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LISA SHAFFER, AND MIKE HART

9 UNITED STATES DISTRICT COURT  
10 NORTHERN DISTRICT OF CALIFORNIA  
11 SAN FRANCISCO DIVISION

12 LONG HAUL, INC. AND EAST BAY )  
13 PRISONER SUPPORT, )  
14 Plaintiffs, )  
15 v. )  
16 UNITED STATES OF AMERICA; )  
MITCHELL CELAYA; KAREN )  
17 ALBERTS; WILLIAM KASISKE; WADE )  
MACADAM; TIMOTHY J. ZUNIGA; )  
18 MIKE HART; LISA SHAFFER; AND )  
DOES 1-25. )  
19 Defendants. )  
20

No. C 09-0168 JSW

**NOTICE OF MOTION AND MOTION  
FOR LEAVE TO FILE MOTION FOR  
RECONSIDERATION BY  
DEFENDANTS LISA SHAFFER AND  
MIKE HART; (PROPOSED) ORDER**

*Place: Courtroom 11, 19<sup>th</sup> Floor*  
*Judge: Hon. Jeffrey S. White*

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2 **NOTICE OF MOTION AND MOTION FOR LEAVE TO FILE MOTION FOR**  
3 **RECONSIDERATION**

4 TO ALL PARTIES AND TO THEIR COUNSEL OF RECORD:

5 PLEASE TAKE NOTICE that pursuant to Northern District of California Civil Local  
6 Rule 7-9(b)(3), Defendants Lisa Shaffer and Mike Hart hereby move this Court for an order  
7 granting them leave to file a motion for reconsideration of this Court's July 26, 2011 Order  
8 Regarding Motions For Summary Judgment ("Order"). As required by Civil Local Rule 7-9,  
9 Defendants Shaffer and Hart respectfully contend, as discussed more fully below, that the Order  
10 is "[a] manifest failure by the Court to consider material facts or dispositive legal arguments  
11 which were presented to the Court before such interlocutory order."

12 **MEMORANDUM OF POINTS AND AUTHORITIES**

13 **INTRODUCTION**

14 Under Northern District Civil Local Rule 7-9, a party may seek leave to file a motion for  
15 reconsideration any time before judgment. N.D. Civ. L.R. 7-9(a). A motion for reconsideration  
16 may be made on one of three grounds: (1) a material difference in fact or law exists from that  
17 which was presented to the Court, which, in the exercise of reasonable diligence, the party  
18 applying for reconsideration did not know at the time of the order; (2) the emergence of new  
19 material facts or a change of law; or (3) a manifest failure by the Court to consider material facts  
20 or dispositive legal arguments presented before entry of judgment. N.D. Civ. L.R. 7-9(b)(1)-(3).  
21 The moving party may not reargue any written or oral argument previously asserted to the Court.  
22 *Id.*, 7-9(c). *See also Hopkins v. Bonvicino*, 2011 WL 995961, \*1 (N.D. Cal. Mar. 21, 2011)  
23 (White, J.) (unpublished); *School Dist. No. 1J, Multnomah County, Or. v. ACandS, Inc.*, 5 F.3d  
24 1255, 1263 (9<sup>th</sup> Cir. 1993) ("Reconsideration is appropriate if the district court (1) is presented  
25 with newly discovered evidence, (2) committed clear error or the initial decision was manifestly  
26 unjust, or (3) if there is an intervening change in controlling law.").

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1 Defendants Shaffer and Hart seek leave to move for reconsideration of the Order as  
2 follows:

3 1. There is no material fact supporting the Order's conclusion that neither defendant  
4 Shaffer nor defendant Hart enjoy qualified immunity because the statement of probable cause and  
5 search warrant were not at the scene of the search in dispute.

6 2. Even if there were evidence supporting the conclusion that neither defendant  
7 Shaffer nor defendant Hart has qualified immunity because the statement of probable cause and  
8 search warrant were not at the scene of the search in dispute, defendants Shaffer and Hart were  
9 line officers, and therefore they have qualified immunity because as a matter of law neither had a  
10 duty to read or even see the warrant but could reasonably rely on the description they received  
11 from the lead officer at the pre-search briefing as well as their own review of the warrant and  
12 statement of probable cause.

13 3. On plaintiffs' claim that defendants Shaffer and Hart's conduct in the execution of  
14 the search warrant violated the Fourth Amendment, which because of the Court's analysis of the  
15 plaintiffs' overbreadth claim the Court did not reach, defendants Shaffer and Hart request that the  
16 Court now reach this additional claim under the Fourth Amendment and grant their motion for  
17 summary judgment based on qualified immunity.

18 **I. No Facts Support the Order's Conclusion That the Warrant and Probable**  
19 **Cause Statement Were Not Present At the Search.**

20 In its Order, the Court concluded that, viewing the evidence in the light most favorable to  
21 plaintiffs, the statement of probable cause "did not accompany" the warrant to the scene of the  
22 search and therefore "the warrant was indisputably overbroad and no reasonable officer could  
23 have mistakenly believed otherwise." The Court pointed to deposition testimony by lead officer  
24 Detective Kasiske of the University of California-Berkeley Police Department ("UCBPD") in  
25 which he stated he did not remember for certain whether he had the statement of probable cause  
26 with him at the time of the search but he believed that it was "probably likely" that he did.  
27 (Docket #126: Supplemental Declaration of Matthew Zimmermann, Ex. 4 at 124:15-19). The  
28 other officers' testimony plaintiffs cited in the motion proceedings support a conclusion that

1 particular officers either did not know or could not remember whether or not the probable cause  
2 statement was attached to the warrant. (Docket #106: Ex.12, Deposition of Karen Alberts, 71:6-  
3 12 ). Defendant Shaffer, however, stated that her “recollection is that the statement of probable  
4 cause was in fact attached to the search warrant.” (Docket #115: Declaration of Lisa Shaffer, ¶  
5 11.). This body of testimonial evidence did not support a conclusion that there was a disputed  
6 material question of fact on this issue.

7 The Court erred when it found that in considering the evidence in the light most favorable  
8 to the non-moving party, there was evidence creating a question of fact which precluded granting  
9 summary judgment. As a result, summary judgment should have been granted in favor of  
10 defendants Shaffer and Hart on their qualified immunity defense.

11 **II. On Plaintiffs’ Overbreadth Claim, Defendants Shaffer and Hart Should**  
12 **Enjoy Qualified Immunity Whether or Not the Warrant and Probable Cause**  
13 **Statement Were Present At the Search.**

14 Even if there is a triable issue of fact regarding whether the warrant and probable cause  
15 statement were present at the scene of the search, as a matter of law, both defendants Shaffer and  
16 Hart have qualified immunity from plaintiffs’ claim that the search warrant was overbroad.

17 Here, there was no dispute over the roles of Shaffer or Hart in applying for the warrant or  
18 its execution. Defendants Shaffer and Hart were FBI employees who were involved only  
19 because of a request from the University of California-Berkeley Police Department (“UCBPD”)  
20 for assistance in carrying out the search. Neither participated in the drafting of the warrant  
21 application or presenting the application to the Alameda County judge, both of which were done  
22 by UCBPD. Both Shaffer and Hart attended the pre-search briefing meeting on the morning of  
23 the search and were provided with a copy of the warrant and the statement of probable cause,  
24 which both reviewed. Both relied on the explanation of UCBPD’s investigation that resulted in  
25 the warrant application, the warrant as issued, and the search planned by UCBPD, given by  
26 UCBPD’s lead officer, Detective Kasiske, at the pre-search briefing meeting.

27 Qualified immunity analysis is dependent on the individual officer’s particular role in the  
28 search in question. Under Ninth Circuit precedent, neither Shaffer nor Hart were required to  
read, review or even see the warrant or probable cause statement because they attended the

1 briefing meeting and learned before the search about the nature and scope of the warrant and the  
2 contents of the probable cause statement. *Ramirez v. Butte-Silver Bow County*, 298 F.3d 1022,  
3 1028 (9<sup>th</sup> Cir. 2002) (“Line officers ... are required to do much less. They do not have to actually  
4 read or even see the warrant; they may accept the word of their superiors that they have a warrant  
5 and that it is valid.”); *KRL v. Estate of Moore*, 512 F.3d 1184, 1190 (9<sup>th</sup> Cir. 2008) (“[E]ven if a  
6 warrant is so lacking in probable cause that official reliance is unreasonable, line officers who do  
7 not read the warrant are still entitled to qualified immunity if they inquire as to the ‘nature and  
8 scope’ of the warrant, and rely on representations made by their superiors.”).

9 Whether or not the statement of probable cause accompanied the search warrant when the  
10 search was executed, under clearly established precedent, defendants Shaffer and Hart have  
11 qualified immunity because as line officers they did not have a duty to read or even see the  
12 warrant but could reasonably rely on the description they received from the lead officers.

13 **III. On Plaintiffs’ Claim That Defendants Shaffer and Hart’s Conduct In The**  
14 **Execution of the Search Warrant Violated the Fourth Amendment, The**  
15 **Court Should Have Granted Summary Judgment Based on Qualified**  
16 **Immunity.**

17 The Court in its Order denying summary judgment on qualified immunity grounds made  
18 no distinction between the conduct of Defendant Shaffer, Defendant Hart or the other officers  
19 named as Defendants. The undisputed evidence established that Defendants Shaffer and Hart, in  
20 addition to no involvement in the planning of the search, had only minimal involvement in the  
21 execution of the warrant. There is no dispute regarding Shaffer and Hart’s actions during the  
22 search. Detective Shaffer assisted in the search of the premises by looking in a limited number of  
23 file cabinets and other document repositories; she did not seize anything. Defendant Hart did not  
24 assist the search by looking at or seizing any materials but provided external surveillance in case  
25 crowds gathered outside the premises. Both Shaffer and Hart also assisted UCBDP by carrying a  
26 portion of the boxes of computer equipment to UCBDP vehicles parked outside the building.  
27 Neither Shaffer nor Hart ever searched any computers or computer-related equipment seized  
28 from the premises.



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**[PROPOSED] ORDER**

Good cause appearing, Plaintiffs' motion for leave to file a motion for reconsideration is hereby GRANTED.

**IT IS SO ORDERED.**

Dated: \_\_\_\_\_

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HONORABLE JEFFREY S. WHITE  
United States District Judge