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Attorneys for Defendants
COUNTY OF SAN MATEO, MARK MARELICH,
JOE COSTA, and DAVID WEIDNER

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

MICHAEL TOSCHI, AND TRACY TOSCHI

Plaintiffs,

vs.

COUNTY OF SAN MATEO, DON DALLIMONTI, RHONDA DALLIMONTI, NEIL CULLEN, BRIAN LEE, DAVID WEIDNER, and DOES ONE through FIFTY, inclusive

Defendants.

Case No. C-07-3625 MMC

DECLARATION OF V. RAYMOND SWOPE III IN SUPPORT OF NOTICE OF MOTION AND MOTION OF DEFENDANTS COUNTY OF SAN MATEO, ET AL. FOR ORDER COMPELLING FURTHER DISCOVERY FROM PLAINTIFFS MICHAEL AND TRACY TOSCHI AND FOR ATTORNEYS' FEES

Date: November 18, 2008
Time: 9:00 a.m.
Courtroom: Magistrate Judge Laporte, Courtroom E, 15th Floor

I, V. Raymond Swope III, declare as follows:

1. I am the Deputy County Counsel of record for Defendants County of San Mateo, Mark Marelich, Joe Costa and David Weidner (hereinafter "County Defendants"). I am an attorney licensed to practice law in the State of California and duly admitted to the Bar of the United States District Court for the Northern District of California. I have direct personal knowledge of the following facts and, if called as a witness, I could and would testify competently thereto.

2. On February 28, 2008 at approximately 10:00 a.m., Defendants took the deposition of Tracy Toschi.

3. On March 20, 2008 at approximately 10:00 a.m., Defendants took the deposition of

Michael Toschi. Attached hereto as Exhibit A are excerpts from Michael Toschi's March 20, 2008 deposition.

4. On May 13, 2008 at approximately 10:00 a.m., Defendants took the second deposition of Michael Toschi. Attached hereto as Exhibit B are excerpts from Michael Toschi's May 13, 2008 deposition.

5. On June 3, 2008 at approximately 10:00 a.m., Defendants took a second deposition of Tracy Toschi

6. On June 27, 2008, at the hearing on Plaintiffs' motion to amend the complaint, Defense Counsel advised Judge Chesney that they had exhausted their seven hour deposition limit as to each plaintiff, and advised that there was much more to be discovered, including the alleged conspiracy. Judge Chesney stated that defendants would have more time to take plaintiffs' depositions, particularly in view of the new allegations of equal protection violations. Attached hereto as Exhibit C are excerpts of the Reporter's Transcripts of the June 27, 2008 hearing before Judge Chesney.

7. On September 5, 2008, County Defendants re-noticed the depositions of Plaintiffs Michael and Tracy Toschi for September 16 and September 17, respectively. Attached hereto as Exhibit D is a true copy of the County Defendants' Re-notices of the depositions of Michael and Tracy Toschi.

8. On September 5, 2008, Plaintiffs' counsel responded to the re-notices of the depositions of Michael and Tracy Toschi with a letter stating that they had conflicts on September 16 and 17 and they would instead produce their clients for depositions "to last no longer than one hour each, on October 8, 2008." Attached hereto as Exhibit E is a true copy of the Plaintiffs' response to the County Defendants' re-notices of the depositions of Michael and Tracy Toschi.

9. Counsel for the County Defendants responded via letter on September 10, 2008 stating why further deposition testimony was necessary from both Plaintiffs and suggesting October 15-17 or the week of October 20, 2008 for the depositions of the Plaintiffs. Attached hereto as Exhibit F is the County Defendants' response to the Plaintiffs' letter of September 5, 2008.

10. On September 17, 2008, Counsel for the County Defendants sent Plaintiffs a meet and confer letter regarding the depositions of Michael and Tracy Toschi and requesting a response to their letter of September 10, 2008. Attached hereto as Exhibit G is the County Defendants' September 17,

2008 meet and confer letter to Plaintiffs.

11. On September 24, 2008, Counsel for the Plaintiffs sent the County Defendants a letter stating in pertinent part, "[w]e previously proposed the depositions of the plaintiffs on October 8, 2008. It appears that that option was not acceptable. Please propose another date to reconvene their depositions since you have noticed other depositions for October 8th." Attached hereto as Exhibit H is the Plaintiffs' September 24, 2008 letter.

12. On September 25, 2008, Counsel for County Defendants and Counsel for the Plaintiffs had a "meet and confer" conference to discuss the depositions of Plaintiffs. Later that same day, Counsel for the County Defendants confirmed the substance of that conference via letter stating that the Plaintiffs' Counsel continued to limit the depositions of the Plaintiffs to one hour each but agreed to discuss the length of the depositions with their clients. Attached hereto as Exhibit I is the County Defendants' September 25, 2008 letter confirming the substance of the meet and confer conference with Plaintiffs on September 25, 2008.

13. On October 7, 2008 Counsel for County Defendants had a meet and confer conference with Plaintiffs' Counsel regarding the length of the depositions for Plaintiffs. Plaintiffs' Counsel agreed to extend the length of time to two hours per Plaintiff, but would not agree to any greater amount of time for the depositions.

14. I have spent 5 hours preparing this motion to compel, the supporting declaration and the proposed order. I have been practicing law for 20 years and have been working as Deputy County Counsel for the County for San Mateo for over 10 years. My hourly rate is $188. My law clerk has spent 8 hours working on this motion as well. Her hourly rate is $22.50. Therefore, I am requesting attorney's fees of $1,120 for preparing this motion to compel.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct and was executed on October 10, 2008 in Redwood City, California.

Dated: 10/10/08

Respectfully submitted,

MICHAEL P. MURPHY, COUNTY COUNSEL

By: _____
V. Raymond Swope III, Deputy

Attorneys for Defendants
COUNTY OF SAN MATEO, MARK MARELICH, JOE COSTA, and DAVID WEIDNER

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