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6 Attorneys for Defendants CITY OF LOS ANGELES, a municipal corporation, LOS
7 ANGELES POLICE DEPARTMENT, WILLIAM BRATTON, MICHAEL
8 MERSEREAU, RICHARD TOMPKINS (erroneously sued as "R. Tompkins"), and
9 ENRIQUE CONRADO (erroneously sued as "Detective Conrado")

8 **UNITED STATES DISTRICT COURT**
9
10 **CENTRAL DISTRICT OF CALIFORNIA**

11 HELENE SZAJER, ZOLTAN SZAJER,

12 *Plaintiffs*

13 vs.

14 CITY OF LOS ANGELES; LOS ANGELES
15 POLICE DEPARTMENT, LOS ANGELES
16 CHIEF OF POLICE WILLIAM BRATTON,
17 LOS ANGELES POLICE DETECTIVE
18 MICHAEL MERSEREAU, LOS ANGELES
19 POLICE DETECTIVE R. TOMPKINS, LOS
20 ANGELES POLICE DETECTIVE YADON,
21 LOS ANGELES POLICE DETECTIVE
22 CONRADO; and DOES 1 through 100,
23 inclusive,

24 *Defendants.*

CASE NO. CV07-07433 SVW (PLAx)

DEFENDANTS CITY OF LOS ANGELES, ET AL.'S REPLY TO PLAINTIFFS' OPPOSITION TO MOTION TO DISMISS; MEMORANDUM OF POINTS AND AUTHORITIES

Date: April 7, 2008
Time: 1:30 P.M.
Courtroom: 6

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **1. Plaintiffs’ Attempt to Seek Damages for an Alleged Policy of the LAPD to Put**
3 **All Gun Stores out of Business Vis-a-vis its Use of Relying on Stale**
4 **Information, Creating Fictitious Informants, Falsifying Information in Search**
5 **Warrants, and Illegally Entering Businesses Is a Direct Attack on Their**
6 **Underlying Convictions**

7 Plaintiffs argue they are not attacking the validity of their convictions for violating
8 Penal Code section 12280(b). Nevertheless, they assert their damages were caused by
9 “certain Defendants acting pursuant to the joint policy of the City of Los Angeles and the
10 Los Angeles Police Department to put all gun stores in the City of Los Angeles out of
11 business by relying on stale information, creating fictitious informants, falsifying
12 information in search warrants, illegally entering the premises of gun stores and planting
13 evidence.” (Opposition, 2:14-16).

14 In support of their argument, Plaintiffs cite to footnote 7 of Heck v. Humphrey, 512
15 U.S. 477 (1994) which recognized a factual scenario in which a section 1983 unreasonable
16 search claim could proceed and not challenge the validity of the underlying criminal
17 conviction. However, Heck distinguishes the viability of this type of search claim
18 “[b]ecause of doctrines like independent source and inevitable discovery” which would
19 permit the prosecution of the criminal charge, notwithstanding the legality of the actual
20 search.

21 In the present case, Plaintiffs’ allegations are a direct attack on Plaintiffs’
22 underlying conviction because the areas searched and the evidence seized were authorized
23 by warrant. (FAC, ¶ 20). Without the warrant, the officers would never have obtained the
24 evidence that became the basis for the criminal charges. Therefore, the doctrines of
25 inevitable discovery or independent source had no application and would not have aided
26 the prosecution of the criminal charges against Plaintiffs. If Plaintiffs successfully prove
27 the warrant contained stale information, the officers created fictitious informants, and/or
28 submitted falsified information to obtain the warrant, then all the evidence would be

1 illegally obtained under the fruit of the poisonous tree doctrine. Likewise, Plaintiffs'
2 allegations that the officers illegally entered the premises directly attacks the validity of
3 the search warrant for their business and residence. Finally, the claim the officers acted
4 pursuant to a policy of planting evidence is a direct challenge to Plaintiffs' conviction for
5 felony possession of an assault weapon. This allegation suggests their conviction was
6 invalid because the assault weapons were planted in their stores.

7 If Plaintiffs claims were limited to challenging the alleged "illegal seizure of their
8 non-contraband property" Defendants would not need to file the present motion to
9 dismiss. However, Plaintiffs' purported claim not to challenge the validity of their felony
10 convictions for possession of assault weapons is directly attacked with allegations that
11 their damages were the result of the Los Angeles Police Department's policy of training
12 its officers to plant evidence, put false and stale evidence in their search warrant affidavits,
13 create fictitious informants, and enter premises illegally.

14 **2. Conclusion**

15 Based on the moving papers and the foregoing, Defendants request the Court to
16 dismiss those claims that are a direct attack on Plaintiffs' underlying criminal convictions
17 and limit this lawsuit to one for unreasonable search beyond the scope of the search
18 warrant.

19 DATED: March 28, 2008

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22 By: 
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24 *Attorneys for Defendants* CITY OF LOS ANGELES, a
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**PROOF OF SERVICE BY MAIL
(Business Practice to Entrust Deposit to Others)
(C.C.P. Section 1013a(3))**

I, Ruth Parkhurst, declare as follows:

I am over the age of 18 years, and not a party to this action. My business address is 200 North Main Street, 6th Floor, City Hall East, Los Angeles, California, which is located in the county where the mailing described below took place.

I am readily familiar with the business practice at my place of business for collection and processing or correspondence for mailing with the United States Postal Service. Correspondence so collected and processed is deposited with the United States Postal Service that same day in the ordinary course of business.

On March 28, 2008 at my place of business at 200 North Main Street, 6th Floor, City Hall East, Los Angeles, California, a copy of the attached

**DEFENDANTS CITY OF LOS ANGELES, ET AL.'S
REPLY TO PLAINTIFFS' OPPOSITION TO MOTION TO DISMISS;
MEMORANDUM OF POINTS AND AUTHORITIES**

was placed for deposit in the United States Postal Service in a sealed envelope, with postage fully prepaid, addressed to:


Franklin S. Adler, Esq.
LAW OFFICES OF FRANKLIN S. ADLER, Esq.
Beverly Hills Law Building
424 South Beverly Drive
Beverly Hills, CA 90212-4414

and that envelope was placed for collection and mailing on that date following ordinary business practices.

X (Federal) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

___ (State) I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed March 28, 2008 at Los Angeles, California.


Ruth Parkhurst