

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES

FEB 25 2010

John A. Clarke, Executive Officer/Clerk
By Cristina Grijalva, Deputy
CRISTINA GRIJALVA

1 **JEFFREY W. COWAN, ESQ., SBN 157474**
2 The Cowan Law Firm
3 1541 Ocean Avenue, Suite 200
4 Santa Monica, California 90401
5 Tel: (310) 394-1420
6 Fax: (310) 394-1430

7 Attorney for Plaintiff Sharon Song Byrd

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **COUNTY OF LOS ANGELES**

10 Sharon Song Byrd, an individual,
11 Plaintiff,

12 vs.

13 Tony Wafford, an individual, The Palms
14 Residential Care Facility, a California
15 Corporation, and Docs 1 through 100,
16 Defendants.

Case No. BC 403677

(Action filed December 10, 2008;
assigned to Hon. Michael C. Solner)

**Plaintiff Sharon Song Byrd's Reply
Brief In Support of Motion for Order
Permitting Discovery of Defendant
Tony Wafford's Profits and Financial
Information**

**Supplemental Declaration of Jeffrey W.
Cowan**

Date: March 4, 2010

Time: 9 a.m.

Dept.: 39

[Trial: April 13, 2010]

17
18
19 **I. THE REQUESTED ORDER SHOULD ISSUE**

20 Plaintiff Sharon Song Byrd ("Ms. Byrd") respectfully submits that the Court should
21 grant her motion and allow her to conduct discovery about Defendant Tony Wafford's financial
22 assets because she has carried her burden of showing that she has a "substantial probability" of
23 prevailing on her sexual harassment and battery claims.
24

25 First, Defendant Tony Wafford has submitted zero evidence in support of his general
26 denial that he neither sexually harassed Ms. Byrd nor hit her when he lost his temper at work on
27 the morning of October 11, 2007. Defendant has elected to borrow the strategy of a criminal
28 defendant and say "It's your burden of proof; I do not have to do anything."

The Cowan Law Firm
1541 Ocean Avenue, Suite 200
Santa Monica, California 90401
(310) 394-1400

1 **JEFFREY W. COWAN, ESQ., SBN 157474**
The Cowan Law Firm
2 1541 Ocean Avenue, Suite 200
3 Santa Monica, California 90401
4 Tel: (310) 394-1420
5 Fax: (310) 394-1430

6
7 Attorney for **Plaintiff Sharon Song Byrd**

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **COUNTY OF LOS ANGELES**

10 Sharon Song Byrd, an individual,

11 Plaintiff,

12 vs.

13 Tony Wafford, an individual, The Palms
14 Residential Care Facility, a California
15 Corporation, and Does 1 through 100,

16 Defendants.

) Case No. BC 403677

) (Action filed December 10, 2008;
) assigned to Hon. Michael C. Solner)

) **Plaintiff Sharon Song Byrd's Reply**
) **Brief In Support of Motion for Order**
) **Permitting Discovery of Defendant**
) **Tony Wafford's Profits and Financial**
) **Information**

) **Supplemental Declaration of Jeffrey W.**
) **Cowan**

17 Date: March 4, 2010

18 Time: 9 a.m.

19 Dept.: 39

20 [Trial: April 13, 2010]

21 **I. THE REQUESTED ORDER SHOULD ISSUE**

22 Plaintiff Sharon Song Byrd ("Ms. Byrd") respectfully submits that the Court should
23 grant her motion and allow her to conduct discovery about Defendant Tony Wafford's financial
24 assets because she has carried her burden of showing that she has a "substantial probability" of
25 prevailing on her sexual harassment and battery claims.

26 First, Defendant Tony Wafford has submitted zero evidence in support of his general
27 denial that he neither sexually harassed Ms. Byrd nor hit her when he lost his temper at work on
28 the morning of October 11, 2007. Defendant has elected to borrow the strategy of a criminal
defendant and say "It's your burden of proof; I do not have to do anything."

1 The strategy is misplaced. Compelling evidence supports Ms. Byrd's tort claims.

2 A. Ms. Byrd's Sexual Harassment Claim

3 Regarding sexual harassment, the submitted Instant Messages corroborate Ms. Byrd's
4 story. Defendant argues that they show only sexual banter but points to no text to support the
5 contention. In fact, this argument is just spin because the IM exchanges unambiguously
6 evidence Defendant Wafford pestering Ms. Byrd for sex. They also evidence her repeated (and
7 diplomatic) rebuffs of her supervisor.¹ (See Exhibit 1 to the attached Byrd Declaration).

8

9
10 ¹ Consider this exchange from July 2006:

11 "Wafford: Did he say invite me over to go over the benefits?
12 Wafford: LOLLOLOL
13 Byrd: The father on your proposal??? so that you make me an adulterer?
14 Wafford: **So shall we talk about this in the morning?**
15 Byrd: About making me an adulterer?
16 Byrd: And taking a chance on losing favor?
17 Wafford: **No about giving me what you said was mine**
18 Byrd: That was before I came to my senses
19 Wafford: OK, I understand
20 Wafford: **So how about one for the road?**
21 Byrd: And disappoint [*sic*] and hurt set in
22 Wafford: **Let me love all the hurt away**
23 Byrd: There are no constraints on lasciviousness.
24 Wafford: **So i will see you in the AM?**
25 Byrd: No. . .the jury is still out
26 Wafford: ok you let me know when its ok to come by
27 Wafford: I'll see you in the am
28 Byrd: Did you just read your previous statement?
Wafford: Oh. . . i forgot
Wafford: LOLLOLOL
Byrd: I see
Wafford: So I'll see you in the am ok
Byrd: You keep repeating and overriding your previous statement. What's up with that?
Wafford: **I'm in need so i get a little crazy**
Wafford: LOLLOLOL
Byrd: All that aside, again I didn't sleep well, I have so much on my mind and a cold is trying to catch me. **What's up with this NEED... You are laying next to warm body everynight [*sic*]...if anyone is I should be?????**

1 Defendant Wafford also argues that the Instant Messages were “edited” – but this is just
2 more spin. No evidence supports the (false) contention.

3 Plus, Defendant Wafford’s own testimony has cost him his credibility. He contends (in
4 his response to form interrogatory No. 15.1) that his consensual sexual relationship with Ms.
5 Byrd continued until about October 2007. [Ms. Byrd has testified that it ended in about
6 December 2004 after she discovered he was sleeping with another co-worker as well as her.]
7 The foregoing instant messages not only corroborate Ms. Byrd’s story but contradict/impeach
8 Mr. Wafford. Those writings make clear that (a) they are not having sex, (b) Defendant
9 Wafford would like to resume having sex with Ms. Byrd, and (c) Ms. Byrd was standing on her
10 refusal to do so.

11 Defendant Wafford also argues that no evidence establishes that his actions were
12 unwelcome. Not true. Ms. Byrd’s words in the Instant Messages and her testimony (see ¶¶ 11-
13 14 of her declaration) show that Wafford’s post-2004 requests for sex were unwelcome.

14 Finally, Defendant Wafford argues that Ms. Byrd is a “scorned woman.” Here too, this
15 is just spin because no evidence supports the argument.

16 When taken together, the Instant Messages and Ms. Byrd’s sworn detailed testimony
17 compel a finding that Ms. Byrd has a substantial probability of prevailing on her claim that
18 Defendant Wafford sexually harassed her.

19 B. Ms. Byrd’s Battery Claim

20 Ms. Byrd also is substantially likely to prevail on her battery claim because compelling
21 circumstantial evidence supports it. Yes, there are no eye-witnesses (another argument that
22
23

24 Byrd: AMEN WALLS! LOL

25 Byrd: Your benefits are right next to you

26 Wafford: **Well all i can say is i miss being with you. And if your not feeling it :-)**

27 Wafford: **And yours can be also**

28 Wafford: **Let talk about this in the AM**

Byrd: There AIN’T No benefits... been down that road oh so many times. Its just a
fun game to you” (emphasis added)

1 criminal defense lawyers favor with juries), but other evidence exists that is more than enough
2 for Ms. Byrd to carry her burden of proof for this motion. Consider the following:

- 3 • Ms. Byrd has testified in detail about how Defendant Wafford hit her on the
4 morning of October 11, 2007;
- 5 • Defendant Wafford has offered no testimony to explain what happened that
6 morning;
- 7 • Defendant Wafford has a *modus operandi* of using violence when he gets
8 frustrated or upset – a point that the moving papers raise and which Defendant
9 Wafford tacitly has conceded; (See Byrd Decl., ¶¶ 5-6; and Exhibit 4 to the
10 Cowan Decl);
- 11 • witnesses have testified about Ms. Byrd’s excited utterances (which are
12 consistent with her testimony of how Defendant Wafford hit her that day) (see
13 the Wheaton and Salgado declarations);
- 14 • the actions of the police corroborate Ms. Byrd’s claim; and
- 15 • Ms. Byrd’s hand surgeon and her therapist have testified how her injury is
16 consistent with and could have been caused by being hit in the way that Ms Byrd
17 says that Defendant Wafford struck her. (See ¶ 9 of the Brouman Declaration
18 and ¶¶ 5-6 of the Dorer Declaration)²

19 More specifically, the records of the LA County Sheriff corroborate Ms. Byrd’s story
20 about calling 911. The deposition testimony of the responding deputy sheriffs (deputies Matt
21 Schwabe and James Stilson) also confirm that when they arrived, Ms. Byrd was the only person
22 to complain about battery or unlawful conduct, and that Defendant Wafford never claimed that
23 Ms. Byrd had done anything unlawful to him, provoked him, or otherwise born any
24 responsibility for the attack. (See Exhibits 5 and 8 to the Cowan declarations).

25
26 ² The informally asserted objection to the testimony of Mr. Dorer lacks merit because he is a
27 licensed and trained physical therapist with decades of treating persons who have sustained hand
28 injuries. It would be hard to imagine someone more qualified (other than Dr. Brouman) to testify
about an injury to a hand and what could have caused it.

1 Most people do not call 911 at 8:30 a.m. on a business day from their job and report
2 being hit unless they were hit. Most people do not tell such stories to the reporting police unless
3 they are true. Most people do not excitedly tell friends and acquaintances about being the
4 victim of violence unless it happened. Most people do not seek emergency room medical care
5 (with its resulting expense) within 24 hours of being the victim of violence unless they need it.
6 And most people (especially those who are gainfully employed, have a history of supporting
7 themselves, and whose actions do not evidence any likelihood of trying to “cash in” from an
8 accident) do not incur tens of thousands of dollars in medical and physical therapy bills unless
9 they need the subject care.

10
11 **IV. CONCLUSION**

12 Defendant Wafford can close his eyes to Ms. Byrd’s evidence, but that does not make it
13 go away.

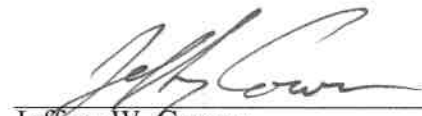
14 For the reasons set forth herein, Ms. Byrd respectfully submits that the Court should
15 allow her to conduct discovery on Defendant Wafford’s finances pursuant to Civil Code § 3295.

16
17 Respectfully submitted,

18 **THE COWAN LAW FIRM**

19 DATED: February 24, 2010

20 By:

21 

22 Jeffrey W. Cowan

23 Attorney for **Plaintiff Sharon Song Byrd**

Supplemental Declaration of Jeffery W. Cowan

1. I Jeffery W. Cowan declare that I am licensed to practice law in the State of California and am trial counsel in this lawsuit for Plaintiff Sharon Song Byrd. I have personal knowledge and if called upon to do so would and could testify to the following:

2. Attached hereto as Exhibit 8 are true and correct copies of pages 14-40 from the certified condensed deposition transcript of deputy Los Angeles County Sheriff James Stilson.

I declare under penalty of perjury under the law of the State of California that the foregoing is true and correct and that I execute this declaration on February 24, 2010



Jeffery W. Cowan

Exhibit 8

1 A. Yes, at the beginning of 2000.
2 **Q. You completed it?**
3 A. About five months in the year.
4 **Q. At some point in 2000 you became a deputy**
5 **Los Angeles County sheriff?**
6 A. Correct.
7 **Q. And your training as a sheriff included doing**
8 **investigations?**
9 A. Yes.
10 **Q. And it included responding -- did it include**
11 **responding to -- how to respond to calls to 911?**
12 A. Yes.
13 **Q. It included preparing reports of investigations**
14 **that you made when responding to a call?**
15 A. Yes.
16 **Q. And it includes -- not being a peace officer I**
17 **often get the terminology wrong. It includes not only**
18 **making formal reports but also entries in the sheriff's**
19 **computer system or log?**
20 A. Correct. The system that we use, the idea is
21 to record generalized information for handling calls.
22 That way you have a record that we actually responded to
23 a call. We were there at a certain date and time, and
24 that if there was any necessary information to clear the
25 call in handling it, it would be entered in to the

Page 14

1 mobile digital terminal that we have.
2 **Q. Do the logs -- do the logs that you folks use**
3 **typically reflect who would have made a call to the 911?**
4 A. The calls -- the way it works is that our desk
5 or dispatching center, which is manned by a deputy
6 sheriff, will receive a call, whether it's 911 or just
7 normal service, and then from there their terminals that
8 they have in the dispatch office is where they would
9 enter the information that goes towards whatever call we
10 handle.
11 The mobile digital terminal we have in our
12 units is used to access that information, so it's a
13 centralized system where it's just a computer we use to
14 access whatever is on the call. It will show who
15 called, who dispatched the call, who is responding to
16 the call, and it will give all information in that
17 regards.
18 **Q. Let me see. I am going to mark as Exhibit 28**
19 **the subpoena that was originally served on you for**
20 **October 20th that you're here pursuant to today after**
21 **the original no show.**
22 **(Exhibit 28 was marked for**
23 **identification.)**
24 MR. COWAN: Let me now show you a document
25 previously marked at deposition as Exhibit 25.

Page 15

1 **Q. This document -- I will let you look at the**
2 **copy that was marked at the exhibit before. You look at**
3 **the copy in the transcript. I will hold on to this one.**
4 **This is an incident history report, and I**
5 **showed you this document briefly before we started**
6 **today's deposition, right?**
7 A. Correct.
8 **Q. Do you recognize this as being -- let me back**
9 **up. If you look you will see attached at the very**
10 **bottom of the document there's an affidavit from a**
11 **detective named Tim Hazelwood.**
12 **Do you know Detective Hazelwood?**
13 A. Yes, I do.
14 **Q. Authenticating these documents and saying these**
15 **are genuine sheriff records.**
16 **Does this log look like something that you**
17 **would have been generated as you understand the way the**
18 **sheriff receives calls and creates records of them?**
19 A. Yes.
20 **Q. Let me take that back for now.**
21 **So in these logs will reflect typically the**
22 **person who called the sheriff whether by 911 or through**
23 **a nonemergency number?**
24 A. Depending on the screen that you bring up, yes.
25 **Q. And the log is -- is what's put in to the log a**

Page 16

1 **combination of what is told to the police operator,**
2 **whether it's regular or 911, both when the call is**
3 **initially placed and then after a call is made by**
4 **deputies to the scene or is it done after the fact?**
5 A. No. You have a combination of a call from
6 history of generation which would be a dispatcher to
7 which deputies or which units are assigned the call, a
8 history of deputies that respond to the call, times they
9 respond, and then at the end your conclusion usually
10 will be some brief narrative as to what transpired.
11 **Q. On a battery call does the report typically**
12 **reflect who the complaining alleged victim is?**
13 A. In the end. Usually when a call is generated
14 the first thing that we see on the screen is just the
15 call, whether it would be what we determine as a 415
16 business, which is a business disturbance, which is
17 obviously what this is there, and with that any other
18 information that you would want you would have to type
19 in another screen in order to get more information.
20 **Q. Now, let me direct your attention back to**
21 **Exhibit 25 for a second. You mentioned 415. That is**
22 **shorthand for Penal Code Section 415?**
23 A. Yes.
24 **Q. This exhibit at the bottom has an entry that**
25 **references -- has my client's name in it. Do you see**

Page 17

