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January 27, 2011

Via Federal Express

Mr. Eric Michael Cap
649 Bethany Road
Burbank, CA 91504

Re: *Rodriguez, et al v. City of Burbank, et al.*
LASC Case No. BC 414 602
Deposition of Eric Michael Cap

Dear Mr. Cap:

We represent the Plaintiffs in the matter of *Rodriguez, et. al. v. City of Burbank* (LASC Case Number BC 414 602). As you are no doubt aware, your deposition has been set for February 1, 2011 with the City of Burbank. Enclosed please find:

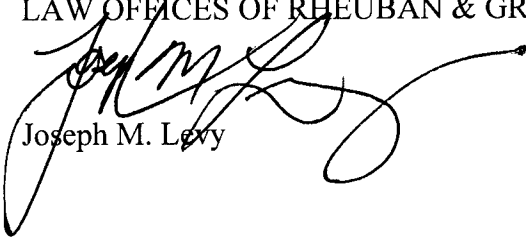
- (A) Our objections to your deposition; and
- (B) Our January 27, 2011 letter to City Attorney Carol Humiston advising her of our objections to your deposition.

Although we are filing objections, you need to know that we do not represent you and, unless advised otherwise by your own attorney, you should attend your deposition on February 1, 2011 as scheduled. Failure to respond to the subpoena may result in the imposition of sanctions, even though we feel that your deposition is an unwarranted attempt by Burbank to intimidate those who publicly comment on the lawsuit.

If you are represented by counsel, we would be more than happy to discuss the deposition with her/him prior to its commencement.

Very truly yours,

LAW OFFICES OF RHEUBAN & GRESEN


Joseph M. Levy

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January 27, 2011

Via Facsimile to (818) 238-5724 and US Mail

Carol Ann Humiston, Esq.
Senior Assistant City Attorney
Office of the City Attorney
275 East Olive Avenue
Burbank, California 91510-6459

Re: *Rodriguez, et al v. City of Burbank, et al.*
LASC Case No. BC 414 602
Meet and Confer / Objections - Deposition of Eric Michael Cap

Dear Ms. Humiston:

Enclosed please find our formal objections to the deposition of Eric Michael Cap, which you unilaterally noticed for February 1, 2011.

Mr. Cap's deposition is merely your attempt to use this case to conduct an improper investigation into matters that have nothing whatsoever to do with the issues raised in the Complaint or the affirmative defenses in your answer. The documents you have requested have no relation whatsoever to the subject matter of this lawsuit, and they are not reasonably calculated to lead to the discovery of admissible evidence.

In addition, the subpoenas which led to the identification of Mr. Cap are the subject of a pending Motion to Quash, set for March 1, 2011. The information leading to the identification of Mr. Cap therefore should not have been produced, and Jackson Lewis claimed that they had withdrawn the subpoena. You are now using this improperly obtained information to intimidate potential witnesses, punish members of the public for exercising their First Amendment free speech rights, and burden Plaintiffs with improper discovery, in violation of *Code of Civil Procedure* § 2023.010.

Carol Ann Humiston, Esq.
January 27, 2011
Page 2

For these reasons, as well as for the reasons outlined in the enclosed objections, Plaintiffs request that the February 1, 2011 deposition of Mr. Cap be taken off-calendar. At the very least, Mr. Cap's deposition should be delayed until after the Motion to Quash is heard by Judge Wayne.

Very truly yours,

LAW OFFICES OF RHEUBAN & GRESEN


Joseph M. Levy

cc: Thomas G. Mackey, Esq. (via fax & mail)
Linda Miller Savitt, Esq. (via fax & mail)
Lawrence A. Michaels, Esq. (via fax & mail)
Robert Tyson, Esq. (via fax & mail)

1 SOLOMON E. GRESEN [SBN: 164783]
2 JOSEPH M. LEVY [SBN: 230467]
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8 Attorneys for Plaintiffs Omar Rodriguez, Steve Karagiosian,
9 Cindy Guillen-Gomez, Elfego Rodriguez and Jamal Childs

10
11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 FOR THE COUNTY OF LOS ANGELES - CENTRAL DISTRICT

13 OMAR RODRIGUEZ; CINDY GUILLEN-)
14 GOMEZ; STEVE KARAGIOSIAN;)
15 ELFEGO RODRIGUEZ; AND JAMAL CHILDS,)

16 Plaintiffs,

17 -vs-

18 BURBANK POLICE DEPARTMENT; CITY OF)
19 BURBANK; AND DOES 1 THROUGH 100,)
20 INCLUSIVE.)

21 Defendants.

CASE NO.: BC 414 602

Assigned to: Hon. Joanne B. O'Donnell, Judge

PLAINTIFFS' OBJECTION TO
DEFENDANT'S NOTICE OF TAKING
DEPOSITION OF ERIC MICHAEL CAP AND
REQUEST FOR PRODUCTION OF
DOCUMENTS

Date: February 1, 2011

Time: 10:00 a.m.

Place: 150 N. Third Street
Burbank, CA 91505

22 BURBANK POLICE DEPARTMENT; CITY OF)
23 BURBANK,)

24 Cross-Complainants,

25 -vs-

26 OMAR RODRIGUEZ, and Individual,)

27 Cross- Defendant)

Complaint Filed: May 28, 2009

28 Plaintiffs OMAR RODRIGUEZ; CINDY GUILLEN-GOMEZ; STEVE KARAGIOSIAN,
(hereinafter "Plaintiffs") hereby object to Defendant's Notice of Taking Deposition of Eric Michael
Cap and Request for Production of Documents (the "Deposition Notice") on the following grounds:

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2 1.The Deposition Notice was served without complying with Los Angeles County
3 Superior Court Local Rule 7.12(e)(2), which requires that, in scheduling depositions, consideration
4 should be given to accommodating the schedules of opposing counsel.

5 2.The Deposition Notice fails to the telephone number of the non-party deponent (as does
6 the subpoena attached to the Deposition Notice). See Code of Civil Procedure Section
7 2025.220(a)(3).

8 3.The Deposition Notice and attached subpoena violates Code of Civil Procedure Section
9 2010.010(a)(3), because the deposition subpoena purports to compel the production of documents
10 other than business records. Code of Civil Procedure Section 2020.010 governs discovery from a
11 person who is not a party to the action, and Section 2010.010(a)(3) authorizes only the production
12 of business records.

13 4.The subject matter of the deposition notice, the information possessed by the non-party
14 deponent, and the documents sought by the attached subpoena are not relevant to the subject matter
15 involved in this action or to the determination of any motion made in this action; and the
16 information sought from the non-party deponent neither is itself admissible in evidence nor appears
17 reasonably calculated to lead to the discovery of admissible evidence. (Code of Civil Procedure
18 Section 2017.010.)

19 5.The burden, expense, and intrusiveness of the discovery sought from the non-party
20 witness outweighs the likelihood that the information sought will lead to the discovery of
21 admissible evidence. (Code of Civil Procedure Section 2017.020(a).)

22 6.The discovery sought is unreasonably cumulative or duplicative, or is obtainable from
23 some other source that is more convenient, less burdensome, or less expensive. (Code of Civil
24 Procedure Section 2019.030(a)(1).

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1 7. By noticing the deposition of non-party witness Eric Michael Cap, defendant is
2 employing a discovery method for the purpose of causing plaintiffs unwarranted annoyance and
3 oppression, and undue burden and expense. (Code of Civil Procedure Section 2023.010(c)
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5 Dated: January 26, 2011

LAW OFFICES OF RHEUBAN & GRESEN

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7
8 By: 

Robert C. Hayden

9 Attorneys for Plaintiffs, Omar Rodriguez, Steve
10 Karagiosian, Cindy Guillen-Gomez, Elfego Rodriguez
11 and Jamal Childs
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