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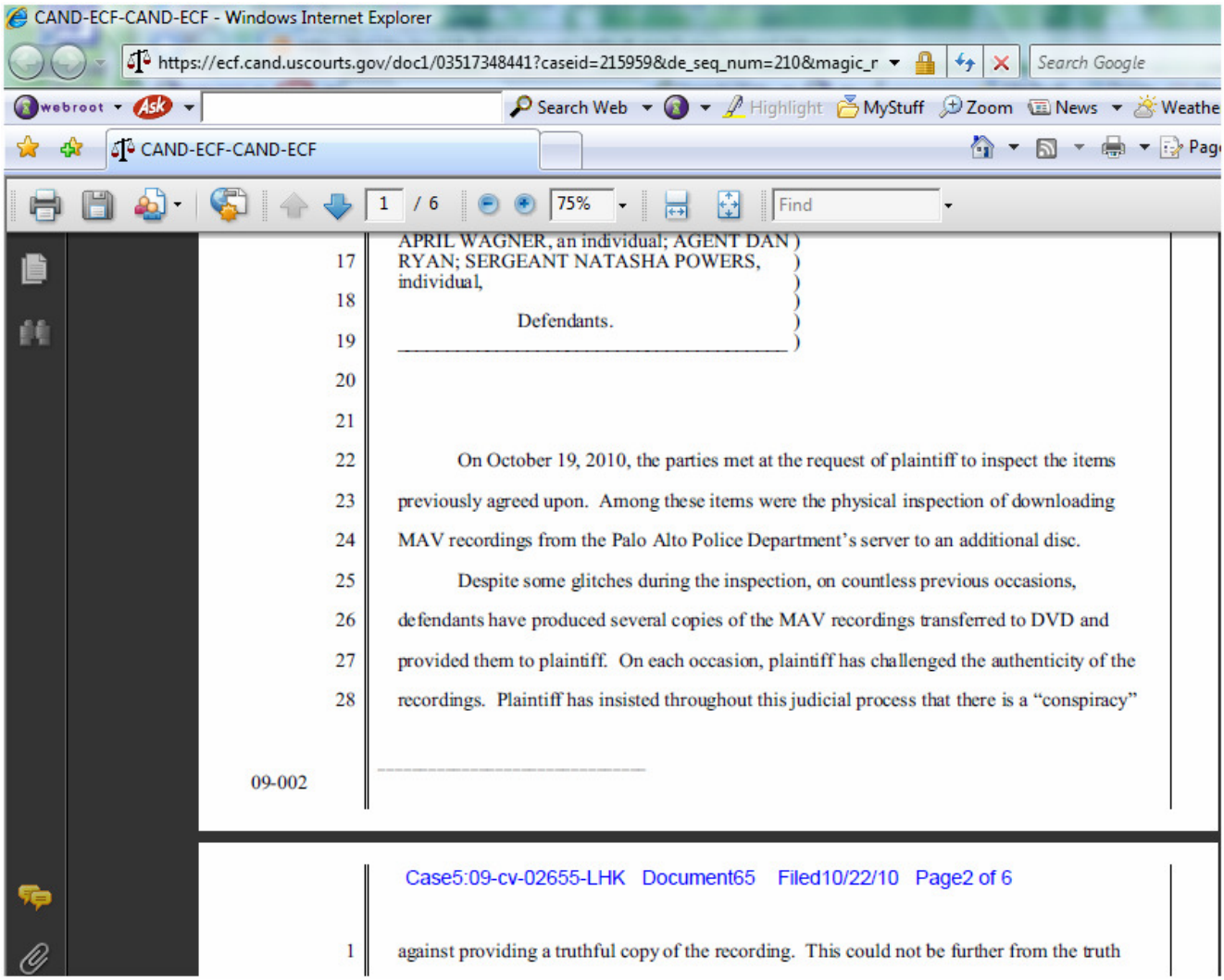
UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

JOSEPH CIAMPI, Plaintiff, v. CITY OF PALO ALTO, a government entity; LYNNE JOHNSON, an individual; CHIEF DENNIS BURNS, an individual; OFFICER KELLY BURGER, an individual; OFFICER MANUEL TEMORES, an individual; OFFICER APRIL WAGNER, an individual; AGENT DAN	NO. C09-02655 LHK (PVT) **DEFENDANTS' BRIEF REGARDING DISPUTE OVER OBTAINING ORIGINAL MAV RECORDINGS CONTAINING DIGITAL WATERMARK** Hon. Patricia V. Trumbull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APRIL WAGNER, an individual; AGENT DAN RYAN; SERGEANT NATASHA POWERS, individual,
Defendants.
On October 19, 2010, the parties met at the request of plaintiff to inspect the items previously agreed upon. Among these items were the physical inspection of downloading MAV recordings from the Palo Alto Police Department's server to an additional disc.
Despite some glitches during the inspection, on countless previous occasions, defendants have produced several copies of the MAV recordings transferred to DVD and provided them to plaintiff. On each occasion, plaintiff has challenged the authenticity of the recordings. Plaintiff has insisted throughout this judicial process that there is a "conspiracy"
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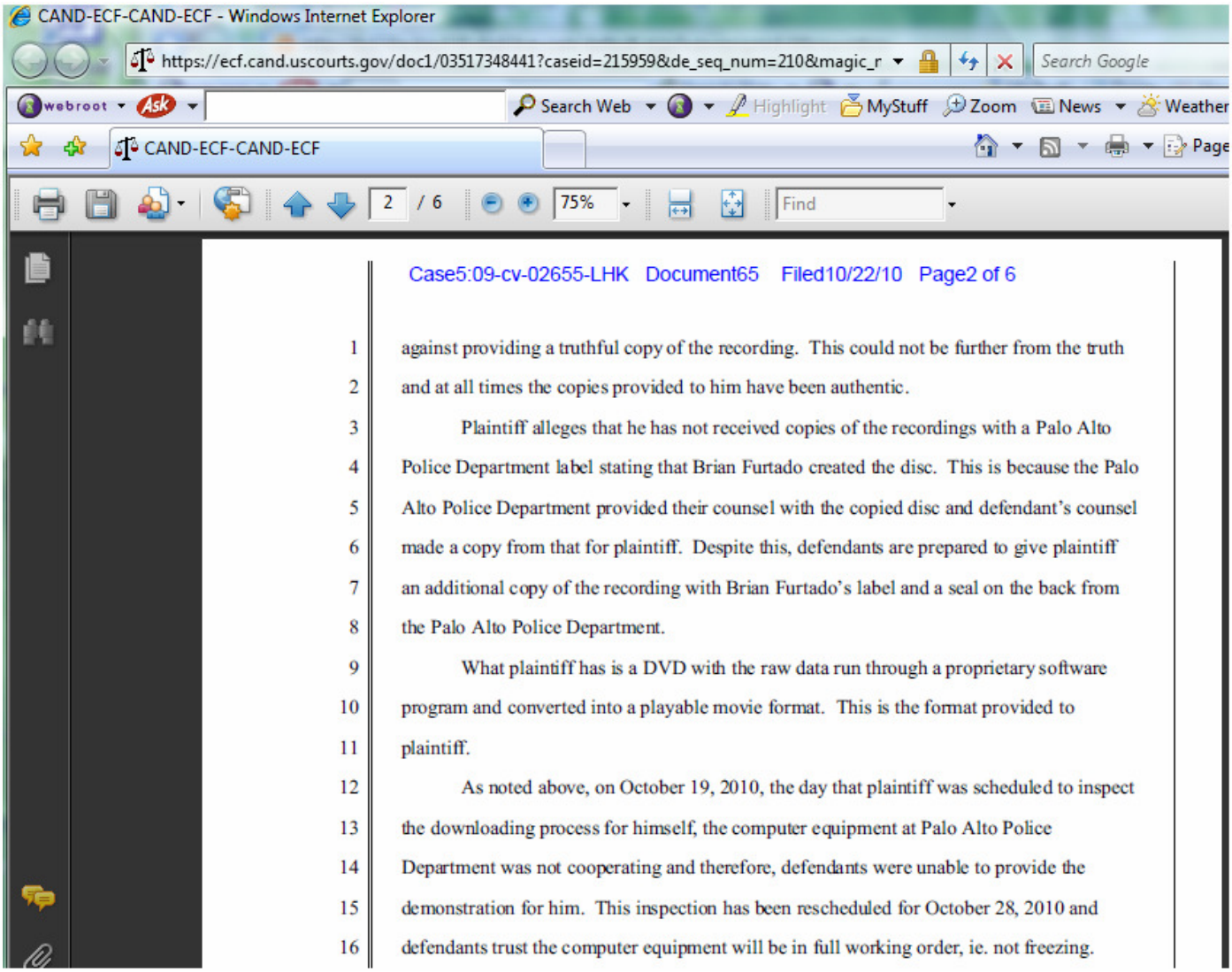
against providing a truthful copy of the recording. This could not be further from the truth

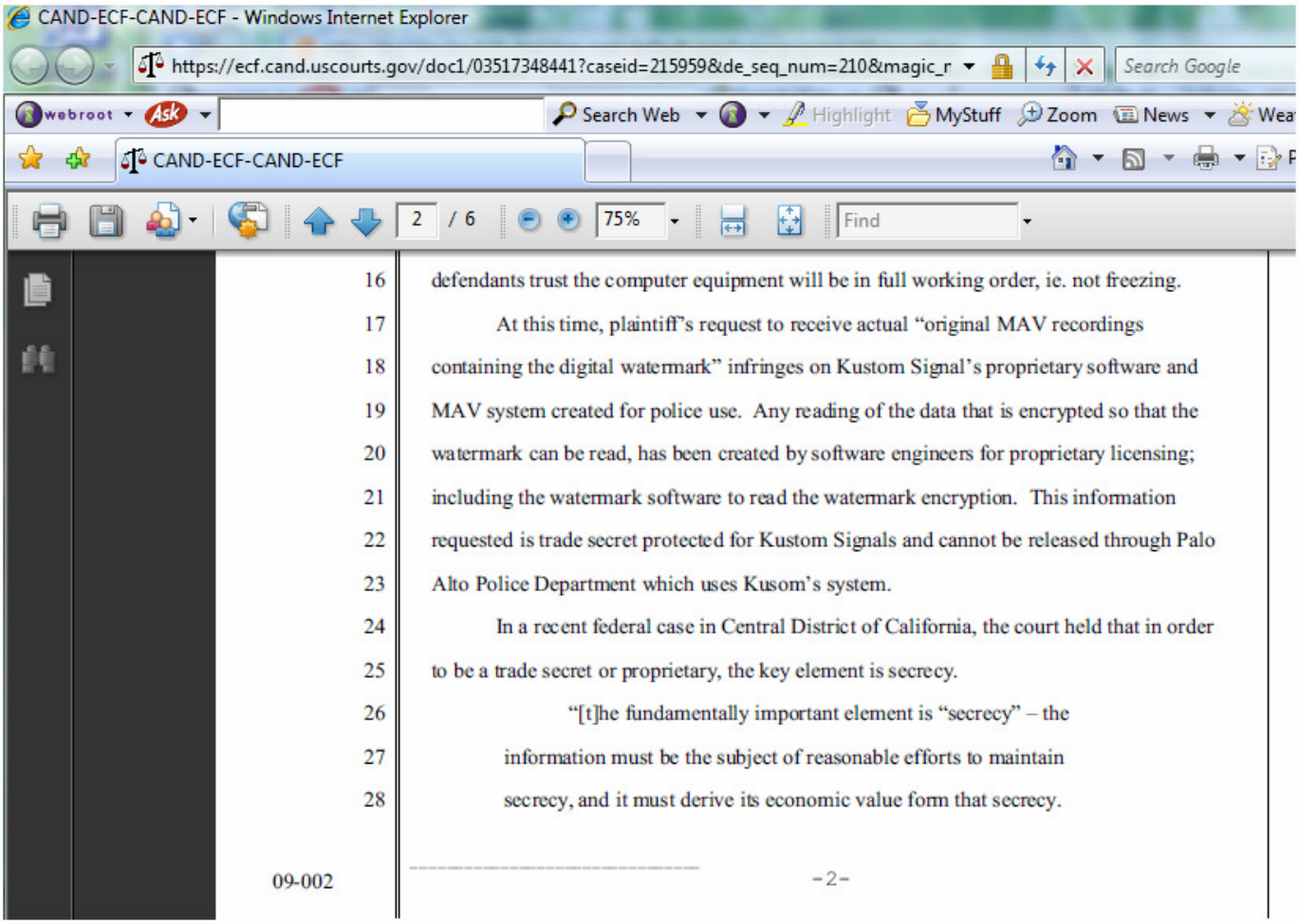


against providing a truthful copy of the recording. This could not be further from the truth and at all times the copies provided to him have been authentic.

Plaintiff alleges that he has not received copies of the recordings with a Palo Alto Police Department label stating that Brian Furtado created the disc. This is because the Palo Alto Police Department provided their counsel with the copied disc and defendant's counsel made a copy from that for plaintiff. Despite this, defendants are prepared to give plaintiff an additional copy of the recording with Brian Furtado's label and a seal on the back from the Palo Alto Police Department.

What plaintiff has is a DVD with the raw data run through a proprietary software program and converted into a playable movie format. This is the format provided to plaintiff.

As noted above, on October 19, 2010, the day that plaintiff was scheduled to inspect the downloading process for himself, the computer equipment at Palo Alto Police Department was not cooperating and therefore, defendants were unable to provide the demonstration for him. This inspection has been rescheduled for October 28, 2010 and defendants trust the computer equipment will be in full working order, ie. not freezing.

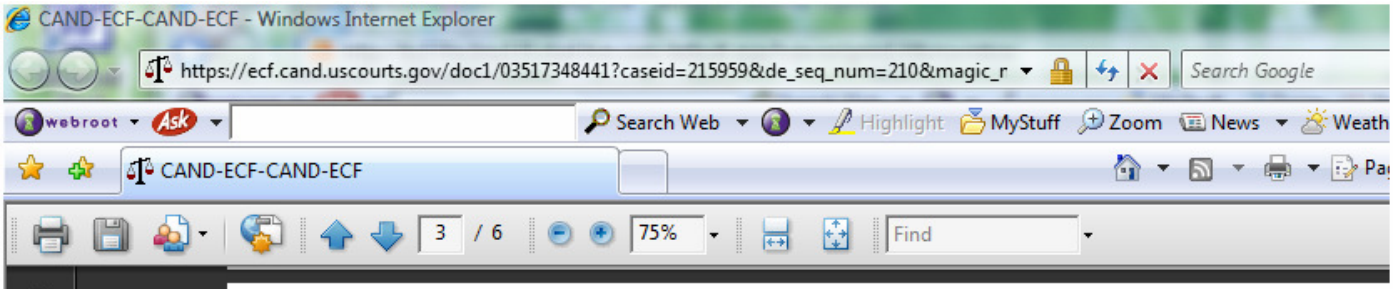


defendants trust the computer equipment will be in full working order, ie. not freezing.

At this time, plaintiff's request to receive actual "original MAV recordings containing the digital watermark" infringes on Kustom Signal's proprietary software and MAV system created for police use. Any reading of the data that is encrypted so that the watermark can be read, has been created by software engineers for proprietary licensing; including the watermark software to read the watermark encryption. This information requested is trade secret protected for Kustom Signals and cannot be released through Palo Alto Police Department which uses Kusom's system.

In a recent federal case in Central District of California, the court held that in order to be a trade secret or proprietary, the key element is secrecy.

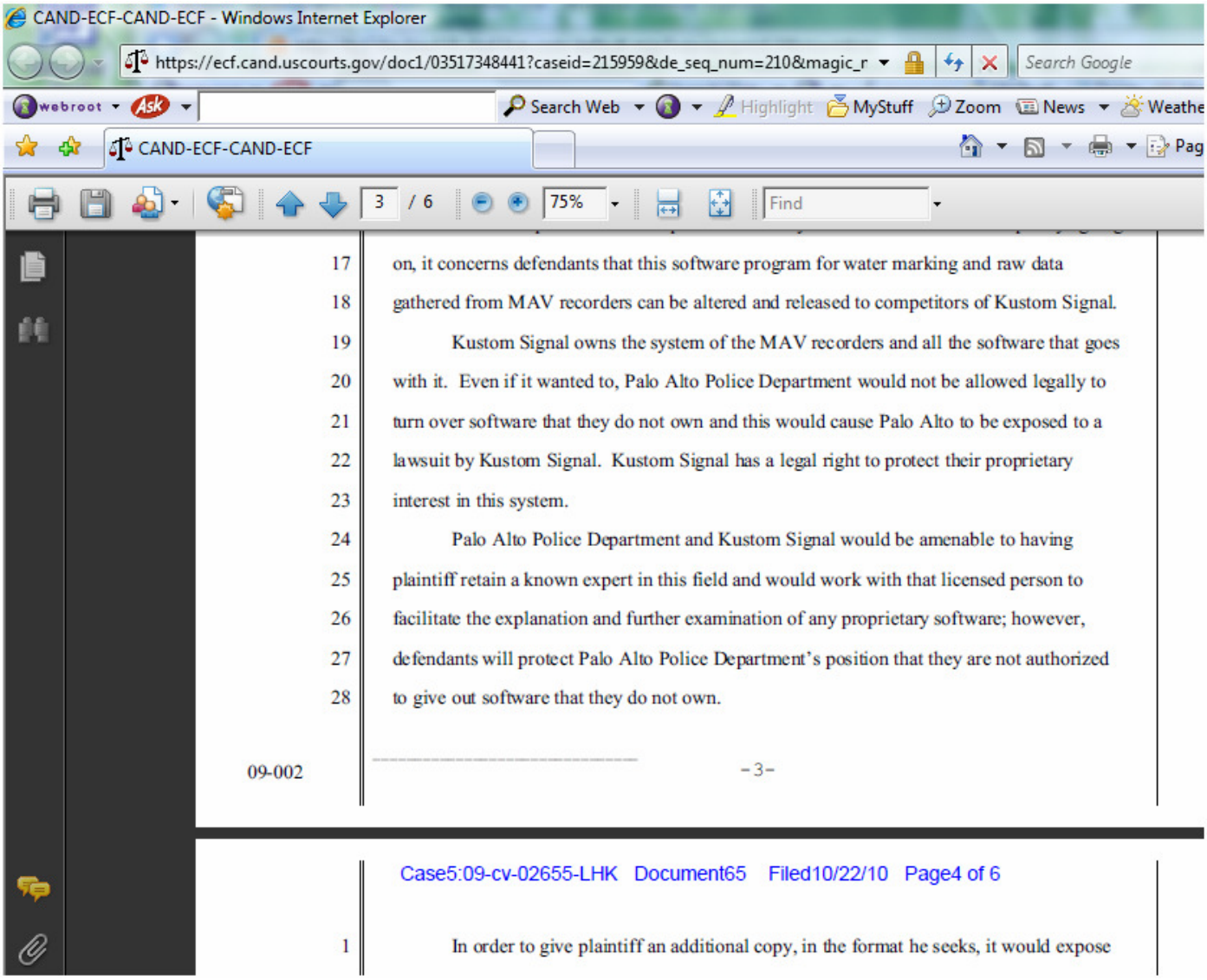
> "[t]he fundamentally important element is "secrecy" – the information must be the subject of reasonable efforts to maintain secrecy, and it must derive its economic value form that secrecy.



Indeed, it is the secrecy of the information that permits it to be treated as "property," because secrecy allows the information-holder to exclude others from using that information. See *Monsanto* (*Ruckelshaus v. Monsanto Co.)* 467 U.S. 986, 1011 ("With respect to a trade secret, the right to exclude others is central to the very definition of the property interest. Once the data that constitutes a trade secret are disclosed to others, or others are allowed to use those data, the holder of the trade secret has lost his property interest in the data"). *Alderson v. United States of America*, 2010 U.S. Dist. LEXIS 67967, 35-36.

The software to run the watermark encryption was given to the Palo Alto Police Department for use to ensure integrity of the data and verify authenticity. Kustom Signals allowed them to utilize it as a licensee of their products.

Plaintiff is not a licensee that would be in a position to protect this proprietary software program and even with a protective order, plaintiff would have proprietary software at his disposal. Based on plaintiff's fallacy belief that there is a "conspiracy" going

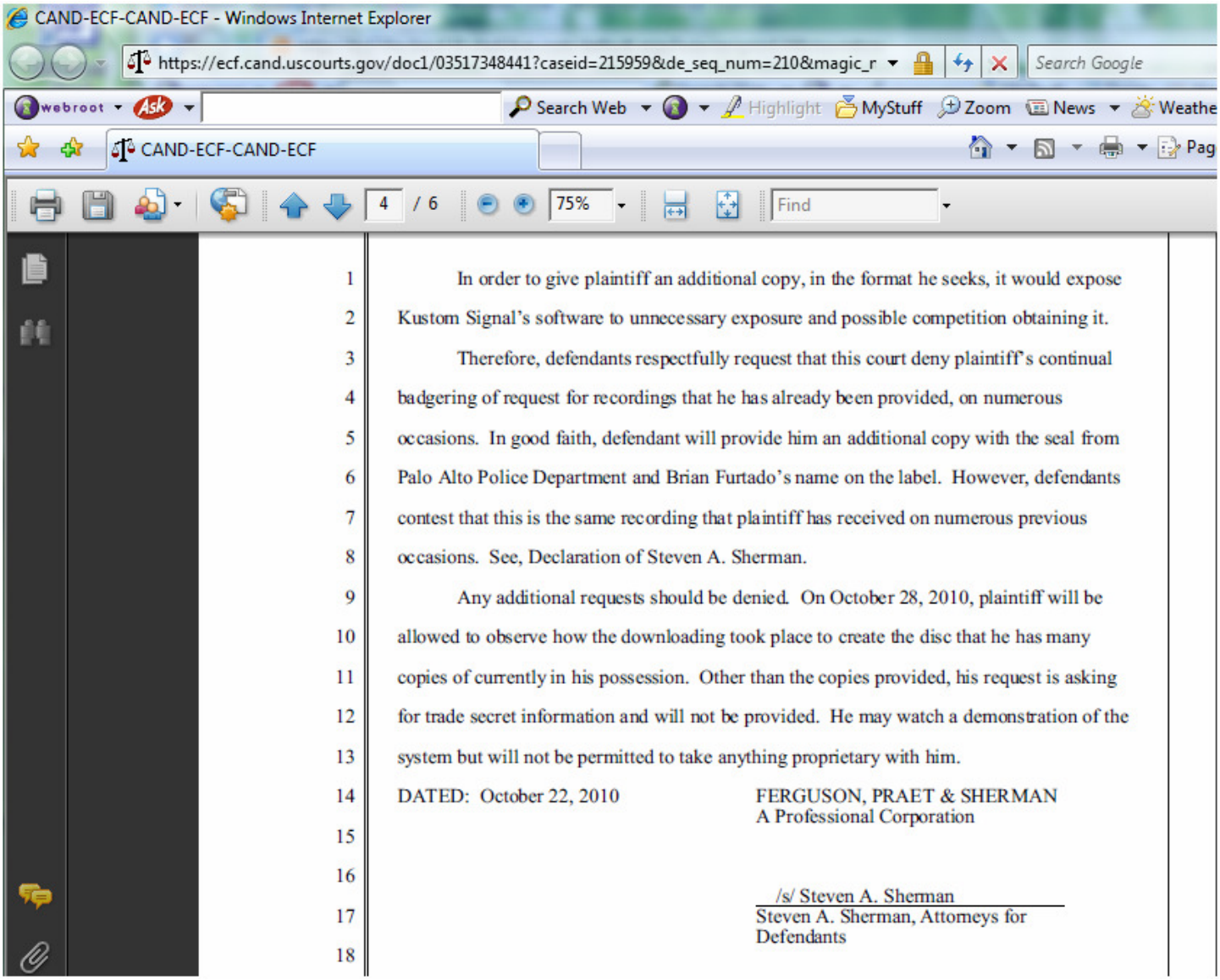


on, it concerns defendants that this software program for water marking and raw data gathered from MAV recorders can be altered and released to competitors of Kustom Signal.

Kustom Signal owns the system of the MAV recorders and all the software that goes with it. Even if it wanted to, Palo Alto Police Department would not be allowed legally to turn over software that they do not own and this would cause Palo Alto to be exposed to a lawsuit by Kustom Signal. Kustom Signal has a legal right to protect their proprietary interest in this system.

Palo Alto Police Department and Kustom Signal would be amenable to having plaintiff retain a known expert in this field and would work with that licensed person to facilitate the explanation and further examination of any proprietary software; however, defendants will protect Palo Alto Police Department's position that they are not authorized to give out software that they do not own.

In order to give plaintiff an additional copy, in the format he seeks, it would expose



In order to give plaintiff an additional copy, in the format he seeks, it would expose Kustom Signal's software to unnecessary exposure and possible competition obtaining it.

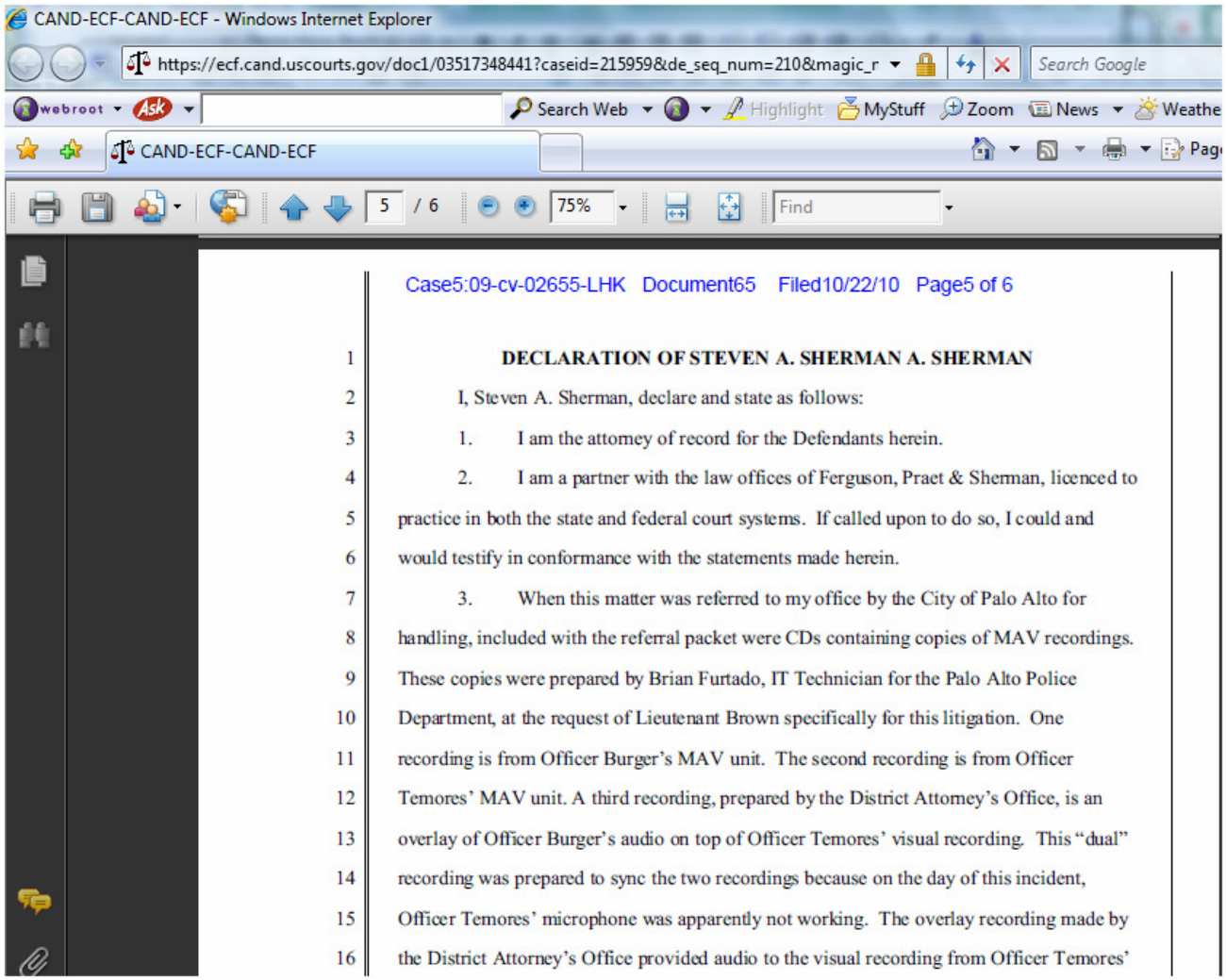
Therefore, defendants respectfully request that this court deny plaintiff's continual badgering of request for recordings that he has already been provided, on numerous occasions. In good faith, defendant will provide him an additional copy with the seal from Palo Alto Police Department and Brian Furtado's name on the label. However, defendants contest that this is the same recording that plaintiff has received on numerous previous occasions. See, Declaration of Steven A. Sherman.

Any additional requests should be denied. On October 28, 2010, plaintiff will be allowed to observe how the downloading took place to create the disc that he has many copies of currently in his possession. Other than the copies provided, his request is asking for trade secret information and will not be provided. He may watch a demonstration of the system but will not be permitted to take anything proprietary with him.

DATED: October 22, 2010

FERGUSON, PRAET & SHERMAN
A Professional Corporation

/s/ Steven A. Sherman
Steven A. Sherman, Attorneys for Defendants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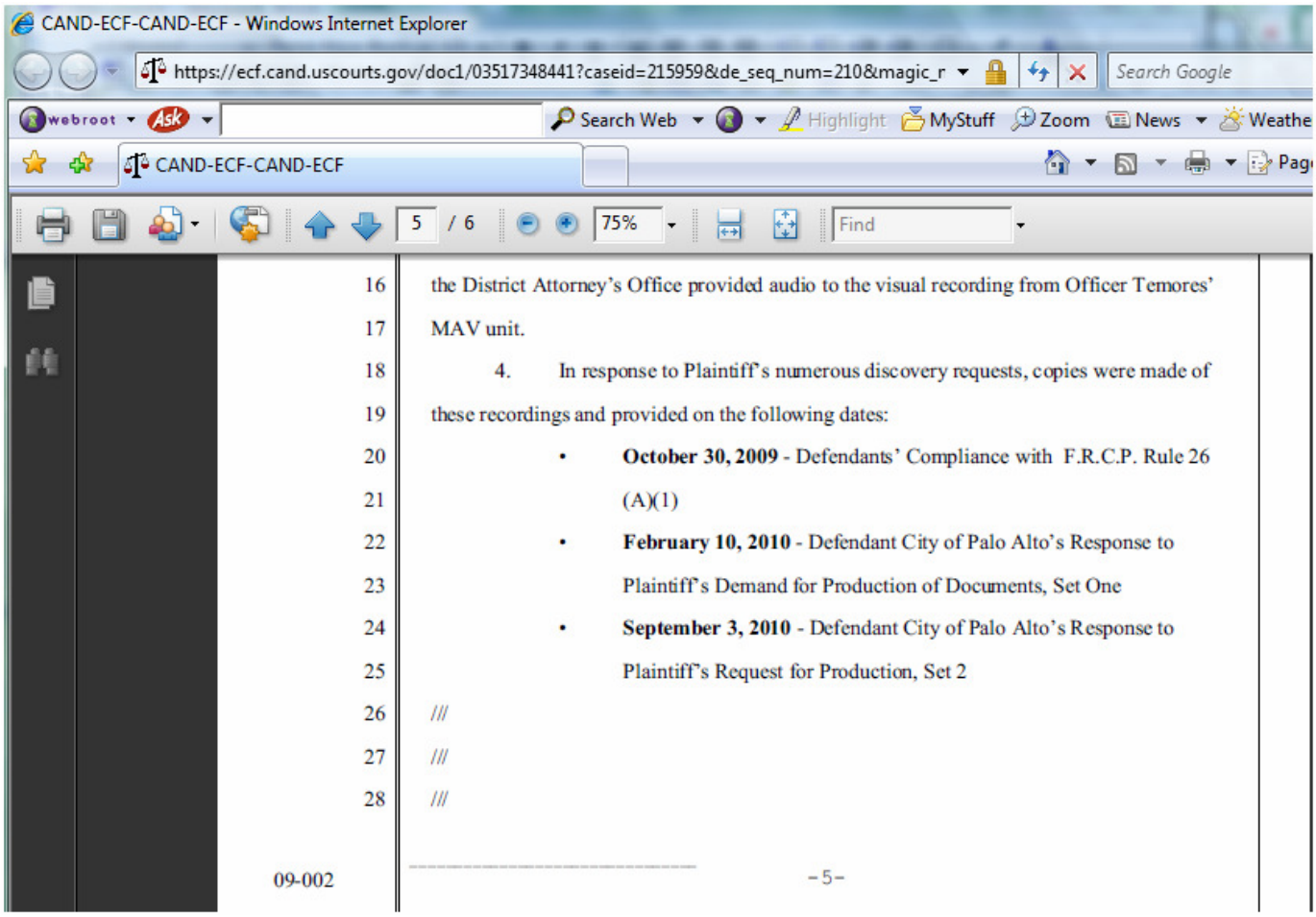
DECLARATION OF STEVEN A. SHERMAN A. SHERMAN
I, Steven A. Sherman, declare and state as follows:
1. I am the attorney of record for the Defendants herein.
2. I am a partner with the law offices of Ferguson, Praet & Sherman, licenced to practice in both the state and federal court systems. If called upon to do so, I could and would testify in conformance with the statements made herein.
3. When this matter was referred to my office by the City of Palo Alto for handling, included with the referral packet were CDs containing copies of MAV recordings. These copies were prepared by Brian Furtado, IT Technician for the Palo Alto Police Department, at the request of Lieutenant Brown specifically for this litigation. One recording is from Officer Burger's MAV unit. The second recording is from Officer Temores' MAV unit. A third recording, prepared by the District Attorney's Office, is an overlay of Officer Burger's audio on top of Officer Temores' visual recording. This "dual" recording was prepared to sync the two recordings because on the day of this incident, Officer Temores' microphone was apparently not working. The overlay recording made by the District Attorney's Office provided audio to the visual recording from Officer Temores'



the District Attorney's Office provided audio to the visual recording from Officer Temores' MAV unit.

4. In response to Plaintiff's numerous discovery requests, copies were made of these recordings and provided on the following dates:

- **October 30, 2009** - Defendants' Compliance with F.R.C.P. Rule 26 (A)(1)
- **February 10, 2010** - Defendant City of Palo Alto's Response to Plaintiff's Demand for Production of Documents, Set One
- **September 3, 2010** - Defendant City of Palo Alto's Response to Plaintiff's Request for Production, Set 2

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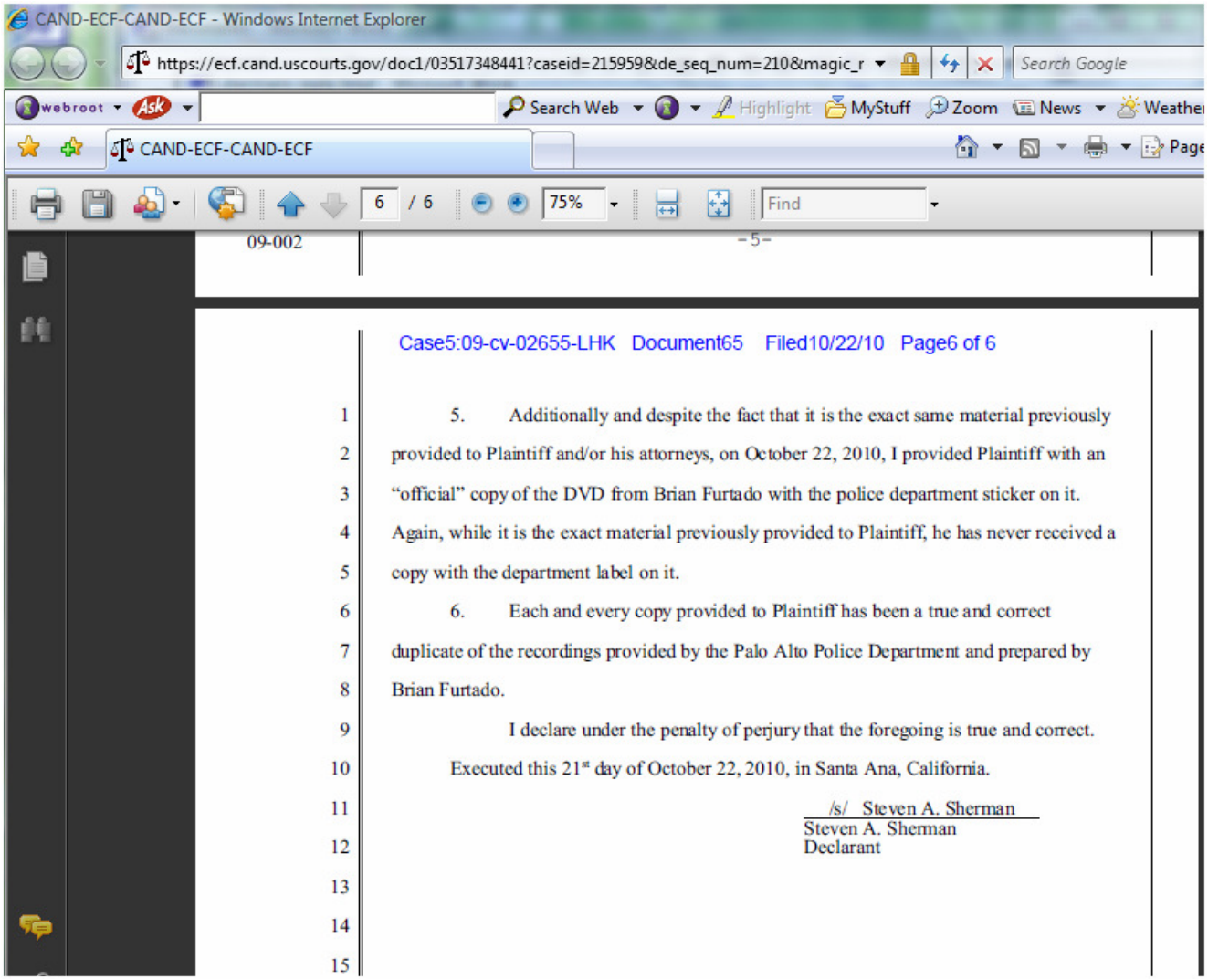
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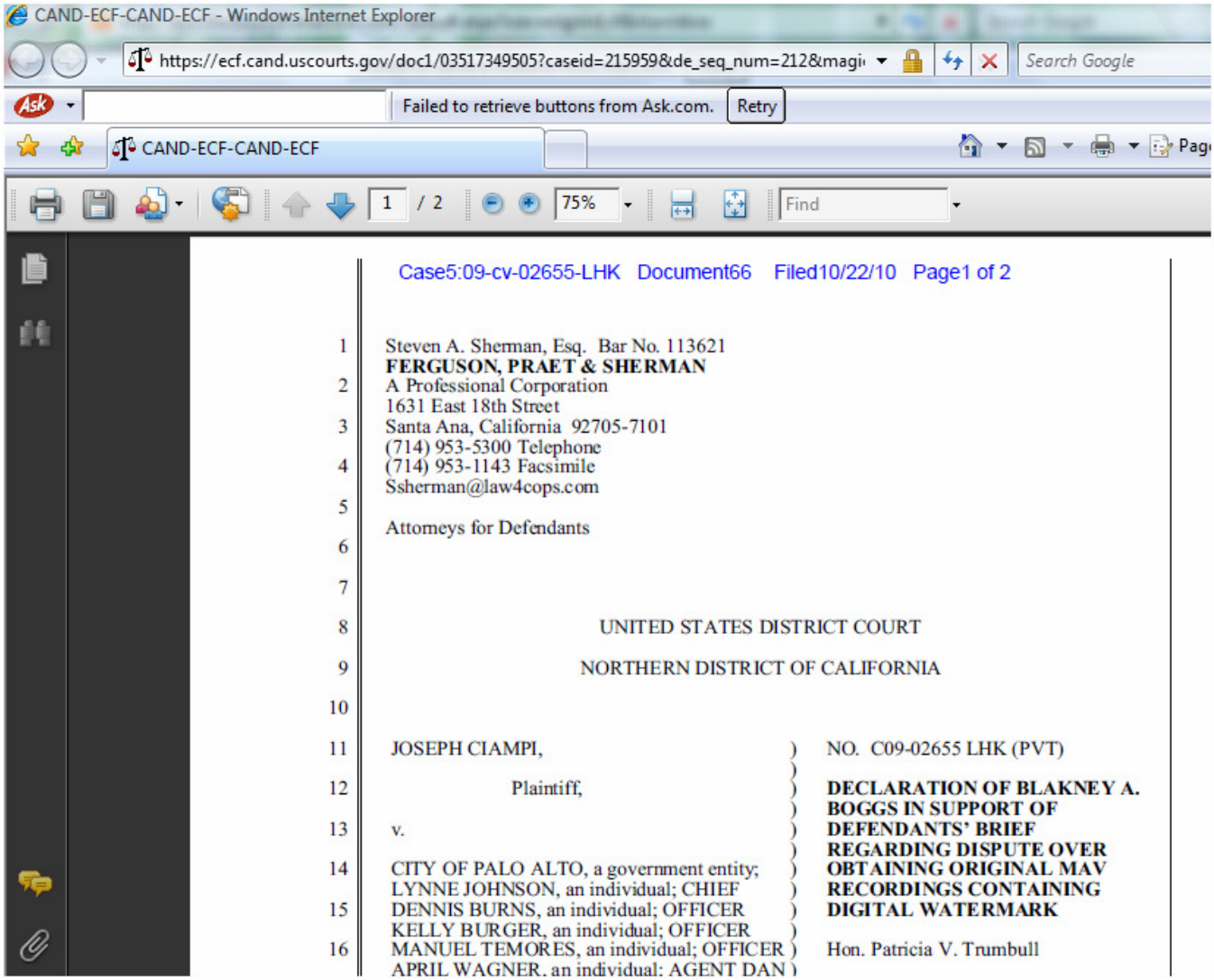
5. Additionally and despite the fact that it is the exact same material previously provided to Plaintiff and/or his attorneys, on October 22, 2010, I provided Plaintiff with an "official" copy of the DVD from Brian Furtado with the police department sticker on it. Again, while it is the exact material previously provided to Plaintiff, he has never received a copy with the department label on it.
6. Each and every copy provided to Plaintiff has been a true and correct duplicate of the recordings provided by the Palo Alto Police Department and prepared by Brian Furtado.
I declare under the penalty of perjury that the foregoing is true and correct.
Executed this 21st day of October 22, 2010, in Santa Ana, California.
/s/ Steven A. Sherman
Steven A. Sherman
Declarant



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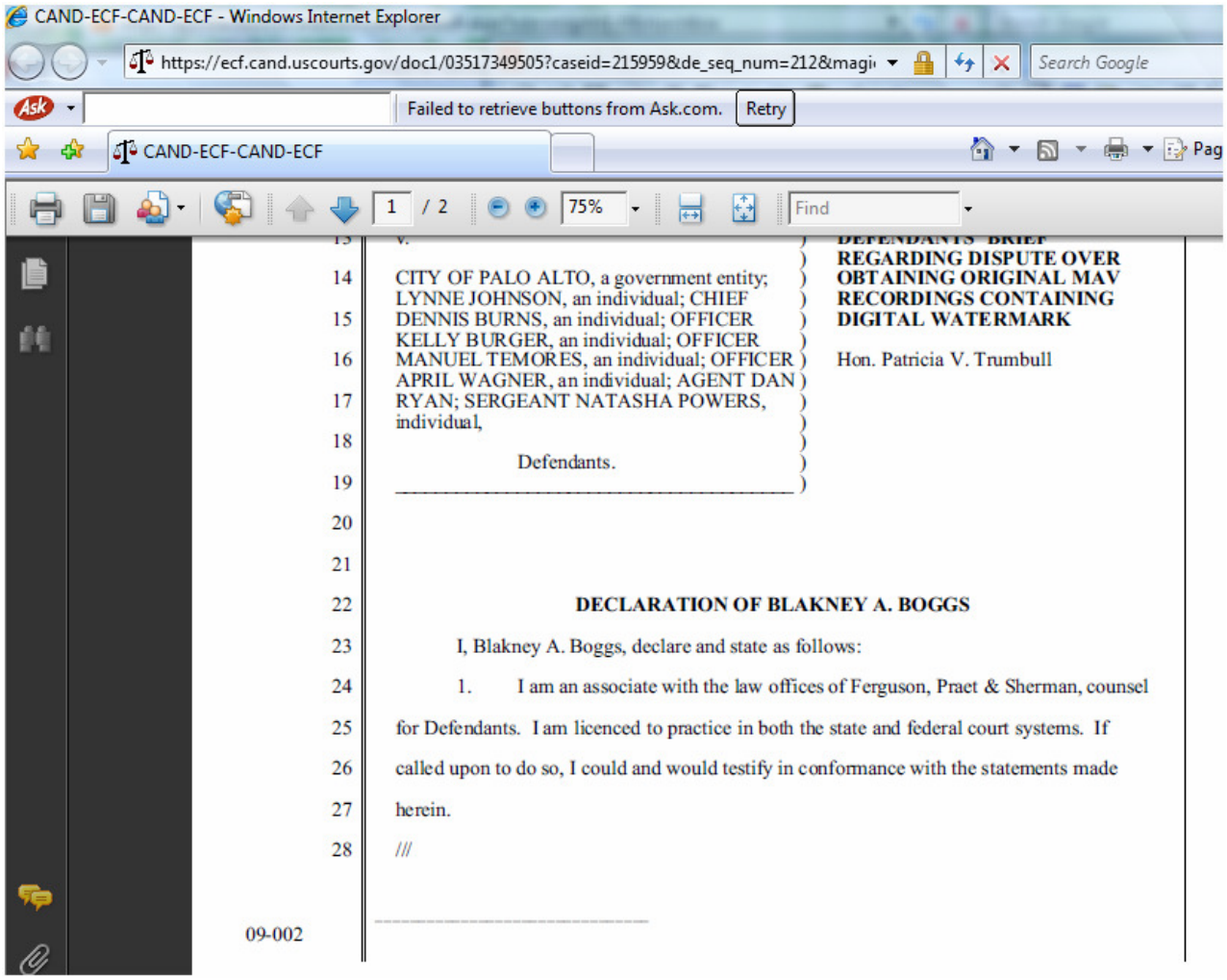

v.

CITY OF PALO ALTO, a government entity; LYNNE JOHNSON, an individual; CHIEF DENNIS BURNS, an individual; OFFICER KELLY BURGER, an individual; OFFICER MANUEL TEMORES, an individual; OFFICER APRIL WAGNER, an individual; AGENT DAN RYAN; SERGEANT NATASHA POWERS, individual,

Defendants.

DEFENDANTS' BRIEF REGARDING DISPUTE OVER OBTAINING ORIGINAL MAV RECORDINGS CONTAINING DIGITAL WATERMARK

Hon. Patricia V. Trumbull

DECLARATION OF BLAKNEY A. BOGGS

I, Blakney A. Boggs, declare and state as follows:

1. I am an associate with the law offices of Ferguson, Praet & Sherman, counsel for Defendants. I am licenced to practice in both the state and federal court systems. If called upon to do so, I could and would testify in conformance with the statements made herein.

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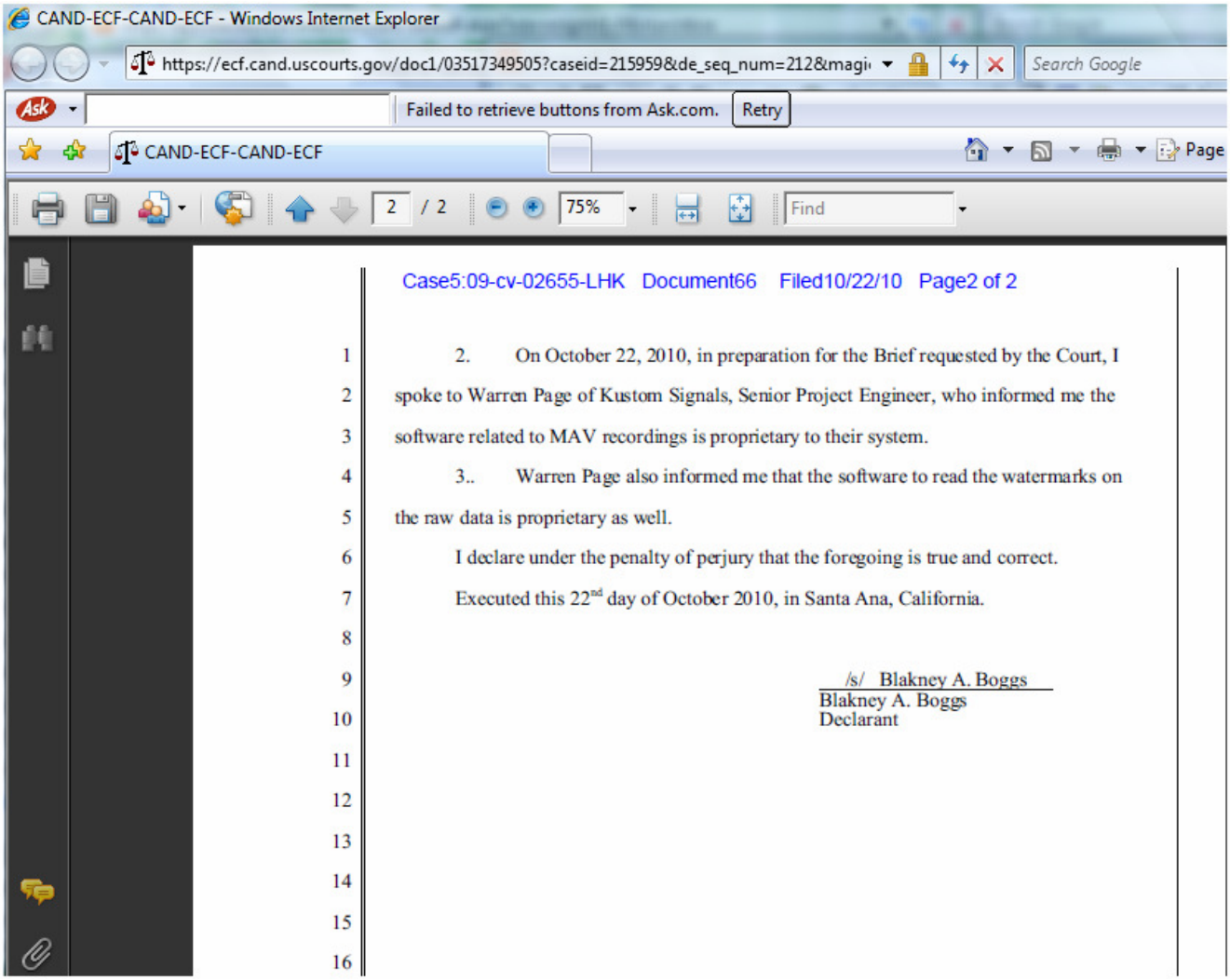

2. On October 22, 2010, in preparation for the Brief requested by the Court, I spoke to Warren Page of Kustom Signals, Senior Project Engineer, who informed me the software related to MAV recordings is proprietary to their system.

3.. Warren Page also informed me that the software to read the watermarks on the raw data is proprietary as well.

I declare under the penalty of perjury that the foregoing is true and correct.

Executed this 22nd day of October 2010, in Santa Ana, California.

/s/ Blakney A. Boggs
Blakney A. Boggs
Declarant