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[REDACTED]

Pro Per

**IN THE SUPERIOR COURT OF ARIZONA
IN AND FOR THE COUNTY OF MARICOPA**

[REDACTED]

Plaintiff,

v.

[REDACTED] DOES 1-10,

Defendant.

No. CV201 [REDACTED]

**SECOND AFFIDAVIT OF [REDACTED]
[REDACTED] FOR CHANGE OF JUDGE
PURSUANT TO RULE 42(F)(2) AND
A.R.S. § 12-409 SINCE FIRST ONE
IGNORED**

(Presently assigned to the Hon. Roger
Brodman)

STATE OF ARIZONA)
) ss.
County of Maricopa)

I, [REDACTED] being duly sworn upon oath, deposes and states as follows:

1. I am the Defendant in the above entitled action and I am representing myself.
2. I bring this Affidavit for Change of Judge pursuant to A.R. S. §12-409 and Rule 42(f)(2) Ariz.C.Civ.Proc., I have cause to believe that due to bias, prejudice, or interest of Judge Brodman thus I believe I cannot obtain a fair and impartial rulings in Judge Brodman's courtroom. On [REDACTED] 18th, [REDACTED] Judge Brodman issued a ruling that defied logic and was obviously biased towards the Plaintiff as he has displayed throughout this case.

1 On [REDACTED] 4th, [REDACTED] Judge Brodman issued an order that stated that all exhibits
2 must be exchanged¹ with the other party by [REDACTED] 21st, [REDACTED] at 4:30PM for an
3 evidentiary hearing two weeks later. As a courtesy to the Plaintiff, the Defendant hand-
4 delivered his exhibits to the Plaintiff's lawyer of record's office. The Defendant hand-
5 delivered these exhibits to [REDACTED] at the law firm of [REDACTED] at approximately
6 2:30PM on [REDACTED] 21st, [REDACTED]. Further, the Defendant ran into [REDACTED] barely said
7 two words to me let alone did he mention anything about the Plaintiff's exhibits that were
8 due in 2 hours. The Plaintiff did not put his exhibits in the mail until [REDACTED] 21st, [REDACTED].
9 The order stated that the exhibits had to be exchanged not put in the mail by [REDACTED] 21st,
10 [REDACTED] by 4:30PM.

11 The Plaintiff lawyer's assistant, [REDACTED] stated in an affidavit that she emailed
12 the Exhibits on [REDACTED] 21st, [REDACTED]. During the Evidentiary Hearing on [REDACTED] 4, [REDACTED] the
13 Defendant called Ms. [REDACTED] as a witness and the Defendant asked Ms. [REDACTED] if the
14 Defendant had ever given her permission to send papers by email as required by Arizona
15 Rules of Civil Procedure Rule 5(c)(2)(d) which states that "*Delivering the paper by any*
16 *other means, including electronic means other than that described in subsection (E), **if the***
17 ***recipient consents in writing** to that method of service or if the court orders service in*
18 *that manner--in which event service is complete upon transmission". Ms. [REDACTED] testified*
19 *that the Defendant **had not given permission in writing** to send papers via email thus the*
20 *Plaintiff's Exhibits were untimely. Further, [REDACTED] testified that she knowingly sent the*
21 *Defendant the papers by email when she knew that I had not given permission per Rule*
22 *5(c)(2)(d).*

23 As a result of [REDACTED]'s willful actions, the Defendant had only one day
24 to review [REDACTED] twenty exhibits. In contrast, [REDACTED] had the full seven days to review the
25 Defendant's exhibits. *Leavy v. Parsell 188 Ariz. 69, 72 (1997)* (" a new trial bases on
26 misconduct is within the judge's discretion but the trial judge should find prejudice as in
27 the present case, (1) the misconduct is significant, especially if the record establishes

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1 Webster's dictionary defines exchange as (2)(b) *reciprocal giving and receiving.*

1 knowing, deliberate violations of rules or court orders that a litigant may confidently
2 expect to be observed² by his or her adversary; (2) the misconduct is prejudicial in nature
3 because it involves essential and important issues³). Here [REDACTED] deliberately disobeyed
4 the order and he disobeyed Rule 5(c)(2)(d). How anyone can say I was not prejudiced by
5 receiving his exhibits with just one mere day to review versus [REDACTED] full seven days is
6 beyond me.

7 From the evidentiary hearing, Judge Brodman ruled against the Defendant. In
8 accordance with Arizona Rules of Civil Procedure, the pro per Defendant filed a motion
9 for a new trial based on the grounds that the Defendant did not receive a fair evidentiary
10 hearing since I had only one day to review exhibits as a result of [REDACTED] and [REDACTED] willful
11 actions. Judge Brodman ruled against me with a reasoning that defies logic and shows his
12 bias against the pro per Defendant since he stated that “*I must have received the Exhibits*
13 *at some other point over the 4 years of the case thus I already had them*”. Over the course
14 of this case, there have been 1000s pieces of paper that I have received and 100s of
15 Exhibits in other motions have been filed. Obviously Judge Brodman expected me to read
16 over 1000s of page and 100s of Exhibits and then “guess” as to what out of these papers
17 was the Plaintiff planning on presenting at the hearing. The Plaintiff did not have to
18 “guess” since he was provided with timely exhibits.

- 19 3. The pro per Defendant hand delivered a copy of my evidentiary exhibits to Judge
20 Brodman's office on or around [REDACTED] 14th at or around 1:30PM. On this day, Judge
21 Brodman was having some type of jury trial as there appeared to be many potential jurors
22 in the hallway. As not to disturb the proceeding, the Defendant placed the exhibits in
23 Judge Brodman's inbox. During the evidentiary hearing, Judge Broadman announced that
24 he had lost my exhibits thus I lost 10 minutes of my hearing time while he tried to find the
25 lost exhibits. During this break, I was told that they were sitting on someone's desk who
26 was out sick. Of course, the Plaintiff's exhibits weren't lost just mine.

27 _____
28 2 The pro per Defendant observed the court order to have the Exhibits exchanged by the date set in
the order.

3 Obviously this was an important issue as it disposed of the case.

- 1 4. The Defendant requested oral arguments for the motion for a new trial which was
2 completely ignored. As you can guess, all of the Plaintiff's oral argument requests were
3 granted.
- 4 5. As part of the Defendant's and the Plaintiff's Rule 80(D), we both agreed that the
5 agreement **wasn't** binding until I had a lawyer of my choice review the agreement before I
6 signed. My attorney advised against me signing the agreement. During the evidentiary
7 hearing, Judge Brodman said that the lawyer was only there to "dot the i's and cross the
8 t's". I asked Judge Brodman why would I pay an attorney for two hours just for him to
9 "dot the i's and cross the t's" when I could do this for free.. The judge did not have a
10 response. I also asked Judge Brodman him if it would be foolish for me to go against my
11 attorney's advise and again he had no response.
- 12 6. On or around [REDACTED] 20th, [REDACTED] the Defendant filed a Motion For Sanctions for Failure
13 to Appear at a Deposition. The Defendant attended oral arguments over a variety of issues
14 and when the topic came up of the motion for sanctions, Judge Brodman, who ordered the
15 oral arguments, stated that he didn't even read the pleadings. How I can get a fair oral
16 argument without him even reading the pleadings is beyond me. Of course, he never made
17 this statement with regards to any motions filed by the Plaintiff since he was biased
18 towards the Plaintiff.
- 19 7. On the Motion for Sanctions, Judge Brodman ruled that we never agreed to allow for
20 depositions of lay witnesses. This is completely false as the joint trial statement stated lay
21 witnesses must be deposed by a specific date that was ultimately extended since [REDACTED]
22 waited to the last minute to do discovery. The Plaintiff failed to provide the proper
23 address for **his** lay witnesses as is required by Rule Rule 26.1(a)(3), Ariz. R. Civ. P. since
24 they gave me the address of a vacant house. Further, [REDACTED] left a voicemail about the
25 deposition "setting up the deposition". I asked Judge Brodman if we didn't agree to
26 deposing lay witnesses then why would [REDACTED] leave this voicemail. Again, no response.
27 During oral arguments, [REDACTED] stated that he didn't feel like giving me the correct
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- 4 [REDACTED] blamed this on him not knowing the changed due to Arizona Rules of Civil Procedure.

1 address. Moreover, they never filed any leave to not provide me with a proper address yet
2 Judge Brodman agreed with them that this was okay. Of course Judge Brodman ruled in
3 their favor saying that we never agreed to depose lay witnesses even when it was in black
4 and white on the joint pre-trial statement. Further, he sided with the [REDACTED] when it came to
5 them not having to follow Rules of Civil Procedure.

6 8. [REDACTED] made oral arguments as to why **his** lay witness should not be deposed. This
7 is an ethics violation per ethics Rule 1.7 Conflict of Interest Number 6 (a lawyer acts
8 directly adversely to a client if it will be necessary for the lawyer to **cross-examine a**
9 **client** who appears as a **witness in a lawsuit involving another client**). Again, no issue
10 for Judge Brodman since he was on the Plaintiff's side.

11 9. On Judge Brodman's "Protocol and Practices" website⁵ he clearly states that no motion to
12 compel shall be brought unless the other side makes an effort to contact the other party by
13 phone. His website states the following: "*A letter to the opposing attorney threatening to*
14 *file a discovery motion if he or she doesnt respond does not, without more, satisfy the*
15 *personal consultation requirement of Rule 37(2)(C)*⁶". [REDACTED] filed a motion to compel and
16 he never contacted the Defendant. Of course, Judge Brodman didn't have an issue with
17 this since he was biased against the Defendant.

18 10. Judge Brodman admitted in a ruling that this case has absolutely zero damages⁷.

19 11. This case involved subpoenas and rulings that dealt heavily with Google. On information
20 and belief, Emily Brodman is the daughter of Judge Brodman and is employed by
21 Google⁸.

22 12. On or around [REDACTED] 27th, [REDACTED] the Defendant filed a change of Judge affidavit.

23 13. In accordance with Arizona Rules of Civil Procedure, the courts were required to have a
24 hearing over the change of judge affidavit. Further, under Arizona Rules of Civil
25

26 ⁵ [https://www.superiorcourt.maricopa.gov/JudicialBiographies/judges/profile.asp?
jdgID=241&jdgUSID=8635](https://www.superiorcourt.maricopa.gov/JudicialBiographies/judges/profile.asp?jdgID=241&jdgUSID=8635)

27 ⁶ Judge Brodman was in Family Court before Civil Court. There is a corresponding law in Civil
Court.

28 ⁷ The Plaintiff hasn't produced one receipt showing any damages. Not a one.

⁸ The Defendant will be filing a suit against Google shortly.

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Procedure Rule 42(F)(3)(A), Judge Brodman cannot make rulings on this case until the hearing took place.

14. In defiance of Arizona Rules of Civil Procedure, Judge Brodman issued a ruling on August 31st, 2016 without the change of judge hearing taking place. This further proves my point that Judge Brodman was biased against the Defendant as he completely ignored Rule 42(F)(3)(A) and A.R.S. § 12-409.

I declare (or certify or verify or state) under penalty of perjury that the foregoing is true and correct.

Executed on the 2nd day of [REDACTED]

[REDACTED]

Filed in person this 2nd day of [REDACTED]

Copy filed in person on [REDACTED] 2nd, [REDACTED] to:
The Honorable Randall Warner
Civil Presiding Judge
East Court Building - 512

Copy of the foregoing
mailed on [REDACTED] 2nd, [REDACTED] to:

[REDACTED]
