibility of evidence offered to support or attach the credibility of a witness.***"

For the foregoing reasons, Burbank respectfully requests that this Court deny Karagiosian's Motion *In Limine* No. 3.

Dated: May 25, 2011

BALLARD, ROSENBERG, GOLPER & SAVITT LLP

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

DECLARATION OF PHILIP L. REZNIK

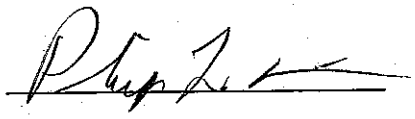
I, PHILIP L. REZNIK, hereby declare:

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

NATURE OF PROCEEDINGS:

PRE-TRIAL CONFERENCE RE MOTIONS IN LIMINE

Matters are called for hearing.

A mandatory settlement conference is set for April 21, 2011, 9 a.m., this department.

Motion of Defendants to quash Notice of Attendance of Burbank Police Department interim Police Chief Scott Lachasse at trial is argued and granted.

Court and counsel confer re motions in limine as follows:

Plaintiff's motions in limine to exclude:

1. Documents, testimony and other evidence regarding lawsuits filed by the other plaintiffs herein is denied.

2. Documents, testimony and other evidence regarding lawsuits filed by Christopher Dunn is withdrawn.

3. Documents, testimony and other evidence regarding any Porto's Bakery investigation is denied.

4. Documents, testimony and other evidence regarding the character of witnesses is denied.

5. Documents, testimony and other evidence requested

MINUTES ENTERED
04/14/11
COUNTY CLERK

11/81/80

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

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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

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:

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

MINUTES ENTERED
04/14/11
COUNTY CLERK

04/18/11

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:

Officers Association did not properly represent Cindy Guillen-Gomez is granted.

14. Any reference to the size of Burbank's law firms, the costs of Burbank's defense, and the number of attorneys retained by Burbank is granted.

Defense counsel are to file the 2 motions in limine by April 18, 2010, with opposition due April 22, 2011. Motions will be heard on April 25, 2011.

Court and counsel confer re trial procedures.

Plaintiff's counsel informs the Court that he will look into the issue of not having posted jury fees.

MINUTES ENTERED
04/14/11
COUNTY CLERK

04/18/11