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9 OF FOLSOM (sued erroneously as CITY OF
10 FOLSOM POLICE DEPARTMENT)

11 *Public Entity, Gov't Code section 6103*

12 SUPERIOR COURT OF CALIFORNIA

13 COUNTY OF SACRAMENTO

14 CAPT. CARLOS MARQUEZ,

15 Plaintiff,

16 v.

17 STATE OF CALIFORNIA, DEPARTMENT
18 OF HIGHWAY PATROL; CHIEF
19 REGINALD J. CHAPPELLE; ASSISTANT
20 CHIEF BRIAN AHGLER; LT. MICHAEL
21 RICHARD; SGT. DAN PAXTON, SGT.
22 JOHN PRICE; OFFICER GEORGE
23 VISILIOU; CITY OF FOLSOM; CITY OF
24 FOLSOM POLICE DEPARTMENT;, and
25 DOES 1-50, inclusive,

26 Defendants.

27 **AND RELATED CROSS-ACTION**

28 Defendant CITY OF FOLSOM (sued erroneously as CITY OF FOLSOM POLICE DEPARTMENT) hereby submits its opposition to Plaintiff's Motion to Compel an Order Compelling Inspection Demand.

I. INTRODUCTION

The plaintiff, Carlos Marquez, was terminated from his job at the California Highway Patrol (CHP) for admittedly having sex at work and misusing state time by making thousands of

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MAR 1 2011

By A. O'DONNELL
Deputy Clerk

Case No. 34-2009-00066442-CU-OE-GDS
(Consolidated with Case No. 34-2010-
80000434)

**DEFENDANT CITY OF FOLSOM'S
OPPOSITION TO PLAINTIFF'S
MOTION TO COMPEL SITE
INSPECTION**

**Date: March 14, 2011
Time: 9:00 a.m.
Dept.: 54**

1 telephone calls to his mistress and writing pornographic sonnets while he was supposedly
2 working. The plaintiff, who was a Captain at the time, kept sexual paraphernalia including dildos,
3 strap-on penises, and pornographic videos, in his work locker. Moreover, the plaintiff fabricated
4 driver's licenses for himself and his mistress purportedly to protect their identities when checking
5 into hotels together. Nevertheless, the plaintiff is suing the City of Folsom, CHP and his former
6 co-workers claiming that his rights were somehow violated.

7 Plaintiff's allegations against the City of Folsom are based on the unsupported allegation
8 that the City of Folsom Police Department (hereinafter "police department") tape recorded Mr.
9 Marquez while he was undergoing an interview by the CHP Office of Internal Affairs. Plaintiff
10 now seeks to inspect, measure and photograph the police department's interrogation rooms.
11 Plaintiff's motion should be denied on procedural grounds alone, because he failed to include the
12 required separate statement with his moving papers. However, defendant should also prevail on
13 substantive grounds because defendant's objections outweigh plaintiff's purported need for the
14 inspection. Plaintiff is unreasonably requesting unfettered access to the police department's
15 interrogation space and surrounding areas to ascertain information to which defendant will
16 stipulate, that could easily be obtained through written discovery, or does not exist. Plaintiff
17 continues to claim that his time in the police department interrogation room was recorded; it was
18 not, and defendant has offered to stipulate to that fact. Further, plaintiff's inspection poses a
19 safety concern and could potentially violate the privacy rights of third persons and compromise
20 confidential information regarding criminal cases and pending investigations. Therefore,
21 defendant City of Folsom respectfully requests that plaintiff's motion to compel an inspection of
22 the City of Folsom Police Department be denied.

23 **II. STATEMENT OF FACTS**

24 On or about December 9, 2010 plaintiff served an inspection demand on the defendant
25 City of Folsom demanding to enter the police department with his counsel, experts and agents for
26 "the purpose of inspections, measuring and/or photographing the interrogation rooms utilized on
27 December 16, 17, 2008 to conduct the "Administrative Interrogation of Plaintiff and the room
28 where Plaintiff and Sgt. Dave Hazelwood discovered the video tape recording devices which

1 Plaintiff alleges were utilized to access his confidential communications.” (Exhibit 1¹ to the
2 Declaration of Mark P. Velez in Support of Plaintiff’s Motion to Compel Site Inspection)
3 Defendant objected to the inspection demand on the basis that the inspection is not reasonably
4 calculated to lead to the discovery of admissible evidence, violates defendant’s privacy rights and
5 compromises the security of law enforcement. (Exhibit 2). Thereafter, defense counsel
6 exchanged several meet and confer letters with plaintiff’s counsel Defendant maintained its
7 position that the police department would not be open for inspection, but offered on at least two
8 occasions to provide declarations attesting to the fact that the police department did not record
9 plaintiff’s interview with the CHP Office of Internal Affairs. (Exhibits 4 & 6). To date, plaintiff
10 has served no written discovery on defendant and has not taken advantage of the police
11 department’s offer to provide declarations. (Declaration of N. Kate Jeffries, filed concurrently
12 herewith.)

13 The City of Folsom has only one interview/interrogation² room. (Declaration of
14 Commander Sheldon Sterling (hereinafter “Sterling Decl.”), para. 3.) As with most, if not all,
15 police interrogation rooms, there is equipment which, if used, enables the police department to
16 record and/or send live video feed of the interrogation room to a neighboring room. Defendant’s
17 police department maintains such equipment in a room next to the interrogation room. *Id.*
18 Defendant’s one interrogation room must be used at any time that a suspect is required to be
19 questioned by the police department; there are no established “business hours” of use as
20 suggested by plaintiff. (*Id.* at para 6). The City of Folsom will stipulate to the existence of these
21 two rooms and the ability to record and create live video feed of the interrogation room for all
22 purposes; there is no need for an inspection to confirm that the rooms exist for the purposes of
23 opposing a summary judgment motion or for trial. Further, it is impossible for plaintiff to verify
24 through an inspection whether or not his interview was recorded or third parties eavesdropped on
25 his conversations and/or the interview. (*Id.* at para. 5). Therefore, plaintiff’s proposed

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27 ¹ Hereinafter, all references to exhibits refer to exhibits to the Declaration of Mark Velez In Support of Plaintiff’s
28 Motion to Compel Site Inspection

² The police department refers to the room as an “interview room ” However, defendant will use plaintiff’s
terminology, “interrogation room,” for the purpose of this motion

1 inspection is entirely unnecessary given the safety and privacy concerns expressed by defendant.

2 **III. LEGAL ARGUMENT**

3 **A. BECAUSE PLAINTIFF DID NOT FILE AND SERVE A SEPARATE**
4 **STATEMENT THE REQUEST FOR AN ORDER COMPELLING A SITE**
5 **INSPECTION SHOULD BE DENIED**

6 Plaintiff's motion is procedurally deficient because it does not contain a separate
7 statement. The Rules of Court provide that a discovery motion "must be accompanied by a
8 separate statement." (Cal. Rules of Court, Rule 3.1345(a)(emphasis added.) Defendant City of
9 Folsom timely served an objection to plaintiff's inspection demand. (Exhibit 2). Because a
10 response was provided to plaintiff's inspection demand, Rules of Court required plaintiff to
11 include a separate statement with a motion to compel. (See Cal. Rules of Court, Rule 3.1345(b).)
12 This deficiency is fatal to plaintiff's motion and should result in the motion being denied in its
13 entirety.

14 **B. DEFENDANT'S OBJECTIONS OUTWEIGH PLAINTIFF'S PURPORTED**
15 **NEED FOR INSPECTION OF THE POLICE DEPARTMENT**

16 A motion to compel further discovery "shall set forth specific facts showing good cause
17 justifying the discovery sought by the inspection demand." (Cal. Code Civ. Proc.
18 §2031.310(b)(1); *Kirkland v. Sup. Ct. (Guess?, Inc.)* (2002) 95 Cal.4th 92, 98). "It follows that in
19 each case involving a motion for an order authorizing inspection there must be a showing that the
20 thing sought to be inspected comes within the general classification of matters subject to
21 discovery, and that inspection may be had without violence to equity, justice, or the inherent
22 rights of the adversary." (*Suezaki v Superior Court of Santa Clara County* (1962) 58 Cal. 2d 166,
23 171-172.)

24 Plaintiff seeks to bring an unspecified number of persons, including his attorney, agents
25 and experts into the police department to conduct unspecified type(s) of inspection and to
26 measure and photograph the interrogation rooms. (Exhibit 1.) Plaintiff attempts to meet the good
27 cause requirement by making conclusory statements that the inspection is necessary to identify
28 witnesses for depositions, to oppose a hypothetical summary judgment motion and to prevent

1 surprise and obtain evidence for trial. (Plaintiff's Motion, pgs. 3:22-24, 4:26-5:1). Plaintiff's
2 counsel's declaration provides no explanation as to how photographing, measuring and inspecting
3 the interrogation room will result in the identity of witnesses and evidence or will be necessary to
4 oppose a hypothetical summary judgment motion or prepare him for trial. Therefore, plaintiff has
5 not met his burden of showing good cause for the inspection.

6 Further, the identity of witnesses and information regarding the measurements of the
7 interview room and the evidence in support of defendant's contention that the interview was not
8 recorded, etc. can all be ascertained by serving written discovery requests. Plaintiff has served no
9 written discovery on defendant. (Declaration of N. Kate Jeffries). Rather, plaintiff has chosen
10 the most intrusive and objectionable form of discovery by making a broad request bring an
11 unspecified number of individuals to inspect, measure and photograph the area of the police
12 department where criminal suspects are questioned.

13 Defendant's reasons for objecting to the inspection outweigh plaintiff's allegations of
14 good cause. Defendant objected to the inspection demand on the basis that the inspection is not
15 reasonably calculated to lead to the discovery of admissible evidence, violates defendant's
16 privacy rights and compromises the security of law enforcement. (Exhibit 2). The police
17 department only has one interrogation room. (Sterling Declaration, para. 3). The police
18 department maintains equipment for recording in a room next to the interview room. *Id.*
19 Defendant's one interview room must be used at any time that a suspect is required to be
20 questioned by the police department, regardless of the time of day. (*Id.* at para. 6). Having an
21 unspecified number of persons, including plaintiff, his attorney, experts and agents roaming
22 through the police department and its interrogation areas for an unlimited period of time
23 compromises the security of law enforcement and invades the privacy of the suspects and inmates
24 who are present at the department for questioning or to meet with their attorneys. Defendant will
25 not have access to its one interrogation room during the inspection and will be unable to question
26 suspects in that secure location.

27 Also, the fact that plaintiff, a former CHP officer, seeks to personally attend the inspection
28 with unspecified experts threatens defendant's security, privacy and confidentiality of

1 information. Plaintiff erroneously contends that there is a recording of his CHP Office of Internal
2 Affairs interview and likely seeks to use his unspecified experts to search the department's
3 electronic database and/or computer equipment in search of this purported recording. This is
4 simply impermissible. The police department's database contains information regarding active
5 criminal investigations and confidential information about police investigations, evidence and
6 third parties who are witnesses, suspects and victims of crimes.

7 The City of Folsom will stipulate to the existence of these two rooms and the ability to
8 record and create live video feed of the interrogation room for all purposes, there is no need for an
9 inspection to confirm that the rooms exist for the purposes of opposing a summary judgment
10 motion or for trial. Defendant has already informed plaintiff that his interview was not recorded
11 and has offered to provide declarations to that effect to no avail. (Exhibit 4, 6; Sterling Decl.,
12 para. 3-4). With this motion, defendant provides the declaration of Commander Sterling, the
13 police department employee who arranged for CHP to use the police department's interrogation
14 room. (Sterling Decl., para. 1-2) Commander Sterling's declaration attests to the existence of the
15 two rooms and the fact that plaintiff's interview was not recorded. Defense counsel will sign an
16 additional written stipulation if necessary to put this issue to rest.

17 Further, it is impossible for plaintiff to obtain information through a site inspection that
18 would contradict the police department's position that it did not record the interview or eavesdrop
19 on plaintiff while he spoke with his representative. (Sterling Decl. para. 5). There is absolutely
20 no method that can be used to determine through a site inspection in 2011 whether a third party
21 overheard Captain Marquez and his representative talking in the interview room in December
22 2008. Similarly, there is absolutely no method that can be used to confirm through a site
23 inspection that the Department's video equipment was not recording at a specific date or time.
24 Therefore, a site inspection would be futile. (*Id.*)

25 Plaintiff's contention that he needs to perform the site inspection to identify witnesses is
26 nonsensical. However, there is no way that by measuring and photographing the interrogation
27 rooms that plaintiff can ascertain what witnesses were present in December 2009 when plaintiff
28 was interviewed by CHP Office of Internal Affairs. Plaintiff now knows by way of the

1 declaration of Commander Sterling that he is a witness to the events at issue. Plaintiff can depose
2 Commander Sterling and serve written discovery requests asking defendant to identify witnesses.
3 Because plaintiff has not shown good cause for the inspection in light of defendant's safety and
4 privacy concerns and the availability of less intrusive measures to obtain the information sought,
5 the motion should be denied.

6 **C. IF PLAINTIFF'S MOTION IS GRANTED DESPITE ITS PROCEDURAL**
7 **DEFICIENCIES, THE ORDER SHOULD BE LIMITED TO ADDRESS**
8 **DEFENDANT'S SAFETY AND PRIVACY CONCERNS**

9 Defendant contends that the absence of good cause and a separate statement should result
10 in this motion being denied. However, if the Court permits plaintiff to conduct the inspection, the
11 scope should be limited. Defendant objects to the safety and privacy concerns of allowing an
12 unknown number of civilians to have unfettered access to the police department and to occupy the
13 one available interrogation room and surrounding area for an unlimited amount of time. Further,
14 the inspection demand does not specify what type of inspection(s) will be performed and by
15 whom. Not only will the room be unavailable for the police department during this time, but the
16 police department's files containing confidential information will be at risk. Further, plaintiff is a
17 former CHP officer who was terminated for gross misconduct. Defendant objects to plaintiff
18 being permitted access to any areas of the police department that are not open to the public,
19 including its interrogation rooms and surrounding areas.

20 If the Court orders a site inspection of the Folsom City Police Department, defendant
21 requests the following: (1) a maximum of two representatives be permitted to attend the
22 inspection; (2) the names of said persons be provided in advance along with a list of any
23 equipment that will be brought into the police department for the inspection; (3) the inspection be
24 limited to 30 minutes; (3) the inspection be limited to photographing and measuring the length,
25 width and height of the interrogation room and the room next to the interview room holding the
26 recording equipment only; (4) any photographs and measurements be limited, and be marked as
27 confidential and for the purposes of this litigation only³; (5) the order prohibit plaintiff from any

28 ³ Plaintiff indicated in prior meet and confer letters that he would be agreeable to such a condition (See Exhibit 3)

1 inspection of defendant's documents, computers, electronically stored information and
2 equipment, including recording and video equipment.

3 **IV. CONCLUSION**

4 Based on the foregoing, Defendant CITY OF FOLSOM (sued erroneously as CITY OF
5 FOLSOM POLICE DEPARTMENT) respectfully requests that plaintiff's motion be denied.

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7 Dated: February 28, 2011

MATHENY SEARS LINKERT & JAIME, LLP

8
9 By: 

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12 CITY OF FOLSOM

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