

FEB 25 2010 11:00AM THE COWAN LAW FIRM

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**FILED**  
 SUPERIOR COURT OF CALIFORNIA  
 COUNTY OF LOS ANGELES

FEB 25 2010

John A. Clerk, Executive Officer/Clerk  
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 CRISTINA GRIJALVA

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

Sharon Song Byrd, an individual,  
 Plaintiff,

vs.

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

**I. THE REQUESTED ORDER SHOULD ISSUE**

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

First, Defendant Tony Wafford has submitted zero evidence in support of his general denial that he neither sexually harassed Ms. Byrd nor hit her when he lost his temper at work on 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."

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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."

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

A. Ms. Byrd's Sexual Harassment Claim

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

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<sup>1</sup> Consider this exchange from July 2006:

"Wafford: Did he say invite me over to go over the benefits?  
Wafford: LOLLOLOL  
Byrd: The father on your proposal??? so that you make me an adulterer?  
Wafford: **So shall we talk about this in the morning?**  
Byrd: About making me an adulterer?  
Byrd: And taking a chance on losing favor?  
Wafford: **No about giving me what you said was mine**  
Byrd: That was before I came to my senses  
Wafford: OK, I understand  
Wafford: **So how about one for the road?**  
Byrd: And disappoint [*sic*] and hurt set in  
Wafford: **Let me love all the hurt away**  
Byrd: There are no constraints on lasciviousness.  
Wafford: **So i will see you in the AM?**  
Byrd: No. . .the jury is still out  
Wafford: ok you let me know when its ok to come by  
Wafford: I'll see you in the am  
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?????**

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

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

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

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

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

B. Ms. Byrd’s Battery Claim

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

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Byrd: AMEN WALLS! LOL

Byrd: Your benefits are right next to you

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

Wafford: **And yours can be also**

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)

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

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

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

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<sup>2</sup> The informally asserted objection to the testimony of Mr. Dorer lacks merit because he is a licensed and trained physical therapist with decades of treating persons who have sustained hand 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**

A4002BC  
JAMES E. STILSON FEBRUARY 4, 2010

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

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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.

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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**

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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**

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<p>1 that?</p> <p>2 A. Correct.</p> <p>3 <b>Q. It says -- at the top it says, "re possible</b></p> <p>4 <b>242."</b></p> <p>5 <b>Let me do this. Why don't you read to me the</b></p> <p>6 <b>entry for this particular call.</b></p> <p>7 A. The clearance on the bottom with her name on</p> <p>8 it?</p> <p>9 <b>Q. Yes.</b></p> <p>10 A. Okay. The clearance on the bottom is entered</p> <p>11 at 0920 hours. The clear that you see is a reflection</p> <p>12 of the clear tab that was pushed.</p> <p>13 <b>Q. You know what, I'm sorry. Let me interrupt</b></p> <p>14 <b>you. You said something that caused me to realize I</b></p> <p>15 <b>could do this in a more clear way.</b></p> <p>16 <b>The first entry pertains to my client, right?</b></p> <p>17 A. Correct. It pertains to the call. That's the</p> <p>18 time the call was entered at 0836 hours.</p> <p>19 If you go through it says "entry" which was</p> <p>20 whoever -- any dispatcher was and their employee number.</p> <p>21 It has a description of the incident. It gives you an</p> <p>22 address which is 5003 La Brea Avenue, Ladera, Unit C.</p> <p>23 The business name is Palms Residential Care,</p> <p>24 and it says "P" for possible 415B, which is a business</p> <p>25 disturbance, possible 242 report.</p> <p style="text-align: right;">Page 18</p>	<p>1 A. If you told me that in regards to what I'm</p> <p>2 reading here -- because this right here, if you look</p> <p>3 after it says, "female secretary says her boss, comma,</p> <p>4 informant slapped her" so the informant is referring to</p> <p>5 the boss as being informant.</p> <p>6 Now, again, I didn't get the call so I don't</p> <p>7 know who the informant was at the time, but the</p> <p>8 information that was entered in to this call is stating</p> <p>9 that Tony Wafford is the informant. That's how I read</p> <p>10 this, so I have no idea --</p> <p>11 <b>Q. I understand.</b></p> <p>12 A. -- who the informant was at the time. That</p> <p>13 would be information gathered at the scene while talking</p> <p>14 to the individual involved.</p> <p>15 <b>Q. How often are there technical mistakes in these</b></p> <p>16 <b>log entries?</b></p> <p>17 A. If you're asking as far as a percentage, calls</p> <p>18 that I have handled, it would have to be less than five</p> <p>19 percent.</p> <p>20 But do they happen? Yes, of course.</p> <p>21 <b>Q. So in going down to the bottom, the reference</b></p> <p>22 <b>toward the bottom of the page that refers to Sharon</b></p> <p>23 <b>Byrd, those are log entries that were made after</b></p> <p>24 <b>sheriffs came out?</b></p> <p>25 A. Yes. Right after deputies responded to the</p> <p style="text-align: right;">Page 20</p>
<p>1 <b>Q. That's shorthand for Penal Code Section 242</b></p> <p>2 <b>which is the statute that makes the crime of battery --</b></p> <p>3 A. California Penal Code Section 242 is basically</p> <p>4 battery on a person.</p> <p>5 <b>Q. You understand that battery is the unlawful</b></p> <p>6 <b>hitting of someone, hitting or touching something</b></p> <p>7 <b>without permission or privilege?</b></p> <p>8 A. Willful and unlawful, yes.</p> <p>9 <b>Q. Then there is further reference to, it says,</b></p> <p>10 <b>"Tony Wafford same." That means the same address?</b></p> <p>11 A. Yes. Tony Wafford would more likely be an</p> <p>12 individual that was at the place. "Same" meaning same</p> <p>13 address. It first gives a phone number and then it</p> <p>14 says, "female secretary says" as to what the caller</p> <p>15 said.</p> <p>16 "FEM," meaning female, "secretary says her boss</p> <p>17 informant slapped her," so what I gather from this is</p> <p>18 when it's saying "Informant" is referring back to Tony</p> <p>19 Wafford as being the informant. Then it has "MDR,"</p> <p>20 being the station, and "MDR watch deputy" being the</p> <p>21 individual that gave the call.</p> <p>22 <b>Q. If I told you that Tony Wafford was the boss</b></p> <p>23 <b>who Ms. Byrd says slapped her and that Ms. Byrd was the</b></p> <p>24 <b>person who called 911, how would that cause you to</b></p> <p>25 <b>interpret this entry differently?</b></p> <p style="text-align: right;">Page 19</p>	<p>1 scene and talked to the individual involved and then</p> <p>2 entered it in to the MDT, mobile digital terminal, as to</p> <p>3 what transpired at the time. Just a brief synopsis.</p> <p>4 <b>Q. When these -- this case is a civil battery</b></p> <p>5 <b>claim. My client and the things we're asking you about</b></p> <p>6 <b>relate to a complaint that, as you can see from this</b></p> <p>7 <b>document, that pertain to a complaint about battery on</b></p> <p>8 <b>October 11, 2007.</b></p> <p>9 <b>You understand that?</b></p> <p>10 A. Yes.</p> <p>11 <b>Q. When sheriffs respond to a battery call -- I am</b></p> <p>12 <b>talking about in general and also specifically you,</b></p> <p>13 <b>you're a sheriff -- is it part of the training and</b></p> <p>14 <b>specified process that they respond, they do an</b></p> <p>15 <b>investigation, and then some sort of entry or report is</b></p> <p>16 <b>prepared?</b></p> <p>17 A. Of course.</p> <p>18 <b>Q. And if for whatever reason the person who would</b></p> <p>19 <b>have been the complaining victim declines to press</b></p> <p>20 <b>charges, is it accurate that the sheriff does not</b></p> <p>21 <b>prepare a formal report?</b></p> <p>22 A. Correct.</p> <p>23 <b>Q. Is it also accurate that the only</b></p> <p>24 <b>memorialization or record of the investigation -- when I</b></p> <p>25 <b>say "investigation" I mean coming out, responding to the</b></p> <p style="text-align: right;">Page 21</p>

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<p>1 call -- will be whatever is entered in to the sheriff's</p> <p>2 system in this kind of log that you have just been</p> <p>3 looking at that's marked as Exhibit 25?</p> <p>4 A. It would be either what was entered in to that</p> <p>5 log or what that individual deputy put in their field</p> <p>6 notebook.</p> <p>7 Q. Right. But what is entered in to the log is</p> <p>8 the official report accessible to anybody with access to</p> <p>9 the sheriff's records?</p> <p>10 A. Correct.</p> <p>11 Q. Have you had experiences where you respond to a</p> <p>12 battery call and after you get there the person who was</p> <p>13 the complaining victim ultimately decides he or she does</p> <p>14 not want to press charges?</p> <p>15 A. That's what I experience most of the time, the</p> <p>16 majority of the time.</p> <p>17 Q. When that's the case, do you -- is that</p> <p>18 typically reflected in the log?</p> <p>19 A. Yes.</p> <p>20 Q. If the person who is alleged to have committed</p> <p>21 the battery, the person who did the alleged violence,</p> <p>22 denies actually have done anything, is that entered in</p> <p>23 to the log?</p> <p>24 A. It can be depending on who was actually making</p> <p>25 the log clearance. In other words, my calls that I</p> <p style="text-align: right;">Page 22</p>	<p>1 her; I don't know what she's talking about; you should</p> <p>2 give her a sobriety test or check to see if she's under</p> <p>3 the influence of drugs; it never happened, categorically</p> <p>4 that's a fact," and words to that effect, will that sort</p> <p>5 of denial where there is absolute denial of the</p> <p>6 allegations that have been made to the police, is that</p> <p>7 typically recorded in the log?</p> <p>8 A. More than likely it will get summarized, and</p> <p>9 the reason for that is because the narrative lines that</p> <p>10 are within each call's clearance are very small.</p> <p>11 So there is only so much you could put in, so</p> <p>12 it might be referred to in regards to no evidence of a</p> <p>13 crime or things of that nature or spoke with informant</p> <p>14 and suspect and no evidence or crime or something very</p> <p>15 minute as far as what was said.</p> <p>16 Q. Would there be an entry like "suspect denies"?</p> <p>17 A. Suspect denies it could be or contact suspect,</p> <p>18 no EV of crime.</p> <p>19 Q. So is it accurate to say -- tell me if I'm</p> <p>20 misunderstanding -- that if the suspect says something</p> <p>21 to suggest there is some lack of culpability on his or</p> <p>22 her part, whether it's to the effect that it never</p> <p>23 happened, this is all being made up and is a false</p> <p>24 charge, or that there was a legal justification,</p> <p>25 self-defense, a person was coming at me with a knife so</p> <p style="text-align: right;">Page 24</p>
<p>1 handle now, when I typically go to any kind of battery</p> <p>2 or whatever it is, I want a statement as to the</p> <p>3 informant, and if so be that the supposed suspect is on</p> <p>4 scene I will try to get a statement from them as well.</p> <p>5 It's my job to determine what transpired, to</p> <p>6 explain the process to the informant or victim and then</p> <p>7 go from there to see their desires.</p> <p>8 Q. If you respond to a call and the -- let's</p> <p>9 assume that the complaining victim -- for whatever</p> <p>10 reason you have reason to believe that the person was</p> <p>11 hit; perhaps there are visible bruises or cuts or for</p> <p>12 whatever reason you're persuaded that that was the</p> <p>13 case -- but the victim doesn't want to press charges and</p> <p>14 in the course of your investigating and responding you</p> <p>15 talk to the perpetrator, or the alleged perpetrator, and</p> <p>16 that person says, "Yes, I hit him, yes, I pushed him but</p> <p>17 it's his fault, you know, he provoked me. He came at me</p> <p>18 with a knife," some sort of justification is given.</p> <p>19 So there is no denial of the action but a</p> <p>20 justification is given for it. Does that get reflected</p> <p>21 typically in the report?</p> <p>22 A. In mine, yes.</p> <p>23 Q. And if the person categorically denies having</p> <p>24 committed any violence or other unlawful or criminal</p> <p>25 actions with words to the effect of "I never touched</p> <p style="text-align: right;">Page 23</p>	<p>1 yes, I kicked him -- either way -- in some way, perhaps</p> <p>2 in shorthand, but in some way it will be reflected in</p> <p>3 the log?</p> <p>4 A. It should.</p> <p>5 Q. So this incident of October 11, 2007, do you</p> <p>6 understand that this is -- involving my client Sharon</p> <p>7 Byrd -- do you understand this to be a call that you</p> <p>8 responded to along with a deputy named Schwabe?</p> <p>9 A. Yes.</p> <p>10 Q. In October 2007 you were still being trained,</p> <p>11 correct?</p> <p>12 A. Yes.</p> <p>13 Q. He was your training officer?</p> <p>14 A. Yes.</p> <p>15 Q. Do you have any independent memory of</p> <p>16 responding to this call?</p> <p>17 A. No.</p> <p>18 Q. And that's after I introduced you to my client</p> <p>19 and she said hello to you?</p> <p>20 A. Yes.</p> <p>21 Q. And after I showed you some pictures of someone</p> <p>22 I represented to you is Tony Wafford, one of the</p> <p>23 defendants in this lawsuit?</p> <p>24 A. Yes.</p> <p>25 Q. All right. No independent memory whatsoever?</p> <p style="text-align: right;">Page 25</p>

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<p>1 A. No.</p> <p>2 <b>Q. Is it possible that -- although you did</b></p> <p>3 <b>remember one other incident that's reflected in these</b></p> <p>4 <b>sheriff records, right?</b></p> <p>5 A. I do recall another incident that day and it</p> <p>6 had to do with the eccentric nature of the incident,</p> <p>7 yes.</p> <p>8 <b>Q. Something colorful with a senior citizen?</b></p> <p>9 A. There was a call of a disturbance between a</p> <p>10 grandmother and her granddaughter. When we responded to</p> <p>11 the scene the door was open --</p> <p>12 <b>Q. I don't need all the details. It was colorful,</b></p> <p>13 <b>unusual enough that that one stands out?</b></p> <p>14 A. Correct.</p> <p>15 <b>Q. Do you have any -- I also showed you a</b></p> <p>16 <b>photograph previously marked Exhibit 26 at the</b></p> <p>17 <b>deposition of Deputy Schwabe which was the exterior of</b></p> <p>18 <b>the mini mall where the Palms Residential Care Facility</b></p> <p>19 <b>at Stocker and La Brea was based at the time. I'm</b></p> <p>20 <b>showing it to you now.</b></p> <p>21 <b>Does that help you jog your memory in any way?</b></p> <p>22 A. It jogs my memory of another arrest I made in</p> <p>23 that parking lot, actually several of them, but I don't</p> <p>24 recall going in to that business.</p> <p>25 <b>Q. So you have no memory of responding early in</b></p> <p style="text-align: right;">Page 26</p>	<p>1 A. Were the individuals in the picture there that</p> <p>2 day or was this at a later date?</p> <p>3 <b>Q. No, this was at a later date.</b></p> <p>4 A. Is this where your client normally sits?</p> <p>5 <b>Q. I can't speak to that but I believe it's a</b></p> <p>6 <b>place where at one time she was sitting. More</b></p> <p>7 <b>importantly it's obviously just a photograph of her</b></p> <p>8 <b>standing behind a desk by a wall. It was something that</b></p> <p>9 <b>was there but I don't expect you to remember the desk.</b></p> <p>10 <b>Having seen these pictures that show certain</b></p> <p>11 <b>portions of the premises --</b></p> <p>12 A. I don't recall being there. I don't recall any</p> <p>13 of this.</p> <p>14 <b>Q. These are different rooms. The photograph with</b></p> <p>15 <b>the conference table is a different room and the main</b></p> <p>16 <b>area where you walk in in sort of a rectangle with desks</b></p> <p>17 <b>against the walls and things like that.</b></p> <p>18 <b>So looking at them individually without a floor</b></p> <p>19 <b>plan may be somewhat confusing. I'm asking simply</b></p> <p>20 <b>whether seeing these photographs causes you to jog your</b></p> <p>21 <b>memory in any way and have some sort of memory flashes</b></p> <p>22 <b>of having been inside?</b></p> <p>23 A. No, No.</p> <p>24 <b>Q. Okay. When you were going through training</b></p> <p>25 <b>with Deputy Schwabe do you have an understanding that</b></p> <p style="text-align: right;">Page 28</p>
<p>1 <b>the morning to a call about an altercation involving</b></p> <p>2 <b>violence involving co-workers?</b></p> <p>3 A. The last altercation I remember had to do with</p> <p>4 the Summit Hotel directly next to this location and had</p> <p>5 to do with assault with a deadly weapon case.</p> <p>6 <b>Q. Do you have independent memory of going inside</b></p> <p>7 <b>the Palms Residential Care Facility?</b></p> <p>8 A. No.</p> <p>9 <b>Q. If I showed you pictures of the inside of the</b></p> <p>10 <b>Palms, do you think that might jog your memory?</b></p> <p>11 A. It might, sure.</p> <p>12 MR. COWAN: Let's go off the record for one</p> <p>13 second. Be right back.</p> <p>14 (Brief recess.)</p> <p>15 BY MR. COWAN:</p> <p>16 <b>Q. Deputy Stilson, I printed out some photographs</b></p> <p>17 <b>I will represent to you I myself took at the Palms</b></p> <p>18 <b>Residential Care Facility during an inspection that was</b></p> <p>19 <b>part of the process in this lawsuit.</b></p> <p>20 <b>Why don't you look at those.</b></p> <p>21 <b>Mr. Givens is welcome to look over your</b></p> <p>22 <b>shoulder if he wants to see them as well.</b></p> <p>23 <b>No? Okay.</b></p> <p>24 <b>Let me know if any of them jog your memory of</b></p> <p>25 <b>having been inside the premises.</b></p> <p style="text-align: right;">Page 27</p>	<p>1 <b>the experience for the trainee sheriff is somewhat</b></p> <p>2 <b>similar to new employees in other professions ranging</b></p> <p>3 <b>from firefighters to professional athletes, that the</b></p> <p>4 <b>rookies have to carry the bags and go through sort of</b></p> <p>5 <b>hazing or scut duty because they're junior men and it's</b></p> <p>6 <b>a tradition?</b></p> <p>7 A. In the Marina they were big on no hazing, no</p> <p>8 extra work outside what a deputy would do, so did I</p> <p>9 carry anybody else's bags? No. It wasn't allowed.</p> <p>10 What I have dealt with all the calls if I was</p> <p>11 the only trainee on that day, yes. I can tell you yes,</p> <p>12 the workload is more for a trainee than a seasoned</p> <p>13 deputy because it's repetition that you will become more</p> <p>14 familiar with what you handle in the field.</p> <p>15 <b>Q. Understood. So if you and a training officer</b></p> <p>16 <b>went out, would it be typical that you would be</b></p> <p>17 <b>assigned, for example, with making log entries after</b></p> <p>18 <b>responding to a call?</b></p> <p>19 A. I would be walked through. If this was in</p> <p>20 October -- I got to the station in September, so that</p> <p>21 would be a month, so any calls that were cleared by</p> <p>22 myself I would not be the one typing in the information</p> <p>23 outside of being directed to.</p> <p>24 <b>Q. So you might be physically hitting the keys but</b></p> <p>25 <b>you believe you would be entering what your partner was</b></p> <p style="text-align: right;">Page 29</p>

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<p>1 telling you to enter?</p> <p>2 A. Correct.</p> <p>3 Q. So directing your attention back to Exhibit 29</p> <p>4 and the entry at the bottom of the first page that was</p> <p>5 made after you and your partner responded to Ms. Byrd's</p> <p>6 911 call.</p> <p>7 Is it an accurate reading that this report</p> <p>8 reflects that Sharon Byrd made a complaint about</p> <p>9 possible battery by her boss; that she did not want to</p> <p>10 prosecute. Then there's a W/A, Wafford, Anthony.</p> <p>11 What does that mean as you understand it? Does</p> <p>12 that mean warn away?</p> <p>13 A. W/A when I use them would be warn and advise.</p> <p>14 Q. So based on your practice and understanding as</p> <p>15 to how you were making -- you and your partner were</p> <p>16 making these entries in October 2007, would it be</p> <p>17 reasonable to infer from this that you folks gave some</p> <p>18 sort of warning to Tony Wafford?</p> <p>19 A. It would either be a warning or an advisement.</p> <p>20 Not necessarily a warning, not necessarily advisement.</p> <p>21 It could be either/or.</p> <p>22 Q. What would the warning be on a call like this?</p> <p>23 A. On this one I don't recall. If I was to handle</p> <p>24 a battery call now where a victim is non-desirous and</p> <p>25 it's possible there was dissension, arguing between the</p> <p style="text-align: right;">Page 30</p>	<p>1 Q. Then date of birth?</p> <p>2 A. Yes.</p> <p>3 Q. Then it says "415." That's referring to</p> <p>4 possible violation of Penal Code 415?</p> <p>5 A. That is referring to the original call up here,</p> <p>6 415B for business.</p> <p>7 Q. Is it accurate to say that this log -- that</p> <p>8 based on the practices of you and Deputy Schwabe at the</p> <p>9 time -- this log contains the most significant,</p> <p>10 important things that you two thought should be</p> <p>11 documented in your log entry?</p> <p>12 A. They contain whatever information my partner,</p> <p>13 Deputy Schwabe, felt was pertinent for this call.</p> <p>14 Q. So it's your belief that although you may have</p> <p>15 been doing the typing but Deputy Schwabe, because he was</p> <p>16 your training officer, was telling you what to enter in</p> <p>17 to this log?</p> <p>18 A. Yes.</p> <p>19 Q. How long in to your training was it before you</p> <p>20 could make log entries?</p> <p>21 A. That was my second T.O. and he was assigned to</p> <p>22 me in the end of November.</p> <p>23 Q. So it was not until the end of November when</p> <p>24 you had your second training officer that you were given</p> <p>25 higher levels of responsibility which included being</p> <p style="text-align: right;">Page 32</p>
<p>1 two individuals, the warn and advisement would be to get</p> <p>2 along and for further investigation, prosecution, things</p> <p>3 of that nature.</p> <p>4 Q. As you remember, what were you doing, though,</p> <p>5 in October 2007 if you gave a warning?</p> <p>6 A. Well, I wouldn't give any warning in '07 in</p> <p>7 October. I was on training so the warning wouldn't have</p> <p>8 come from me.</p> <p>9 Q. It would have come from your partner?</p> <p>10 A. Right.</p> <p>11 Q. What about the advisement?</p> <p>12 A. Same.</p> <p>13 Q. Same thing. It's semantics. It's not a</p> <p>14 warning or advisement. These are terms --</p> <p>15 A. These are generalized terms to refer to talking</p> <p>16 to an individual about things that have transpired.</p> <p>17 Whether it's, you know -- for an example, if I go to a</p> <p>18 call where there is a disturbance and the disturbance</p> <p>19 involves loud music, the warning or advisement would be</p> <p>20 turn the music down or there's possible repercussions as</p> <p>21 far as getting a ticket for having loud music, for</p> <p>22 disturbing the neighbors, things of that nature.</p> <p>23 Q. After the name "Wafford, Anthony" it says</p> <p>24 "M/B." Is that male/black?</p> <p>25 A. Yes.</p> <p style="text-align: right;">Page 31</p>	<p>1 able to make log entries by yourself?</p> <p>2 A. Doing clearance by myself.</p> <p>3 Q. Were there occasions as you remember when you</p> <p>4 were training under Deputy Schwabe where you and he had</p> <p>5 disagreements about what should or should not go in to</p> <p>6 this log?</p> <p>7 A. Negative.</p> <p>8 Q. If this entry was made in the way you remember</p> <p>9 it where Deputy Schwabe told you what to put in and you</p> <p>10 did the typing it's your belief that you generally</p> <p>11 agreed based on your own independent judgment that you</p> <p>12 had accrued at that point based on your honest</p> <p>13 experience as a deputy along with the training you had</p> <p>14 received in the academy about, yes, this is an accurate</p> <p>15 summary of the important things that we can put in to</p> <p>16 this entry given the limited space that we have?</p> <p>17 A. I wouldn't question my T.O. at that time. If</p> <p>18 this is what he wanted in, this is what went in there.</p> <p>19 There would be no questions, there would be no concerns.</p> <p>20 There would be nothing to the nature as far as me</p> <p>21 wondering if something else should have been done.</p> <p>22 At this stage in my training I was in training,</p> <p>23 so if I was told to do something I'm going to do it.</p> <p>24 Q. I understand. I am asking something a little</p> <p>25 different. I get that you're being trained, you're</p> <p style="text-align: right;">Page 33</p>

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<p>1 doing it the way you're being taught. I understand 2 that.</p> <p>3 My question was a little different. I had 4 asked you before whether there were occasions where you 5 personally disagreed with the sufficiency or the nature 6 of what Schwabe was telling you to enter, and I think 7 your answer was no, that you generally agreed.</p> <p>8 Is that accurate?</p> <p>9 A. I agreed with whatever he was doing, correct.</p> <p>10 Q. Were there times where he told you to make an 11 entry and although you did not verbally disagree with 12 him, because you felt it was inappropriate given your 13 relationship, that you mentally thought, "I don't know 14 if this is right, we should be saying something else"?</p> <p>15 A. No.</p> <p>16 Q. So is it accurate to say that internally and 17 personally if you were the person who essentially typed 18 in this report, this entry that would have been dictated 19 by Deputy Schwabe as you remember it, that you were 20 generally in agreement that this was an accurate, 21 effective summary of what had happened on the call?</p> <p>22 A. Correct.</p> <p>23 Q. Do you think Deputy Schwabe is a good peace 24 officer?</p> <p>25 A. He is a great peace officer.</p> <p style="text-align: right;">Page 34</p>	<p>1 Q. Then the next column shows 8:49. What is that?</p> <p>2 A. That's the time we arrived on scene.</p> <p>3 Q. And the column after that?</p> <p>4 A. That is the time we left the scene.</p> <p>5 Q. If my math is right that shows that you and 6 your colleague, Deputy Schwabe, were on the scene of the 7 Palm Residential Care Facility for approximately 8 16 minutes?</p> <p>9 A. From the time we pulled up until the time we 10 left, 16 minutes.</p> <p>11 Q. Thank you. Then the last thing. Just so I 12 have a clear record.</p> <p>13 Let me show you a email thread that shows 14 emails between you and me on December 25th and 26th. 15 Have you seen these emails before?</p> <p>16 A. Yes.</p> <p>17 Q. At the bottom there is a cut-off of one that I 18 sent you on December 23. Then there is a reply you sent 19 me at 3:48 a.m. on December 25th. Then I replied to you 20 on December 26th at 1:54 in the afternoon; is that 21 right?</p> <p>22 A. Correct.</p> <p>23 Q. You remember getting this email?</p> <p>24 A. Yes.</p> <p>25 Q. So we're going to mark this email as</p> <p style="text-align: right;">Page 36</p>
<p>1 Q. Turn to the second page of Exhibit 25. Towards 2 the bottom about three sections up there is another 3 entry related to this log entry that we were talking 4 about on the first page. Yes?</p> <p>5 A. Correct.</p> <p>6 Q. This one shows, among other things, some 7 columns with times running across it, right?</p> <p>8 A. Correct.</p> <p>9 Q. And is it accurate to show that based on this 10 that the sheriff would have received a phone call at 11 about 8:36 a.m.?</p> <p>12 A. It shows that the call was dispatched at 8:36. 13 The call can't be dispatched until all the information 14 is received and then the call is generated, so the time 15 the call was actually received, I can't be certain as to 16 the time. All I can tell you is that at 8:36 that call 17 was dispatched to us.</p> <p>18 Q. The next two columns show the time of 8:40.</p> <p>19 A. Correct.</p> <p>20 Q. Is that referring to when the call was 21 acknowledged?</p> <p>22 A. Correct. The call would be from the dispatch 23 area. The call would be sent to our computer system 24 within our car. The call would be acknowledged at 8:40, 25 and it shows we went en route to that location at 8:40.</p> <p style="text-align: right;">Page 35</p>	<p>1 Exhibit 29.</p> <p>2 (Exhibit 29 was marked for 3 identification.)</p> <p>4 BY MR. COWAN:</p> <p>5 Q. Let me change subjects for a second.</p> <p>6 How many calls have you responded to regarding 7 a complaint of violence either in the workplace or 8 between people who live together or have some other kind 9 of personal relationship?</p> <p>10 A. Are you asking me to guess on numbers?</p> <p>11 Q. I am not asking you to guess but whether it's 12 in the hundreds, thousands or ten thousands.</p> <p>13 A. I would estimate a third of our calls has to 14 deal with some sort of violence, whether it be domestic, 15 business, on a party, and I would estimate that I have 16 handled at least 2,500 calls in the last two-and-a half 17 years that I have been in Marina.</p> <p>18 That 2,500 calls, if you go a third of that you 19 are talking about at least 800 calls.</p> <p>20 Q. Thank you. And of those 800 calls, are you 21 able to estimate -- this is again involving violence -- 22 are you able to give a rough estimate or a precise one 23 as to how often the complaining victim decides that he 24 or she does not want to press charges?</p> <p>25 A. I would estimate 75 to 90 percent.</p> <p style="text-align: right;">Page 37</p>

<p>1       <b>Q. And of those numbers do you have an</b> 2 <b>understanding based on what you observe and what people</b> 3 <b>say as to why they don't press charges?</b> 4       <b>In other words, is it because they just are --</b> 5 <b>they want to -- I won't suggest reasons.</b> 6       <b>Do you have an understanding as to why?</b> 7       A. If we go off the types of calls we deal with, 8 if it's involving domestic violence usually because 9 there is some sort of spousal relationship they don't 10 want somebody arrested. 11       If it's a call involving possible friendship, 12 again they usually don't want to see somebody arrested. 13       When it involves batteries which are 14 misdemeanors it's usually because the work that is 15 required is by the victim, meaning the victim is the one 16 that has to press the charges, the victim is the one 17 that needs to make sure that they are the ones that go 18 in to court to testify; they are the ones that have to 19 address the suspect and let them know that they are 20 indeed placed under arrest, and also a large 21 percentage -- I can't give you numbers -- it's because 22 they realize being a misdemeanor they're going to be 23 released, so the individual they just placed under 24 arrest, they will be released; they will not be 25 contained in jail for a lengthy time. It's a</p> <p style="text-align: right;">Page 38</p>	<p>1       report created -- a log entry when you were in training. 2       <b>So you are saying back then, especially because</b> 3 <b>you were a trainee, that entry would have been made</b> 4 <b>immediately after the fact?</b> 5       A. My T.O. Deputy Schwabe, had me clear them as we 6 left every scene. 7       <b>Q. Is that when you were still at the crime scene?</b> 8       A. We would be pulling away, getting ready to 9 handle another call. He wanted that call cleared before 10 we arrived at whatever call we were en route to. 11       <b>Q. When he was your training officer, the two of</b> 12 <b>you were in the same car?</b> 13       A. Yes. 14       <b>Q. Who would drive?</b> 15       A. He did. 16       <b>Q. Makes it even more likely you would be the</b> 17 <b>one --</b> 18       A. There were times he wanted to say something 19 specific in a call where he would handle all entries. 20       <b>Q. Then you would drive?</b> 21       A. No. We would either -- we would pull off the 22 scene -- I don't know -- less than a half mile away. He 23 would pull over and just want me to observe and watch 24 whatever was around us so that we were safe and he would 25 get on the box and he would do all entries.</p> <p style="text-align: right;">Page 40</p>
<p>1       misdemeanor so very minimum jail time. 2       <b>Q. Do those people express concerning they're at</b> 3 <b>risk of retaliation because they press charges against</b> 4 <b>somebody, now they're released and they figure the</b> 5 <b>person is free to get at them?</b> 6       A. That's a very small portion of it, the ones I 7 have to deal with. Usually it tends more to not wanting 8 to create any kind of headaches for themselves. 9       <b>Q. And how often have you had the experience from</b> 10 <b>what you have seen and observed that people don't press</b> 11 <b>charges because they're talked out of it by somebody</b> 12 <b>else, whether it's a family member or someone they</b> 13 <b>work with, if it's a workplace incident, that sort of</b> 14 <b>thing?</b> 15       A. I would say a dozen times. 16       <b>Q. Going back to Exhibit 25 for a second and those</b> 17 <b>kind of log entries. Are they typically prepared</b> 18 <b>immediately after you are done with an incident?</b> 19       A. On training, yes. 20       <b>Q. Later they might be done further down the road?</b> 21       A. I will say that across the board as far as 22 deputy sheriffs and their time frames, as far as 23 clearing calls, it's not all the same. It's subjective. 24       <b>Q. Fair enough. Let me not get in to that because</b> 25 <b>that's not what happened here. We're talking about a</b></p> <p style="text-align: right;">Page 39</p>	<p>1       <b>Q. I see. Does talking about the process by which</b> 2 <b>the two of you make these log entries jog your memory in</b> 3 <b>any way as to who or when the entries were made</b> 4 <b>involving the October 11, 2007 entries regarding my</b> 5 <b>client?</b> 6       A. No. Because again, we have so many entries 7 every day that there's times when he would do it, times 8 he would tell me to, either while we're driving, and I 9 don't know if that was this call. 10       <b>Q. Listen, you have -- I understand you have</b> 11 <b>thousands of incidents. Every once and a while</b> 12 <b>lightning strikes and you ask a question and you talk</b> 13 <b>about a process, you show someone a photo. It causes</b> 14 <b>the little bell to ring and all of a sudden people</b> 15 <b>remember things. That's why I'm asking.</b> 16       A. If I can elaborate? 17       <b>Q. Sure.</b> 18       A. Since being off training, because I handle -- 19 when I get a call, what have you, I handle everything 20 from start to finish. So how I jot information down to 21 remember things, how I go as far as the times en route, 22 how I perceive as far as how I will handle a call, where 23 I want my assisting units to set up, what have you, is 24 all in my control. 25       So from start to finish I have very little</p> <p style="text-align: right;">Page 41</p>

**PROOF OF SERVICE**

I am over the age of eighteen years and not a party to this action; my business address is 1541 Ocean Avenue, Suite 200, Santa Monica, California 90401.

On February 25, 2010 I served **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** on the interested parties in said action as indicated below:

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☒ **[BY MAIL]** by placing a copy of said document for collection and mailing on the date indicated above, in a sealed envelope(s), addressed as set forth above, pursuant to ordinary business practices. I am "readily familiar" with this firm's practice of collecting and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service at Santa Monica, California on that same day in the ordinary course of business.

☐ **[BY FACSIMILE]** by transmitting a true copy by facsimile transmission at the time indicated on the transmission report from facsimile telephone number (310) 394-1430 to a facsimile machine maintained by the party on whom it was served, at the facsimile machine telephone number indicated on the attached service list. The transmission was reported as complete and without error. The transmission report which was properly issued by the transmitting facsimile machine is attached to the file copy of this document.

☐ **[BY OVERNIGHT COURIER]** I caused to be delivered to and served by an *Overnight Courier* on all interested parties in said action, the above named document(s) by placing true copies thereof in enclosed sealed envelopes, delivery fees paid or provided for, and addressed as set forth above.

☒ **[STATE]** I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on February 25, 2010, at Santa Monica, California.



**Valerie A. Dearth**