

EXHIBIT A

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

REFUGIO NIETO and ELVIRA NIETO,)
individually and as the Co-Successors)
in Interest to ALEJANDRO NIETO,)
Plaintiffs,)
) CASE NO.
vs.) C14-03823-NC
)
CITY AND COUNTY OF SAN FRANCISCO,)
Police Chief GREG SUHR in his)
individual capacity, et al.,)
Defendants.)

DEPOSITION OF ANTONIO THEODORE
WEDNESDAY, MAY 27, 2015

BEHMKE REPORTING AND VIDEO SERVICES, INC.
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1 Within that process while that officer open there,
2 he open up his trunk. Nieto was walking down, and,
3 let's say, like -- let's say 100 to 120 --
4 approximately 100 to 120 feet away, he was -- I saw
5 him that distance.

6 Q. I'm sorry. Feet or meters?

7 A. Feet.

8 Q. Okay.

9 A. I'm not so much in the meters and -- I use
10 it, but feet, inches person. Sorry.

11 At that point they stopped, opened their
12 doors, officers came out on both sides. Alex Nieto
13 just come around this little one bend. I could
14 still see the eucalyptus tree and the benches in the
15 distance where he were.

16 He was walking down there, and, yeah, I
17 didn't show -- I had no idea that the police was
18 going after him, because it was pretty cool and
19 casual walking.

20 One officer came out on the right-hand
21 side. Officer on the right-hand side shout out,
22 "stop." Within that moment, approximately some --
23 some how much of a second, and fired his first shot,
24 bam; fired second shot, bam; fired a third. Alex
25 Nieto went to his knees. And another fourth.

1 with no railing, and then they all started opening
2 fire. So I could hear a mix of semi-automatic
3 rifles with handguns, and Mr. Nieto was already on
4 the ground not moving.

5 Q. So --

6 A. Yes.

7 Q. So did you hear Mr. Nieto say anything?

8 A. He didn't say anything. Did not have time
9 to even speak or move. He had no idea what is going
10 on.

11 Q. Did you see any of the other people that
12 you had seen previously in the eucalyptus grove
13 around?

14 A. No. I only saw one person up at the
15 eucalyptus grove, not somebody I saw there before.
16 This person had on a bright color whitish top,
17 jean-looking thing, was in the bushes. For one
18 reason, I felt that shots is coming from that
19 direction, too, so I felt I was in the line of fire,
20 so I then proceed to walk up the little trail.

21 Q. In which direction?

22 A. In an easterly direction.

23 Q. So away from where the shooting happened?

24 A. Yeah, I was walking away.

25 Q. Do you know which officer first shot?

1 hundred, hundred feet approximately, between 80 and
2 a hundred.

3 Q. Did you see what Mr. Nieto was doing with
4 his hands when the officers were in contact with
5 him?

6 A. Mr. Nieto hands was in his pockets.

7 Q. Which pockets?

8 A. Jacket pockets. He was more in this
9 posture when I saw him walking. (Indicating.)

10 MR. POINTER: May the record reflect the witness
11 has his hands in his jacket pockets, which are to
12 the front of his person.

13 THE WITNESS: To the front of his person.

14 BY MS. BAUMGARTNER

15 Q. You said that you saw Mr. Nieto go to his
16 knees?

17 A. Yes, I did. That's after he was shot three
18 times.

19 Q. What was he doing with his hands when he
20 went to his knees?

21 A. Pulling them out.

22 Q. Did you see his hands out of his pocket at
23 some point?

24 A. Just a glimpse moment, because he got
25 another shot just immediately after that fourth shot

1 and was in his face.

2 Q. So you did get a glimpse of his hands? I'm
3 sorry. I am trying to clarify.

4 A. Not -- I don't think -- I cannot recall his
5 hands, like, all the way out of his pocket.
6 Honestly, it was just so fast. It was just too fast
7 by me back and forth watching the officers.

8 The one with the rifle running, you know,
9 looking in the distance because there was somebody
10 else shooting in that way. It was fast. The first
11 four shot was the fatal ones. That didn't go down
12 like, no way, like half a minute. It was just so
13 quick.

14 So I cannot actually say, yes, his hand was
15 all the way out of his pocket, but he had no time to
16 pull his hands out.

17 Q. So after Mr. Nieto went on his knees, you
18 heard another shot, and Mr. Nieto went all the way
19 down to the ground; is that right?

20 A. Yes.

21 Q. At any point during that period of time did
22 you see any flashes of light coming from the
23 direction --

24 A. No, no.

25 Q. Sorry. I need to finish.

1 A. Sorry.

2 Q. That's okay. I understand.

3 So you saw no flashes of light coming from
4 the direction of Mr. Nieto?

5 A. No, there was no flashes of light coming
6 from Mr. Nieto, and he had nothing in his hand.

7 Q. Well, his hands -- you saw his hands in his
8 pocket, right?

9 A. Yeah, his hands was in his pocket. He was
10 on his knees, maybe trying to, like, take them out
11 like maybe hands up, like that. He got a fourth one
12 there. That was it. He had no chance to pull, to
13 dip for anything. I saw no movements of that.

14 Q. But you never saw him with his hands up,
15 did you?

16 A. No, he never made his hands up.

17 Q. So you said you thought that there might be
18 shots coming in your direction?

19 A. Yes, there was a person that to me, I felt
20 maybe it's another officer. It was another -- kind
21 of had me in a baffled state, because I also thought
22 maybe it might be a shooter.

23 So, yes, I was -- there was approximately
24 five people -- one, two, three, four, five,
25 including myself, because from the other car there

1 was another officer running. That officer didn't
2 really make it on the scene in time to, like, shoot
3 or anything.

4 But, yeah, there was a person way up in the
5 distance in the eucalyptus tree, and they were
6 shooting, shooting back. I don't know if it's back
7 and forth shooting, but I just felt in danger at
8 that moment and I started walking.

9 Q. Okay. Did you walk away, or did you run
10 away?

11 A. No, I just walked a little further up, up
12 on the trailhead --

13 Q. Okay.

14 A. -- where I stopped. And after the four
15 shots -- it's only when after the fourth shot and he
16 was on his face, another officer pull up with his
17 semi-automatic rifle, and they -- for that little
18 pause, bam, bam, bam, bam, he's on the ground. They
19 pause for a little bit, and it's just like rattling
20 going on, you know, just like multiple shots being
21 fired.

22 Q. Which direction were you facing when you
23 heard the multiple shots?

24 A. I was facing the north, northwestern -- I
25 was direct in line with Mr. Nieto, the eucalyptus

1 A. No.

2 Q. So after you heard all of those shots, what
3 happened then?

4 A. After all those shots, the officers
5 approach Mr. Nieto. They were pointing guns still.
6 One officer cuffed him. And, yep, with that I
7 just -- after that I was like, whoa. I was kind
8 of -- I felt pretty weird that you are going to cuff
9 a dead person or a dying person.

10 That I couldn't handle, and I started
11 walking, just start walking out of the park then, up
12 the hill where I met that one gentleman, same time.
13 He was giving me what he heard and told me a little,
14 and, yeah, I just left the park after that.

15 Q. At any point did you hear any of the
16 officers who were engaged with Mr. Nieto say
17 anything to each other?

18 A. No, I could not really hear from there.
19 You can hear the highway noise, the city noise.
20 From that distance, I cannot hear what -- I could
21 just see -- all I could see is the movements and the
22 gestures people making. As I say, I did not stay
23 much longer after they handcuffed him.

24 Q. Do you know which officer handcuffed
25 Mr. Nieto?

1 It was only after the news report I heard
2 he was hit 16 times or something. For me I cannot
3 count. I would say he got hit, like, approximately
4 10 to 15 times, because there was like so many shots
5 and they all ringing off at the same time.

6 Q. Do you know what -- okay.

7 So when Mr. Nieto fell to his face, do you
8 know where his hands were?

9 A. They seemed to be tucked under him.

10 MR. POINTER: Did you see -- can you repeat your
11 answer again? I'm sorry.

12 THE WITNESS: Say he was laying on his hands.

13 BY MS. BAUMGARTNER

14 Q. So -- let's see. I'm not sure I asked you
15 this. Forgive me if I did. But which direction
16 were you facing when you heard the multiple shots?

17 A. As I stated before, I was facing in a
18 northwestern direction.

19 Q. Okay. Sorry about that.

20 So you were facing towards where the police
21 officer and Mr. Nieto were, or were you facing some
22 other direction?

23 A. I was facing, yes, police officers,
24 Mr. Nieto, the park bench, the other police officer
25 up at the eucalyptus tree.

1 MS. BAUMGARTNER: For the record, Mr. Theodore
2 is holding a subpoena.

3 THE WITNESS: I have another, too.

4 BY MR. POINTER

5 Q. In terms of when the shooting actually took
6 place, during this incident when Mr. Nieto was shot
7 and killed, given these maps and your description of
8 where you were at today, is it fair to say you were
9 behind the officers as you watched them shoot and
10 kill Mr. Nieto?

11 MS. BAUMGARTNER: Objection. Vague.

12 THE WITNESS: Yes, I was behind the officers.

13 BY MR. POINTER

14 Q. Now --

15 A. Behind and in an aerial position as well.

16 Q. When you say behind and in an aerial
17 position, do you mean and behind and to the side?

18 A. Behind and aerial, vertical. I was up
19 maybe a hundred, 75 feet.

20 Q. So is it fair to say you were behind and
21 above the officers?

22 A. Behind and above, that's correct.

23 Q. Is it fair to say you were essentially
24 looking down at this incident?

25 A. Yes, I was looking down.

1 relates to the communication between the officers
2 and Mr. Nieto. I believe you said that you heard an
3 officer -- one officer yell words to the effect of
4 "stop"; is that true?

5 A. Yes.

6 Q. And did you hear any response from
7 Mr. Nieto?

8 A. No, I did not.

9 Q. Did you hear any officer give any warnings
10 to Mr. Nieto? For example, "stop or we will shoot,"
11 or, "put down the object or we will shoot"?

12 MS. BAUMGARTNER: Objection. Vague.

13 THE WITNESS: There was nothing of such I heard.

14 BY MR. POINTER

15 Q. So it's your testimony that when you were
16 there watching this incident, you did not hear any
17 officer give Mr. Nieto a warning to do something or
18 that he would be shot; is that true?

19 MS. BAUMGARTNER: Objection, been asked and
20 answered, vague.

21 THE WITNESS: No, I heard nothing else but
22 "stop."

23 BY MR. POINTER

24 Q. Did you hear any officers make any mention
25 or use the word "Taser," during the course of

1 you're --

2 A. No, I have not heard such thing.

3 Q. Did you hear Mr. Nieto say words to the
4 effect of "you put your hands up"?

5 A. No, I've not heard Mr. Nieto say -- spoke
6 at all that day.

7 Q. Did you hear any officers say words to the
8 effect of, "look out; he's got a gun"?

9 A. No, I haven't heard such a thing.

10 Q. I'm talking about -- this series of
11 questions, I'm asking about what did you or did not
12 hear people saying, I'm asking while you were there
13 on the scene of the incident. Do you understand
14 that?

15 A. Yes, sir.

16 Q. Okay. Now, you mentioned that you watched
17 the officers actually go and handcuff Mr. Nieto; is
18 that true?

19 A. Yes, sir.

20 Q. Did you see any officers take any objects
21 out of Mr. Nieto's hand?

22 A. No, I did not see such a thing.

23 Q. Did you see any officers kick a black
24 object away from Mr. Nieto's body as he lay on the
25 ground?

1 A. No, I did not see such.

2 Q. Did you ever see Mr. Nieto point anything
3 at the officers?

4 MS. BAUMGARTNER: Objection. Vague.

5 THE WITNESS: No, I did not see Mr. Nieto point
6 any object towards the police officers.

7 BY MR. POINTER

8 Q. As you saw the officers approach Mr. Nieto,
9 did you hear any of the officers mention any words
10 to the effect of "gun" or "there's a gun"?

11 A. For the record, I only heard one voice,
12 "stop," one time. The only verbal word I heard.
13 After that was just gunshots.

14 Q. Did it appear to you that Mr. Nieto was
15 shot -- strike that.

16 Did it appear to you that the officers
17 continued firing when Mr. Nieto was laying on the
18 ground?

19 A. Yes, they did.

20 Q. You mention that you saw -- strike that.

21 You mention that someone sent you something
22 you believe was from YouTube about this incident,
23 like a video?

24 A. Yes.

25 Q. Or audio? I'm not sure.

1 a loud way, and point how many of a second the first
2 shot went off, point how many after that another
3 shot went off, slight pause, another shot, bam,
4 another shot. Nobody said nothing. I heard nothing
5 else but "stop."

6 Q. Okay. I'm just trying to clarify.

7 Was there anything that gave you any
8 indication about whether or not the officers were
9 actually speaking to each other or Mr. Nieto other
10 than the word "stop" that you heard?

11 MR. POINTER: Objection. Vague and ambiguous,
12 compound.

13 MS. BAUMGARTNER: I'm sorry --

14 MR. POINTER: And calls for speculation.

15 BY MS. BAUMGARTNER

16 Q. You said they were speaking to Mr. Nieto?

17 A. He was the only person in the vicinity at
18 that time.

19 Q. Yes. So you believe that they said the
20 word "stop" to Mr. Nieto. Could you tell whether
21 they were attempting to say anything else to
22 Mr. Nieto by --

23 A. No, it was not attempting to say anything.
24 It was just "stop," bam, bam, bam, bam.

25 Q. And --

1 STATE OF CALIFORNIA)
2) ss
3 COUNTY OF CONTRA COSTA)

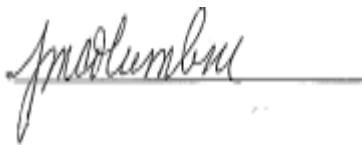
4 I hereby certify that the witness in the
5 foregoing deposition, ANTONIO THEODORE, was by me duly
6 sworn to testify to the truth, the whole truth and
7 nothing but the truth, in the within-entitled cause;
8 that said deposition was taken at the time and place
9 herein named; and that the deposition is a true record
10 of the witness's testimony as reported by me, a duly
11 certified shorthand reporter and a disinterested
12 person, and was thereafter transcribed into
13 typewriting by computer.

14 I further certify that I am not interested in
15 the outcome of the said action, nor connected with nor
16 related to any of the parties in said action, nor to
17 their respective counsel.

18 IN WITNESS WHEREOF, I have hereunto set my
19 hand this 8th day of June 2015.

20 Reading and Signing was:

21 ___ requested ___ waived XXX not requested

22 
23
24

25 JOAN MARIE COLUMBINI, CSR NO. 5435