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10 Attorneys for Plaintiff Gilbert Garcia

11 **SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO**
12 **(North County)**

13 GILBERT GARCIA,
14 Plaintiff,
15 v.
16 CITY OF OCEANSIDE, a public entity;
CHIEF FRANK McCOY; CAPTAIN
17 REGINALD GRIGSBY; and
DOES 1 through 20 inclusive,
18 Defendants.
19

CASE NO.: 37-2011-00101110-CU-WT-NC

FIRST AMENDED COMPLAINT FOR:

1. Racketeering ("RICO"), 18 USC § 1964(c);
2. Discrimination In Violation Of Government Code § 12940 (Race/National Origin); and
3. Failure to Prevent Harassment/ Discrimination/Retaliation, Government Code § 12940(k)

20 **GENERAL ALLEGATIONS**

21 1. Plaintiff, Gilbert Garcia ("GARCIA"), at all times relevant in this complaint had his
22 place of residence in the County of San Diego, State of California.

23 2. Defendant, City of Oceanside, is a municipality located in the County of San Diego,
24 State of California, and operates a police department called Oceanside Police Department ("OPD").
25 OPD at all relevant times had in excess of 100 employees.

26 3. Defendant, CHIEF FRANK McCOY ("McCOY"), is the Chief of Police for OPD,
27 is an employee of OPD and was at all relevant times a supervisor of GARCIA. McCOY is white.

28 4. Defendant, CAPTAIN REGINALD GRIGSBY ("GRIGSBY"), is an employee of

1 OPD and was at all relevant times a supervisor of GARCIA. GRIGSBY is African-American and
2 had previously sued the OPD alleging that OPD used minority officers and employees as
3 "scapegoats."

4 5. Sgt. Travis Norton ("Norton") is an employee of OPD and was at all relevant times
5 a supervisor of GARCIA. Norton is white.

6 6. Sgt. Dave Larson ("Larson") is an employee of OPD and was at all relevant times
7 above GARCIA in the hierarchy of OPD. Larson is white.

8 7. Plaintiff GARCIA is unaware of the true names and capacities of the defendants
9 named as DOES 1 through 20, and therefore sues these defendants as fictitious parties. Plaintiff
10 will, upon learning the true names and capacities of these DOE defendants, seek leave to amend the
11 complaint so that the true names and capacities of these individuals may be added to the complaint.
12 At this time, plaintiff GARCIA states on information and belief that each of the fictitiously named
13 defendants is and/or acted as the agent of the other defendants and is responsible for the occurrences
14 herein alleged, and is liable to plaintiff for the damages proximately caused thereby.

15 8. GARCIA was hired by OPD in or about July, 2007. GARCIA was hired as a police
16 officer. GARCIA is of Hispanic descent and is a member of a recognized minority group protected
17 under the Fair Employment and Housing Act.

18 9. GARCIA was very good at his job and received numerous accolades from OPD.

19 10. On August 24, 2009, at 7 p.m., GARCIA received a radio call from OPD dispatch
20 of a reckless driver. The report of a reckless driver was made by a citizen, Mr. Richard Ortiz. Ortiz
21 had reported a driver in his neighborhood who was drinking a beer while driving recklessly. Ortiz
22 reported that the driver had thrown a beer can out the window towards his kids and him who were
23 playing basketball in their driveway. Ortiz provided the make, model and license plate number for
24 the car. OPD dispatch ran the plate and provided GARCIA with the address of the registered owner
25 of the car. The registered owner of the car was one Larson. However, GARCIA was unaware at
26 the time that the owner of the car was David Larson, a sergeant with OPD.

27 11. GARCIA drove to the neighborhood where the car was reported, but the driver had
28 already left the scene. GARCIA then started looking for the car and drove toward the target address

1 he had obtained from dispatch. While en route to "Larson's" residence, GARCIA was called by
2 Norton. Norton asked GARCIA if he realized that the owner of the vehicle was Sgt. Larson.

3 12. Norton told GARCIA not to go to Larson's house and instead to meet Norton at an
4 intersection near Larson's house. Norton met GARCIA near Roosevelt Middle School. Norton
5 ordered GARCIA not to use the radio during the rest of the investigation of this incident. When
6 Norton arrived at the school, he started making phone calls.

7 13. Norton called the citizen who made the report, Ortiz. Ortiz reported that the driver
8 of the car was wearing a green, camouflage type hat. Norton also talked to GRIGSBY who directed
9 Norton and GARCIA go to Larson's house and determine if Larson was the reckless driver.
10 GARCIA told Norton, "we need to be professional and I have a family." Norton responded that
11 when we get to the house, "he's not going to be drunk."

12 14. Norton and GARCIA went to Larson's house and knocked on the door. Neither
13 Norton nor GARCIA had turned on audio recorders. Larson partially opened the door. He was
14 wearing a green, camouflage-type hat, like the citizen, Ortiz, had reported the driver of the car was
15 wearing. Norton asked Larson if he was just driving his car and Larson denied that he was and also
16 denied that anyone else was driving his car. Later in the interview, Larson admitted that he was
17 driving the car from In-N-Out Burger. Norton and GARCIA then left the Larson residence. Norton
18 told GARCIA, "it's him and he's hammered."

19 15. Norton made another call to a superior officer at OPD who instructed Norton and
20 GARCIA to go to Ortiz's residence and obtain a statement. While at Ortiz's home, Norton stated that
21 the batteries in his recorder were dead and instructed GARCIA to record the interview with Ortiz.
22 GARCIA recorded the interview. Ortiz reported that the driver (Larson) was flaunting that he was
23 drinking and driving and had a real attitude about it. Ortiz also said it appeared to him that Larson
24 was lost since this was a residential street. At no time did Ortiz say he did not want to make a
25 complaint, nor did he say he wanted to drop the matter. Ortiz had a nine-year old daughter who was
26 present at the interview. During the interview, Ortiz asked Norton, "So does he get a DUI for that?",
27 to which Norton responded, "Yeah. We're still investigating at this point. We just want to make
28 sure we dot all our Is and cross our Ts." (See Exhibit 1, a certified transcript of the audio recording

1 of Ortiz's interview. The audio file can be accessed at http://dl.dropbox.com/u/17737696/WS_10035.WMA).

3 16. After the interview of Ortiz, Norton made yet another phone call to a superior officer
4 at OPD. Norton told the superior officer that the driver was Larson and was then ordered by the
5 superior officer to investigate the incident as a DUI. Norton and GARCIA were instructed to return
6 to Larson's residence and perform Standard Field Sobriety Tests and obtain a Preliminary Alcohol
7 Screen ("PAS"), i.e Breathalyzer result.

8 17. Norton and GARCIA returned to Larson's house and Norton told GARCIA to record
9 the incident, which GARCIA did with an audio recorder that he had purchased himself in 2006,
10 when he was an officer with the San Diego Police Department. The recorder was not OPD issued
11 or owned equipment. After Larson invited Norton inside his house, Norton spoke to Larson, and
12 said:

13 There was a radio call. Somebody was driving your car down
14 [omitted] Street, right off [omitted], drove past some kids, was
15 drinking, turned back around, looked at them, and then threw a beer
16 can out the window. So that there was a report of someone driving
17 ". . . past some kids, was drinking, turned back around, looked at
18 them, and then threw a beer can out the window. So I'm asking: Was
19 that you?

(See Exhibit 2, a certified transcript of the audio recording of
Larson's interview. The audio file can be accessed at
http://dl.dropbox.com/u/17737696/WS_10036.WMA).

20 18. Larson admitted he was the driver of the car, as reported to OPD by Ortiz, and that
21 he was under the influence of alcohol. In fact, as the following testimony shows, Larson admitted
22 to Norton that he was above the legal limit of .08%. But, instead of securing the evidence of this
23 crime by performing the PAS test and arresting Larson pursuant to Vehicle Code § 40300.5 to
24 accurately determine Larson's blood-alcohol level with a more accurate measurement at the OPD
25 police station, Norton chose instead to call his supervisors, again, to determine whether he should
investigate the crime:

26 ///

27 ///

28 ///

1 SERGEANT NORTON: Was that you driving past them?
2 SERGEANT LARSON: Yeah.
3 SERGEANT NORTON: How much have you had to drink?
4 Then?
5 SERGEANT LARSON: Two.
6 SERGEANT NORTON: Two?
7 SERGEANT LARSON: Yeah.
8 SERGEANT NORTON: All right. Will you blow in a PAS?
9 SERGEANT LARSON: Now? I'm going to blow over.
10 SERGEANT NORTON: Okay. Why don't you hang tight here
11 for me. Okay. I've got [to make] a
couple calls. (Exhibit 2).

12 19. After his private conversation with Larson, Norton joined GARCIA by the car.
13 Norton asked GARCIA if he was still recording and GARCIA said no. GARCIA asked Norton what
14 was going on. Norton responded that they were "cleared" by the Captain (GRIGSBY) and the Chief
15 of Police (McCOY), and that they (GRIGSBY and McCOY) had made a decision. Norton ordered
16 GARCIA to get rid of the recordings and "if it ever came to an investigation that I'll [Norton] take
17 the hit for it." GARCIA asked if he were sure, and was told that the Chief had approved the "wash
18 out" i.e., the intentional refusal to investigate the crime and to destroy all evidence. Norton
19 explained, "cops don't record cops" and "he [Larson] saved me when I was a young officer."

20 20. GARCIA asked Norton if he needed to write a report regarding the incident. Norton
21 responded that he (Norton) was instructed to write a "Confidential Memorandum." GARCIA asked
22 what that was and Norton responded, "I don't know, but I'm going to find out." Norton told
23 GARCIA to clear the call with "Information Only" ("IO").

24 21. GARCIA was upset by Norton's and the OPD command's instructions. GARCIA was
25 being ordered to cover up the fact that a senior OPD officer was drinking and driving in a
26 residential neighborhood in the vicinity of children and had thrown a beer can out the window of
27 his car. GARCIA initially thought that it might be a test to see if he would go along.

28 22. On information and belief, GARCIA alleges Norton returned on his own to Ortiz's

1 home on August 24, 2009, and disposed of the beer can Larson had thrown so that it could not be
2 used as evidence against Larson.

3 23. Before the DUI incident involving Larson and GARCIA's refusal to destroy evidence,
4 GARCIA was under investigation for a false claim of sexual harassment by Kim Hirst. Lewd,
5 vulgar and sexual comments were commonplace within the OPD throughout GARCIA's employment
6 and were accepted practice. None of GARCIA's supervisors had ever stated that such talk in the
7 workplace was prohibited. Given the rampant racism and sexism that is openly demonstrated and
8 tolerated (i.e., ratified) at the OPD, GARCIA never thought that such speech was cause for
9 disciplinary action. After all, it was known at the OPD that another officer was not punished even
10 when she showed GARCIA nude photographs of herself while on duty; that another infamous
11 Captain, whose career has advanced swimmingly, had been caught having sex in a car with another
12 married officer outside a police event; that same Captain had been caught with a woman in his
13 marked police vehicle in the middle of a planned drug sting operation by OPD undercover
14 detectives; that same Captain had used, with hostility, racist terms toward an Asian officer, and then
15 retaliated against that Asian officer when he protested; that despite the civil rights lawsuit filed by
16 the Asian officer against the Captain and OPD, the command did nothing to curtail the rampant
17 racism at OPD, and even continued its unjustified policy of requiring racial diversity training only
18 one time in an officer's career (at the start); that as a result of the OPD's failure to attempt stop the
19 racism at OPD after the above lawsuit was filed, the racism continued to a point that another Asian
20 officer who was openly harassed due to his heritage was forced to consider legal action against the
21 OPD.

22 24. Ms. Hirst was an employee of AFN, Inc., a contractor for the San Diego Sheriff's
23 Department. GARCIA had admittedly carried on a banter involving sexual innuendo and lewd
24 remarks for approximately three months in the Summer, 2008, a year before the DUI incident. The
25 banter was initiated by Ms. Hirst and ultimately it made GARCIA uncomfortable so he stopped. In
26 April, 2009, GARCIA made a remark to a co-worker of Hirst's that GARCIA thought Hirst was "a
27 tease." Unknown to GARCIA, the co-worker turned out to be Hirst's supervisor and Hirst's
28 supervisor initiated a complaint. In an apparent attempt to save her job, Hirst claimed sexual

1 harassment against GARCIA based solely on a comment. Hirst's claims of sexual harassment were
2 false because she had invited the comments, was not bothered by them, and at no time was harassed
3 by GARCIA. She never reported the comments made by GARCIA, nor did she ever tell GARCIA
4 to stop. Indeed, Hirst called GARCIA and tried to start an affair with him. GARCIA refused Hirst's
5 advances.

6 25. GARCIA had three interviews with Internal Affairs and was told that comments were
7 not grounds for termination since GARCIA had never been subject to discipline previously, they told
8 GARCIA it was "survivable." During the four months prior to the DUI incident, GARCIA was not
9 suspended — he continued with his normal work schedule.

10 26. After the DUI incident, GARCIA was very uncomfortable with being told to cover
11 up Larson's DUI, particularly since he was already under investigation by Internal Affairs. GARCIA
12 talked to his union representative, Martin Morjabe. The union representative told GARCIA not to
13 destroy the tapes, that he should not go along with the cover-up, and to talk to the union's attorney.
14 GARCIA did talk to the union's attorney.

15 27. Plaintiff is informed and believes and thereon alleges that Morjabe reported to OPD
16 command that GARCIA was refusing to go along with the cover-up of Larson's DUI. Morjabe
17 informed GARCIA that two OPD sergeants had told him that they had heard that GARCIA was
18 going to "take out" OPD command with the tapes. OPD and its command officers, McCOY and
19 GRIGSBY, retaliated against GARCIA for refusing to cover up the DUI of Larson.

20 28. Shortly after GARCIA learned that OPD command was aware that he was not going
21 along with the cover-up, GARCIA was retaliated against by abruptly being put on administrative
22 leave due to the unfounded sexual harassment allegations.

23 29. In further retaliation for refusing to destroy evidence, McCOY and GRIGSBY then
24 added to the pending sexual harassment case a charge that GARCIA was "untruthful." The
25 untruthful charge is the most damning charge for a police officer. Plaintiff is informed and believes
26 and thereon alleges that McCOY and GRIGSBY knew that this charge was false yet made it anyway
27 in a pre-emptive attempt to discredit GARCIA if he disclosed the Larson cover-up..

28 30. In the end, the sexual harassment charge, which was initially a "courtesy complaint"

1 (i.e., a formal wrist-slapping process stemming from a hypocritical, litigious vendor had complained
2 about a comment to which GARCIA admitted making), then turned into a another opportunity by
3 the OPD command, through a steered internal affairs investigation, to have GARCIA terminated.
4 This was a complete turnaround from what GARCIA had been told previously, by the Internal
5 Affairs investigating officer, Sgt. Ron Hardy, that the courtesy complaint was "survivable." In
6 retaliation for refusing to destroy evidence of Larson's DUI, plaintiff alleges on information and
7 belief that Sgt. Hardy was instructed to steer his investigation in such a way as to reach a
8 recommendation to McCOY that GARCIA's employment with OPD to be terminated.

9 31. Sgt. Ron Hardy's fraudulent investigation into Hirst's complaint against GARCIA to
10 reach a conclusion and recommendation desired by OPD's command was consistent with a pattern
11 of such activity in other Internal Affairs investigations conducted by Sgt. Ron Hardy, such as 1) the
12 fraudulent and steered investigation by Sgt. Ron Hardy into an egregious violation of sexual
13 harassment rules by a female officer (who was called as a witness by Oceanside City Attorney to
14 testify against GARCIA), following her illegal act of showing GARCIA nude photographs of herself
15 while on duty, and yet as a result of Sgt. Hardy's investigation, she was not reprimanded; 2) the
16 fraudulent and steered investigation conducted by Sgt. Ron Hardy into the purported wrongful
17 behavior of an Asian officer, which was resulted in a retaliatory demotion of the Asian officer for
18 having complained about wrongful behavior of his supervisor and of his partner; and 3) the
19 fraudulent and steered investigation of Sgt. Ron Hardy into a second Asian officer's complaints of
20 racial discrimination by white officers who openly made fun of the officer's Asian heritage by
21 speaking out loud in training sessions using stereotyped Asian dialect and accents, other unidentified
22 officer(s) placing a *Cat Fancy* magazine about in the Asian officer's locker with comments
23 handwritten on it about cats being food, comments not only made to the Asian officer out loud, but
24 in front of a high ranking command officer who did not reprimand the offending partner, regarding
25 restaurants in San Diego that might serve dog, and open comments made during meetings about
26 "DWO's," which is a term commonly and openly used by OPD officers to refer to bad driving as
27 "Driving While Oriental." As with the other investigations conducted by Sgt. Hardy discussed
28 above, the second Asian officer's complaints were dealt with in a way that suited the desired

1 outcome of the OPD command, which meant his complaints were swept under the rug with no
2 discipline being recommended for the white officers who openly violated the Asian officer's civil
3 rights.

4 32. In further retaliation for refusing to destroy evidence, and after Sgt. Hardy's
5 fraudulent investigation resulted in McCOY recommending GARCIA's termination, GARCIA was
6 given a perfunctory *Skelly* hearing after which the official decided that GARCIA should be
7 terminated. GARCIA appealed the decision through an arbitration.

8 33. The arbitration was handled for the OPD by Senior Deputy City Attorney Tarquin
9 Preziosi. OPD used the testimony of Ms. Hirst as a centerpiece of their evidence against GARCIA
10 at the arbitration. The arbitrator found Hirst credible enough and affirmed the termination decision.

11 34. After GARCIA was terminated, in or about October, 2010, Hirst initiated a civil
12 complaint against him and the City of Oceanside and the OPD. GARCIA submitted a demand for
13 defense and indemnification. In further and ongoing retaliation for refusing to destroy evidence,
14 OPD refused GARCIA's lawful demand for a defense and indemnification. This demand was
15 reiterated and on each occasion denied.

16 35. During GARCIA's ongoing attempts to defend himself from Hirst's unfounded
17 charges, GARCIA attended a session of Hirst's deposition. This was on September 6, 2011. The
18 OPD was represented at this deposition by Senior Deputy City Attorney Preziosi, the same attorney
19 who represented the OPD at the arbitration on GARCIA's termination. After the deposition,
20 GARCIA approached Preziosi and said, "You know she [Hirst] is lying, right?" Preziosi started
21 laughing, and responded, "Yes, we know she's lying." GARCIA told Preziosi, "You guys railroaded
22 me. Are you going to give me my job back?" Preziosi continued laughing and remarked that it was
23 "not his department."

24 36. Plaintiff is informed and believes and thereon alleges that OPD knowingly used the
25 perjured testimony of Ms. Hirst against plaintiff at the arbitration hearing thus making the arbitration
26 and the entire *Skelly* procedure a sham. Plaintiff did not discover this sham until it was admitted by
27 OPD, on September 6, 2011.

28 37. At the arbitration, over strenuous objection from Senior Deputy City Attorney

1 Preziosi, Norton admitted he told GARCIA to destroy the audio recordings of Ortiz and Larson, as
2 shown by the following testimony that related to the August 24, 2009 incident with Larson:

3 GARCIA'S COUNSEL: Do you have a recollection of
4 covering Officer Garcia on an incident
5 where there was an audio recording
6 made as a result of the response to the
7 incident, and you for whatever reason
8 directed Officer Garcia to dispose of
9 or destroy the audio recording?

7 SERGEANT NORTON: Yes.

8 **FIRST CAUSE OF ACTION**
9 **(Racketeering; 18 USC § 1964(c) Against McCoy, Grigsby**
10 **And Does 1 Through 20)**

10 38. The allegations of paragraphs 1 through 37, inclusive, are realleged and incorporated
11 by reference.

12 39. The multiple actions taken by McCOY, GRIGSBY, and Does 1 through 20, as
13 alleged above, relating to their orders to Norton cover up the Larson DUI (e.g., by not securing
14 evidence of Larson's BAC pursuant to Vehicle Code § 40300.5, by disposing of the beer can, and
15 by ordering GARCIA to destroy the audiotapes), and by these defendants' retaliation against
16 GARCIA for refusing to destroy evidence (e.g., by having Sgt. Hardy conduct a steered
17 investigation into Hirst's allegations, by terminating GARCIA, and by refusing to indemnify
18 GARCIA in the *Hirst v. Garcia* action) were examples of the multiple predicate acts that amounted
19 to "a pattern racketeering activity" as defined by 18 USC § 1961(1)(B), (5). For example, such
20 actions constituted at least two acts indictable under 18 USC § 1512 (relating to witness and evidence
21 tampering), and under § 1513 (relating to retaliation against witnesses), and therefore are also
22 considered RICO violations of § 1962, giving rise to a private cause of action under § 1964(c). Not
23 only was there a pattern of racketeering activity related to the above cover-up and retaliation,
24 GARCIA alleges on information and belief OPD itself routinely engages in additional predicate acts
25 such as coverups of crimes committed by other City employees and retaliation against persons, like
26 GARCIA, who blow the whistle or resist being involved in the cover ups. For example, and in
27 addition to the above allegations regarding Sgt. Hardy's steered Internal Affairs investigations, in
28 March, 2009, GARCIA's partner for a DUI checkpoint, while acting as the subject officer in charge

1 of DUI testing and arrests, concluded that an off duty City of Oceanside firefighter was driving with
2 a BAC greater than .08%, in violation of V.C. 23152(b). Nonetheless, because of his employment
3 as a firefighter with the City of Oceanside, an officer was ordered by the commanding sergeant at
4 OPD not to arrest the firefighter, and instead to call him a taxi. Although not currently alleged as
5 predicate acts, the witness tampering continues by OPD's attorney, Tarquin Preziosi, in his repeated
6 threats of criminal action directed at GARCIA's attorney if the audio recordings that exist on
7 GARCIA's personally owned recorder are distributed to the media. (See, e.g., Exhibit 3, a true and
8 correct copy of a Preziosi's letter dated November 15, 2011 (and GARCIA's counsel's reply thereto,
9 which continued an implicit, yet frivolous threat of criminal prosecution for violation of Penal Code
10 § 832.7, if the electronic audio files were disclosed to the media, even though the audio files were
11 created by GARCIA's personally owned recording device, and therefore were not personnel records
12 at all, but instead were records related to a criminal investigation that was washed out by the OPD
13 command.)

14 40. McCOY, GRIGSBY, and Does 1 through 20 were "persons employed by" OPD,
15 which itself was an "enterprise engaged in, or the activities which affect, interstate or foreign
16 commerce" as defined by 18 USC § 1961(c). For example, GARCIA alleges on information and
17 belief that OPD receives federal money for DUI enforcement; OPD uses interstate wires to
18 investigate suspected DUI drivers; OPD purchases and uses out-of-state equipment to enforce DUI
19 laws; etc.

20 41. As a legal cause of the above racketeering, GARCIA was injured by the loss of his
21 employment and associated past and future wages and benefits, as well as the ongoing legal costs
22 of having to defend himself in the Hirst litigation. He also has suffered mental anguish and
23 emotional distress. In addition, he is entitled to recover treble damages, costs of suit, and attorney's
24 fees.

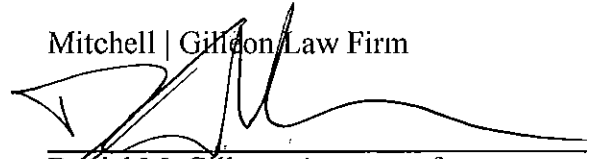
25 **SECOND CAUSE OF ACTION**
26 **(Discrimination In Violation Of Government Code § 12940**
27 **(Race/National Origin) Against OPD)**

28 42. The allegations of paragraphs 1 through 37, inclusive, are realleged and incorporated
by reference.

- 1 mental and emotional distress, and other general and special damages according to proof;
- 2 b. Incidental and consequential damages according to proof;
- 3 c. Prejudgment interest at the legal rate;
- 4 d. Attorney fees as provided for under the FEHA and RICO;
- 5 e. Restitution;
- 6 f. Costs of suit;
- 7 g. Treble damages under RICO; and
- 8 h. Any other proper relief.
- 9

10 Dated: February 9, 2012

Mitchell | Gilson Law Firm



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12 Daniel M. Gilson, Attorneys for
13 Plaintiff Gilbert Garcia

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Transcript of Audio Recording:

WS_10035

Hirst v. Garcia

August 24th

THORSNES LITIGATION SERVICES, LLC
2550 Fifth Avenue, Ninth Floor
San Diego, California 92103
P: 877.771.3312 | F: 619.330.1956
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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO, NORTH COUNTY DIVISION

| | | |
|---------------------------------|---|-------------------|
| KIMBERLI HIRST, |) | |
| |) | |
| Plaintiffs, |) | |
| |) | Case No. 37-2010- |
| vs. |) | 00101050-CU-PO-NC |
| |) | |
| OFFICER GILBERT GARCIA, et al., |) | |
| |) | |
| Defendants. |) | |
| |) | |

TRANSCRIPT OF
AUDIO RECORDING WS_10035
AUGUST 24th

Transcribed by Thomas R. McPhail, CSR No. 12544

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OFFICER GARCIA: Hi, how are you, sir?

WITNESS: Good. Yeah, we were walking up, and as soon as he -- he was sort of drinking it from, you know, this whole distance right here. Almost as if he was showing off to the kids that were playing basketball, and he drove by real slow.

And when he got down there, came back, he kind of slowed down. He saw me looking at him throwing hoops here, and he just saw me do it. And then he took a long drink as he went down there and tossed the can. All right.

SERGEANT NORTON: At you guys?

WITNESS: What's that?

SERGEANT NORTON: At you guys?

WITNESS: No. Well, we were kind of walking up right here, and he just, like, I guess he was pulling away, he just, "This is what I think of you guys," you know, looking at me. So that's basically it.

SERGEANT NORTON: So he didn't throw it directly at you?

WITNESS: No, no. He just tossed it. You know, it was just sort of rude, you know, as far as, "Hey, this is what I think of you guys and your neighborhood", you know. I don't know he had a bit of an attitude or

1 something. Kind of sneered at us, whatever.

2 SERGEANT NORTON: So where were you guys when he
3 threw that beer can?

4 WITNESS: Maybe just walking right here. As he
5 passed us, he kind of just tossed it out the window. He
6 didn't aim at us or anything. He just tossed it in the
7 back after he passed us. You know, I came walking here,
8 and I kind of remembered the number and -- were you able
9 to find him?

10 SERGEANT NORTON: Yeah.

11 WITNESS: Okay.

12 SERGEANT NORTON: So he was drinking as he went by?

13 WITNESS: Oh, yeah, absolutely. And he was sort of
14 flaunting it. So it was just sort of weird, you know.
15 He seems old enough to know better than that, you know?

16 SERGEANT NORTON: Right.

17 WITNESS: It's sort of a teenage move, if anything.
18 So does he get a DUI for that?

19 SERGEANT NORTON: Yeah. We're still investigating
20 at this point.

21 WITNESS: Okay.

22 SERGEANT NORTON: We just want to make sure we dot
23 all our Is and cross all our Ts.

24 WITNESS: Yeah. He was maybe right here in this
25 driveway here as we were walking up. These guys were

1 playing. And, you know, the other guy was chasing a
2 ball or something like that, and as soon as I come
3 walking back this way.

4 SERGEANT NORTON: Did he roll real slow by you or
5 drive normally?

6 WITNESS: Just drove normally. Yeah, he wasn't --
7 nah, he was just driving normal speed.

8 SERGEANT NORTON: Okay. Hi, Sweetie, how are you?

9 FEMALE CHILD: Fine.

10 SERGEANT NORTON: How old are you?

11 FEMALE CHILD: Nine.

12 SERGEANT NORTON: Nine? Wow. What grade are you
13 in?

14 FEMALE CHILD: Fourth.

15 SERGEANT NORTON: Wow.

16 WITNESS: I think they weren't really watching, but
17 I keep an eye out. I watch the traffic coming up and
18 down here pretty good so.

19 SERGEANT NORTON: Okay. Is there anything you can
20 think of?

21 OFFICER GARCIA: No. No, sir.

22 SERGEANT NORTON: Okay.

23 OFFICER GARCIA: Is the beer can here?

24 WITNESS: It's just right down there.

25 SERGEANT NORTON: Down the street?

1 WITNESS: It just sort of tumbled as he was going.

2 SERGEANT NORTON: Okay.

3 WITNESS: He wasn't speeding or anything. It was
4 just -- it was almost as if he was lost or something.
5 He was kind of looking around.

6 SERGEANT NORTON: Saw you guys?

7 WITNESS: Yeah. I don't know. The whole thing is
8 just kind of weird. I don't even know if he's from this
9 street, but, you know, driving around on a street that
10 you don't even know drinking, you know. Unless he just
11 was spending some time before he got home to finish it
12 off, you know.

13 OFFICER GARCIA: Can you identify him?

14 WITNESS: Yeah, I think so.

15 OFFICER GARCIA: You think so?

16 SERGEANT NORTON: Okay. All right. Thank you,
17 sir. I appreciate your time.

18 WITNESS: No. Thank you guys for being here. I
19 appreciate it.

20 SERGEANT NORTON: Have a good night. Bye, Sweetie.

21 OFFICER GARCIA: This is Officer Garcia,
22 August 24th, 19:41 hours. Myself and Sergeant Norton
23 made contact at 769 Masters Drive. End of interview.
24
25

1 STATE OF CALIFORNIA)
)
 2 COUNTY OF SAN DIEGO)

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I, Thomas R. McPhail, a Certified Shorthand Reporter for the State of California, do hereby certify that the foregoing audio recording was transcribed by computer-aided transcription under my direction; that the foregoing is a true record, to the best of my ability, of the proceedings taken electronically at that time.

I further certify that I am a disinterested person and that I am in no way interested in the outcome of said action.

IN WITNESS WHEREOF, I have subscribed my name this 31st day of January, 2012.

Thomas R. McPhail

Thomas R. McPhail, CSR No. 12544

| | | | | |
|--|--|--|--|--|
| <p>A</p> <p>ability 6:9 able 3:8 absolutely 3:13 action 6:14 aim 3:6 al 1:6 appreciate 5:17,19 attitude 2:25 audio 1:15 6:6 August 1:16 5:22</p> <hr/> <p>B</p> <p>back 2:8 3:7 4:3 ball 4:2 basically 2:19 basketball 2:6 beer 3:3 4:23 best 6:8 better 3:15 bit 2:25 Bye 5:20</p> <hr/> <p>C</p> <p>California 1:1 6:1,5 Case 1:5 Certified 6:4 certify 6:5,12 chasing 4:1 CHILD 4:9,11,14 come 4:2 coming 4:17 computer-aided 6:7 contact 5:23</p> | <p>COUNTY 1:2,2 6:2 COURT 1:1 cross 3:23 CSR 1:23 6:20</p> <hr/> <p>D</p> <p>day 6:17 Defendants 1:7 DIEGO 1:2 6:2 direction 6:7 directly 2:20 disinterested 6:12 distance 2:5 DIVISION 1:2 dot 3:22 drink 2:11 drinking 2:4 3:12 5:10 drive 4:5 5:23 driveway 3:25 driving 4:7 5:9 drove 2:7 4:6 DUI 3:18</p> <hr/> <p>E</p> <p>electronically 6:9 et 1:6 eye 4:17</p> <hr/> <p>F</p> <p>far 2:23 FEMALE 4:9,11,14 find 3:9 Fine 4:9 finish 5:11 flaunting</p> | <p>3:14 foregoing 6:6,8 Fourth 4:14 further 6:12</p> <hr/> <p>G</p> <p>Garcia 1:6 2:2 4:21,23 5:13,15,21,21 GILBERT 1:6 going 5:1 good 2:3 4:18 5:20 grade 4:12 guess 2:17 guy 4:1 guys 2:13,15,18,24 3:2,25 5:6,18</p> <hr/> <p>H</p> <p>Hey 2:23 Hi 2:2 4:8 HIRST 1:3 home 5:11 hoops 2:9 hours 5:22</p> <hr/> <p>I</p> <p>identify 5:13 interested 6:13 interview 5:23 investigating 3:19</p> <hr/> <p>J</p> <p>January 6:17</p> <hr/> <p>K</p> <p>keep 4:17 kids 2:6 KIMBERLI 1:3</p> | <p>kind 2:8,16 3:1,5,8 5:5,8 know 2:4,19,22,23,25 2:25 3:7,14 3:15,15 4:1 5:7,8,9,10,10 5:12</p> <hr/> <p>L</p> <p>long 2:10 looking 2:9,19 5:5 lost 5:4</p> <hr/> <p>M</p> <p>Masters 5:23 McPhail 1:23 6:4,20 move 3:17</p> <hr/> <p>N</p> <p>nah 4:7 name 6:16 neighborhood 2:24 night 5:20 Nine 4:11,12 normal 4:7 normally 4:5,6 NORTH 1:2 Norton 2:13,15,20 3:2 3:10,12,16,19 3:22 4:4,8,10 4:12,15,19,22 4:25 5:2,6,16 5:20,22 number 3:8</p> <hr/> <p>O</p> <p>Officer 1:6 2:2 4:21,23 5:13,15,21,21 Oh 3:13 Okay 3:11,21 4:8,19 4:22 5:2,16 old</p> | <p>3:15 4:10 outcome 6:13</p> <hr/> <p>P</p> <p>passed 3:5,7 person 6:13 Plaintiffs 1:4 playing 2:6 4:1 point 3:20 pretty 4:18 proceedings 6:9 pulling 2:17</p> <hr/> <p>R</p> <p>R 1:23 6:4,20 real 2:7 4:4 really 4:16 record 6:8 recording 1:15 6:6 remembered 3:8 Reporter 6:5 right 2:5,12,17 3:4 3:16,24 4:24 5:16 roll 4:4 rude 2:23</p> <hr/> <p>S</p> <p>SAN 1:2 6:2 saw 2:9,10 5:6 Sergeant 2:13,15,20 3:2 3:10,12,16,19 3:22 4:4,8,10 4:12,15,19,22 4:25 5:2,6,16 5:20,22 Shorthand 6:4 showing 2:6 sir 2:2 4:21 5:17</p> |
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| slow 2:7 4:4 slowed 2:9 sneered 3:1 soon 2:4 4:2 sort 2:4,23 3:13,14 3:17 5:1 speed 4:7 speeding 5:3 spending 5:11 State 1:1 6:1,5 street 4:25 5:9,9 subscribed 6:16 SUPERIOR 1:1 sure 3:22 Sweetie 4:8 5:20 | Ts 3:23 tumbled 5:1 <hr/> V vs 1:5 <hr/> W walking 2:3,16 3:4,7,25 4:3 want 3:22 wasn't 4:6 5:3 watch 4:17 watching 4:16 way 4:3 6:13 weird 3:14 5:8 went 2:11 3:12 weren't 4:16 We're 3:19 WHEREOF 6:16 window 3:5 WITNESS 2:3,14,16,22 3:4,11,13,17 3:21,24 4:6 4:16,24 5:1,3 5:7,14,18 6:16 Wow 4:12,15 WS_10035 1:15 <hr/> Y yeah 2:3 3:10,13,19 3:24 4:6 5:7 5:14 <hr/> 0 00101050-CU-... 1:5 <hr/> 1 12544 1:23 6:20 19:41 5:22 | <hr/> 2 2012 6:17 24th 1:16 5:22 <hr/> 3 31st 6:17 37-2010 1:5 <hr/> 7 769 5:23 | | |
| <hr/> T taken 6:9 teenage 3:17 Thank 5:16,18 thing 5:7 think 2:18,24 4:16,20 5:14,15 Thomas 1:23 6:4,20 threw 3:3 throw 2:20 throwing 2:9 time 5:11,17 6:10 tossed 2:11,22 3:5,6 traffic 4:17 transcribed 1:23 6:6 TRANSCRIPT 1:14 transcription 6:7 true 6:8 | | | | |

Transcript of Audio Recording:

WS_10036

Hirst v. Garcia

August 24th

THORSNES LITIGATION SERVICES, LLC
2550 Fifth Avenue, Ninth Floor
San Diego, California 92103
P: 877.771.3312 | F: 619.330.1956
www.thorsnes.com

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO, NORTH COUNTY DIVISION

| | | |
|---------------------------------|---|-------------------|
| KIMBERLI HIRST, |) | |
| |) | |
| Plaintiffs, |) | |
| |) | Case No. 37-2010- |
| vs. |) | 00101050-CU-PO-NC |
| |) | |
| OFFICER GILBERT GARCIA, et al., |) | |
| |) | |
| Defendants. |) | |
| |) | |

TRANSCRIPT OF
AUDIO RECORDING WS_10036
AUGUST 24th

Transcribed by Thomas R. McPhail, CSR No. 12544

1 OFFICER GARCIA: This is Officer Garcia with
2 Sergeant Norton recording a contact of 5276 Rosewood
3 Drive. It's August 24th at 20:17 hours.

4 SERGEANT NORTON: Just leave it.

5 OFFICER GARCIA: Okay. It's a Hyundai.

6 SERGEANT NORTON: Hey, Dave, can I talk to you?

7 SERGEANT LARSEN: Do what?

8 SERGEANT NORTON: Can I talk to you?

9 SERGEANT LARSEN: Yeah.

10 SERGEANT NORTON: Can you come out?

11 SERGEANT LARSEN: Get in the house.

12 SERGEANT NORTON: There was a radio call. Somebody
13 was driving your car, was driving down Masters Street
14 right off Frazee, drove past some kids, was drinking,
15 turned back around, looked at them, and then threw a
16 beer can out the window.

17 So I'm asking: Was that you?

18 SERGEANT LARSEN: I had a beer on the way home.

19 SERGEANT NORTON: Okay. Was that you driving past
20 them?

21 THE WITNESS: Yeah.

22 SERGEANT NORTON: How much have you had to drink?
23 Then?

24 THE WITNESS: Two.

25 SERGEANT NORTON: Two?

1 SERGEANT LARSEN: Yeah.

2 SERGEANT NORTON: All right. Will you blow in a PAS?

3 SERGEANT LARSEN: Now? I am going to blow over.

4 SERGEANT NORTON: Okay. Why don't you hang tight
5 right here for me. Okay. I've got a couple calls. Can
6 you hang tight for me?

7 THE WITNESS: All right.

8 SERGEANT NORTON: Right here. Do you want them to
9 go inside or stay here?

10 THE WITNESS: Whatever they want.

11 SERGEANT NORTON: Okay. Hang tight right here.

12 Are you good?

13 OFFICER GARCIA: Yes, sir. Okay.

14 MRS. LARSEN: He only had two beers. What's going
15 to happen?

16 OFFICER GARCIA: The Sergeant is going to make some
17 phonecalls. That's where we're at right now.

18 MRS. LARSEN: But he wasn't drunk when he was
19 driving.

20 SERGEANT LARSEN: Go inside. You guys busy?

21 OFFICER GARCIA: Nah, not really. Last night we
22 were busy.

23 SERGEANT LARSEN: Do what?

24 OFFICER GARCIA: Last night we were busy.

25 SERGEANT NORTON: Oh, you were?

1 OFFICER GARCIA: Yeah.

2 SERGEANT NORTON: You had a homicide; right?

3 OFFICER GARCIA: Yeah.

4 SERGEANT LARSEN: Yeah.

5 OFFICER GARCIA: For like an hour, I was the only
6 one 10-8.

7 SERGEANT NORTON: Really?

8 OFFICER GARCIA: Everybody was downtown.

9 SERGEANT LARSEN: Who's he calling? Reggie?

10 OFFICER GARCIA: I don't know, sir. This is his
11 show.

12 SERGEANT NORTON: Do what?

13 OFFICER GARCIA: It's his show.

14 SERGEANT NORTON: Oh.

15 OFFICER GARCIA: I'm just here with him.

16 MRS. LARSEN: When you guys rang the doorbell the
17 first time, I was just kidding.

18 SERGEANT LARSEN: Do what?

19 MRS. LARSEN: [INAUDIBLE]

20 OFFICER GARCIA: No. Let's just stay out here a
21 few more, Ma'am.

22 SERGEANT NORTON: Gil?

23 OFFICER GARCIA: Yes.

24 SERGEANT NORTON: Go to the car.

25 OFFICER GARCIA: Okay.

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SERGEANT NORTON: Can I talk to Dave real quick?

OFFICER GARCIA: This is Officer Garcia. 20:27
hours. End of interview.

1 STATE OF CALIFORNIA)
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 2 COUNTY OF SAN DIEGO)

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I, Thomas R. McPhail, a Certified Shorthand Reporter for the State of California, do hereby certify that the foregoing audio recording was transcribed by computer-aided transcription under my direction; that the foregoing is a true record, to the best of my ability, of the proceedings taken electronically at that time.

I further certify that I am a disinterested person and that I am in no way interested in the outcome of said action.

IN WITNESS WHEREOF, I have subscribed my name this 31st day of January, 2012.


 Thomas R. McPhail, CSR No. 12544

| | | | | |
|--|---|---|--|---|
| <p>A</p> <p>ability 6:9 action 6:14 al 1:6 asking 2:17 audio 1:15 6:6 August 1:16 2:3</p> <hr/> <p>B</p> <p>back 2:15 beer 2:16,18 beers 3:14 best 6:8 blow 3:2,3 busy 3:20,22,24</p> <hr/> <p>C</p> <p>California 1:1 6:1,5 call 2:12 calling 4:9 calls 3:5 car 2:13 4:24 Case 1:5 Certified 6:4 certify 6:5,12 come 2:10 computer-aided 6:7 contact 2:2 COUNTY 1:2,2 6:2 couple 3:5 COURT 1:1 CSR 1:23 6:20</p> <hr/> <p>D</p> <p>Dave 2:6 5:1</p> | <p>day 6:17 Defendants 1:7 DIEGO 1:2 6:2 direction 6:7 disinterested 6:12 DIVISION 1:2 doorbell 4:16 downtown 4:8 drink 2:22 drinking 2:14 Drive 2:3 driving 2:13,13,19 3:19 drove 2:14 drunk 3:18</p> <hr/> <p>E</p> <p>electronically 6:9 et 1:6 Everybody 4:8</p> <hr/> <p>F</p> <p>first 4:17 foregoing 6:6,8 Frazee 2:14 further 6:12</p> <hr/> <p>G</p> <p>Garcia 1:6 2:1,1,5 3:13,16,21,24 4:1,3,5,8,10 4:13,15,20,23 4:25 5:2,2 Gil 4:22 GILBERT 1:6 go 3:9,20 4:24 going 3:3,14,16 good</p> | <p>3:12 guys 3:20 4:16</p> <hr/> <p>H</p> <p>hang 3:4,6,11 happen 3:15 Key 2:6 HIRST 1:3 home 2:18 homicide 4:2 hour 4:5 hours 2:3 5:3 house 2:11 Hyundai 2:5</p> <hr/> <p>I</p> <p>INAUDIBLE 4:19 inside 3:9,20 interested 6:13 interview 5:3</p> <hr/> <p>J</p> <p>January 6:17</p> <hr/> <p>K</p> <p>kidding 4:17 kids 2:14 KIMBERLI 1:3 know 4:10</p> <hr/> <p>L</p> <p>LARSEN 2:7,9,11,18 3:1 3:3,14,18,20 3:23 4:4,9,16 4:18,19 leave 2:4 Let's 4:20 looked 2:15</p> | <p>M</p> <p>Masters 2:13 Ma'am 4:21 McPhail 1:23 6:4,20</p> <hr/> <p>N</p> <p>Nah 3:21 name 6:16 night 3:21,24 NORTH 1:2 Norton 2:2,4,6,8,10,12 2:19,22,25 3:2,4,8,11,25 4:2,7,12,14 4:22,24 5:1</p> <hr/> <p>O</p> <p>Officer 1:6 2:1,1,5 3:13,16,21,24 4:1,3,5,8,10 4:13,15,20,23 4:25 5:2,2 Oh 3:25 4:14 Okay 2:5,19 3:4,5,11 3:13 4:25 outcome 6:13</p> <hr/> <p>P</p> <p>PAS 3:2 person 6:13 phonecalls 3:17 Plaintiffs 1:4 proceedings 6:9</p> <hr/> <p>Q</p> <p>quick 5:1</p> <hr/> <p>R</p> <p>1:23 6:4,20 radio 2:12 rang 4:16 real</p> | <p>5:1 really 3:21 4:7 record 6:8 recording 1:15 2:2 6:6 Reggie 4:9 Reporter 6:5 right 2:14 3:2,5,7,8 3:11,17 4:2 Rosewood 2:2</p> <hr/> <p>S</p> <p>SAN 1:2 6:2 Sergeant 2:2,4,6,7,8,9 2:10,11,12,18 2:19,22,25 3:1,2,3,4,8 3:11,16,20,23 3:25 4:2,4,7 4:9,12,14,18 4:22,24 5:1 Shorthand 6:4 show 4:11,13 sir 3:13 4:10 Somebody 2:12 State 1:1 6:1,5 stay 3:9 4:20 Street 2:13 subscribed 6:16 SUPERIOR 1:1</p> <hr/> <p>T</p> <p>taken 6:9 talk 2:6,8 5:1 Thomas 1:23 6:4,20 threw 2:15 tight 3:4,6,11 time 4:17 6:10 transcribed 1:23 6:6 TRANSCRIPT</p> |
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| 1:14 transcription 6:7 true 6:8 turned 2:15 two 2:24,25 3:14 | 5 | | | |
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| want 3:8,10 wasn't 3:18 way 2:18 6:13 we're 3:17 WHEREOF 6:16 window 2:16 WITNESS 2:21,24 3:7,10 6:16 WS_10036 1:15 | | | | |
| Y | | | | |
| Yeah 2:9,21 3:1 4:1 4:3,4 | | | | |
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| 31st 6:17 37-2010 1:5 | | | | |



CITY OF OCEANSIDE

OFFICE OF THE CITY ATTORNEY

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November 15, 2011

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Mitchell Gilleon Law Firm
Daniel M. Gilleon
1320 Columbia Street, Suite 200
San Diego, CA 92101

VIA FACSIMILE (619) 702-6337
and U.S. MAIL

Re: Garcia v. City of Oceanside

Dear Mr. Gilleon:

I am in receipt of the letter that you faxed to my office yesterday following our telephone conversation. It is both highly inflammatory, inaccurate, and leaves out a number of key details. You called me yesterday at approximately 3 p.m. You advised that you were prepared to file a complaint against the City alleging that Garcia was wrongfully terminated in retaliation for refusing to destroy evidence. You stated that the statute of limitations to file your action ran "today" (November 14th). You wanted to know if we could enter into some sort of "tolling agreement". You stated that you had information that would be very damaging and embarrassing to the Department, namely, a tape recording that Garcia made while he was on-duty. You stated that Garcia, while he was with Sgt. Norton, made contact with Sgt. Larson at Sgt. Larson's house in response to a citizen's complaint. You stated that on that tape Sgt. Larson admitted to drinking and driving and that Sgt. Norton told Garcia to "destroy" the tape recording. You further alleged that subsequently the Department failed to discipline or take other action against Sgt. Larson. You stated that you were prepared to release this tape recording to the media and that the media was still very interested in receiving a copy of the tape. You claimed that the tape and the Department's alleged subsequent failure to take any action against Sgt. Larson would be very embarrassing to all concerned; you further stated that the Department could avoid all this by agreeing to toll the statute of limitations so that you and I could "work something out", thus avoiding alleged media scrutiny into the Larson incident.

Daniel M. Gilleon
November 15, 2011
Page 2

You stated that if I did not agree to toll the statute of limitations, you would be forced to file a complaint in court and go to the media with the tape, as well as documents relating to Garcia's termination. I unequivocally refused to "toll" any statute of limitations. When I enquired as to what legal theory Garcia would be proceeding under given the procedural circumstances of this termination, you provided no answer.

Accordingly, the very clear implication of your call was that Garcia would be filing this complaint to harass and embarrass the Department (and by extension, Sgt. Larson and others involved). I reminded you that any tape recording made while Garcia was on duty while investigating a potential crime would be the property of the Department, as are Garcia's personnel records. Further, I informed you that Garcia's personnel documents are subject to a protective order issued by the Court in *Hirst v. Garcia*, and that you as an attorney are not free to disseminate them to the media in violation of that order. Finally, I will inform you now that any release of materials relating to Sgt. Larson's personnel file (i.e., the tape recording) is prohibited by Penal Code sections 832.7 & 832.8.

Sincerely,

JOHN P. MULLEN
City Attorney

By:  TARQUIN PREZIOSI
Senior Deputy City Attorney

TP/sh

cc: John Simpson, Esq. (facsimile (619) 515-1197)

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MITCHELL | GILLEON
LAW FIRM

November 15, 2011

Tarquin Preziosi
Oceanside City Attorney
300 North Coast Highway
Oceanside, CA 92054

By Facsimile: 760.439.3877

Re: *Garcia v. Oceanside*

Dear Mr. Preziosi:

I just received your letter dated November 15, 2011, which contains a few accurate statements intertwined with mostly delusional fantasy. I called last Thursday and left a detailed message which went unreturned. I did not state the statute of limitations ran yesterday. In fact, I said I do not believe the statute actually ran because I believed the causes of action for retaliation have not even accrued due to ongoing retaliation, e.g., the City's ongoing refusal to defend Mr. Garcia. However, to play it safe I was suggesting a tolling agreement. You shot that suggestion down, as with others, in a tone that can only be described as obnoxious. I did not state I was prepared to release the tapes to the media. I said the complaint would be filed in the public realm and the media was clearly interested. In fact, I just gave a statement to the North County Times and Channel 10, and I'm scheduled to talk with the Union Tribune shortly. I have made it clear to all media that I will not release the tapes, but that the tapes will be played at trial in this case, as well as the Hirst case in light of the City's ongoing attempt to throw Mr. Garcia under the bus by falsely claiming he was terminated for sexual harassment. If you make that claim at trial, the jury will hear the real reason Mr. Garcia was terminated.

I will not spend more of my time responding to the other misrepresentations you made in your CYA letter. I will keep all communications with you to writing in light of your obvious willingness to distort the truth.

Sincerely,

Mitchell | Gilleon Law Firm



Daniel M. Gilleon

mglawyers.com WEBSITE | info@mglawyers.com E MAIL

2
3 **PROOF OF SERVICE**

4 STATE OF CALIFORNIA, COUNTY OF SAN DIEGO

5 I, the undersigned, whose address is 1320 Columbia Street, Suite 200, San Diego, California
92101, certify:

6 That I am, and at all times hereinafter mentioned was, more than 18 years of age and not a
7 party to this action;

8 That on February 9, 2012, I served the within:

9 **FIRST AMENDED COMPLAINT FOR:**

- 10 **1. Racketeering ("RICO"), 18 USC**
§ 1964(c);
11 **2. Discrimination In Violation Of**
Government Code § 12940
(Race/National Origin); and
12 **3. Failure to Prevent Harassment/**
Discrimination/Retaliation,
13 **Government Code § 12940(k)**

14 on all interested parties in said action: **SEE ATTACHED SERVICE LIST**

15 (VIA U.S. MAIL) I placed the original [xx] a true copy thereof enclosed in a sealed
16 envelope(s) addressed as stated on the attached mailing list and placing such envelope(s)
on this date following ordinary business practices.

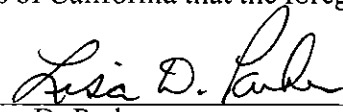
17 (BY CERTIFIED MAIL) I placed the original a true copy thereof enclosed in a sealed
18 envelope(s) addressed as stated on the attached mailing list and placing such envelope(s),
certified mail, return receipt requested postage thereon fully prepaid, in the United States
19 Mail at San Diego on this date following ordinary business practices.

20 (BY FACSIMILE TRANSMISSION) I transmitted a true copy thereof via facsimile on all
interested parties to the action for immediate delivery to SEE ATTACHED SERVICE LIST.

21 (PERSONAL SERVICE) Personally served/Delivered to the addressed stated on the
22 attached mailing list via DLS Attorney Service.

23 I declare under penalty of perjury under the laws of California that the foregoing is true and
correct.

24 Dated: February 9, 2012



Lisa D. Parker

SERVICE LIST

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Office of the City Attorney
John P. Mullen, City Attorney
Deborah Nash, Deputy City Attorney
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Tel: 760.435.3981
Fax: 760.439.3877
Attorneys for Defendants City of Oceanside, Frank McCoy, Reginald Grigsby