

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

ANTON EWING,

Plaintiff,

v.

FARRELL K. LAYTON, et al.,

Defendants.

CASE NO. 14cv2951-BAS (MDD)

ORDER GRANTING IN PART
AND DENYING IN PART CITY
DEFENDANTS' *EX PARTE*
MOTION FOR PROTECTIVE
ORDERS

[ECF NO. 18]

Before the Court is the Application for Protective Orders filed on behalf of certain Defendants (the "City Defendants") on February 19, 2015, and supplemented on February 20, 2015. (ECF Nos. 18-19). Plaintiff responded in opposition on March 9, 2015. (ECF No. 21). City Defendants replied on March 10, 2015. (ECF No. 22). A hearing was held on May 1, 2015. As provided below, City Defendants' Application is **GRANTED IN PART AND DENIED IN PART.**

Background

The Complaint alleges violations of Title 42, United States Code, Section 1983, against Defendants, mainly law enforcement personnel and agencies from the City of San Diego and the County of San Diego stemming from the arrest of Plaintiff on August 14, 2014. The Complaint was removed by City Defendants to this Court from the

1 Superior Court of California on December 15, 2014. (ECF No. 1).
2 Plaintiff moved to remand the case to the Superior Court on December
3 30, 2014. (ECF No. 4). That motion was denied on March 11, 2015.
4 (ECF No. 23). City Defendants answered the complaint on January 5,
5 2015. (ECF No. 5). On April 8, 2015, County Defendants filed a motion
6 to dismiss the Complaint as it pertains to them. (ECF No. 24). That
7 motion remains pending.

8 Discussion

9 City Defendants seek a protective order from this Court pursuant to
10 Fed.R.Civ.P. 26(c) to govern the interactions of the parties. Plaintiff
11 opposes primarily on the basis that Rule 26 governs discovery and
12 disclosure rendering the order sought by City Defendants overbroad.
13 City Defendants agree that Rule 26 governs discovery but assert that
14 inasmuch as the opening of discovery is imminent, the order sought is
15 ripe. The Court agrees with City Defendants that despite the fact that
16 discovery has not yet commenced, the Court may issue an order under
17 Rules 26(b) and (c) governing the manner in which discovery shall be
18 conducted in this case.

19 City Defendants seek to restrain Plaintiff in nine ways. Each will
20 be discussed below:

21 Request No. 1

22 City Defendants seek an order requiring Plaintiff to disclose the
23 names of all friends and acquaintances employed by the City Attorney's
24 Office.

25 This request is **DENIED**. City Defendants may seek such
26 discovery, if relevant, through proper means under the Federal Rules of
27 Civil Procedure.

28

1 Request No. 2

2 City Defendants seek an order prohibiting Plaintiff from having any
3 contact regarding this litigation with any person employed by City
4 Attorney's Office other than its counsel of record. In his opposition,
5 Plaintiff states that he will no longer communicate with City Defendants'
6 counsel.

7 Defendants' request is **GRANTED IN PART** as follows:

8 **In connection with this litigation, Plaintiff may not contact**
9 **any person known to him to be employed by the City Attorney's**
10 **Office other than City Defendants' counsel of record except as**
11 **authorized by the Court or by agreement with counsel of record.**
12 **Plaintiff must comply with any orders of this Court mandating**
13 **communication with counsel of record (e.g. meet and confer**
14 **requirements for discovery).**

15 Request No. 3

16 City Defendants seek an order requiring the parties to
17 communicate only by electronic mail, other than through pleadings filed
18 with the Court.

19 This request is **GRANTED IN PART** as follows:

20 **In connection with this litigation, the Court relieves the**
21 **parties of the requirement to meet and confer personally**
22 **regarding discovery and discovery disputes. Any required meet**
23 **and confer may be conducted by telephone. Meeting and**
24 **conferring through electronic or traditional mail is not**
25 **authorized.**

26 Request No. 4

27 In a request related to Request No. 3 above, City Defendants seek
28 an order requiring that any telephonic or personal meetings be recorded.

1 This request is **DENIED as moot**. During the hearing on this
2 request counsel for the City Defendants and Plaintiff agreed to record
3 any telephonic or personal meetings between them.

4 Request No. 5

5 City Defendants request that all depositions or other personal
6 meetings occur within a facility of the District Court and during such
7 times as the parties may have access to a judge of this Court or a Court-
8 appointed referee.

9 This request is **DENIED without prejudice**. Plaintiff has
10 represented himself in several cases in this Court. The Court, in
11 reviewing those dockets, has not identified any in which Plaintiff has
12 been subject to an order to show cause or been sanctioned. Consequently,
13 the Court believes that the parties can and will conduct themselves in a
14 civil and professional manner going forward.

15 Request No. 6

16 City Defendants request that Plaintiff be barred from publishing
17 the personal addresses or telephone numbers of any City Defendants,
18 employees of City Defendants or employees of the City Attorney's Office.

19 This request is **GRANTED IN PART**, as follows: **To the extent**
20 **that Plaintiff obtains any non-public personal information,**
21 **including addresses and telephone numbers, of any witness or**
22 **counsel, including staff assigned to work with the witness or**
23 **counsel in connection with this case, Plaintiff shall not disclose**
24 **such information to the public.**

25 Request No. 7

26 City Defendants request that Plaintiff be barred from physically
27 stalking or cyberstalking any City Defendant, any employee of any City
28 Defendant or any employee of the City Attorney's Office.

1 This request is **DENIED**. To the extent that Plaintiff engages in
2 any criminal behavior, in connection with this case or otherwise, his
3 behavior may be investigated and prosecuted by the appropriate
4 authorities.

5 Request No. 8

6 City Defendants request an order prohibiting the parties from
7 commencing discovery until all parties are served or dismissed and there
8 is full compliance with all Court orders re the conduct of discovery.

9 This request is **GRANTED IN PART**. In federal civil cases, absent
10 an order to the contrary, discovery may not commence until the parties
11 have met and conferred under Fed.R.Civ.P. 26(f). *See* Fed.R.Civ.P.
12 26(d)(1). In this Court, the Rule 26(f) does not occur until after the Early
13 Neutral Evaluation. In this case, neither the Early Neutral Evaluation
14 nor the Rule 26(f) conference have taken place. The Court does not
15 intend to conduct the Early Neutral Evaluation until the pending motion
16 to dismiss by the County Defendants is ruled upon. **Accordingly, no**
17 **discovery is authorized at this time.**

18 Request No. 9

19 City Defendants seek an order requiring Plaintiff to negotiate in
20 good faith with the City Attorney's Office before attempting personal
21 service of any document on the City or upon any City employee. If no
22 agreement can be reached, Plaintiff must seek leave of Court before
23 attempting personal service.

24 This request is **DENIED as moot**. During the hearing on this
25 request, counsel for the City Defendants agreed to accept service of
26 discovery and other lawful process on behalf of any City employee in
27 connection with this case. Counsel made clear, however, that he cannot
28 accept service of any complaint and related summonses on behalf of the

1 City of San Diego.

2 **Conclusion**

3 City Defendants' Application is **GRANTED IN PART AND**
4 **DENIED IN PART** as provided above.

5 **IT IS SO ORDERED.**

6
7 DATED: May 1, 2015

8 
9 Hon. Mitchell D. Dembin
10 U.S. Magistrate Judge

11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28