

Indeed Chief Justice Rhenquist "Tell the Truth or Say Nothing"

Lisa Berger, Deputy City Attorney, Defendant's Dumurrer to Complaint as per Los Angeles Superior Court Case BC 385899:

*MEMORANDUM OF POINTS AND AUTHORITIES: INTRODUCTION, Page 3, Lines 5 thru 7. "Under state law and federal regulations, plaintiff Michael L. Lofton is required to submit periodically to random drug testing in order to maintain his Class B vehicle license, which is required for his job." by Deputy City Attorney Lisa Berger*

ARGUMENT: Statement of Facts, Pages 3-4, Lines 28, 1 to 2. "He holds a Class B vehicle license and is therefore required by state law and federal regulations to submit periodically to random drug testing." by Deputy City Attorney Lisa Burger

As a Senior Electrical Mechanic, a Class B vehicle license is not required for my job. I've been employed as a file clerk for the Veterans Administration, a Steam Plant Assistant, Electrical Craft Helper, Apprentice Electrical Repairer, Electrical Mechanic, Senior Electrical Mechanic, substitute Electrical Mechanic Supervisor, and Electrician, but never as a commercial truck driver, nor have I had the interest to be employed as a commercial truck driver. Be it past or present, I've yet to be employed as a commercial truck driver. As a Senior Electrical Mechanic I'm not required to drive or use vehicles that require a class B license. Although I possess a commercial class B driver's license, my employment duties do not require that I drive a vehicle that requires a class B driver's license.

Furthermore, from January 2007 until I was placed at No Shift No Pay (NSNP) and sent home on October 17, 2007, without cause, I was assigned to work at 1212 Palmetto Street, in the ESM Diagnostics section. The work performed by me, required using "Flir" infrared cameras, contact resistance, timing testing using "Vanguard Instruments Incorporated" testing equipment, and SF<sub>6</sub> Gas leak detection, to aid in preventive maintenance of electrical apparatus. The results and related documentation for such testing of High Voltage switchgear, conductors, transformers, wire and cable terminations, at LADWP and other facilities, does not required a Class B vehicle license. The work as described associated with driving to and from LADWP facilities, or other locations, does not require any more than a regular Class C driver's license.

*MEMORANDUM OF POINTS AND AUTHORITIES: INTRODUCTION, Page 3, Lines 7 thru 12. "On October 16, 2007, he was ordered in for a test but was unable to provide a sufficient sample. Believing it would infringe on his personal liberty if he remained long enough to comply, Mr. Lofton left without completing the test. He was thereafter notified he would have to undergo a substance abuse evaluation in order to receive the necessary clearance from the Department of Transportation ["DOT"] to return to work.*

*Because he was unwilling to do so, he was placed on an unpaid status.” by Deputy City Attorney Lisa Berger*

On October 16, 2007, I reported to the LADWP Truesdale Training Center as directed by my immediate Supervisor, for a refresher Qualified Electrical Worker that began at 7:00 A.M. and ended at 3:00 P.M. At approximately 9:30 A.M. I received a call from my immediate supervisor to report to [Maximed Medical Center](#) at the conclusion of the 3:00 P.M., QEW refresher training of October 16, 2007. At 3:30 P.M. I arrived at the [Maximed Medical Center](#). I provided Maximed Medical Center personnel with two separate urine samples, the last sample at the conclusion of the work day, which ended at 4:00 P.M. Both samples provided, according to Maximed Medical Center personnel were not of sufficient volume.

[“U.S. Department of Transportation, Office of the Secretary, Office of Drug and Alcohol Policy and Compliance, \*\*Best Practices for DOT Random Drug and Alcohol Testing\*\*](#)

#### **Part V. Testing:**

##### **D. What must employees do when notified of a random test?**

[“When an employee is notified, he or she must proceed immediately to the collection site. Contrary to the \*urban legends\* circulating among some employees, \*immediately\* does not mean two hours. \*\*Immediately means that after notification, all the employee’s actions must lead to an immediate specimen collection.\*\* Why? For the integrity of the testing process.”](#)

There was plenty of time for the 3 hour DOT test to be performed during the normal scheduled work day of 7:00 A.M. through 4:00 PM, so that my body could produce sufficient urine, and so that it would not infringe upon my personal rights. The two urine samples provided were not collected under mandatory random sampling conditions as required by law. The call from my immediate supervisor for DOT testing at 9:30 A. M. to report for testing after 3:00 P.M. leaves a *six hour time difference between the initial directive and the actual urine sampling provided* between 3:30 P.M and 4:30 P.M., **which is in violation of random test DOT procedures.** [Finally, I had a prescheduled Tungsten Inert Gas Aluminum welding class, on this same date, from 6:00 P.M. to 9:00 P.M. that I paid for at Los Angeles Trade Tech College.](#)

This being said, the LADWP/DOT rights end where my rights begin, meaning remaining at the Maximed Medical Center after normal shift, is definitely an unnecessary intrusion on my personal liberty and property rights.

**U.S. Constitution, 14<sup>th</sup> AMENDMENT:** [“All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. \*\*No State shall make or enforce any law which shall\*\*](#)

**abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws”.**

California Constitution, Article 1, Section 1: “All men are by nature free and independent, and have certain inalienable rights, among which are those of enjoying and **defending life and liberty; acquiring, possessing, and protecting property; and pursuing and obtaining safety and happiness”.**

California Constitution, Article 1, Section 2: “All political power is inherent in the people. Government is instituted for the protection, security, and benefit of the people, and they have the right to alter or reform the same whenever the public good may require it”.

California Constitution, Article 1, Section 3. “The State of California is an inseparable part of the American Union, and the **Constitution of the United States is the supreme law of the land”.**

California Constitution, Article 1, Section 10: The people" *shall have the right to freely assemble together to consult for the common good, to instruct their Representatives, and to petition Legislature for redress of grievances”.*

California Constitution, Article 1, Section 13: “In criminal prosecutions, *in any court whatever, the party accused* shall have the right to a speedy and public trial; to have the *process of the court to compel the attendance of witnesses in his behalf*, and to appear and defend , in person and with counsel. No person shall be twice put in jeopardy for the same offense; nor be compelled, *in any criminal case, to be a witness against himself, nor be deprived of life, liberty or property without due process of law.....”.*

California Constitution, Article 1, Section 22: “**The provisions of the Constitution are mandatory and prohibitory**, unless by express words they are declared to be otherwise”.

*MEMORANDUM OF POINTS AND AUTHORITIES: INTRODUCTION, Page 3, Lines 14 thru 20: “Mr. Lofton fails to state a cause of action against defendant Antonio Villaraigosa. He has alleged no facts indicating Mayor Villaraigosa personally participated in Mr. Lofton being required to take a drug test or in his being placed on unpaid status. A public official cannot be held liable for the acts and omissions of another person. Moreover, the allegations of the complaint establish as a matter of law that the actions complained of were taken in order to comply with state and federal regulations, for the purpose of promoting the safety of employees and the public. A public employee may not be held liable for enforcing the law.” by Deputy City Attorney Lisa Berger*

L.A. City Charter, Sec. 215. **Oath of Office:** Every officer provided for in the Charter shall, before entering upon the discharge of the duties of office, take the following oath or affirmation: “I do solemnly swear (or affirm, as the case may be) that *I will support the*

Constitution of the United States and the Constitution of the State of California and the Charter of the City of Los Angeles, and that I will faithfully discharge the duties of the office of (here inserting the name of the office...Mayor, City Councilperson, other government officials, etc.) according to the best of my ability."

L.A. City Charter 1, Sec. 209: **Code of Conduct of Elected Officials; Censure.** All elected officials of the City are expected to conform to the highest standards of personal and professional conduct. The Council shall have the power to adopt, by a two-thirds vote, a resolution of censure with respect to any member of the Council whose actions constitute a gross failure to meet such high standards, even if the action does not constitute a ground for removal from office under the Charter.

L.A. City Charter, Sec. 230. **Mayor.** Except as otherwise provided in the Charter, management authority shall be vested in the Mayor who shall be the Chief Executive Officer of the City and shall devote his or her entire time to the duties of the office. The Mayor shall execute and uphold all laws and ordinances of the City.

L.A. City Charter, Sec. 231. **Powers and Duties.** The **Mayor shall have the power and duty to: (a) exercise management authority over all departments, agencies and appointed offices of the City ...."**

ARGUMENT: Statement of Facts, Pages 3-4, Lines 13 thru 15. "Concerned about his right against self-incrimination, Mr. Lofton refused to participate in the evaluation and was placed on unpaid status pending DOT clearance." By Deputy City Attorney Lisa Berger

California Constitution, Article 1, Section 13: ".....nor be compelled, in any criminal case, to be a witness against himself, nor be deprived of life, liberty or property without due process of law....."

California Constitution, Article 1, Section 22: "**The provisions of the Constitution are mandatory and prohibitory**, unless by express words they are declared to be otherwise"

#### **Part V. Testing:**

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"When an employee is notified, he or she must proceed immediately to the collection site. Contrary to the *urban legends* circulating among some employees, *immediately* does not mean two hours. **Immediately means that after notification, all the employee's actions must lead to an immediate specimen collection. Why?** For the integrity of the testing process."

Since I do not have a history of drug and alcohol use, and the LADWP's medical records for Michael L. Lofton, employee #532091, for past and present DOT tests are all negative, with good reason I refused to submit to evaluation by any substance abuse professional as a condition to remain employed. *To be denied the right to work, to be placed at NSNP without proof, and/or to be subjected to any other unwarranted punishment without proof that you are in fact an alcohol or drug substance abuser, is a serious Constitutional violation.*

The failure of IBEW local 18, the failure of the [Civil Service Commission](#), specifically [Sylvia Drew Ivie](#), the failure of [Los Angeles City Councilman Herb Wesson](#) to correct the wrongs committed by the LADWP that have resulted in loss of property, gainfully employment rights, [blatant defamation](#) of [my good character without proof](#), [holding the earned retirement benefits](#), [other earned benefits](#), of Michael L. Lofton, a 30 year and of qualifying age LADWP employee, [Threats](#), cutting off [LADWP supplied electricity](#) and [water](#) while holding retirement and other earned LADWP retirement benefits as hostage, and most importantly unresolved Los Angeles Superior Court Case 895188 where the defendants have admitted guilt..... left no other recourse but to file Los Angeles Superior Court case [BC 385899](#), and the [Demurr](#) and proposed judgment order to Los Angeles Superior Court Case 10K18049, [where there are no issues in dispute](#).

Page 3, Lines 12-13. ***“Mr. Lofton now contends he is being denied his right to employment because of his race.”*** by Deputy City Attorney Lisa Berger

***False:*** [BC 385899](#), C895188 and/or the Demurr to 10K18049 are not a race based, affirmative action, discriminatory argument or legal issues. Los Angeles Superior Court Cases [BC 385899](#), 895188, [“Theft by Court”](#), the Demurr to Los Angeles Superior Court Case 10K18049 are about law abiding citizens, namely [Michael Lofton](#), my parents, the Lofton Family, Carl Steadman, etc., being denied U.S. and California Constitutional protections, blatant disrespect for the rule of law by elected officials, [especially elected Black leaders](#), and other government employees in positions of authority. Elected officials must be held accountable to his or her sworn oath of office, to uphold the Constitution, when it is proven that government unlawfully violates the *inalienable rights* of its' citizens, *the lawful right to work being paramount to all other rights*. ([The Los Angeles Sentinel has yet to publish the truth](#))

***“The property which every man has in his own labour, as it is the original foundation of all other property, so it is the most sacred and inviolable. The patrimony of a poor man lies in the strength and dexterity of his hands; and to hinder him from employing this strength and dexterity in what manner he thinks proper without injury to his neighbour, is a plain violation of this most sacred property. It is a manifest encroachment upon the just liberty both of the workman, and of those who might be disposed to employ him. As it hinders the one from working at what he thinks proper, so it hinders the aothersa from employing whom they think proper. To judge whether he is***

fit to be employed, may surely be trusted to the discretion of the employers whose interest it so much concerns. The affected anxiety of the law-giver lest they should employ an improper person, is evidently as impertinent as it is oppressive.” by Adam Smith, Glasgow Edition of the Works and Correspondence Vol. 2a An Inquiry Into the Nature and Causes of the Wealth of Nations, Vol. 1, CHAPTER X: Of Wages and Profit in the different Employments of Labour and Stock (paragraph 591)

.....To deprive an individual of the right to gainful employment eventually and inevitably deprives him of rights the average citizen takes for granted; the right to acquire, possess, his or her property. This impairs the contract that exists between the citizen and his government. *A citizen of less than independent means must have work to acquire the necessities of life.*

When any U.S. citizen(s) is egregiously violated by the atrocities of a government seriously gone awry, *the citizen, the legal immigrant, has the right to petition his or her elected official for redress of grievances.* This duty to respect the lawful rights of the law abiding, namely Michael L. Lofton, my dad, Leon E. Lofton, Jr., an honorably discharged disabled draftee combat infantry veteran of WWII who passed in 2003 with his integrity intact, my Mom, Mrs. Esther M. Lofton, the entire Mr. and Mrs. Leon E. Lofton, Jr. family, Carl Steadman, etc., have resulted in substantial harm, losses and/or very destructive, which are the basis for this and other court cases.

“The Honorable Robert Finerman issued the following order to Elaine Reed and her supervisor, Mr. Underwood: *“The parents are not guilty of any criminal violation; the children are not guilty of any criminal violation. My order to you is for an abode and the necessities of life.”* The Lofton minors remained in the custody and under the control of the Probation Department of the County of Los Angeles until June 1968”. (Source Fact, truth, and Cases 895188, BC 385899)

“The Honorable Leopoldo G. Sanchez issued the following order: to officials and agents of DPSS: *“The parents are not guilty of any criminal violation; the children are not guilty of any criminal violation. My order to you is for an abode and the necessities of life.”* (Source Fact, truth, and Cases 895188, BC 385899)

*“Tyranny, not the rule of law, reigns in inner-city Los Angeles. Tyranny is arbitrary or despotic government; the severe and autocratic exercise of sovereign power, either vested constitutionally in one ruler, or usurped by him by breaking down the division and distribution of governmental powers.”* (Source Fact, truth, and Cases 895188, BC 385899)

“The tyrannical stranglehold has yet to be removed from the life of *Carl A. Steadman Jr.* whose employment opportunities have been reduced after “a long train of abuses” by officials and agents of Los Angeles County. *LA County government who violated him to cover-up for lies by two Los Angeles County Deputy Sheriffs, Hanson (#428366) and Marshall (#412547), one black the other white.* As result of a minor traffic accident in the Los Angeles area August 10, 1998 Carl A. Steadman was convicted and fined in

case #8IW7573, Inglewood Municipal Court of reckless driving even though the record (Traffic Collision Report #1998080109) found the other driver violated Vehicle Code (VC) 22106: unsafe backing. Carl A Steadman Jr. was convicted and fined in case #8CU01940 in Culver City Municipal Court of violating Penal Code (PC) Sections 242/243, a battery merely for pursuing an escaping driver to obtain information required by California Rules of the Road. Lies from the sheriffs to highway patrolman C. Jackson (#13701) precipitated the recommendation that "a complaint be filed against P-2 (Steadman) for 14601.1 (a) VC-driving on a suspended license." (Source Fact, truth, and Cases [895188](#), [BC 385899](#))

"Councilman Tom La Bonge and [Councilman Bernard Parks, City Councilman, 8<sup>th</sup> District](#), City of Los Angeles each received a copy of the booklet titled [Theft by Court](#), authored by [Esther M. Lofton](#), detailing a level of corruption in local courts damaging the life of an inner city youth. The cost of the publication borne by Michael L. Lofton, who gained nothing thereby, brought no response of any kind from LA Councilman Parks." (Source Fact, truth, and Cases [895188](#), [BC 385899](#))

"A petition dated 06-08-99 signed by Esther M. Lofton, forwarded by U.S. mail to 8<sup>th</sup> District Councilman Mark Ridley-Thomas, in behalf of Carl A. Steadman Jr. who resides in the 8<sup>th</sup> Council District, City of Los was returned to the sender, unopened. Judgment and sentencing order, case #8CU01940, in violation of PC Section 242/243 records that \$750 of the \$800 fine went to a county fund (2<sup>nd</sup> district) instead of to (scratched out) appointed counsel". (Source Fact, truth, and Cases [895188](#), [BC 385899](#))

*"Insisting on honesty as the only policy, the supreme ruled Wednesday that public employees can be punished for lying, even when they merely deny an accusation that later turns out to be true".*

*".....Chief Justice William H. Rehnquist. 'An employee who is asked about possible wrongdoing has only two legal choices: Tell the truth or say nothing'".* (LA Times, January 22, 1998.)

"Today **Tyranny** should be the cry from residents of inner city Los Angeles who are not only taxed without representation from their own kind to an extent not experienced by colonists prior to 1776, a form of **tyranny** that grossly violates the constitution and laws and mirrors an unfathomable level of indecency among civilized individuals" (Source Fact, truth, and Cases [895188](#), [BC 385899](#))

"While inner city officials ignore the rights of their constituents, with impunity, an atmosphere that breeds contempt for the law, illegal aliens see this as an opportunity to slip into the country fully aware that people that have been treated shabbily in their own land are less likely to offer them opposition." (Source Fact, truth, and Cases [895188](#), [BC 385899](#))

Unlike Deputy City Attorney Lisa Berger who is not sworn under oath to serve the U.S. citizens, [all elected officials](#) are sworn under oath and mandated by law to uphold the [U.S. Constitution](#), the California Constitution, etc., in behalf of law abiding citizens such as honorably discharged disabled WWII U.S. Army Veteran Leon E. Lofton, Jr., [Mrs. Esther M. Lofton \(895188\)](#), the Lofton family ([895188](#)), [Michael L. Lofton \(895188, BC 385899](#), the Demurrer to 10K18049, [proposed Judgment Order](#)), [Carl Steadman \(Theft by Court\)](#), honorably discharged Iraq War Veteran Sgt. Anita Shaw and family, etc., whose son Jamiel Shaw was murdered by a felonious criminal illegal/undocumented immigrant, etc. The primary failure is with elected [black leaders](#) at the local (Los Angeles City [8<sup>th</sup> District Councilman Bernard Parks](#), Los Angeles [10<sup>th</sup> District Councilman Herb Wesson](#)), county (Los Angeles County 2<sup>nd</sup> District Supervisor Mark Ridley Thomas, former LA County 2<sup>nd</sup> District [Supervisor Yvonne B. Burke](#)), state, and federal level (President [Barack Obama](#)), former [Congresswoman Diane Watson](#), [Congresswoman Karen Bass](#), Congresswoman [Maxine "Kerosene" Waters](#), etc. ) U.S. Supreme Court [Justice Clarence Thomas](#), multiple members of the Congressional Black Caucus) of government who have contempt for the [Constitutional rights of law abiding U.S. citizens, who are U.S. born and black](#).

.....since this is supposed to be "[One Nation Under God, Indivisible, with Liberty and Justice for All](#)", to which [government is instituted for the protection of its' citizens](#).

Sincerely,

[Michael L. Lofton](#)