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9 Attorneys for Defendants

10 UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT OF CALIFORNIA

12 JOSEPH CIAMPI,

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 These responses are made solely for the purpose of this action.

2 **REQUEST FOR PRODUCTION NO 1**

3 Please produce and provide a copy of Defendant Temores' MAV recording that has a
4 "date of last modification" of March 15, 2008, the date that the recording was created.

5 **AMENDED RESPONSE TO REQUEST FOR PRODUCTION NO 1**

6 Objection. This discovery request is vague and ambiguous as to the phrases "MAV
7 recording" and "date of last modification" which are undefined and require speculation as to
8 their meaning and interpretation. Further, the request is argumentative, lacks foundation,
9 and requires assumptions to ascertain its meaning.

10 However and without waiving said objection, Defendant attaches hereto as Exhibit
11 "1", a copy of Officer Temores' MAV recording with a "date of last modification" of March
12 15, 2008.

13 **REQUEST FOR PRODUCTION NO 2**

14 Please produce and provide a copy of Defendant Burger's taser video of the March
15 15, 2008 incident created by taser camera V07-065373 on the tamper proof MPEG4 file
16 format according to the Department of Justice Study and the manufacturer's, Taser
17 International's, specifications. (Obviously the video from this taser camera should not be the
18 same as the video from taser camera V06-015542 that was sent to the Santa Clara County
19 Crime Lab). (Export all of the video files at once from the taser camera to create a copy in
20 the MPEG4 format).

21 **AMENDED RESPONSE TO REQUEST FOR PRODUCTION NO 2**

22 Objection. This discovery request is vague and ambiguous as to the phrases "taser
23 camera V07-065373" and "tamper proof MPEG4 file format" which are undefined and
24 require speculation as to their meaning and interpretation. Further, this request is
25 overbroad to the extent it seeks information within the possession, custody and control of
26 third parties which is equally available to the requesting party. Further, the request is
27 argumentative, lacks foundation, requires assumptions to ascertain its meaning, and
28 inappropriately imputes or seeks legal conclusions within the call of the request and, as

1 phrased, may violate the attorney client privilege, the attorney work product doctrine, and
2 the official information privilege.

3 However and without waiving said objection, Defendant states that on March 15,
4 2008, he was in possession of taser camera V06-015542, not V07-065373 as previously
5 believed. All responses provided previously stating this contrary information will be
6 amended as further investigation has borne out the facts represented herein.

7 The Department is presently attempting to locate taser gun V07-065373 and once
8 found, will agree to downloading its history before an independent neutral party. Suffice it
9 to say as it was not in Officer Burger's possession on March 15, 2008, it will not contain
10 information relevant to this lawsuit.

11 **REQUEST FOR PRODUCTION NO 3**

12 Please produce and provide a copy of Defendant Burger's taser video of the March
13 15, 2008 incident created by taser camera V06-015542 on the tamper proof MPEG4 file
14 format according to the Department of Justice Study and the manufacturer's, Taser
15 International's specifications. (Export all of the video files at once from the taser camera to
16 create a copy in the MPEG4 format).

17 **AMENDED RESPONSE TO REQUEST FOR PRODUCTION NO 3**

18 Objection. This discovery request is vague and ambiguous as to the phrases "taser
19 camera V06-015542" and "tamper proof MPEG4 file format" which are undefined and
20 require speculation as to their meaning and interpretation. Further, this request is overbroad
21 to the extent it seeks information within the possession, custody and control of third parties
22 which is equally available to the requesting party. Further, the request is argumentative,
23 lacks foundation, requires assumptions to ascertain its meaning, and inappropriately imputes
24 or seeks legal conclusions within the call of the request and, as phrased, may violate the
25 attorney client privilege, the attorney work product doctrine, and the official information
26 privilege.

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1 However and without waiving said objection, Defendant states that the Department
2 does not have the physical capability to copy in a MPEG4 format. This has been verified
3 with Taser International. The only method the Department possesses for copying this type
4 of recording is via streaming video. Defendant has previously provided a streaming copy of
5 Defendant Burger's taser video from March 15, 2008, however, if Plaintiff requires an
6 additional copy such will be provided upon request.

7 **REQUEST FOR PRODUCTION NO 4**

8 Please produce and provide a copy of Defendant Temores' taser video of the
9 March 15, 2008 incident created by taser camera V06-0 15530 on the tamper proof MPEG4
10 file format according to the Department of Justice Study and the manufacturer's, Taser
11 International's specifications. (Export all of the video files at once from the taser camera to
12 create a copy in the MPEG4 format).

13 **AMENDED RESPONSE TO REQUEST FOR PRODUCTION NO 4**

14 Objection. This discovery request is vague and ambiguous as to the phrases "taser
15 camera V06-015530" and "tamper proof MPEG4 file format" which are undefined and
16 require speculation as to their meaning and interpretation. Further, this request is
17 overbroad to the extent it seeks information within the possession, custody and control of
18 third parties which is equally available to the requesting party. Further, the request is
19 argumentative, lacks foundation, requires assumptions to ascertain its meaning, and
20 inappropriately imputes or seeks legal conclusions within the call of the request and, as
21 phrased, may violate the attorney client privilege, the attorney work product doctrine, and
22 the official information privilege.

23 However and without waiving said objection, Defendant states that the Department
24 does not have the physical capability to copy in a MPEG4 format. This has been verified
25 with Taser International. The only method the Department possesses for copying this type
26 of recording is via streaming video. Defendant has previously provided a streaming copy of
27 Defendant Temores's taser video from March 15, 2008, however, if Plaintiff requires an
28 additional copy such will be provided upon request.

1 **REQUEST FOR PRODUCTION NO 5**

2 Please produce and provide a copy of Defendant Temores' activation data of the
3 March 15, 2008 incident from his taser gun's Data Port in the PDF file format according to
4 Defendant Powers' assertion from the February 6, 2007 Taser Task Force meeting,
5 according to the Department of Justice Study, and according to the manufacturer Taser
6 International.

7 **AMENDED RESPONSE TO REQUEST FOR PRODUCTION NO 5**

8 Objection. This discovery request is vague and ambiguous as to the phrases
9 “activation data” and “Data Port in the PDF file format” which are undefined and require
10 speculation as to their meaning and interpretation. Further, this request is overbroad to the
11 extent it seeks information within the possession, custody and control of third parties which
12 is equally available to the requesting party. Further, the request is argumentative, lacks
13 foundation, requires assumptions to ascertain its meaning, and inappropriately imputes or
14 seeks legal conclusions within the call of the request and, as phrased, may violate the
15 attorney client privilege, the attorney work product doctrine, and the official information
16 privilege.

17 However and without waiving said objection, Defendant attaches hereto as Exhibit
18 “2”, a PDF copy of Defendant Temores’ activation data. This information can also be found
19 the Use of Force report prepared in this matter attached hereto as Exhibit “3”, as well as the
20 gun’s full history, Exhibit “4”.

21 **REQUEST FOR PRODUCTION NO 6**

22 Please produce and provide a copy of Defendant Burger's activation data of the
23 March 15, 2008 incident from his taser gun's Data Port in the PDF file format according to
24 Defendant Powers' assertion from the February 6,2007 Taser Task Force meeting, according
25 to the Department of Justice Study, and according to the manufacturer Taser International.

26 **AMENDED RESPONSE TO REQUEST FOR PRODUCTION NO 6**

27 Objection. This discovery request is vague and ambiguous as to the phrases
28 “activation data” and “Data Port in the PDF file format” which are undefined and require

1 speculation as to their meaning and interpretation. Further, this request is overbroad to the
2 extent it seeks information within the possession, custody and control of third parties which
3 is equally available to the requesting party. Further, the request is argumentative, lacks
4 foundation, requires assumptions to ascertain its meaning, and inappropriately imputes or
5 seeks legal conclusions within the call of the request and, as phrased, may violate the
6 attorney client privilege, the attorney work product doctrine, and the official information
7 privilege. The request is also compound in nature.

8 However and without waiving said objection, Defendant attaches hereto as Exhibit
9 "5", a PDF copy of Defendant Burger's activation data. This information can also be found
10 the Use of Force report prepared in this matter attached hereto as Exhibit "3", as well as the
11 gun's full history, Exhibit "6".

12 **REQUEST FOR PRODUCTION NO 7**

13 Please produce and provide a copy of Defendant Temores' activation data from his
14 taser gun's Data Port in the PDF file format according to Defendant Powers' assertion from
15 the February 6, 2007 Taser Task Force meeting, according to the Department of Justice
16 Study, and according to the manufacturer Taser International from March 14, 2008 through
17 March 16, 2008 to clear up any disputes about the number of times he discharged electricity
18 and the duration he discharged electricity.

19 **AMENDED RESPONSE TO REQUEST FOR PRODUCTION NO 7**

20 Objection. This discovery request is vague and ambiguous as to the phrases
21 "activation data" and "Data Port in the PDF file format" which are undefined and require
22 speculation as to their meaning and interpretation. Further, this request is overbroad to
23 the extent it seeks information within the possession, custody and control of third parties
24 which is equally available to the requesting party. Further, the request is argumentative,
25 lacks foundation, requires assumptions to ascertain its meaning, and inappropriately
26 imputes or seeks legal conclusions within the call of the request and, as phrased, may
27 violate the attorney client privilege, the attorney work product doctrine, and the official
28 information privilege.

1 However and without waiving said objection, Defendant states that it is unable to
2 select a particular date range to download. As such and in the spirit of cooperation,
3 Defendant attaches hereto as Exhibit "4", the entire report history downloaded from the
4 taser gun utilized by Officer Temores on March 15, 2008, as well as the PDF download
5 of the same date, Exhibit "2".

6 **REQUEST FOR PRODUCTION NO 8**

7 Please produce and provide a copy of Defendant Burger's activation data from his
8 taser gun's Data Port in the PDF file format according to Defendant Powers' assertion
9 from the February 6, 2007 Taser Task Force meeting, according to the Department of
10 Justice Study, and according to the manufacturer Taser International from March 14, 2008
11 through March 16, 2008, to clear up any disputes about the number of times he discharged
12 electricity and the duration he discharged electricity.

13 **AMENDED RESPONSE TO REQUEST FOR PRODUCTION NO 8**

14 Objection. This discovery request is vague and ambiguous as to the phrases
15 "activation data" and "Data Port in the PDF file format" which are undefined and require
16 speculation as to their meaning and interpretation. Further, this request is overbroad to
17 the extent it seeks information within the possession, custody and control of third parties
18 which is equally available to the requesting party. Further, the request is argumentative,
19 lacks foundation, requires assumptions to ascertain its meaning, and inappropriately
20 imputes or seeks legal conclusions within the call of the request and, as phrased, may
21 violate the attorney client privilege, the attorney work product doctrine, and the official
22 information privilege. The request is further compound.

23 However and without waiving said objection, Defendant states that it is unable to
24 select a particular date range to download. As such and in the spirit of cooperation,
25 Defendant attaches hereto as Exhibit "6", the entire report history downloaded from the
26 taser gun utilized by Officer Burger on March 15, 2008, as well as the PDF Weapon
27 Summary, Exhibit "5".

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1 **REQUEST FOR PRODUCTION NO 9**

2 Please produce and provide the secure "x26" DATA FILES, containing the
3 activation data of Defendants Temores' and Burger's taser guns' Data Ports from the
4 March 15, 2008, incident.

5 **AMENDED RESPONSE TO REQUEST FOR PRODUCTION NO 9**

6 Objection. This discovery request is compound and vague and ambiguous as to
7 the phrases "secure x26 DATA FILES," "activation data," and "Data Ports" which are
8 undefined and require speculation as to their meaning and interpretation. Further, the
9 request is argumentative, lacks foundation, and requires assumptions to ascertain its
10 meaning. Further, this request is overbroad to the extent it seeks information within the
11 possession, custody and control of third parties which is equally available to the
12 requesting party. The request is also compound.

13 Furthermore, other than the reference to the model of the taser gun "x26," the
14 request is duplicative of Requests for Production 8 and 9, above.

15 However and without waiving said objection, Defendant refers Plaintiff to
16 Exhibits "4" and "6" which contain the PDF download history for the taser guns of both
17 Officer Temores and Officer Burger.

18 **REQUEST FOR PRODUCTION NO 10**

19 Please produce and provide the secure "x26" DATA FILES, containing the
20 activation data of Defendants Temores' and Burger's taser guns' Data Ports from March
21 14, 2008 through March 16, 2008 in order to clear up any disputes about the number of
22 times electricity was discharged.

23 **AMENDED RESPONSE TO REQUEST FOR PRODUCTION NO 10**

24 Objection. This discovery request is compound and vague and ambiguous as to
25 the phrases "secure x26 DATA FILES," "activation data," and "Data Ports" which are
26 undefined and require speculation as to their meaning and interpretation. Further, the
27 request is argumentative, lacks foundation, and requires assumptions to ascertain its
28 meaning. The request is also compound.

1 However and without waiving said objection, Defendant refers Plaintiff to
2 Exhibits "4" and "6" which are responsive to this request.

3 **REQUEST FOR PRODUCTION NO 11**

4 Please produce and provide documentation that verifies that there is only one
5 MAV hard drive per vehicle.

6 **RESPONSE TO REQUEST FOR PRODUCTION NO 11**

7 Objection. This discovery request is argumentative, lacks foundation, and
8 requires an assumption to ascertain its meaning. Further, the request is vague and
9 ambiguous as to the term "verifies" and the phrase "MAV hard drive" which are
10 undefined and require speculation as to their meaning and interpretation. Further, the
11 request is overbroad to the extent it seeks information within the possession, custody and
12 control of third parties which is equally available to the requesting party.

13 However and without waiving said objections, Defendant attaches hereto as
14 Exhibit "7" a copy of the Kustom Signals Reference Manual for its MAV system.
15 Defendant cannot, however, authenticate its completeness as he did not author the actual
16 manual.

17 As can be seen from its review, there is only one hard drive in a vehicle at any
18 given time. At the end of an officer's shift, that hard drive is removed and dropped in a
19 secure box for uploading to the Department's CPU/server by the MAV Custodian which,
20 at Palo Alto, is Brian Furtado. The hard drives are then put back into circulation and the
21 original recordings remain on the CPU.

22 **REQUEST FOR PRODUCTION NO 12**

23 Please produce Defendant Temores' original MAV recording DVD, that was
24 created on March 15 ,2008, that was or was supposed to be placed in the secure MAV
25 recording lock-box, as documented in Palo Alto CMR 462:04, under MAV policy 446.3,
26 for inspection, review, analysis and duplication in the presence of a neutral third party
27 who will document the evidence for court purposes.

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1 **RESPONSE TO REQUEST FOR PRODUCTION NO 12**

2 Objection. This discovery request is argumentative, lacks foundation, and
3 requires assumptions to ascertain its meaning. Further, the request is vague and
4 ambiguous as to the phrases "original MAV recording DVD," "the secure MAV
5 recording lock-box," "Palo Alto CMR 462:04," and "MAV policy 446.3" which are
6 undefined and require speculation as to their meaning and interpretation. Further, this
7 request inappropriately mixes legal conclusions into the substance of the request
8 rendering it unintelligible and beyond the scope of permissible discovery. Further, the
9 request is overbroad to the extent it seeks information within the possession, custody and
10 control of third parties which is equally available to the requesting party.

11 However and without waiving said objection, Defendant states that the original
12 recording is available on the Department CPU for viewing, inspection and analysis by a
13 neutral third party at a time/date arranged between the parties/counsel. Plaintiff has
14 already been provided with a copy of this recording in previous responses.

15 **REQUEST FOR PRODUCTION NO 13**

16 Please produce and provide Defendant Burger's original MAV recording DVD,
17 that was created on March 15, 2008, that was or was supposed to be placed in the secure
18 MAV recording lock-box, as documented in Palo Alto CMR 462:04, under MAV policy
19 446.3, for inspection, review, analysis and duplication in the presence of a neutral third
20 party who will document the evidence for court purposes.

21 **RESPONSE TO REQUEST FOR PRODUCTION NO 13**

22 Objection. This discovery request is argumentative, lacks foundation, and
23 requires assumptions to ascertain its meaning. Further, the request is vague and
24 ambiguous as to the phrases "original MA V recording DVD," "the secure MAV
25 recording lock-box," "Palo Alto CMR 462:04," and "MAV policy 446.3" which are
26 undefined and require speculation as to their meaning and interpretation. Further, this
27 request inappropriately mixes legal conclusions into the substance of the request
28 rendering it unintelligible and beyond the scope of permissible discovery. Further, the

1 request is overbroad to the extent it seeks information within the possession, custody and
2 control of third parties which is equally available to the requesting party.

3 However and without waiving said objection, Defendant states that the original
4 recording is available on the Department CPU for viewing, inspection and analysis by a
5 neutral third party at a time/date arranged between the parties/counsel. Plaintiff has
6 already been provided with a copy of this recording in previous responses.

7 **REQUEST FOR PRODUCTION NO 14**

8 Please produce and provide the chain of custody log of Defendant Temores' MAV
9 recording as documented in Palo Alto CMR 462:04, under attachment "D, No.5," "Chain
10 of custody log will be maintained on the MAV Server by Custodian from Technical
11 Services.

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

13 Objection. This discovery request is vague and ambiguous as to the phrases
14 "chain of custody log," "Palo Alto CMR 462:04," and "attachment D, No. 5" which are
15 undefined and require speculation as to their meaning and interpretation. Further, the
16 request is overbroad in that it is not limited to plaintiff or his legal claims, and thus seeks
17 irrelevant information not calculated to lead to the discovery of admissible evidence.
18 Further, the request is overbroad to the extent it seeks information within the possession,
19 custody and control of third parties which is equally available to the requesting party.

20 However and without waiving said objection, Defendant states once a MAV
21 recording is uploaded to the server, a log is created which basically chronicles what was
22 accessed and for what purpose, i.e., recording, copies etc. A copy of Officer Temores'
23 log is attached hereto as Exhibit "10". Officer Burger's log will be provided immediately
24 upon receipt. Two copies of Temores' log were inadvertently provided to counsel.

25 **REQUEST FOR PRODUCTION NO 15**

26 Please produce and provide the chain of possession of Defendant Temores'
27 original DVD MAV recording of the March 15, 2008, incident according to Palo Alto
28 Police Department's policy Section 610 Property Procedures.

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2 **RESPONSE TO REQUEST FOR PRODUCTION NO 15**

3 Objection. This discovery request is argumentative, lacks foundation, and
4 requires assumptions to ascertain its meaning. Further, the request is vague and
5 ambiguous as to the phrases "original DVD MAV recording," and "Palo Alto Police
6 Department's policy Section 610 Property Procedures" which are undefined and require
7 speculation as to their meaning and interpretation. Further, this request inappropriately
8 mixes legal conclusions into the substance of the request rendering it unintelligible,
9 beyond the scope of permissible discovery, and, as phrased, violates the attorney work
10 product doctrine. Further, the request is overbroad to the extent it seeks information
11 within the possession, custody and control of third parties which is equally available to
12 the requesting party.

13 However and without waiving said objection, Defendant states that as noted
14 previously, the original recording remains on the Department's CPU. A DVD that was
15 made of the original recording and it remains in evidence. A copy of the evidence sheet
16 is attached as Exhibit "10".

17 **REQUEST FOR PRODUCTION NO 16**

18 Please produce and provide the chain of possession of Defendant Burger's original
19 DVD MAV recording of the March 15, 2008 incident according to Palo Alto Police
20 Department's policy Section 610 Property Procedures.

21 **RESPONSE TO REQUEST FOR PRODUCTION NO 16**

22 Objection. This discovery request is argumentative, lacks foundation, and
23 requires assumptions to ascertain its meaning. Further, the request is vague and
24 ambiguous as to the phrases "original DVD MAV recording," and "Palo Alto Police
25 Department's policy Section 610 Property Procedures" which are undefined and require
26 speculation as to their meaning and interpretation. Further, this request inappropriately
27 mixes legal conclusions into the substance of the request rendering it unintelligible,
28 beyond the scope of permissible discovery, and, as phrased, violates the attorney work

1 product doctrine. Further, the request is overbroad to the extent it seeks information
2 within the possession, custody and control of third parties which is equally available to
3 the requesting party.

4 However and without waiving said objection, Defendant states that as noted
5 previously, the original recording remains on the Department's CPU. A DVD that was
6 made of the original recording and the original remains in evidence. A copy of the
7 evidence sheet is attached as Exhibit "8".

8 **REQUEST FOR PRODUCTION NO 17**

9 Please produce and provide all reports and documents of the Palo Alto Police
10 Department's analysis of Defendants Burger's and Temores' MAV recordings
11 accomplished by using the propriety software and or verification program that detects
12 alterations and tampering as documented in the Palo Alto CMR 462:04 MAV policy.

13 **RESPONSE TO REQUEST FOR PRODUCTION NO 17**

14 Objection. Defendant objects to this request in that it is compound and vague and
15 ambiguous as to the phrases "analysis," "proprietary software and or verification
16 program," and "Palo Alto CMR 462:04 MAV policy" which are undefined and require
17 speculation as to their meaning and interpretation. Further, the request is overbroad in
18 that it is not limited to plaintiff or his legal claims, and thus seeks irrelevant information
19 not calculated to lead to the discovery of admissible evidence. Further, the request as
20 phrased may seek the production of documents that are privileged under the attorney
21 client and work product privileges, as well as personnel file information which is
22 privileged pursuant to the official information privilege. Further, the request is overbroad
23 to the extent it seeks information within the possession, custody and control of third
24 parties which is equally available to the requesting party.

25 However and without waiving said objection, Defendant attaches hereto as
26 Exhibit "9" documents which are responsive to this request.

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1 **REQUEST FOR PRODUCTION NO 18**

2 Please produce and provide the identity of the MAV Custodian or other
3 department personnel who created the copy of Defendant Temores' MAV recording that
4 has a date of last modification of March 18,2008 according to Palo Alto CMR 462:04
5 MAV policy 446.4 and 446.9.

6 **RESPONSE TO REQUEST FOR PRODUCTION NO 18**

7 Objection. This discovery request is argumentative, lacks foundation, and
8 requires assumptions to ascertain its meaning. Further, the request is vague and
9 ambiguous as to the phrases "who created", "date of last modification," and Palo Alto
10 CMR 462:04 MAV policy 446.4 and 446.9," which are undefined and require
11 speculation as to their meaning and interpretation. Further, this request inappropriately
12 mixes legal conclusions into the substance of the request rendering it unintelligible,
13 beyond the scope of permissible discovery, and, as phrased, violates the attorney client
14 privilege and attorney work product doctrine. Further, the request is overbroad to the
15 extent it seeks information within the possession, custody and control of third parties
16 which is equally available to the requesting party. Further, to the extent the request seeks
17 the desired information solely in the form of a written response from this Defendant, the
18 Request is in effect an interrogatory and should be asked pursuant to Rule 36 of the
19 Federal Rules of Civil Procedure.

20 Lastly, Defendant is responding to what essentially constitutes Interrogatory No. 5
21 in a spirit of cooperation. However, Plaintiff is now on notice that Defendant will object,
22 from this point forward, to any interrogatory that is cloaked as an admission or
23 production request. Defendant considers that this request constitutes one of Plaintiff's
24 interrogatories under FRCP and will not respond once the statutory limit is exceeded.

25 However and without waiving said objection, Defendant states, Brian Furtado.

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1 **REQUEST FOR PRODUCTION NO 19**

2 Please produce and provide the identity of the MAV Custodian or other
3 department personnel who created the copy of Defendant Temores' MAVrecording that
4 has a date of last modification of October 12, 2008 according to Palo Alto CMR 462:04
5 MAVpolicy 446.4 and 446.9.

6 **RESPONSE TO REQUEST FOR PRODUCTION NO 19**

7 Objection. This discovery request is argumentative, lacks foundation, and
8 requires assumptions to ascertain its meaning. Further, the request is vague and
9 ambiguous as to the phrases "who created", "date of last modification," and Palo Alto
10 CMR 462:04 MAV policy 446.4 and 446.9," which are undefined and require
11 speculation as to their meaning and interpretation. Further, this request inappropriately
12 mixes legal conclusions into the substance of the request rendering it unintelligible,
13 beyond the scope of permissible discovery, and, as phrased, violates the attorney client
14 privilege and attorney work product doctrine. Further, the request is overbroad to the
15 extent it seeks information within the possession, custody and control of third parties
16 which is equally available to the requesting party. Further, to the extent the request seeks
17 the desired information solely in the form of a written response from this Defendant, the
18 Request is in effect an interrogatory and should be asked pursuant to Rule 36 of the
19 Federal Rules of Civil Procedure.

20 Lastly, Defendant is responding to what essentially constitutes Interrogatory No. 6
21 in a spirit of cooperation. However, Plaintiff is now on notice that Defendant will object,
22 from this point forward, to any interrogatory that is cloaked as an admission or
23 production request. Defendant considers that this request constitutes one of Plaintiff's
24 interrogatories under FRCP and will not respond once the statutory limit is exceeded.

25 However and without waiving said objection, Defendant states, Brian Furtado.

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1 **REQUEST FOR PRODUCTION NO 20**

2 Please produce and provide the identity of the MAV Custodian or other
3 department personnel who created the copy of Defendant Burger's MAV recording that
4 has a date of last modification of March 18, 2008 according to Palo Alto CMR 462:04
5 MAV policy 446.4 and 446.9.

6 **RESPONSE TO REQUEST FOR PRODUCTION NO 20**

7 Objection. This discovery request is argumentative, lacks foundation, and
8 requires assumptions to ascertain its meaning. Further, the request is vague and
9 ambiguous as to the phrases "who created", "date of last modification," and Palo Alto
10 CMR 462:04 MAV policy 446.4 and 446.9," which are undefined and require
11 speculation as to their meaning and interpretation. Further, this request inappropriately
12 mixes legal conclusions into the substance of the request rendering it unintelligible,
13 beyond the scope of permissible discovery, and, as phrased, violates the attorney client
14 privilege and attorney work product doctrine. Further, the request is overbroad to the
15 extent it seeks information within the possession, custody and control of third parties
16 which is equally available to the requesting party. Further, to the extent the request seeks
17 the desired information solely in the form of a written response from this Defendant, the
18 Request is in effect an interrogatory and should be asked pursuant to Rule 36 of the
19 Federal Rules of Civil Procedure.

20 Lastly, Defendant is responding to what essentially constitutes Interrogatory No. 7
21 in a spirit of cooperation. However, Plaintiff is now on notice that Defendant will object,
22 from this point forward, to any interrogatory that is cloaked as an admission or
23 production request. Defendant considers that this request constitutes one of Plaintiff's
24 interrogatories under FRCP and will not respond once the statutory limit is exceeded.

25 However and without waiving said objection, Defendant states, Brian Furtado.

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1 **REQUEST FOR PRODUCTION NO 21**

2 Please produce and provide the identity of the MAV Custodian or other
3 department personnel who created the copy of Defendant Burger's MAV recording that
4 has a date of last modification of October 13, 2008 according to Palo Alto CMR 462:04
5 MAVpolicy 446.4 and 446.9.

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

7 Objection. This discovery request is argumentative, lacks foundation, and
8 requires assumptions to ascertain its meaning. Further, the request is vague and
9 ambiguous as to the phrases "who created", "date of last modification," and Palo Alto
10 CMR 462:04 MAV policy 446.4 and 446.9," which are undefined and require
11 speculation as to their meaning and interpretation. Further, this request inappropriately
12 mixes legal conclusions into the substance of the request rendering it unintelligible,
13 beyond the scope of permissible discovery, and, as phrased, violates the attorney client
14 privilege and attorney work product doctrine. Further, the request is overbroad to the
15 extent it seeks information within the possession, custody and control of third parties
16 which is equally available to the requesting party. Further, to the extent the request seeks
17 the desired information solely in the form of a written response from this Defendant, the
18 Request is in effect an interrogatory and should be asked pursuant to Rule 36 of the
19 Federal Rules of Civil Procedure.

20 Lastly, Defendant is responding to what essentially constitutes Interrogatory No. 8
21 in a spirit of cooperation. However, Plaintiff is now on notice that Defendant will object,
22 from this point forward, to any interrogatory that is cloaked as an admission or
23 production request. Defendant considers that this request constitutes one of Plaintiff's
24 interrogatories under FRCP and will not respond once the statutory limit is exceeded.

25 However and without waiving said objection, Defendant states, Brian Furtado.

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1 **REQUEST FOR PRODUCTION NO 22**

2 Please produce and provide the identity of the MAV Custodian or other
3 department personnel who created the copy of Defendant Temores' MAV recording that
4 has a date of last modification of March 15, 2008 according to Palo Alto CMR 462:04
5 MAV policy 446.4 and 446.9.

6 **RESPONSE TO REQUEST FOR PRODUCTION NO 22**

7 Objection. This discovery request is argumentative, lacks foundation, and
8 requires assumptions to ascertain its meaning. Further, the request is vague and
9 ambiguous as to the phrases "who created", "date of last modification," and Palo Alto
10 CMR 462:04 MAV policy 446.4 and 446.9," which are undefined and require
11 speculation as to their meaning and interpretation. Further, this request inappropriately
12 mixes legal conclusions into the substance of the request rendering it unintelligible,
13 beyond the scope of permissible discovery, and, as phrased, violates the attorney client
14 privilege and attorney work product doctrine. Further, the request is overbroad to the
15 extent it seeks information within the possession, custody and control of third parties
16 which is equally available to the requesting party. Further, to the extent the request seeks
17 the desired information solely in the form of a written response from this Defendant, the
18 Request is in effect an interrogatory and should be asked pursuant to Rule 36 of the
19 Federal Rules of Civil Procedure.

20 Lastly, Defendant is responding to what essentially constitutes Interrogatory No. 9
21 in a spirit of cooperation. However, Plaintiff is now on notice that Defendant will object,
22 from this point forward, to any interrogatory that is cloaked as an admission or
23 production request. Defendant considers that this request constitutes one of Plaintiff's
24 interrogatories under FRCP and will not respond once the statutory limit is exceeded.

25 However and without waiving said objection, Defendant states, Brian Furtado.

26 **REQUEST FOR PRODUCTION NO 23**

27 Please produce and provide the identity, (the names, addresses and phone
28 numbers), of the MAV Custodians or other department personnel or anyone else who

1 removed Defendants Temores' and Burger's MAV recordings from the tamper proof hard
2 drives.

3 **RESPONSE TO REQUEST FOR PRODUCTION NO 23**

4 Objection. This discovery request is overbroad as to time, compound,
5 argumentative, lacks foundation, and requires assumptions to ascertain its meaning.
6 Further, the request is vague and ambiguous as to the phrases "removed", and "tamper
7 proof hard drives," which are undefined and require speculation as to their meaning and
8 interpretation. Further, the request is overbroad in that it is not limited to plaintiff or his
9 legal claims, and thus seeks irrelevant information not calculated to lead to the discovery
10 of admissible evidence. Further, this request inappropriately mixes legal conclusions into
11 the substance of the request rendering it unintelligible, beyond the scope of permissible
12 discovery, and, as phrased, violates the attorney client privilege and attorney work
13 product doctrine, as well as the official information privilege relating to personnel file
14 information. Further, the request is overbroad to the extent it seeks information within
15 the possession, custody and control of third parties which is equally available to the
16 requesting party. Further, to the extent the request seeks the desired information solely in
17 the form of a written response from this Defendant, the Request is in effect an
18 interrogatory and should be asked pursuant to Rule 36 of the Federal Rules of Civil
19 Procedure.

20 Lastly, Defendant is responding to what essentially constitutes Interrogatory No.
21 10 in a spirit of cooperation. However, Plaintiff is now on notice that Defendant will
22 object, from this point forward, to any interrogatory that is cloaked as an admission or
23 production request. Defendant considers that this request constitutes one of Plaintiff's
24 interrogatories under FRCP and will not respond once the statutory limit is exceeded.

25 However and without waiving said objection, Defendant states, Brian Furtado.

26 **REQUEST FOR PRODUCTION NO 24**

27 Please produce and provide the dates and times that Defendants Ternores' and
28 Burger's MAV recordings of the March 15, 2008 incident were removed from the tamper
proof hard drives.

1 **RESPONSE TO REQUEST FOR PRODUCTION NO 24**

2 Objection. This discovery request is compound, argumentative, lacks foundation,
3 and requires assumptions to ascertain its meaning. Further, the request is vague and
4 ambiguous as to the phrases “removed”, and “tamper proof hard drives,” which are
5 undefined and require speculation as to their meaning and interpretation. Further, this
6 request inappropriately mixes legal conclusions into the substance of the request
7 rendering it unintelligible, beyond the scope of permissible discovery, and, as phrased,
8 violates the attorney client privilege and attorney work product doctrine, as well as the
9 official information privilege relating to personnel file information. Further, the request
10 is overbroad to the extent it seeks information within the possession, custody and control
11 of third parties which is equally available to the requesting party. Further, to the extent
12 the request seeks the desired information solely in the form of a written response from
13 this Defendant, the Request is in effect an interrogatory and should be asked pursuant to
14 Rule 36 of the Federal Rules of Civil Procedure.

15 Lastly, Defendant is responding to what essentially constitutes Interrogatory No.
16 11 in a spirit of cooperation. However, Plaintiff is now on notice that Defendant will
17 object, from this point forward, to any interrogatory that is cloaked as an admission or
18 production request. Defendant considers that this request constitutes one of Plaintiff’s
19 interrogatories under FRCP and will not respond once the statutory limit is exceeded.

20 However and without waiving said objection, Defendant states March 15, 2008, is
21 the date the recording was uploaded.

22 **REQUEST FOR PRODUCTION NO 25**

23 Please produce and provide the date and time Defendant Burger's MAV video of
24 the March 15, 2008 incident was uploaded into the MAV server.

25 **RESPONSE TO REQUEST FOR PRODUCTION NO 25**

26 Objection. This discovery request is argumentative, lacks foundation, and
27 requires assumptions to ascertain its meaning. Further, the request is vague and
28 ambiguous as to the phrases “MAV video”, “uploaded,” and “MAV server,” which are

1 undefined and require speculation as to their meaning and interpretation. Further, the
2 request is overbroad to the extent it seeks information within the possession, custody and
3 control of third parties which is equally available to the requesting party. Further, to the
4 extent the request seeks the desired information solely in the form of a written response
5 from this Defendant, the Request is in effect an interrogatory and should be asked
6 pursuant to Rule 36 of the Federal Rules of Civil Procedure.

7 Lastly, Defendant is responding to what essentially constitutes Interrogatory No.
8 12 in a spirit of cooperation. However, Plaintiff is now on notice that Defendant will
9 object, from this point forward, to any interrogatory that is cloaked as an admission or
10 production request. Defendant considers that this request constitutes one of Plaintiff's
11 interrogatories under FRCP and will not respond once the statutory limit is exceeded.

12 However and without waiving said objection, Defendant states March 15, 2008.
13 The exact time is indicated on the report which is attached as Exhibit "10". Two copies
14 of Officer Temores' report were provided inadvertently. There is printout concerning
15 Officer Burger's MAV recording as well, and that document will be provided
16 immediately upon receipt.

17 **REQUEST FOR PRODUCTION NO 26**

18 Please produce and provide the date and time Defendant Temores' MAV video of
19 the March 15, 2008 incident was uploaded into the MAV server.

20 **RESPONSE TO REQUEST FOR PRODUCTION NO 26**

21 Objection. This discovery request is argumentative, lacks foundation, and
22 requires assumptions to ascertain its meaning. Further, the request is vague and
23 ambiguous as to the phrases "MAV video", "uploaded," and "MAV server," which are
24 undefined and require speculation as to their meaning and interpretation. Further, the
25 request is overbroad to the extent it seeks information within the possession, custody and
26 control of third parties which is equally available to the requesting party. Further, to the
27 extent the request seeks the desired information solely in the form of a written response
28 from this Defendant, the Request is in effect an interrogatory and should be asked
pursuant to Rule 36 of the Federal Rules of Civil Procedure.

1 Lastly, Defendant is responding to what essentially constitutes Interrogatory No.
2 13 in a spirit of cooperation. However, Plaintiff is now on notice that Defendant will
3 object, from this point forward, to any interrogatory that is cloaked as an admission or
4 production request. Defendant considers that this request constitutes one of Plaintiff's
5 interrogatories under FRCP and will not respond once the statutory limit is exceeded.

6 However and without waiving said objection, Defendant states March 15, 2008.
7 The exact time is indicated on the report which is attached as Exhibit 10".

8 **REQUEST FOR PRODUCTION NO 27**

9 Please produce and provide the identity of the MAV Custodian or other employee
10 who uploaded Defendant Burger's MAV video of the March 15,2008 incident into the
11 secure MAV server.

12 **RESPONSE TO REQUEST FOR PRODUCTION NO 27**

13 Objection. This discovery request is argumentative, lacks foundation, and
14 requires assumptions to ascertain its meaning. Further, the request is vague and
15 ambiguous as to the phrases "MAV video", "uploaded," and "secure MAV server,"
16 which are undefined and require speculation as to their meaning and interpretation.
17 Further, as phrased, the request violates the official information privilege relating to
18 personnel file information. Further, the request is overbroad to the extent it seeks
19 information within the possession, custody and control of third parties which is equally
20 available to the requesting party. Further, to the extent the request seeks the desired
21 information solely in the form of a written response from this Defendant, the Request is
22 in effect an interrogatory and should be asked pursuant to Rule 36 of the Federal Rules of
23 Civil Procedure.

24 Lastly, Defendant is responding to what essentially constitutes Interrogatory No.
25 14 in a spirit of cooperation. However, Plaintiff is now on notice that Defendant will
26 object, from this point forward, to any interrogatory that is cloaked as an admission or
27 production request. Defendant considers that this request constitutes one of Plaintiff's
28 interrogatories under FRCP and will not respond once the statutory limit is exceeded.

1 However and without waiving said objection, Defendant states, Brian Furtado.

2 **REQUEST FOR PRODUCTION NO 28**

3 Please produce and provide the identity of the MAV Custodian or other employee
4 who uploaded Defendant Temores' MAV video of the March 15, 2008 incident into the
5 secure MAV server.

6 **RESPONSE TO REQUEST FOR PRODUCTION NO 28**

7 Objection. This discovery request is argumentative, lacks foundation, and
8 requires assumptions to ascertain its meaning. Further, the request is vague and
9 ambiguous as to the phrases "MAV video", "uploaded," and "secure MAV server,"
10 which are undefined and require speculation as to their meaning and interpretation.
11 Further, as phrased, the request violates the official information privilege relating to
12 personnel file information. Further, the request is overbroad to the extent it seeks
13 information within the possession, custody and control of third parties which is equally
14 available to the requesting party. Further, to the extent the request seeks the desired
15 information solely in the form of a written response from this Defendant, the Request is
16 in effect an interrogatory and should be asked pursuant to Rule 36 of the Federal Rules of
17 Civil Procedure.

18 Lastly, Defendant is responding to what essentially constitutes Interrogatory No.
19 15 in a spirit of cooperation. However, Plaintiff is now on notice that Defendant will
20 object, from this point forward, to any interrogatory that is cloaked as an admission or
21 production request. Defendant considers that this request constitutes one of Plaintiff's
22 interrogatories under FRCP and will not respond once the statutory limit is exceeded.

23 However and without waiving said objection, Defendant states, Brian Furtado.

24 **REQUEST FOR PRODUCTION NO 29**

25 Please produce the MAV server and the electronic chain of custody log of
26 Defendants Temores' and Burger's MAV recordings for inspection, review, analysis and
27 duplication at a mutually convenient time in the presence of a neutral third party who will
28 document the evidence for court purposes.

///

1 **RESPONSE TO REQUEST FOR PRODUCTION NO 29**

2 Objection. This discovery request is compound and vague and ambiguous as to
3 the phrases "MAV server," and "electronic chain of custody log" which are undefined
4 and require speculation as to their meaning and interpretation. Further, the request is
5 overbroad as to time and is not limited to plaintiff or his legal claims, and thus seeks
6 irrelevant information not calculated to lead to the discovery of admissible evidence.
7 Further, the request is overbroad to the extent it seeks information within the possession,
8 custody and control of third parties which is equally available to the requesting party.

9 However and without waiving said objection, Defendant states that these
10 documents and the server are available for viewing, inspection and analysis by a neutral
11 third party at a time/date arranged between the parties/counsel.

12 **REQUEST FOR PRODUCTION NO 30**

13 Please produce and provide the complete and official Palo Alto Police
14 Department MAV policy.

15 **RESPONSE TO REQUEST FOR PRODUCTION NO 30**

16 Objection. This discovery request is vague and ambiguous as to time and the
17 phrase "complete and official Palo Alto Police Department MAV policy" which is
18 undefined and requires speculation as to its meaning and interpretation. Further, the
19 request as phrased may seek the production of documents that are privileged under the
20 attorney client and work product privileges. Further, the request is overbroad to the
21 extent it seeks information within the possession, custody and control of third parties
22 which is equally available to the requesting party.

23 However and without waiving said objection, Defendant attaches hereto as
24 Exhibit "11", Policy 446.

25 **REQUEST FOR PRODUCTION NO 31**

26 Please produce and provide the complete Palo Alto Police Department's policy
27 Section 610 Property Procedures.

28 ///

1 **RESPONSE TO REQUEST FOR PRODUCTION NO 31**

2 Objection. This discovery request is vague and ambiguous as to time and the
3 phrase "Palo Alto Police Department's policy Section 610 Property Procedures" which is
4 undefined and requires speculation as to its meaning and interpretation. Further, the
5 request as phrased may seek the production of documents that are privileged under the
6 attorney client and work product privileges. Further, the request is overbroad to the
7 extent it seeks information within the possession, custody and control of third parties
8 which is equally available to the requesting party.

9 However and without waiving said objection, Defendant attaches as Exhibit "12"
10 documents responsive to this request.

11 **REQUEST FOR PRODUCTION NO 32**

12 Please provide a copy of Sergeant Michael Honiker's audio recording of Plaintiff
13 Ciampi according to Palo Alto Police Department Policy Section 449.

14 **RESPONSE TO REQUEST FOR PRODUCTION NO 32**

15 Objection. This discovery request is vague and ambiguous as to time and the
16 phrases "audio recording" and "Palo Alto Police Department Policy Section 449" which
17 are undefined and require speculation as to their meaning and interpretation. Further, the
18 request as phrased is argumentative to the extent it assumes the legal basis for the
19 request. Further, to the extent the request seeks personnel information relating to third
20 parties not named in this lawsuit, the request is not calculated to lead to the discovery of
21 admissible evidence, and violates the right of privacy of those persons as well as and the
22 official information privilege. Further, the request is overbroad to the extent it seeks
23 information within the possession, custody and control of third parties which is equally
24 available to the requesting party.

25 However and without waiving said objection, Defendant believes that Plaintiff is
26 in possession of this audio recording. Furthermore, Section 449 does not apply this
27 particular interview. Plaintiff's interview with Sergeant Honiker was part of an internal
28 affairs investigation and it is outlined in the Use of Force report provided at Exhibit "3".

1 Section 449 covers tape recordings in general, not internal affairs investigations. As
2 such, there is nothing additional to provide.

3 **REQUEST FOR PRODUCTION NO 33**

4 Please produce and provide the chain of possession record of Sergeant Michael
5 Honiker's audio recording of Plaintiff Ciampi according to Palo Alto Police Department's
6 policy Section 610 Property Procedures.

7 **RESPONSE TO REQUEST FOR PRODUCTION NO 33**

8 Objection. This discovery request is vague and ambiguous as to time and the
9 phrases "audio recording" and "Palo Alto Police Department's policy Section 610
10 Property Procedures" which are undefined and require speculation as to their meaning
11 and interpretation. Further, the request as phrased is argumentative to the extent it
12 assumes the legal basis for the request. Further, to the extent the request seeks personnel
13 information relating to third parties not named in this lawsuit, the request is not
14 calculated to lead to the discovery of admissible evidence, and violates the right of
15 privacy of those persons as well as and the official information privilege. Further, the
16 request is overbroad to the extent it seeks information within the possession, custody and
17 control of third parties which is equally available to the requesting party.

18 However and without waiving said objection, Defendant states that there is no
19 chain of custody because the interview was/is not considered "evidence." It is not part of
20 the crime report. Please see response to No. 32, above.

21 **REQUEST FOR PRODUCTION NO 34**

22 Please produce Sergeant Michael Honiker's original recording for inspection,
23 review and duplication at a mutually convenient date and time in the presence of a neutral
24 third party who will document the evidence for the Court.

25 **RESPONSE TO REQUEST FOR PRODUCTION NO 34**

26 Objection. This discovery request is vague and ambiguous as to time and the
27 phrases "audio recording" and "Palo Alto Police Department's policy Section 610
28 Property Procedures" which are undefined and require speculation as to their meaning

1 and interpretation. Further, the request as phrased is argumentative to the extent it
2 assumes the legal basis for the request. Further, to the extent the request seeks personnel
3 information relating to third parties not named in this lawsuit, the request is not
4 calculated to lead to the discovery of admissible evidence, and violates the right of
5 privacy of those persons as well as and the official information privilege. Further, the
6 request is overbroad to the extent it seeks information within the possession, custody and
7 control of third parties which is equally available to the requesting party.

8 However and without waiving said objection, Defendant states that the original
9 recording is stored on the Department server and as such, cannot be surrendered. The
10 recording is available on the Department CPU for listening, inspection, and copying by a
11 mutually selected neutral third party at a time/date arranged between the parties/counsel.

12 **REQUEST FOR PRODUCTION NO 35**

13 Please produce and provide any and all evidence of a baseball bat being at the
14 scene of the March 15, 2008 incident as documented in Defendant Burger's statement in
15 the police report.

16 **AMENDED RESPONSE TO REQUEST FOR PRODUCTION NO 35**

17 Objection. This discovery request is argumentative, lacks foundation, and
18 requires assumptions to ascertain its meaning. Further, the request is vague and
19 ambiguous as to the term "evidence" which is undefined and requires speculation as to its
20 meaning and interpretation. Further, the request is overbroad and burdensome in that it
21 seeks information that may be known by third parties who are equally available to the
22 requesting party. Further, the request as phrased violates the attorney client privilege and
23 attorney work product doctrine, as well as the official information privilege relating to
24 personnel file information.

25 However and without waiving said objection, Defendant states that other than
26 being documented by Officer Burger in the police report [Exhibit "13"], there is no
27 evidence responsive to this request.

28 ///

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 Please produce and provide that exact name, model and year of Defendants
10 Temores' and Burger's MAV systems.

11 **RESPONSE TO REQUEST FOR PRODUCTION NO 38**

12 Objection. This discovery request is compound and vague and ambiguous as to
13 the phrases "activation data," "Data Port in the PDF file format," and multiple use of the
14 term "according" which are undefined and require speculation as to their meaning and
15 interpretation. Further, this request is overbroad to the extent it seeks information within
16 the possession, custody and control of third parties which is equally available to the
17 requesting party. Further, the request is argumentative, lacks foundation, requires
18 assumptions to ascertain its meaning, and inappropriately imputes legal conclusions
19 within the request and, as phrased, may violate the attorney client privilege, the attorney
20 work product doctrine, and the official information privilege. Further, the request is
21 overbroad to the extent it seeks information within the possession, custody and control of
22 third parties which is equally available to the requesting party. Further, to the extent the
23 request seeks the desired information solely in the form of a written response from this
24 Defendant, the Request is in effect an interrogatory and should be asked pursuant to Rule
25 36 of the Federal Rules of Civil Procedure.

26 Lastly, Defendant is responding to what essentially constitutes Interrogatory No.
27 16 in a spirit of cooperation. However, Plaintiff is now on notice that Defendant will
28 object, from this point forward, to any interrogatory that is cloaked as an admission or

1 production request. Defendant considers that this request constitutes one of Plaintiff's
2 interrogatories under FRCP and will not respond once the statutory limit is exceeded.

3 However and without waiving said objection, Defendant states it utilizes Kustom
4 Signal Digital Eyewitness Mobile Audio/Visual System NXT. Given the
5 proprietary/copyrighted nature of this material, copies will not be produced.

6 **REQUEST FOR PRODUCTION NO 39**

7 Please produce and provide that exact name of the propriety software and or
8 verification program used to analyze the MAV recordings as documented in the Palo Alto
9 CMR 462:04 and by Kustom Signals the manufacturer.

10 **RESPONSE TO REQUEST FOR PRODUCTION NO 39**

11 Objection. This discovery request is vague and ambiguous as to the phrase
12 "propriety software and or verification program" as well as the term "analyze" which
13 could mean merely viewing the data, the underlying technical applications and devises
14 enabling viewing, or something altogether different. Further, the Request is overbroad to
15 the extent it seeks information within the possession, custody and control of third parties.
16 Additionally, it is unclear whether Plaintiff is seeking to inspect such "propriety and or
17 verification program[s]" or the documents establishing the requested information. To the
18 extent that the Request seeks the desired information solely in the form of a written
19 response from this Defendant, the Request is in effect an interrogatory and should be
20 asked pursuant to Rule 36 of the Federal Rules of Civil Procedure.

21 Lastly, Defendant is responding to what essentially constitutes Interrogatory No.
22 17 in a spirit of cooperation. However, Plaintiff is now on notice that Defendant will
23 object, from this point forward, to any interrogatory that is cloaked as an admission or
24 production request. Defendant considers that this request constitutes one of Plaintiff's
25 interrogatories under FRCP and will not respond once the statutory limit is exceeded.

26 However and without waiving said objection, Defendant states that the name of
27 the propriety software is Kustom Signals Verification Software.

28 ///

1 **REQUEST FOR PRODUCTION NO 40**

2 Please produce and provide the propriety software and or verification program
3 used to analyze the MAV recordings as documented in the Palo Alto CMR 462:04 and by
4 Kustom Signals the manufacturer just as you have provided the MA V videos.

5 **RESPONSE TO REQUEST FOR PRODUCTION NO 40**

6 Objection. This discovery request is vague and ambiguous as to the phrase
7 “propriety software and or verification program” as well as the term “analyze” which
8 could mean merely viewing the data, the underlying technical applications and devises
9 enabling viewing, or something altogether different. 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, given the proprietary/copyrighted
13 nature of this material, a copy will not be produced.

14 Defendant is amenable is to running the original recordings stored on the
15 Department CPU through the verification program for viewing, inspection and analysis
16 by a mutually selected neutral third party at a time/date arranged between the parties/
17 counsel.

18 **REQUEST FOR PRODUCTION NO 41**

19 Please produce and provide the operating manual and or instructions for the
20 propriety software and or verification program used to analyze the MAV recordings as
21 documented in the Palo Alto CMR 462:04 and by Kustom Signals the manufacturer.

22 **RESPONSE TO REQUEST FOR PRODUCTION NO 41**

23 Objection. The Request is vague and ambiguous as to the phrases “operating
24 manual and or instructions,” “propriety software and or verification program,” as well as
25 the term “analyze” which could mean merely viewing the data, the underlying technical
26 applications and devises enabling viewing, or something altogether different. Further,
27 the Request is overbroad to the extent it seeks information within the possession, custody
28 and control of third parties which is equally available to the requesting party.

1 However and without waiving said objection, Defendant refers Plaintiff to Exhibit
2 "7".

3 **REQUEST FOR PRODUCTION NO 42**

4 Please produce and provide the operating instructions for the entire MAV system
5 as documented in the Palo Alto CMR 462:04 in which the instructions were provided at
6 no cost by the vendor.

7 **RESPONSE TO REQUEST FOR PRODUCTION NO 42**

8 Objection. This discovery request is vague and ambiguous as to time and the
9 phrases "operating instructions," "entire MAV system," "Palo Alto CMR 462:04" and
10 "vendor" which are all undefined and require speculation as to their meaning and
11 interpretation. Further, the request is overbroad, burdensome and seeks irrelevant
12 information not calculated to lead to the discovery of admissible evidence. Further, the
13 Request is overbroad to the extent it seeks information within the possession, custody
14 and control of third parties which is equally available to the requesting party.

15 However and without waiving said objection, Defendant refers Plaintiff to Exhibit
16 "7".

17 **REQUEST FOR PRODUCTION NO 43**

18 Please produce and provide the operating instructions for the entire MAV system
19 as documented in the Palo Alto CMR 462:04 in which the instructions were provided at
20 no cost by the vendor.

21 **RESPONSE TO REQUEST FOR PRODUCTION NO 43**

22 Objection. This discovery request is vague and ambiguous as to time and the
23 phrases "operating instructions," "entire MAV system," "Palo Alto CMR 462:04" and
24 "vendor" which are all undefined and require speculation as to their meaning and
25 interpretation. Further, the request is overbroad, burdensome and seeks irrelevant
26 information not calculated to lead to the discovery of admissible evidence. Further, the
27 Request is overbroad to the extent it seeks information within the possession, custody
28 and control of third parties which is equally available to the requesting party.

1 However and without waiving said objection, Defendant refers Plaintiff to
2 Exhibit "7", See Response to No. 42, above.

3 **REQUEST FOR PRODUCTION NO 44**

4 Please produce Defendant Temores' taser gun's Data Port that recorded his taser
5 gun's activation data of the March 15, 2008 incident in order to download the activation
6 data directly for inspection, review and duplication at a mutually convenient date and
7 time in the presence of a neutral third party who will document the evidence for the
8 Court.

9 **RESPONSE TO REQUEST FOR PRODUCTION NO 44**

10 Objection. This discovery request is vague and ambiguous as to the phrases
11 "taser gun's Data Port" and "activation data" which are undefined and require speculation
12 as to their meaning and interpretation. Further, the Request is overbroad to the extent it
13 seeks information within the possession, custody and control of third parties which is
14 equally available to the requesting party

15 However and without waiving said objection, Defendant states that Officer
16 Temores' taser gun's data port remains in evidence. Defendant will download the
17 activation from the gun for inspection and analysis before a mutually selected neutral
18 third party at a time/date arranged between the parties/counsel.

19 **REQUEST FOR PRODUCTION NO 45**

20 Please produce Defendant Burger's taser gun's Data Port that recorded his taser
21 gun's activation data of the March 15, 2008 incident in order to download the activation
22 data directly for inspection, review and duplication at a mutually convenient date and
23 time in the presence of a neutral third party who will document the evidence for the
24 Court.

25 **RESPONSE TO REQUEST FOR PRODUCTION NO 45**

26 Objection. This discovery request is vague and ambiguous as to the phrases
27 "taser gun's Data Port" and "activation data" which are undefined and require speculation
28 as to their meaning and interpretation. Further, the Request is overbroad to the extent it

1 seeks information within the possession, custody and control of third parties which is
2 equally available to the requesting party

3 However and without waiving said objection, Defendant states that Officer
4 Burger's taser gun's data port remains in evidence. Defendant will download the
5 activation from the gun for inspection and analysis before a mutually selected neutral
6 third party at a time/date arranged between the parties/counsel.

7 **REQUEST FOR PRODUCTION NO 46**

8 Please produce Defendant Temores' taser gun's Data Port that recorded his taser
9 gun's activation data from March 14, 2008 through March 16, 2008 in order to download
10 the activation data directly for inspection, review and duplication at a mutually
11 convenient date and time in the presence of a neutral third party who will document the
12 evidence for the Court.

13 **RESPONSE TO REQUEST FOR PRODUCTION NO 46**

14 Objection. This discovery request is vague and ambiguous as to the phrases
15 "taser gun's Data Port" and "activation data" which are undefined and require speculation
16 as to their meaning and interpretation. Further, the Request is overbroad to the extent it
17 seeks information within the possession, custody and control of third parties which is
18 equally available to the requesting party.

19 However and without waiving said objection, Defendant states that Officer
20 Burger's taser gun's data port remains in evidence. Defendant will download the
21 activation from the gun for inspection and analysis before a mutually selected neutral
22 third party at a time/date arranged between the parties/counsel. Defendant has
23 downloaded and printed the full history for the taser gun in question and attaches such
24 hereto as Exhibit "6". If Plaintiff wishes to be present this information to be downloaded
25 before a neutral third party of mutual selection, a time/date arranged between the
26 parties/counsel.

27 ///

28 ///

1 **REQUEST FOR PRODUCTION NO 47**

2 Please produce Defendant Burger's taser gun's Data Port that recorded his taser
3 gun's activation data from March 14, 2008 through March 16, 2008 in order to download
4 the activation data directly for inspection, review and duplication at a mutually
5 convenient date and time in the presence of a neutral third party who will document the
6 evidence for the Court.

7 **RESPONSE TO REQUEST FOR PRODUCTION NO 47**

8 Objection. This discovery request is vague and ambiguous as to the phrases
9 “taser gun's Data Port” and “activation data” which are undefined and require speculation
10 as to their meaning and interpretation. Further, the Request is overbroad to the extent it
11 seeks information within the possession, custody and control of third parties which is
12 equally available to the requesting party.

13 However and without waiving said objection, Defendant reincorporates his
14 response to No. 45, above.

15 **REQUEST FOR PRODUCTION NO 48**

16 Please produce and provide the service manuals for the entire MAV system as
17 documented in the Palo Alto CMR 462:04 in which the instructions were provided at no
18 cost by the vendor.

19 **RESPONSE TO REQUEST FOR PRODUCTION NO 48**

20 Objection. This discovery request is vague and ambiguous as to time and the
21 phrases “service manuals,” “entire MAV system,” “Palo Alto CMR 462:04” and
22 “vendor” which are all undefined and require speculation as to their meaning and
23 interpretation. Further, the request is overbroad, burdensome and seeks irrelevant
24 information not calculated to lead to the discovery of admissible evidence. Further, the
25 Request is overbroad to the extent it seeks information within the possession, custody
26 and control of third parties which is equally available to the requesting party

27 However and without waiving said objection, Defendant attaches hereto as
28 Exhibit “7” the reference manual for its MAV system.

1 **REQUEST FOR PRODUCTION NO 49**

2 Please produce and provide the recovered MAV audio/video files from Defendant
3 Temores' MAV's hard drive.

4 **RESPONSE TO REQUEST FOR PRODUCTION NO 49**

5 Objection. This discovery request is vague and ambiguous as to time and the
6 phrase "recovered MAV audio/video files" which is undefined and require speculation as
7 to its meaning and interpretation. Further, the request is overbroad in that it is not limited
8 to plaintiff or his legal claims, and thus seeks irrelevant information not calculated to lead
9 to the discovery of admissible evidence. Further, the Request is overbroad to the extent it
10 seeks information within the possession, custody and control of third parties which is
11 equally available to the requesting party.

12 However and without waiving said objection, Defendant states that the original
13 MAV video of the March 15, 2008, incident is stored on the MAV CPU. As stated
14 previously, after the recordings are downloaded from the MAV hard drives, the hard
15 drives are re-circulated. As such, there is no hard drive to produce.

16 **REQUEST FOR PRODUCTION NO 50**

17 Please produce and provide the recovered MAV audio/video files from Defendant
18 Burger's MAV's hard drive.

19 **RESPONSE TO REQUEST FOR PRODUCTION NO 50**

20 Objection. This discovery request is vague and ambiguous as to time and the
21 phrase "recovered MAV audio/video files" which is undefined and require speculation as
22 to its meaning and interpretation. Further, the request is overbroad in that it is not limited
23 to plaintiff or his legal claims, and thus seeks irrelevant information not calculated to lead
24 to the discovery of admissible evidence. Further, the Request is overbroad to the extent it
25 seeks information within the possession, custody and control of third parties which is
26 equally available to the requesting party.

27 However and without waiving said objection, Defendant states that the original
28 MAV video of the March 15, 2008, incident is stored on the MAV CPU. As stated

1 previously, after the recordings are downloaded from the MAV hard drives, the hard
2 drives are re-circulated. As such, there is no hard drive to produce.

3 **REQUEST FOR PRODUCTION NO 51**

4 Please produce and provide Defendant Temores' taser camera V06-015530 in
5 order to download the taser video of the March 15, 2008 incident directly for inspection,
6 review and duplication at a mutually convenient date and time in the presence of a neutral
7 third party who will document the evidence for the Court.

8 **RESPONSE TO REQUEST FOR PRODUCTION NO 51**

9 Objection. This discovery request is vague and ambiguous as to the phrases
10 "taser camera V06-015530" and "taser video" which are undefined and require
11 speculation as to their meaning and interpretation. Further, the request is argumentative,
12 lacks foundation, and requires assumptions to ascertain its meaning. Further, the Request
13 is overbroad to the extent it seeks information within the possession, custody and control
14 of third parties which is equally available to the requesting party.

15 However and without waiving said objection, Defendant is amenable to
16 producing for download, taser camera V06-015530 at the Department before by a
17 mutually selected neutral third party at a time/date arranged between the parties/counsel.

18 **REQUEST FOR PRODUCTION NO 52**

19 Please produce and provide Defendant Burger's taser camera V06-015542 in
20 order to download the taser video of the March 15, 2008 incident directly for inspection,
21 review and duplication at a mutually convenient date and time in the presence of a neutral
22 third party who will document the evidence for the Court.

23 **RESPONSE TO REQUEST FOR PRODUCTION NO 52**

24 Objection. This discovery request is vague and ambiguous as to the phrases
25 "taser camera V06-015542" and "taser video" which are undefined and require
26 speculation as to their meaning and interpretation. Further, the request is argumentative,
27 lacks foundation, and requires assumptions to ascertain its meaning. Further, the Request
28 is overbroad to the extent it seeks information within the possession, custody and control
of third parties which is equally available to the requesting party.

1 However and without waiving said objection, Defendant is amenable to
2 producing for download, taser camera V06-015542 at the Department before by a
3 mutually selected neutral third party at a time/date arranged between the parties/counsel.

4 **REQUEST FOR PRODUCTION NO 53**

5 Please produce and provide Defendant Burger's taser camera V07-065373 in
6 order to download the taser video of the March 15, 2008 incident directly for inspection,
7 review and duplication at a mutually convenient date and time in the presence of a neutral
8 third party who will document the evidence for the Court.

9 **RESPONSE TO REQUEST FOR PRODUCTION NO 53**

10 Objection. This discovery request is vague and ambiguous as to the phrases
11 “taser camera V07-065373” and “taser video” which are undefined and require
12 speculation as to their meaning and interpretation. Further, the request is argumentative,
13 lacks foundation, and requires assumptions to ascertain its meaning. Further, the Request
14 is overbroad to the extent it seeks information within the possession, custody and control
15 of third parties which is equally available to the requesting party.

16 However and without waiving said objection, Defendant states that taser camera
17 V07-065373 was not assigned to Officer Burger on March 5, 2008. The Department's
18 taser log, which indicates that V07-065373 was assigned to Officer Burger, is incorrect.
19 The taser log is created in an Excel format and subject to human error. The taser log
20 should have indicated that taser camera V06-015542 was assigned to Officer Burger on
21 the date of this incident.

22 Defendant is presently looking for taser camera V07-065373 and once located
23 will make the camera available for inspection and downloading before a mutually
24 selected neutral third party at a date and time convenient for all parties

25 **REQUEST FOR PRODUCTION NO 54**

26 Please produce and provide the CPU, (HP, serial number 2UB4240055T) that
27 stores Defendants Burger's and Temores' taser videos inspection, review and duplication
28 of Defendants Burger's and Temores' taser videos of the March 15, 2008 incident at a

1 mutually convenient date and time in the presence of a neutral third party who will
2 document the evidence for the Court.

3 **RESPONSE TO REQUEST FOR PRODUCTION NO 54**

4 Objection. This discovery request is compound and vague and ambiguous as to
5 the phrases "CPU" and "HP, serial number 2UB4240055T" which are undefined and
6 require speculation as to their meaning and interpretation. Further, the request is
7 argumentative, lacks foundation, and requires assumptions to ascertain its meaning.
8 Further, the Request is overbroad to the extent it seeks information within the possession,
9 custody and control of third parties which is equally available to the requesting party.

10 The request is also burdensome and oppressive in that the CPU is used on a daily
11 basis and its surrender would severely cripple Department function.

12 However and without waiving said objection, Defendant will make available the
13 Department CPU for viewing, inspection and analysis before a mutually selected neutral
14 third party at a time/date arranged between the parties/counsel. Said inspection will
15 include the MAV recordings of Officers Temores and Burger, and their stored taser gun
16 and camera information from the March 15, 2008, incident. Review of unrelated files
17 will not be permitted.

18 **REQUEST FOR PRODUCTION NO 55**

19 Please produce and provide the chain of possession of Defendant Temores' taser
20 camera V06-015530 from March 14, 2008 to the present according to Palo Alto Police
21 Department's policy Section 610 Property Procedures.

22 **RESPONSE TO REQUEST FOR PRODUCTION NO 55**

23 Objection. This discovery request is overbroad as to time, argumentative, lacks
24 foundation, and requires assumptions to ascertain its meaning. Further, the request is
25 vague and ambiguous as to the phrases "chain of possession," "taser camera V06-
26 015530," and "Palo Alto Police Department's policy Section 610 Property Procedures"
27 which are undefined and require speculation as to their meaning and interpretation.
28 Further, this request inappropriately mixes legal conclusions into the substance of the

1 request rendering it unintelligible, beyond the scope of permissible discovery, and, as
2 phrased, violates the attorney client privilege, attorney work product doctrine, the official
3 information privilege, and the privacy interests of third parties. Further, the Request is
4 overbroad to the extent it seeks information within the possession, custody and control of
5 third parties which is equally available to the requesting party.

6 However and without waiving said objection, Defendant states that Officer
7 Temores' taser camera V06-015530 was not taken into evidence until August 29, 2008.
8 At that time an evidence sheet was completed by then-Assistant Chief Burns and such is
9 attached as Exhibit "14".

10 **REQUEST FOR PRODUCTION NO 56**

11 Please produce and provide the chain of possession of Defendant Burger's taser
12 camera V06-015542 March 14, 2008 to the present according to Palo Alto Police
13 Department's policy Section 610 Property Procedures.

14 **RESPONSE TO REQUEST FOR PRODUCTION NO 56**

15 Objection. This discovery request is overbroad as to time, argumentative, lacks
16 foundation, and requires assumptions to ascertain its meaning. Further, the request is
17 vague and ambiguous as to the phrases "chain of possession," "taser camera V06-
18 015542," and "Palo Alto Police Department's policy Section 610 Property Procedures"
19 which are undefined and require speculation as to their meaning and interpretation.
20 Further, this request inappropriately mixes legal conclusions into the substance of the
21 request rendering it unintelligible, beyond the scope of permissible discovery, and, as
22 phrased, violates the attorney client privilege, attorney work product doctrine, the official
23 information privilege, and the privacy interests of third parties. Further, the Request is
24 overbroad to the extent it seeks information within the possession, custody and control of
25 third parties which is equally available to the requesting party.
26 parties which is equally available to the requesting party.

27 However and without waiving said objection, Defendant states that Officer
28 Burger's taser camera V06-015542 was not taken into evidence until August 29, 2008.
At that time an evidence sheet was completed by then-Assistant Chief Burns and such is

1 attached as Exhibit "14." Also, see the PDF taser printout life history for V06-015542 at
2 Exhibit "6".

3 **REQUEST FOR PRODUCTION NO 57**

4 Please produce and provide the chain of possession of Defendant Burger's taser
5 camera V07-065373 March 14, 2008 to the present according to Palo Alto Police
6 Department's policy Section 610 Property Procedures.

7 **RESPONSE TO REQUEST FOR PRODUCTION NO 57**

8 Objection. This discovery request is overbroad as to time, argumentative, lacks
9 foundation, and requires assumptions to ascertain its meaning. Further, the request is
10 vague and ambiguous as to the phrases "chain of possession," "taser camera V07-
11 065373," and "Palo Alto Police Department's policy Section 610 Property Procedures"
12 which are undefined and require speculation as to their meaning and interpretation.
13 Further, this request inappropriately mixes legal conclusions into the substance of the
14 request rendering it unintelligible, beyond the scope of permissible discovery, and, as
15 phrased, violates the attorney client privilege, attorney work product doctrine, the official
16 information privilege, and the privacy interests of third parties. Further, the Request is
17 overbroad to the extent it seeks information within the possession, custody and control of
18 third parties which is equally available to the requesting party.

19 However and without waiving said objection, Defendant states that taser camera
20 V07-065373 was not assigned to Officer Burger on March 14, 2008. As such, it was
21 never booked into evidence. Defendant is attempting to locate this particular camera and
22 once located will allow the camera's history to be download before a mutually selected
23 neutral third party at a date/time to be agreed upon by Plaintiff and counsel.

24 **REQUEST FOR PRODUCTION NO 58**

25 Please produce and provide the identity of the Supervisors and or Watch
26 Commanders by name, address and phone number who viewed the MAV videos of the
27 March 15, 2008 incident in order to document the incident for completeness and
28 accuracy.

1 **RESPONSE TO REQUEST FOR PRODUCTION NO 58**

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

12 Lastly, Defendant is responding to what essentially constitutes Interrogatory No.
13 17 in a spirit of cooperation. However, Plaintiff is now on notice that Defendant will
14 object, from this point forward, to any interrogatory that is cloaked as an admission or
15 production request. Defendant considers that this request constitutes one of Plaintiff's
16 interrogatories under FRCP and will not respond once the statutory limit is exceeded.

17 However and without waiving said objection, Defendant states that the recordings
18 were reviewed by Sergeant Natasha Powers and Lt. Mike Denson, and the purpose of the
19 review was for the Use of Force report (Exhibit"3").

20 **REQUEST FOR PRODUCTION NO 59**

21 Please produce and provide the identity of the Supervisors and or Watch
22 Commanders by name, address and phone number who downloaded the digital video and
23 the activation and deployment data from Defendants Temores' and Burger's taser guns'
24 taser cameras and Data Ports of the March 15,2008.

25 **RESPONSE TO REQUEST FOR PRODUCTION NO 59**

26 Objection. This discovery request is vague, overly broad and burdensome and
27 attempts to seek the production of documents that are privileged under the attorney client
28 and work product privileges, and as phrased, violates the official information privilege

1 relating to personnel file information and seeks information that is not calculated to lead
2 to the discovery of admissible evidence. Further, the Request is overbroad to the extent it
3 seeks information within the possession, custody and control of third parties which is
4 equally available to the requesting party. Further, to the extent the request seeks the
5 desired information solely in the form of a written response from this Defendant, the
6 Request is in effect an interrogatory and should be asked pursuant to Rule 36 of the
7 Federal Rules of Civil Procedure.

8 Lastly, Defendant is responding to what essentially constitutes Interrogatory No.
9 18 in a spirit of cooperation. However, Plaintiff is now on notice that Defendant will
10 object, from this point forward, to any interrogatory that is cloaked as an admission or
11 production request. Defendant considers that this request constitutes one of Plaintiff's
12 interrogatories under FRCP and will not respond once the statutory limit is exceeded.

13 However and without waiving said objection, Defendant states, Sergeant Natasha
14 Powers.

15 **REQUEST FOR PRODUCTION NO 60**

16 Please produce and provide the identity of the Supervisors and or Watch
17 Commanders by name, address and phone number who secured and booked Defendant
18 Burger's expended taser cartridge of the March 15, 2008 incident into evidence pursuant
19 to Department policy.

20 **RESPONSE TO REQUEST FOR PRODUCTION NO 60**

21 Objection. This discovery request is vague, overly broad and burdensome and
22 attempts to seek the production of documents that are privileged under the attorney client
23 and work product privileges, and as phrased, violates the official information privilege
24 relating to personnel file information and seeks information that is not calculated to lead
25 to the discovery of admissible evidence. Further, the Request is overbroad to the extent it
26 seeks information within the possession, custody and control of third parties which is
27 equally available to the requesting party. Further, to the extent the request seeks the
28 desired information solely in the form of a written response from this Defendant, the

1 Request is in effect an interrogatory and should be asked pursuant to Rule 36 of the
2 Federal Rules of Civil Procedure.

3 Lastly, Defendant is responding to what essentially constitutes Interrogatory No.
4 19 in a spirit of cooperation. However, Plaintiff is now on notice that Defendant will
5 object, from this point forward, to any interrogatory that is cloaked as an admission or
6 production request. Defendant considers that this request constitutes one of Plaintiff's
7 interrogatories under FRCP and will not respond once the statutory limit is exceeded.

8 However and without waiving said objection, Defendant states, Alex Afanatiev.

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**

5 Please produce and provide the supplemental report of the March 15, 2008
6 tasing of Plaintiff Ciampi prepared by the Supervisors and or Watch Commanders
7 according to the Use of Force Policy 308.10 and or 308.99.

8 **RESPONSE TO REQUEST FOR PRODUCTION NO 62**

9 Objection. This discovery request is vague and ambiguous as to the phrases
10 “supplemental report” and “Use of Force Policy 308.10 and or 308.99” which are
11 undefined and require speculation as to their meaning and interpretation. Further, the
12 request is overly broad and attempts to seek the production of documents that are
13 privileged under the attorney client and work product privileges, and as phrased, violates
14 the official information privilege relating to personnel file information and seeks
15 information that is not calculated to lead to the discovery of admissible evidence.
16 Further, this discovery request is argumentative, lacks foundation, requires assumptions
17 to ascertain its meaning, and improperly imputes legal conclusions into the call of the
18 request. Further, the Request is overbroad to the extent it seeks information within the
19 possession, custody and control of third parties which is equally available to the
20 requesting party.

21 However and without waiving said objection, Defendant attaches as Exhibit “3”,
22 the Use of Force report prepared concerning Plaintiff’s incident of March 15, 2008.

23 **REQUEST FOR PRODUCTION NO 63**

24 Please produce and provide the property report of Defendant Temores' broken
25 taser cartridge according to Use of Force Police 308.10 and or 308.99.

26 **RESPONSE TO REQUEST FOR PRODUCTION NO 63**

27 Objection. This discovery request is vague and ambiguous as to the phrases
28 “property report” and “Use of Force Policy 308.10 and or 308.99” which are undefined

1 and require speculation as to their meaning and interpretation. Further, the request is
2 overly broad and attempts to seek the production of documents that are privileged under
3 the attorney client and work product privileges, and as phrased, violates the official
4 information privilege relating to personnel file information and seeks information that is
5 not calculated to lead to the discovery of admissible evidence. Further, this discovery
6 request is argumentative, lacks foundation, requires assumptions to ascertain its meaning,
7 and improperly imputes legal conclusions into the call of the request. Further, the
8 Request is overbroad to the extent it seeks information within the possession, custody
9 and control of third parties which is equally available to the requesting party.

10 However and without waiving said objection, Defendant states that there is no
11 report concerning the broken taser cartridge as such was not booked into evidence.
12 Furthermore, Use of Force Policies 308.10 and/or 308.99 do not require that a broken
13 taser cartridge be documented. As such, there are no documents responsive to this
14 request.

15 **REQUEST FOR PRODUCTION NO 64**

16 Please produce and provide the property report of Defendant Burger's expended
17 taser cartridge according to Use of Force Police 308.10 and or 308.99.

18 **RESPONSE TO REQUEST FOR PRODUCTION NO 64**

19 Objection. This discovery request is vague and ambiguous as to the phrases
20 "property report" and "Use of Force Policy 308.10 and or 308.99" which are undefined
21 and require speculation as to their meaning and interpretation. Further, the request is
22 overly broad and attempts to seek the production of documents that are privileged under
23 the attorney client and work product privileges, and as phrased, violates the official
24 information privilege relating to personnel file information and seeks information that is
25 not calculated to lead to the discovery of admissible evidence. Further, this discovery
26 request is argumentative, lacks foundation, requires assumptions to ascertain its meaning,
27 and improperly imputes legal conclusions into the call of the request. Further, the
28 Request is overbroad to the extent it seeks information within the possession, custody
and control of third parties which is equally available to the requesting party.

1 However and without waiving said objection, Defendant states that Officer
2 Burger's expended taser cartridge remains in evidence. Alex Afanatiev was the
3 individual who booked the cartridge into evidence. See Exhibit "15".

4 **REQUEST FOR PRODUCTION NO 65**

5 Please produce and provide the supplemental Use of Force report of the March
6 15, 2008 incident according to Palo Alto Police Department Policy 309.

7 **RESPONSE TO REQUEST FOR PRODUCTION NO 65**

8 Objection. This discovery request is vague and ambiguous as to the phrases "the
9 supplemental Use of Force report" and "Palo Alto Police Department Policy 309" which
10 are undefined and require speculation as to their meaning and interpretation. Further, the
11 request is overly broad and attempts to seek the production of documents that are
12 privileged under the attorney client and work product privileges, and as phrased, violates
13 the official information privilege relating to personnel file information and seeks
14 information that is not calculated to lead to the discovery of admissible evidence.
15 Further, this discovery request is argumentative, lacks foundation, requires assumptions
16 to ascertain its meaning, and improperly imputes legal conclusions into the call of the
17 request. Further, the Request is overbroad to the extent it seeks information within the
18 possession, custody and control of third parties which is equally available to the
19 requesting party.

20 However and without waiving said objection, Defendant these reports as Exhibit
21 "3".

22 **REQUEST FOR PRODUCTION NO 66**

23 Please produce and provide the chain of possession of Defendant Burger's
24 expended taser cartridge from the March 15, 2008 incident according to Palo Alto Police
25 Department's policy Section 610 Property Procedures.

26 **RESPONSE TO REQUEST FOR PRODUCTION NO 66**

27 Objection. This discovery request is vague and ambiguous as to the phrases
28 "chain of possession" and "Palo Alto Police Department's policy Section 610 Property

1 Procedures” which are undefined and require speculation as to their meaning and
2 interpretation. Further, the request is overly broad and attempts to seek the production of
3 documents that are privileged under the attorney client and work product privileges, and
4 as phrased, violates the official information privilege relating to personnel file
5 information and seeks information that is not calculated to lead to the discovery of
6 admissible evidence. Further, this discovery request is argumentative, lacks foundation,
7 requires assumptions to ascertain its meaning, and improperly imputes legal conclusions
8 into the call of the request. Further, the Request is overbroad to the extent it seeks
9 information within the possession, custody and control of third parties which is equally
10 available to the requesting party.

11 However and without waiving said objection, Defendant states that the chain of
12 custody is clearly documented in the police reports attached as Exhibit “13”.

13 **REQUEST FOR PRODUCTION NO 67**

14 Please produce and provide the chain of possession of Defendant Temores'
15 broken taser cartridge from the March 15, 2008 incident according to Palo Alto Police
16 Department's policy Section 610 Property Procedures.

17 **RESPONSE TO REQUEST FOR PRODUCTION NO 67**

18 Objection. This discovery request is vague and ambiguous as to the phrases
19 “chain of possession” and “Palo Alto Police Department’s policy Section 610 Property
20 Procedures” which are undefined and require speculation as to their meaning and
21 interpretation. Further, the request is overly broad and attempts to seek the production of
22 documents that are privileged under the attorney client and work product privileges, and
23 as phrased, violates the official information privilege relating to personnel file
24 information and seeks information that is not calculated to lead to the discovery of
25 admissible evidence. Further, this discovery request is argumentative, lacks foundation,
26 requires assumptions to ascertain its meaning, and improperly imputes legal conclusions
27 into the call of the request. Further, the Request is overbroad to the extent it seeks
28 information within the possession, custody and control of third parties which is equally
available to the requesting party.

1 However and without waiving said objection, Defendant states that the broken
2 taser cartridge was never taken into evidence and therefore, there are no documents
3 responsive to this request.

4 **REQUEST FOR PRODUCTION NO 68**

5 Please produce and provide any and all documentation verifying that the Santa
6 Clara County Crime Lab downloaded and viewed Defendant Temores' taser gun's
7 activation data of the March 15, 2008 incident by viewing the activation data directly
8 from Defendant Temores' taser gun's Data Port.

9 **RESPONSE TO REQUEST FOR PRODUCTION NO 68**

10 Objection. This discovery request is vague and ambiguous as to the phrases
11 “downloaded and viewed,” “activation data,” “Data Port,” and “directly” which are
12 undefined and require speculation as to their meaning and interpretation. Further, this
13 request is overbroad to the extent it seeks information within the possession, custody and
14 control of third parties which is equally available to the requesting party. Further, the
15 request is argumentative, lacks foundation, requires assumptions to ascertain its meaning,
16 and inappropriately imputes legal conclusions within the request and, as phrased, may
17 violate the attorney client privilege, the attorney work product doctrine, and the official
18 information privilege. Further, the Request is overbroad to the extent it seeks
19 information within the possession, custody and control of third parties which is equally
20 available to the requesting party.

21 However and without waiving said objection, Defendant believes that the Santa
22 Clara County Crime Lab prepared two reports regarding the taser videos and such are
23 attached as Exhibit “16”.

24 **REQUEST FOR PRODUCTION NO 69**

25 Please produce and provide any and all documentation verifying that the Santa
26 Clara County Crime Lab downloaded and viewed Defendant Burger's taser gun's
27 activation data of the March 15, 2008 incident by viewing the activation data directly
28 from Defendant Burger's taser gun's Data Port.

1 **RESPONSE TO REQUEST FOR PRODUCTION NO 69**

2 Objection. This discovery request is vague and ambiguous as to the phrases
3 “downloaded and viewed,” “activation data,” “Data Port,” and “directly” which are
4 undefined and require speculation as to their meaning and interpretation. Further, this
5 request is overbroad to the extent it seeks information within the possession, custody and
6 control of third parties which is equally available to the requesting party. Further, the
7 request is argumentative, lacks foundation, requires assumptions to ascertain its meaning,
8 and inappropriately imputes legal conclusions within the request and, as phrased, may
9 violate the attorney client privilege, the attorney work product doctrine, and the official
10 information privilege. Further, the Request is overbroad to the extent it seeks
11 information within the possession, custody and control of third parties which is equally
12 available to the requesting party.

13 However and without waiving said objection, Defendant believes that the Santa
14 Clara County Crime Lab prepared two reports regarding the taser videos and such are
15 attached as Exhibit “16”.

16 **REQUEST FOR PRODUCTION NO 70**

17 Please produce and provide any and all documentation verifying that the Santa
18 Clara County Crime Lab downloaded and viewed Defendant Burger's taser video of the
19 March 15, 2008 incident directly from Defendant Burger's taser camera V07-065373.

20 **RESPONSE TO REQUEST FOR PRODUCTION NO 70**

21 Objection. This discovery request is vague and ambiguous as to the phrases
22 “downloaded and viewed” and “directly” which are undefined and require speculation as
23 to their meaning and interpretation. Further, this request is overbroad to the extent it
24 seeks information within the possession, custody and control of third parties which is
25 equally available to the requesting party. Further, the request is argumentative, lacks
26 foundation, requires assumptions to ascertain its meaning, and inappropriately imputes
27 legal conclusions within the request and, as phrased, may violate the attorney client
28 privilege, the attorney work product doctrine, and the official information privilege.

1 Further, the Request is overbroad to the extent it seeks information within the possession,
2 custody and control of third parties which is equally available to the requesting party.

3 However and without waiving said objection, Defendant states that there is no
4 documentation responsive to this request in that camera V07-065373 was not provided,
5 nor examined, by the Crime Lab. As noted previously, V07-065373 was not assigned to
6 Officer Burger on March 15, 2008. All responses provided previously stating
7 information contrary to this response will be amended as further investigation has borne
8 out the facts represented herein.

9 **REQUEST FOR PRODUCTION NO 71**

10 Please produce and provide any and all documentation verifying that the Santa
11 Clara County Crime Lab used the propriety software and or verification program to
12 analyze Defendants Burger's and Temores' MAV recordings of the March 15,2008
13 incident.

14 **RESPONSE TO REQUEST FOR PRODUCTION NO 71**

15 Objection. This discovery request is vague and ambiguous as to the phrases
16 "propriety software and or verification program" and "analyze" which are undefined and
17 require speculation as to their meaning and interpretation. Further, this request is
18 overbroad to the extent it seeks information within the possession, custody and control of
19 third parties which is equally available to the requesting party. Further, the request is
20 argumentative, lacks foundation, requires assumptions to ascertain its meaning, and
21 inappropriately imputes legal conclusions within the request and, as phrased, may violate
22 the attorney client privilege, the attorney work product doctrine, and the official
23 information privilege. Further, the Request is overbroad to the extent it seeks
24 information within the possession, custody and control of third parties which is equally
25 available to the requesting party.

26 However and without waiving said objection, Defendant cannot speak for the
27 Santa Clara County Crime Lab on this issue. Defendant would refer Plaintiff to Exhibit
28 "16", the reports prepared concerning the Lab's testing.

1 **REQUEST FOR PRODUCTION NO 72**

2 Please produce and provide any and all documentation verifying that that the
3 Santa Clara County Crime Lab downloaded and viewed Defendant Temores' MAV video
4 directly from Temores' MAV hard drive.

5 **RESPONSE TO REQUEST FOR PRODUCTION NO 72**

6 Objection. This discovery request is vague and ambiguous as to the phrases
7 “downloaded and viewed,” “hard drive,” and “directly” which are undefined and require
8 speculation as to their meaning and interpretation. Further, this request is overbroad to
9 the extent it seeks information within the possession, custody and control of third parties
10 which is equally available to the requesting party. Further, the request is argumentative,
11 lacks foundation, requires assumptions to ascertain its meaning, and inappropriately
12 imputes legal conclusions within the request and, as phrased, may violate the attorney
13 client privilege, the attorney work product doctrine, and the official information
14 privilege. Further, the Request is overbroad to the extent it seeks information within the
15 possession, custody and control of third parties which is equally available to the
16 requesting party.

17 However and without waiving said objections, Defendant states that the recording
18 in question did not exist on a hard drive after being downloaded directly to the
19 Department’s CPU. As such, the Crime Lab would not have had the ability to download
20 directly from the hard drive, but would have reviewed such from a DVD copy made from
21 the original recording.

22 **REQUEST FOR PRODUCTION NO 73**

23 Please produce and provide any and all documentation verifying that the Santa
24 Clara County Crime Lab downloaded and viewed Defendant Burger's MAV video
25 directly from Burger's MA V hard drive.

26 **RESPONSE TO REQUEST FOR PRODUCTION NO 73**

27 Objection. This discovery request is vague and ambiguous as to the phrases
28 “downloaded and viewed,” “hard drive,” and “directly” which are undefined and require

1 speculation as to their meaning and interpretation. Further, this request is overbroad to
2 the extent it seeks information within the possession, custody and control of third parties
3 which is equally available to the requesting party. Further, the request is argumentative,
4 lacks foundation, requires assumptions to ascertain its meaning, and inappropriately
5 imputes legal conclusions within the request and, as phrased, may violate the attorney
6 client privilege, the attorney work product doctrine, and the official information
7 privilege. Further, the Request is overbroad to the extent it seeks information within the
8 possession, custody and control of third parties which is equally available to the
9 requesting party.

10 However and without waiving said objections, Defendant states that the recording
11 in question did not exist on a hard drive after being downloaded directly to the
12 Department's CPU. As such, the Crime Lab would not have had the ability to download
13 directly from the hard drive, but would have reviewed such from a DVD copy made from
14 the original recording.

15 **REQUEST FOR PRODUCTION NO 74**

16 Please produce and provide the chain of custody log of Defendant Burger's MAV
17 recording as documented in Palo Alto CMR 462:04, under attachment "D, No.5," "Chain
18 of custody log will be maintained on the MAV Server by Custodian from Technical
19 Services.

20 **RESPONSE TO REQUEST FOR PRODUCTION NO 74**

21 Objection. This discovery request is vague and ambiguous as to the phrases
22 "downloaded and viewed," "hard drive," and "directly" which are undefined and require
23 speculation as to their meaning and interpretation. Further, this request is overbroad to
24 the extent it seeks information within the possession, custody and control of third parties
25 which is equally available to the requesting party. Further, the request is argumentative,
26 lacks foundation, requires assumptions to ascertain its meaning, and inappropriately
27 imputes legal conclusions within the request and, as phrased, may violate the attorney
28 client privilege, the attorney work product doctrine, and the official information
privilege.

1 However and without waiving said objection, Defendant will forward this
2 information immediately upon receipt. Two copies of Officer Temores' MAV recording
3 transfer/custody were provided to counsel inadvertently.

4 **REQUEST FOR PRODUCTION NO 75**

5 Please produce and provide the identity, (name, address and phone number), of
6 the Dispatcher who made the radio communication's call to Defendants Temores, Burger
7 and Wagner on March 15, 2008.

8 **RESPONSE TO REQUEST FOR PRODUCTION NO 75**

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

19 Lastly, Defendant is responding to what essentially constitutes Interrogatory No.
20 21 in a spirit of cooperation. However, Plaintiff is now on notice that Defendant will
21 object, from this point forward, to any interrogatory that is cloaked as an admission or
22 production request. Defendant considers that this request constitutes one of Plaintiff's
23 interrogatories under FRCP and will not respond once the statutory limit is exceeded.

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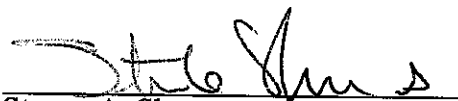
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1 However and without waiving said objection, Defendant states Sean Smith; the
2 original dispatch done by Lisa Sandoval; Melissa Kirkland and Klem Keys also were on
3 the radio traffic call.

4 DATED: September 3, 2010

FERGUSON, PRAET & SHERMAN
A Professional Corporation

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7 By:


8 Steven A. Sherman,
9 Attorneys for Defendants
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