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20 UNITED STATES DISTRICT COURT
21 NORTHERN DISTRICT OF CALIFORNIA

22 BETTY LOU HESTON, individually, and
23 ROBERT H. HESTON, individually and as
24 the personal representatives of ROBERT C.
25 HESTON, deceased,

26 Plaintiffs,

27 vs.

28 CITY OF SALINAS and SALINAS POLICE
DEPARTMENT, SALINAS POLICE CHIEF
DANIEL ORTEGA, MICHAEL DOMINICI,
CRAIG FAIRBANKS, JAMES GODWIN,
LEK LIVINGSTON, VALENTIN
PAREDEZ, JUAN RUIZ, TIM SIMPSON
and TASER INTERNATIONAL, INC., and
DOES 1 to 10,

Defendants.

Case No.: C 05-03658 JW

[James Ware, United States
District Judge]

**DECLARATION OF
PATRICK (RICK) SMITH IN
SUPPORT OF DEFENDANT
TASER INTERNATIONAL,
INC.'S OPPOSITION TO
PLAINTIFFS' CONDITIONAL
MOTION FOR ATTORNEYS'
FEES**

Date: 12-1-08
Time: 9:00 a.m.
Courtroom 8, 4th Floor
The Honorable James Ware

I, Patrick (Rick) W. Smith, declare as follows:

1. I have personal knowledge of the facts and statements set forth in this

1 declaration and if called upon to testify I could and would competently testify thereto.

2 2. I am presently the Chief Executive Officer and a co-founder of TASER
3 International, Inc. ("TASER") which is extensively involved in electronic control
4 devices ("ECDs or devices"), product concepts, feasibilities, historical research of
5 electronic weapons, electrical and electronic medical device safety and injury studies,
6 research, testing, and prototype designs and fabrications of AUTO TASER®,
7 ADVANCED TASER M26™ (M26 or TASER M26), ADVANCED TASER M18,
8 Animal TASER (MX), TASER X26™ (X26), TASER CAM™, TASER C2™, and
9 TASER XREP™ products. I am the inventor of the electrical waveform for the
10 TASER M26 and XREP devices. The original company, which began in September
11 1993, became the largest ECD manufacturer in the United States in its first year of sales.
12 We have thoroughly researched and redeveloped a technology which had been dormant
13 for over 20 years, refined it, and brought it successfully to worldwide market (in 43
14 countries) for the first time.

15 3. I was the primary author and head of the development team on TASER
16 Training Version 8, and I have been an integral author in the subsequent training
17 versions, through the current Version 14. TASER Training Version 8 was released in
18 August 2002, Version 9 was released in May 2003, Version 10 was released in July
19 2003, Version 10.1 was released in January 2004, Version 11 was released in January
20 2004, and Version 12 was created in November 2004 and released in January 2005.

21 4. In TASER Training Version 12, User Certification Course, TASER M26
22 non-lethal Weapon, Version 12.0, created in November 2004 and released in January
23 2005 with Version 12 Lesson Plan, TASER X26 User Program, TASER X26 Instructor
24 Program, and TASER M26 Instructor Program, there were Power Point slides and video
25 demonstrating the use of a TASER M26 on a person who was resisting custody by
26 turtling (laying supine on the floor, placing arms and hands under body, and resisting
27 or struggling against officers' efforts to capture, control, restrain the person and take him
28 into custody).

1 5. In late December 2004, prior to the filing of the Heston lawsuit in
2 September of 2005, TASER Training Version 12 was mailed out with an effective date
3 of January, 1, 2005. Version 12, Slide 108, warned about prolonged TASER ECD
4 applications. Attached as Exhibit A is a true and correct copy of Slide 108 of Version
5 12. Attached as Exhibit B is a true and correct copy of two power point slides from
6 Version 12, the same program as slide 108, which warns, among other things, about
7 disturbances in breathing patterns or loss of consciousness from suspects in custody, and
8 lists toxic drug use, preexisting heart conditions, protracted physical struggle, and
9 excited delirium as common factors contributing to sudden death, factors which were
10 present in the subject incident involving Mr. Heston.

11 6. In June 2005, prior to the filing of this lawsuit in September 2005, TASER
12 issued warnings to avoid extended or prolonged applications. Such warnings were based
13 on a Canadian study completely unrelated to this case. On June 14, 2005, the British
14 Columbia Office of Police Complaint Commissioner published its OPCC Report, that
15 found, in part, that multiple applications of the TASER ECD **may** increase the risk
16 respiratory impairment to the subject and should be avoided where practical. In response
17 to the OPCC Report, and in an abundance of conservative caution, TASER formulated
18 and disseminated a responsive Bulletin dated June 28, 2005. When TASER issued the
19 Bulletin, there existed no substantiated peer-reviewed medical, scientific, or engineering
20 published literature evidencing respiratory impairment/pH changes in humans resulting
21 from multiple TASER ECD applications. Attached as Exhibit C is a true and correct
22 copy of the June 28, 2005 TASER Training Bulletin.

23 7. The June 28, 2005 TASER Training Bulletin was issued in direct response
24 to the OPCC Report speculating that multiple ECD applications “appears likely,”
25 “could,” and “may increase” respiratory impairment/pH changes. TASER, in a
26 conservative and very proactive approach to the OPCC Report’s speculations, published
27 the Bulletin with the following language:

28 “2. Repeated, prolonged, and/or continuous exposure(s) to the TASER


1 electrical discharge may cause strong muscle contractions that may impair
2 breathing and respiration, particularly when the probes are placed across
3 the chest or diaphragm. Users should avoid prolonged, extended,
4 uninterrupted discharges or extensive multiple discharges whenever
practicable in order to minimize the potential for over-exertion of the
subject or potential impairment of full ability to breathe over a protracted
time period.”

5 8. The June 28, 2005 TASER Training Bulletin warnings were given in an
6 abundance of caution and were not related to any matters associated with the Heston
7 lawsuit.

8 9. The Heston lawsuit has not caused any changes in TASER’s training,
9 policy or usage across the country, nor has the lawsuit provided any catalyst changing
10 TASER’s warnings which were already in place prior to the commencement of the
11 litigation. The Heston lawsuit has not resulted in any new changes in training or
12 warnings, and it has not resulted in any product or technology changes to TASER
13 devices. TASER has a medical advisory board, a training advisory board of active duty
14 police trainers, and external warnings consultants who oversee TASER’s warnings. The
15 Heston lawsuit has not raised any new matters or caused any changes to take place.

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

18 Executed this 6 day of November 2008, at Scottsdale, Arizona.

19 
20 _____
Patrick (Rick) W. Smith