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9 Attorneys for Defendants

10 UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT OF CALIFORNIA

12 JOSEPH CIAMPLI,

13 Plaintiff,

14 v.

15 CITY OF PALO ALTO, a government entity;
16 LYNNE JOHNSON, an individual; CHIEF
17 DENNIS BURNS, an individual; OFFICER
18 KELLY BURGER, an individual; OFFICER
19 MANUEL TEMORES, an individual; OFFICER
20 APRIL WAGNER, an individual; AGENT DAN
21 RYAN; SERGEANT NATASHA POWERS,
22 individual,

23 Defendants.

NO. C09-02655 JF (PVT)

**DEFENDANT DENNIS BURNS'
RESPONSE TO PLAINTIFF
REQUEST FOR PRODUCTION
OF DOCUMENTS, SET TWO**

AND

**DEFENDANTS' AMENDED
RESPONSE TO PLAINTIFF'S
REQUEST FOR PRODUCTION,
SET TWO, REQUESTS 1-10, 35**

24 PROPOUNDING PARTY: Plaintiff, Joseph Ciampi, Pro Per

25 RESPONDING PARTY: Defendant, Dennis Burns

26 SET NUMBER: Two

27 TO PLAINTIFF AND ALL INTERESTED PARTIES:

28 Defendant, City of Palo Alto, responds to:

a) Plaintiff's Request for Production of Documents and Inspection of Tangible
Things, Set 2; and

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1 **REQUEST FOR PRODUCTION NO 36**

2 Please produce Defendant Temores' broken taser cartridge, as documented by
3 Defendant Temores' testimony on pages 45, 81 and 82 of the trial transcript, for
4 inspection, analysis and documentation in the presence of a neutral third party who will
5 document the evidence for court purposes.

6 **RESPONSE TO REQUEST FOR PRODUCTION NO 36**

7 Objection. This discovery request is vague and ambiguous as to the phrases
8 "broken taser cartridge" and "trial transcript" which are undefined and require
9 speculation as to their meaning and interpretation. Further, the request is overbroad to
10 the extent it seeks information within the possession, custody and control of third parties
11 which is equally available to the requesting party.

12 However and without waiving said objection, Defendant does not possess a copy
13 of the trial transcript and as such, cannot address that particular statement. The broken
14 cart was never retained as evidence. Generally speaking, if an officer breaks a taser
15 cartridge, they throw them away. Defendants believe that this is what occurred in this
16 particular situation.

17 **REQUEST FOR PRODUCTION NO 37**

18 Please produce and provide the chain of possession of Defendant Temores'
19 broken taser cartridge according to Palo Alto Police Department Policy Section 610
20 Property Procedures.

21 **RESPONSE TO REQUEST FOR PRODUCTION NO 37**

22 Objection. This discovery request is vague and ambiguous as to the phrases
23 "broken taser cartridge" and "Palo Alto Police Department Policy Section 610 Property
24 Procedures" which are undefined and require speculation as to their meaning and
25 interpretation. Further, the request is overbroad in that it is not limited to plaintiff or his
26 legal claims, and thus seeks irrelevant information not calculated to lead to the discovery
27 of admissible evidence. Further, the request is argumentative, lacks foundation, requires
28 assumptions to ascertain its meaning, and inappropriately imputes a legal basis and legal

1 conclusion for the request and, as phrased, violates the attorney client privilege and
2 attorney work product doctrine. Further, the request is overbroad to the extent it seeks
3 information within the possession, custody and control of third parties which is equally
4 available to the requesting party.

5 However and without waiving said objection, Defendant does not possess a copy
6 of the trial transcript and as such, cannot address that particular statement. The broken
7 cartridge was never retained as evidence. See Response to No. 36, above.

8 **REQUEST FOR PRODUCTION NO 38**

9 **REQUEST FOR PRODUCTION NO 61**

10 Please produce and provide the identity of the Supervisors and or Watch
11 Commanders by name, address and phone number who secured and booked Defendant
12 Temores' broken taser cartridge of the March 15, 2008 incident into evidence pursuant to
13 Department policy.

14 **RESPONSE TO REQUEST FOR PRODUCTION NO 61**

15 Objection. This discovery request is vague, overly broad and burdensome and
16 attempts to seek the production of documents that are privileged under the attorney client
17 and work product privileges, and as phrased, violates the official information privilege
18 relating to personnel file information and seeks information that is not calculated to lead
19 to the discovery of admissible evidence. Further, the Request is overbroad to the extent it
20 seeks information within the possession, custody and control of third parties which is
21 equally available to the requesting party. Further, to the extent the request seeks the
22 desired information solely in the form of a written response from this Defendant, the
23 Request is in effect an interrogatory and should be asked pursuant to Rule 36 of the
24 Federal Rules of Civil Procedure.

25 Lastly, Defendant is responding to what essentially constitutes Interrogatory No.
26 20 in a spirit of cooperation. However, Plaintiff is now on notice that Defendant will
27 object, from this point forward, to any interrogatory that is cloaked as an admission or
28 production request. Defendant considers that this request constitutes one of Plaintiff's
interrogatories under FRCP and will not respond once the statutory limit is exceeded.

1 However and without waiving said objection, Defendant states that the broken
2 taser cartridge was never booked into evidence and as such, there is no documentation
3 responsive to this request.

4 **REQUEST FOR PRODUCTION NO 62**

Property Procedures

610.1 PURPOSE AND SCOPE

It is the policy of the Palo Alto Police Department to insure that all evidence/property is processed and stored in a manner which provides optimum security against loss, theft or tampering. Responsibility for proper handling and storage of evidence/property begins with the employee who has first custody of the evidence/property. This responsibility is then transferred to the Property Technician when the evidence/property is placed in his/her custody. The Investigative Services Division Captain or his/her designee shall have the overall responsibility for the storage and safekeeping of all evidence/property. This policy provides for the proper collection, storage, and security of evidence and other property. Additionally, this policy provides for the protection of the chain of evidence and those persons authorized to remove and/or destroy property. The Palo Alto Police Department has a full time property unit consisting of two civilian Property/Evidence Technicians.

610.1.1 DEFINITIONS

PROPERTY - Includes all items of evidence, items taken for safekeeping and found property.

EVIDENCE - Property which is related to a crime or which may implicate or clear a person of a criminal charge.

FOUND PROPERTY - Non-evidentiary property which, after coming into the custody of the Department, has been determined to be lost or abandoned and is not known or suspected to be connected with any criminal offense.

PROPERTY HELD FOR SAFEKEEPING - Non-evidentiary property which is in the custody of the Department for temporary protection of some person/persons. Examples are:

- Property obtained by the Department for safekeeping such as a firearm;
- Personal property of an arrestee not taken as evidence;
- Property taken for safekeeping under authority of a law, i.e. Welfare & Institutions Code § 5150 (mentally ill persons).

610.2 PROPERTY HANDLING

- (a) **Taking Property** - Employees who take property into custody shall, in every instance, place all property obtained in the course of his or her employment in the Department's property system prior to going off duty. In no instance shall property be stored in a personal locker, desk, or other unauthorized locations.
- (b) **Documentation** - The employee will prepare a case report or follow-up report and a property report describing how, what, when, and where he/she came into possession of the property.
 1. The employee shall submit the property report with the property item; property reports for large items stored in the temporary storage room shall be placed in the file on the property room door;
 2. The employee shall also prepare a property tag and attach it to the property items, except for those which are placed in a container stamped with the property identification stamp;

Palo Alto Police Department

Policy Manual

Property Procedures

- (c) **Inquires** - The employee will make appropriate inquires into the State Department of Justice computer regarding serialized or identifiable items of property to determine if the property is reported stolen.
- (d) **Property Technician: Present** - When the Property Technician is on duty, the employee shall:
 - 1. Deliver property he/she has taken into custody, to the Property Technician;
 - 2. The Property Technician shall verify property received to the property described on the property report. An exception to this provision is sealed cash, and items sealed to preserve trace evidence;
- (e) **Property Technician: Absent** - In the absence of the Property Technician, the employee shall place small property items, together with the property record, in a temporary storage property locker.

610.2.1 PROPERTY BOOKING PROCEDURE

All property must be booked prior to the employee going off duty unless otherwise approved by a supervisor. Employees booking property shall observe the following guidelines:

- (a) Complete the Palo Alto Property sheet describing each item of property separately, listing all serial numbers, owner's name, finder's name, and other identifying information or markings;
- (b) Mark each item of evidence with case number and item number;
- (c) The property shall be stored in the temporary evidence lockers outside the evidence area until it is received by the Property Technician;
- (d) Submit the original property form with the property. A copy shall be included in the police report.

610.2.2 SPECIAL HANDLING

Certain items of evidence are handled in a manner different from the standard property intake procedure:

- (a) **Firearms** - an employee accepting custody of a firearm shall insure that the firearm is unloaded prior to accepting it. When the firearm is taken into custody in a loaded status (i.e., taken from a suspect), the officer taking the firearm into custody shall unload it as soon as possible and always before transferring custody to another person. All firearms will be handled and transferred from one person to another with cylinders open, magazines removed, bolts opened and locked and chambers cleared, safety on.
 - 1. If for some reason such as damage, malfunction, or maintaining the firearms condition for evidentiary purposes, the firearm cannot be unloaded, the person having custody of it shall insure that the status is given to the person to whom the firearm is transferred. If the loaded firearm is deposited into a temporary storage locker, it will be clearly marked and a explanation of its loaded status attached for the Property Technician to read.
 - 2. The Property Technician shall make arrangements for unloading any firearms that were not unloaded prior to securing them into the property/evidence room.
 - 3. The Property Technician will maintain a separate log of all firearms which come into his/her possession. The log will contain: the case number, make, model, serial number, and disposition.

Palo Alto Police Department

Policy Manual

Property Procedures

"Bio-Hazard" labels, or clear and prominent labeling by the submitting officer. The property room should not be considered a conduit for the disposal of bio-hazard materials. Officers who come into possession of such items that are not of any evidentiary value shall dispose of the item(s) at the Stanford Hospital Emergency room.

610.4 RECORDING OF PROPERTY

The Property Technician receiving custody of evidence or property shall record his/her signature, the date and time the property was received and where the property will be stored on the Property Report.

An item number shall be obtained for each item or group of items. This number shall be recorded on Property Tag and the Property Report.

If, during the time the property is held by the Palo Alto Police Department, the location of the property is changed, the change shall be noted on the Property Report.

610.5 PROPERTY CONTROL

Each time the Property Technician receives property or releases property to another person, he/she shall enter this information on the property report form. Officers desiring property for court shall contact the property officer at least one day prior to the court day.

610.5.1 RESPONSIBILITY OF OTHER PERSONNEL

Request for analysis, for items other than narcotics or drugs, shall be completed on the appropriate forms and submitted to the Property Technician. This request may be filled out any time after the booking of property or evidence.

610.5.2 TRANSFER OF EVIDENCE TO CRIME LABORATORY

Items requiring laboratory analysis shall be turned into the property room. The officer shall indicate on the property report what type of analysis is required.

It shall be the responsibility of the Property Technician to take items requiring analysis to the laboratory at least once per week, and more often if required. All items taken to the lab shall be recorded in the crime lab log book maintained in the property room. While at the lab, the Property Technician shall pick up and return to the property room all items on which a lab examination has been completed. These items shall be placed in the property room.

610.6 SECURITY OF STORAGE AREAS

Property storage areas will be secured during all non-business hours and during business hours whenever the Property Technician is absent. The Property Technician and/or other authorized persons will be responsible for securing all areas upon leaving. When the Property Technician is absent the property storage areas may only be entered when:

- (a) **Emergency** - a circumstance of emergency exists or access is necessary to store or retrieve property which cannot wait for the availability of the Property Technician.
- (b) **Authorization** - the person entering the storage area must be authorized by the Investigative Services Division (ISD) Captain.
 1. **Exception** - an exception to the above two provisions is that the Watch Commander has access to the small storage cage for the purpose of storing large items in the absence of the Property Technician.

Palo Alto Police Department
Policy Manual

Property Procedures

- (c) **Property Storage area keys:** Only the following keys to the property storage areas are authorized:
1. One complete set of keys (to the main property room, supplementary storage areas, all temporary storage lockers and the alarm system) will be assigned to the Property Technicians;
 2. One complete duplicate set of keys will be assigned to the ISD Captain and kept in a secured designated place;
 3. One key to the temporary storage room will be assigned to the Watch Commander;
 4. Duplications or possession of keys to the property storage areas' alarms is prohibited without the express permission of the ISD Captain and the Chief of Police;
 5. Locks to the property storage areas and the property storage areas' alarm system will be re-keyed and the safe combination changed whenever a Property Technician is reassigned.

610.6.1 REPORTING OF SUSPICIOUS CIRCUMSTANCES

The Property Technician will notify the Investigative Services Division (ISD) Captain immediately upon discovery of any signs of tampering, unauthorized entry, or other suspicious circumstances and will initiate a case report with complete details.

The ISD Captain will review the report and cause a formal investigation to be initiated if warranted.

610.6.2 INTERNAL AUDITS

Internal audits of the property and evidence in storage will be performed periodically, no less than twice a year, by police personnel. Such audits will be unannounced for the purpose of ensuring integrity of the property/evidence system.

Audits will be performed under the auspices of the Investigative Services Division Captain, who will submit a written report to the Chief of Police. Any discrepancies found will be thoroughly investigated and corrective action taken if necessary. Audits by the City Auditor or other independent party authorized by the Chief shall be conducted at least once a year.

610.7 WITHDRAWAL AND RETURN OF EVIDENCE

An integral part of effective management of a property/evidence function is adequate control and recording of withdrawal and return of evidence. Transferring possession of evidence from one person to another is known as the chain of possession. Accurate records of each change of possession are paramount for prevention of tainted evidence, loss of evidence and for effective prosecution of a case. Properly controlled chain of possession of evidence can also prevent embarrassment to the Department and discipline of employees.

Adherence to the procedure set forth in this general order will result in the complete recording of each change of possession and location of all evidence. The last person in the chain shall be the person who has custody of and is responsible for the proper care and preservation of the evidence.

610.7.1 DEFINITIONS

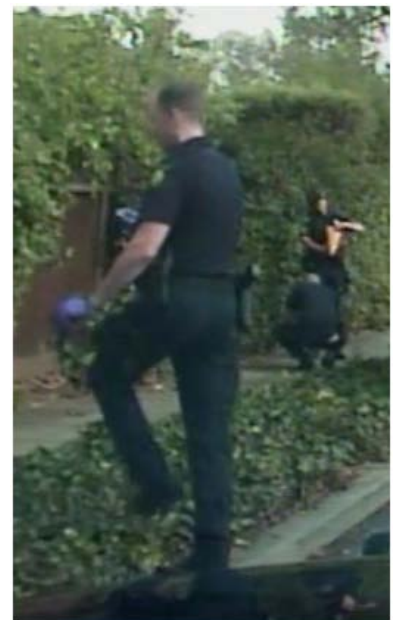
INTRA-AGENCY: The property/evidence does not leave the Palo Alto Police Department (i.e., viewing for identification).

CALIFORNIA PENAL CODE 141.

(b) Any peace officer who knowingly, willfully, and intentionally alters, modifies, plants, places, manufactures, conceals, **or moves any physical matter**, with specific intent that the action will result in a person being charged with a crime or **with the specific intent that the physical matter will be wrongfully produced as genuine or true upon any trial, proceeding, or inquiry whatever**, is guilty of a felony punishable by two, three, or five years in the state prison.



By removing a taser cartridge and taser probe from the crime scene and taking photographs of the scene in order to portray an entirely different set of circumstances than what actually occurred the PAPD violated PC 141 (b) as well as Ciampi's right to "Due Process" under the 14th Amendment of the U.S. Constitution.



CALIFORNIA PENAL CODE 1054.1.

The prosecuting attorney shall disclose to the defendant or his or her attorney all of the following materials and information, if it is in the possession of the prosecuting attorney or if the prosecuting attorney knows it to be in the possession of the investigating agencies:

(a) The names and addresses of persons the prosecutor intends to call as witnesses at trial.

(b) Statements of all defendants.

(c) All relevant real evidence seized or obtained as a part of the investigation of the offenses charged.

(d) The existence of a felony conviction of any material witness whose credibility is likely to be critical to the outcome of the trial.

(e) Any exculpatory evidence.

By removing a taser cartridge and taser probe from the crime scene and destroying them, the Palo Alto Police violated Penal Code 1054.1 (c) and (e).