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6 Attorneys for Defendant,
VENTURA COUNTY SHERIFF'S OFFICE
7 *(erroneously sued as Ventura County Sheriffs*
8 *Department)*

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

11
12 SIGITAS RAULINAITIS,

13 Plaintiff,

14 v.

15 VENTURA COUNTY SHERIFFS
16 DEPARTMENT,

17 Defendant.

CASE NO. CV13-02605-MAN

**DEFENDANTS' OBJECTION TO
FILING OF PLAINTIFF'S
SUMMARY JUDGMENT MOTION
AND REQUEST FOR ORDER
STRIKING THE FILING;
DECLARATION OF DEFENSE
COUNSEL IN SUPPORT THEREOF**

Date: June 24, 2014

Time: 10:00 a.m.

Ctrm: 580 Roybal

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20 TO PLAINTIFF, SIGITAS RAULINAITIS, AND TO HIS COUNSEL OF
21 RECORD, JONATHAN W. BIRDT:

22 PLEASE TAKE NOTICE that defendant, VENTURA COUNTY SHERIFF'S
23 OFFICE, hereby objects to Plaintiff's Motion for Summary Judgment filed on
24 May 12, 2014, as website docket entry 53, and requests acting Judge Margaret A.
25 Nagle to enter an order striking it:

26 1. The Scheduling Order of April 22, 2014, website docket entry 50,
27 establishes a summary judgment motion filing date, as opposed to a dispositive
28 motion filing deadline. A summary judgment motion is to be filed on August 1,

1 2014, not before or after that date. The footnote to the Court's 16(b) order further
2 clarifies this ruling, discussed at length in the telephonic 16(b) conference. The
3 footnote states that the Court suggests that the parties file cross-motions for summary
4 judgment and that these motions must be filed on this date and scheduled for hearing
5 on September 2, 2014.

6 During the scheduling conference, plaintiff's counsel was amenable to
7 filing simultaneous cross-motions for summary judgment. The filing date of August 1
8 and the hearing date of September 2 were suggested and mutually agreed upon.

9 Defense counsel has never indicated that his client would not be filing a
10 summary judgment motion; to the contrary, he has said it will be doing so. During
11 discussions between counsel on May 7, 2014, plaintiff's counsel indicated that he
12 would like to "get deposition dates locked down," then said he didn't need any
13 discovery and asked, "Do we need to meet and confer on MSJ?"

14 Defense counsel replied that when he had finished his client's summary
15 judgment motion, he would send it to plaintiff's counsel. They could then meet in
16 plaintiff's counsel's office for the Central District Local Rule 7-3 pre-filing confer-
17 ence. Defense counsel has never indicated that he would not be filing a summary
18 judgment motion and has never agreed that plaintiff's counsel could file a summary
19 judgment motion sooner than the court-established filing date of August 1 or schedule
20 the hearing before the court-established hearing date of September 2.

21 2. The moving papers do not indicate compliance with Central District
22 Local Rules. Rule 7-3 states: "This motion is made following the conference of
23 counsel pursuant to Local Rule 7-3, which took place on (date)." The Local Rule
24 also establishes a seven-day waiting period following the pre-filing conference for
25 filing of a disputed motion.

26 The present motion does not contain any such representation; in fact, no
27 pre-filing conference has taken place. While plaintiff's counsel has mentioned some
28 of the ideas in passing in previous filings and correspondence, neither this motion nor

1 its contents have been presented to defense counsel for evaluation or discussion. Nor
 2 did seven days elapse since it was sent; it was e-mailed to defense counsel on
 3 May 12, 2014, for the first time.

4 During a number of telephonic conferences, the Court has emphasized
 5 the importance of complying with the formalities of the Local Rules regarding
 6 summary judgment motions. Not only have these not been dispensed with, the Court
 7 has highlighted their importance and the need for compliance with them.


8 3. The motion itself is incomplete, preventing a reasoned response. There
 9 is incomplete numbering without content, such as No. 3 on page 1 of the Statement of
 10 Uncontroverted Facts and Conclusions of Law. There are no pinpoint evidentiary
 11 citations. Standard pleading practice requires that each material fact which is
 12 allegedly undisputed must contain a citation to supporting material in the record.

13 4. At 2:52 p.m. on May 12, 2014, defense counsel requested plaintiff's
 14 counsel to withdraw the summary judgment motion so that the timeline and
 15 procedure established and agreed to in the 16(b) conference would unfold as ordered.
 16 Defense counsel requested that cross-filing take place on August 1, with the hearing
 17 occurring on September 2, 2014. Defense counsel informed plaintiff's counsel that if
 18 the motion were not withdrawn, defense counsel would file an objection to the
 19 motion. At 3:04 p.m. on May 12, 2014, plaintiff's counsel declined to withdraw or
 20 alter the filing in any way.

21
 22 DATED: May 13, 2014

WISOTSKY, PROCTER & SHYER

23
 24 By:


 25 Alan E. Wisotsky
 26 James N. Procter II
 27 Jeffrey Held
 28 Attorneys for Defendant,
 VENTURA COUNTY SHERIFF'S OFFICE

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DECLARATION OF JEFFREY HELD

I, Jeffrey Held, declare:

1. I am an attorney admitted to practice law before all the courts of the State of California and the United States District Court, Central District of California. I am employed as an attorney in the law offices of Wisotsky, Procter & Shyer, counsel of record for defendant Ventura County Sheriff's Office.

2. I make this declaration based upon information which is personally known to me. If called to testify as a witness to the information contained in this declaration, I would competently and truthfully do so under penalty of perjury of the laws of the United States of America.

3. The Scheduling Order of April 22, 2014, website docket entry 50, establishes a summary judgment filing date, as opposed to a dispositive motion filing deadline. A summary judgment motion is to be filed on August 1, 2014; the order does not say "by" or "no later than." A footnote to the Court's order of that date clarifies that the Court suggests that the parties file cross-motions for summary judgment and that these motions must be filed on the specified date and scheduled for hearing on September 2, 2014.

4. During the scheduling conference, plaintiff's counsel was amenable to filing simultaneous cross-motions for summary judgment. The filing date of August 1 and the hearing date of September 2 were suggested, discussed, mutually agreed upon, and ordered.

5. Defense counsel has never indicated that his client would not be filing a summary judgment motion; to the contrary, he has said that it would do so.

6. Nor has defense counsel ever indicated that the dates established in the Scheduling Order were flexible, not determinative, or would be waived or not enforced. Plaintiff's counsel has no defense permission to have filed this summary judgment motion prematurely.

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1 7. During discussions between counsel on May 7, 2014, plaintiff's counsel
2 indicated that he would like to "get deposition dates locked down," then said he
3 didn't need any discovery and asked, "Do we need to meet and confer on MSJ?"

4 8. Defense counsel replied that when he finished his client's summary
5 judgment motion, he would send it to plaintiff's counsel. They could then meet and
6 confer in plaintiff's counsel's office for the Central District Local Rule 7-3 meeting.

7 9. Defense counsel has never indicated that he would not be filing a
8 summary judgment motion and has never agreed that plaintiff's counsel could file a
9 summary judgment motion sooner than the court-established filing date of August 1
10 or schedule the hearing before the court-established hearing date of September 2.

11 10. No pre-filing conference has taken place with respect to the motion for
12 summary judgment filed on May 12, 2014. While plaintiff's counsel has mentioned
13 some of the ideas in court conferences, previous filings, and correspondence, no
14 actual pre-filing conference relevant to this motion filed on May 12 has occurred.

15 11. Nor did seven days elapse since it was sent; it was e-mailed to defense
16 counsel for the first time on May 12, 2014.

17 12. During a number of conferences, the Court has emphasized the
18 importance of complying with the Local Rules regarding motion practice, in general,
19 and summary judgment motions, in particular. Not only have these not been
20 dispensed with, the Court has highlighted their importance and the need for
21 compliance with them.

22 13. At 2:52 p.m. on May 12, 2014, defense counsel contacted plaintiff's
23 counsel to ask him to withdraw the summary judgment motion so that the timeline
24 and procedure established and agreed upon in the 16(b) conference could unfold as
25 ordered and designed by the Court. Defense counsel requested that the cross-filing
26 take place on August 1, with the hearing occurring on September 2, 2014, as ordered.
27 Defense counsel informed plaintiff's counsel that if the summary judgment motion
28 were not withdrawn, defense counsel would file an objection to the motion. At

1 3:04 p.m. on May 12, 2014, plaintiff's counsel declined to withdraw or alter the filing
2 in any way.

3 I declare under penalty of perjury under the laws of the United States of
4 America that the foregoing is true and correct.

5 Executed on May 13, 2014, at Oxnard, California.

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8 Jeffrey Held
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