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7 Attorneys for Defendant
 City of Richmond

8
 9 **UNITED STATES DISTRICT COURT**
 10 **NORTHERN DISTRICT OF CALIFORNIA**

11 CLEVELAND BROWN,

12 Plaintiff,

13 v.

14 CITY OF RICHMOND, a California
 15 Governmental Entity,

16 Defendant.

Case No.: C 08-03401 EMC

~~PROPOSED~~
**ORDER RE MOTION TO QUASH
 DEPOSITION SUBPOENA ISSUED
 TO ATTORNEY HARRY STERN**

DATE: September 17, 2012
 TIME: 10:00 am
 COURT: (Honorable Elizabeth LaPorte)

17
 18 Trial Date: November 5, 2012

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 20 The motion by Harry Stern ("Stern") to quash defendant's deposition subpoena came on
 21 for hearing before the Honorable Elizabeth D. Laporte, Magistrate Judge, on September 17, 2012.
 22 Michael Rains appeared on behalf of the moving party, Harry Stern. Arthur Hartinger appeared
 23 on behalf of defendant City of Richmond ("the City"). Harry Stern was also present. In addition,
 24 Jonathan Matthews, attorney for plaintiff Cleveland Brown, was present.

25 Having reviewed the pleadings and received oral argument, the Court rules as follows:

26 1. With respect to questions directed to Stern regarding plaintiff Shawn Pickett
 27 ("Pickett"), who listed Stern as a witness, the Court defers ruling on the motion in light of the fact
 28 that Brown's trial was severed and will be tried before Pickett's trial. The Court will rule on the

C 08-03401 EMC

Proposed Order to Ouash Deposition Subpoena of Harrv Stern

1 motion in the future on application by any party.

2 2. With respect to the issues for the proposed deposition of Stern relating to plaintiff
3 Brown, the parties reached a stipulation of fact confirming that Stern received the correspondence
4 in question. The parties will stipulate to a Deposition of Harry Stern on Written Questions, in the
5 form attached hereto as Exhibit A, within five days of issuing this order. Otherwise, the parties
6 will notify the Court of the nature of any dispute for final determination by the Court.

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DATED: October 3 , 2012

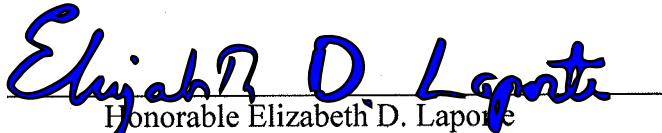

Honorable Elizabeth D. Laporte
Magistrate Judge
United States District Court

EXHIBIT A

1 Arthur A. Hartinger (SBN: 121521)
ahartinger@meyersnave.com
2 Geoffrey Spellberg (SBN: 121079)
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GOV'T CODE § 6103

7 Attorneys for Defendant
CITY OF RICHMOND
8

9 UNITED STATES DISTRICT COURT
10 NORTHERN DISTRICT OF CALIFORNIA
11 SAN FRANCISCO DIVISION
12

13 JAMES JENKINS, SHAWN PICKETT,
14 ARNOLD THREETS, AND CLEVELAND
BROWN,

15 Plaintiffs,

16 v.

17 CITY OF RICHMOND, a California
18 Governmental Entity,

19 Defendant.
20

Case No. C-08-03401 EMC

**DEPOSITION OF HARRY STERN ON
WRITTEN QUESTIONS**

Trial Date: November 5, 2012

21 At the September 17, 2012 hearing before Magistrate Judge Laporte, the parties and Harry
22 Stern stipulated to a deposition on written questions of Harry Stern. That deposition is set forth
23 herein.
24

25 ///

26 ///

27 ///

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1 Exhibits

2 The following documents are attached and are marked as exhibits in the deposition:

3 Exhibit 1 – November 18, 2008 Letter from Timothy Armistead to Harry Stern

4 Exhibit 2 – December 17, 2008 Letter from Timothy Armistead to Harry Stern

5 Exhibit 3 – May 12, 2009 Letter from Timothy Armistead to Harry Stern

6 Exhibit 4 – August 3, 2009 Letter from Timothy Armistead to Harry Stern

7

8 Examination

9 DEFENDANT: Did you receive the November 18, 2008 letter from Timothy
10 Armistead, which is marked as Exhibit 1, on or shortly after November 18, 2008?

11 HARRY STERN: Yes.

12 Q. Did you receive the December 17, 2008 letter from Timothy Armistead, which is
13 marked as Exhibit 2, on or shortly after December 17, 2008?

14 HS. Yes.

15 Q. Did you receive the May 12, 2009 letter from Timothy Armistead, which is marked as
16 Exhibit 3, on or shortly after May 12, 2009?

17 HS. Yes.

18 Q. Did you receive the August 3, 2009 letter from Timothy Armistead, which is marked as
19 Exhibit 4, on or shortly after August 3, 2009?

20 HS. Yes.

21

22 I, HARRY STERN, do hereby declare under the penalty of perjury that the foregoing testimony is
23 true and correct.

24

25 Date: _____

_____ Harry Stern

27

28

1 APPROVED AS TO FORM:

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3 Date: _____

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Michael Rains
Attorney for Harry Stern

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EXHIBIT 1

ARMISTEAD INVESTIGATIVE SERVICES

LICENSE # 11984 • ESTABLISHED 1985
1564-A FITZGERALD DRIVE, SUITE 323
PINOLE, CALIFORNIA 94564

TEL: (415) 608-2224 • EMAIL: TARMISTEAD@SBCGLOBAL.NET • FAX: (510) 243-0455

Harry Stern, Attorney at Law
Rains Lucia Stern, PC
2300 Contra Costa Blvd, Suite 230
Pleasant Hill, California 94523

18 November 2008

Re: Capt. Cleveland Brown

Dear Mr. Stern:

Enclosed per our agreement please find a duplicate CD of my 15 October 2008 interview of Capt. Cleveland Brown. Because of memory storage limitations, the interview was both recorded and also duplicated in two parts. You will find that each part is duplicated on the enclosed CD, and when you open it on a PC, each part will be represented by a separate icon, labeled respectively part 1 and part 2.

I would also like to reiterate my request, made during the interview, for either a photocopy of the complete medical records of Capt. Brown's ER visit and his subsequent evaluation and surgery by his orthopedic surgeon, or for medical releases executed and signed by Capt. Brown and directed to the two medical facilities involved. Please advise.

Thank you for your assistance.

Sincerely,


Timothy Armistead, D.Crim, CFS

Cc Arthur Hartinger, Attorney at Law
Leslie Knight, Director of Human Resources, City of Richmond

Enc One CD, 15 October 2008 interview of Capt. Cleveland Brown

CITY022640

EXHIBIT 2

ARMISTEAD INVESTIGATIVE SERVICES

LICENSE # 11384 · ESTABLISHED 1985
1564-A FITZGERALD DRIVE, SUITE 323
PINOLE, CALIFORNIA 94564

TEL: (415) 608-2224 · EMAIL: TARMISTEAD@SBCGLOBAL.NET · FAX: (510) 243-0455

Harry S. Stern, Attorney at Law
Rains Lucia Stern, PC
2300 Contra Costa Blvd, Suite 230
Pleasant Hill, California 94523

17 December 2008

Re: Capt. Cleveland Brown

Dear Mr. Stern:

Enclosed please find a copy of my letter of 18 November 2008, to which I have not received a response.

I would like to reiterate my request, made during the interview of Captain Brown and again in the enclosed letter, for either a photocopy of the complete medical records of Capt. Brown's ER visit and his subsequent evaluation and surgery by his orthopedic surgeon, or for medical releases executed and signed by Capt. Brown and directed to the two medical facilities involved. Please advise.

Thank you for your assistance.

Sincerely,


Timothy Armistead, D.Crim, CFS

Cc Arthur Hartinger, Attorney at Law
Leslie Knight, Director of Human Resources, City of Richmond

Enc Letter of 18 November 2008

CITY022641

EXHIBIT 3



Request for records by c.o.b. 15 May 2009

Tuesday, May 12, 2009 5:29 PM

From: "Timothy Armistead" <tarmistead@sbcglobal.net>
To: Hstern@rlslawyers.com
12 May 2009 ltr 2 Harry Stern.docx (16KB)

Dear Mr. Stern:

Attached as a pdf, please find a letter requesting certain medical records, or executed releases for such records, regarding Captain Cleveland Brown. An original, signed copy of the letter is being mailed to you at your firm's address, as well.

The letter reiterates my requests for records originally made in my interview of Captain Brown in October 2008 and in two follow-up letters to you. The letter also requests additional medical records, or executed releases for same, pertaining to the 1 August 2008 and 9 January 2009 letters that Captain Brown sent to the City. (You were cc'd by Captain Brown on the 9 January 2009 letter, and I gave you the opportunity to read my copy of the 1 August 2008 letter during the interview I conducted with Captain Brown in October 2008.)

Thank you.

Timothy Armistead, D.Crim, CFS, CFC
Armistead Investigative Services
1564-A Fitzgerald Drive, Suite 323
Pinole, California 94564
(415) 608-2224

This email may contain contents that are protected by the attorney work product privilege. If you received it in error, please delete it and any attachments and notify the sender.

ARM0091

ARMISTEAD INVESTIGATIVE SERVICES

TIMOTHY ARMISTEAD, D.CRIM, CFS, CFC
LICENSE # 11384 • ESTABLISHED 1985
1564-A FITZGERALD DRIVE, SUITE 323
PINOLE, CALIFORNIA 94564

TEL: (415) 608-2224

EMAIL: TARMISTEAD@SBCGLOBAL.NET

FAX: (510) 243-0455

Harry S. Stern, Attorney at Law
Rains Lucia Stern, PC
2300 Contra Costa Blvd, Suite 230
Pleasant Hill, California 94523

12 May 2009

Re: Capt. Cleveland Brown

Dear Mr. Stern:

In November and again in December 2008, I wrote reminding you that in my interview of Captain Brown in October, you had agreed to consider my request that Captain Brown either execute a release for medical records regarding his injury of December 2007, or alternatively, that he simply provide me with copies of such records. To date, you have not responded to my request.

This letter is to reiterate that request and to make an additional request, as well, in light of a letter that Captain Brown sent to the City Manager of Richmond dated 9 January of this year. In pertinent part, in that letter Captain Brown stated, "As you will recall, I ruptured my Achilles tendon in December of 2007. Originally, I did not think that it was a work related injury as the precipitating event happened when I was at home. After a consultation with my physician and attorney, it was determined that the injury could, in fact, be work related."

In an earlier letter hand delivered by Captain Brown to Deputy Chief Edwin Medina on 1 August 2008, Captain Brown wrote that, "After seeing my physician he determined that I had aggravated a previous injury that had happened in the course and scope of my employment with Richmond."

While it is within my client's authority to direct Captain Brown in for a second interview in order to pursue these differing explanations as to why Captain Brown filed a workers' compensation claim for his injury of December 2007, in the interest of efficiency and clarity I am using the format of a letter to you to request information and medical records, in addition to those previously requested regarding Captain Brown's diagnosis and surgery for the injury of December 2007, as follows:

- 1) The name(s) and contact information of the physician or physicians referenced in the passages quoted above from Captain Brown's letters of August 2008 and January 2009, along with a record of their determinations and the dates of those determinations;

2) Copies of, or executed releases to obtain, all records of Captain Brown's consultation with and any treatment by, said physician or physicians referenced in the August 2008 and January 2009 letters; and,

3) Copies of or an executed release to obtain records of all work related injury claims that Captain Brown has filed with the City of Richmond since beginning his employment with the Richmond Police Department.

Please provide the records or executed releases that I originally requested in my interview of Captain Brown in October 2008 and again in my two follow-up letters to you of November and December 2008, as well as the contact information and copies of records (or executed releases) referenced in numbers (1) through (3) above, by close of business on Friday, 15 May 2009. If I have not obtained these items by close of business on the 15th, I will finalize my report of investigation with the information currently available to me.

Sincerely,

Timothy Armistead, D.Crim, CFS, CFC

Cc Randy Riddle, City Attorney of Richmond
Leslie Knight, Director of Human Resources, City of Richmond

EXHIBIT 4

ARMISTEAD INVESTIGATIVE SERVICES

LICENSE # 11984 • ESTABLISHED 1985
TIMOTHY ARMISTEAD, D.CRM, CFS, CFC
1564-A FITZGERALD DRIVE, SUITE 323
PINOLE, CALIFORNIA 94564

TEL: (415) 606-2224 • EMAIL: TARMISTEAD@SBCGLOBAL.NET • FAX: (510) 243-0455

Harry Stern, Attorney at Law
Rains Lucia Stern, PC
2300 Contra Costa Blvd, Suite 230
Pleasant Hill, California 94523

3 August 2009

Re: Capt. Cleveland Brown

Dear Mr. Stern:

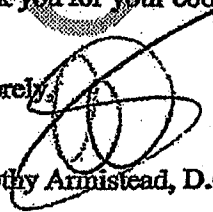
Enclosed please find a photocopy of a letter from Leslie Knight to Capt. Brown, dated 21 July 2009. Pursuant to the terms of that letter, and to Ms. Knight's request that I re-open my investigation of Capt. Cleveland Brown's workers' compensation claim, this is to direct that Capt. Brown provide me with an executed, signed release for copies of any and all medical records that Dr. Michael T. Monroe or staff or associates of Dr. Monroe have generated regarding all medical services provided to Capt. Brown by Dr. Monroe, his staff or associates, specific to the injury to Capt. Brown's left Achilles tendon in December 2007.

The release should note explicitly that the medical records are to include, but not be limited to, all evaluations and histories taken; notes and calendar entries of any and all consultations between Dr. Monroe and Capt. Brown, whether in person, over the telephone, or written; all written communications between Capt. Brown and Dr. Monroe, his staff or associates; records of any and all conversations between Dr. Monroe and Capt. Brown; surgical reports; radiological reports; reports of any and all histological examinations of Capt. Brown's Achilles tendon; and any and all other records generated in the course of Capt. Brown's treatment by Dr. Monroe. The release should also direct that Dr. Monroe send the copies of the requested records to me at the above address as soon as possible.

Capt. Brown's release should be executed, signed and sent to me in the original at the above address as soon as possible.

Thank you for your cooperation.

Sincerely,


Timothy Armistead, D.Crim, CFS, CFC

Cc Leslie T. Knight

Letter Harry Stern re. release of medical records
Capt. Cleveland Brown workers' compensation claim investigation

CITY023898