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IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

ZHIVKA VALIAVICHARSKA,

Plaintiff,

v.

MITCH CELAYA, et al.,

Defendant.

Case No.: CV 10-4847 JSC

**ORDER FOR PLAINTIFF'S  
COUNSEL TO SHOW CAUSE**

United States District Court  
Northern District of California

On October 27, 2011, Plaintiff's counsel, Mr. Steven Yourke, electronically filed a declaration from Plaintiff in opposition to Defendants' motion for summary judgment. The declaration was signed by Plaintiff under penalty of perjury. (Dkt. No. 50.) Plaintiff states in her declaration: "I put my hand on top of the barricade and shook it." (Dkt. No. 50 ¶ 5.) During her sworn trial testimony on February 7, 2012, Plaintiff stated: "I don't particularly recollect [shaking the barricade], but I'm saying I may have been shaking the barricade." (Trial Tr., Feb. 7, 2012 (Valiavicharska) at 7: 17-18.) Defendant subsequently attempted to impeach Plaintiff with her unequivocal declaration statement. (*Id.* at 11: 10-15.) Plaintiff, after examining her declaration at some length, stated: "I hadn't actually seen that document, but it was filed on my behalf." (*Id.*) Out of the presence of the jury, and upon questioning

1 from the Court, Mr. Yourke issued the following explanation for Plaintiff's failure to have  
2 seen her declaration prior to her testimony at trial:

3 [T]o the best of my recollection, I did speak with her [Plaintiff] telephonically, told her  
4 what I was doing. I was preparing a declaration for her. I believe I read it to her or at  
5 least explained what the substance of the declaration was and would it be okay if I were  
6 to sign it on her behalf. And she said, 'Yes.' . . . I don't believe I sent it to her for  
7 review before getting her authorization, but I certainly discussed it with her on the  
8 phone and told her what it was and what it was for.

9 (Partial Trial Tr., 2-7-12 at 2:19-24, 3:2-5.)

10 General Order 45 §10(B) requires that an attorney filing a declaration on behalf of his  
11 client "shall attest that concurrence in the filing of the document has been obtained" from the  
12 signatory and "shall maintain records to support this concurrence for subsequent production  
13 for the court if so ordered." Based on the evidence now before the Court, Mr. Yourke did not  
14 obtain the required concurrence prior to filing this declaration on behalf of Plaintiff. Mr.  
15 Yourke is therefore ordered to show cause, including production of any records in support of  
16 Plaintiff's concurrence, by February 27, 2012 as to why he should not be sanctioned for his  
17 failure to comply with General Order 45 §10(B). Such sanctions may include referral to the  
18 Standing Committee on Professional Conduct, the Chief Judge, or another appropriate  
19 disciplinary authority in California or the Northern District. See L.R. 11-6 (a). Defendant  
20 shall file a response, if any, by March 12, 2012. A hearing on this Order To Show Cause will  
21 be held March 23, 2012 at 9:00 a.m.

22 **IT IS SO ORDERED.**

23 Dated: February 13, 2012

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26 JACQUELINE SCOTT CORLEY  
27 UNITED STATES MAGISTRATE JUDGE  
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