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**** NOTE CHANGES MADE BY COURT

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

TRENT CHILDS,

Plaintiff,

vs.

CITY OF LOS ANGELES, MARIO ARIDE, MICHAEL DELERY, DAVID RICH, ALEJANDRA SOTELO-CLEMENTE, COUNTY OF LOS ANGELES, AND DOES 1 through 20, Inclusive;

Defendants.

CASE NO.: CV13-06402 GAF (CWx)
*Hon. Gary A. Feess, Ctrm. 740, Roybal
Mag. Carla Woehrle, Ctrm. 640, Roybal*

PROTECTIVE ORDER REGARDING DISCLOSURE OF CONFIDENTIAL INFORMATION

The parties have exchanged written discovery pursuant to FRCP 33 and 34. In propounding discovery to the Defendants, Plaintiff has requested all existing complaints for “excessive” uses of force involving the Defendant Officers. Following a meet and confer between Mr. Sethi and Ms. Pessis, the parties have reached a compromise. Accordingly, Defendant City of Los Angeles, as the Custodian of Records for the

1 documents at issue, through its counsel of record, has agreed to produce certain
2 confidential information in this litigation, and therefore, the parties have stipulated to the
3 following terms and conditions, the Court hereby orders as follows:
4

5 **GOOD CAUSE STATEMENT**

6 1. In accordance with the above-referenced agreement, the City of Los Angeles
7 has agreed to produce copies of the following documents following the issuance of a
8 protective order in this matter:

9 a) The LAPD's Internal Affairs Investigation Report (and the attached addenda)
10 relating to the arrest of Plaintiff on February 4, 2012, which gives rise to this litigation.¹

11 b) Copies of Internal Affairs investigations (and the attached addenda) involving
12 allegations of excessive force made against Officers Mario Aride and Michael Delery for
13 the period of time of 2/4/07 to 2/4/12. Plaintiff has agreed to withdraw the request for
14 this class of Internal Affairs investigations with regard to Defendant Officers Alejandra
15 Sotelo-Clemente and David Rich since they were not involved in the subject use of force.
16

17 c) Plaintiff may purchase duplicate recordings of any recorded statement taken
18 in connection with the investigations referred to Paragraph 1(b) herein at a cost of \$10.00
19 per CD-rom if those recordings can be located by the LAPD's Professional Standards
20 Bureau.

21 2. The Los Angeles Police Department conducts internal administrative
22 investigations of Officer Involved Uses of Force and Complaint Investigations (hereinafter
23 "Administrative Investigations") and also maintains a personnel file on its officers which
24 includes personnel training information. Once an Administrative Investigation is initiated,
25 a formal investigation number is prepared. Such investigations are reviewed by
26 appropriate command officers in the Department. This review has several purposes: (1)
27

28 ¹ The related Investigation does not appear to include any recorded statements.

1 to determine whether the involved officers violated any Department policies or
2 procedures; (2) to determine whether administrative discipline and/or retraining of the
3 involved officers is necessary; and (3) to ascertain if police policies and procedures in
4 such areas as supervision, training, tactics, policies, etc. should be modified.
5 Administrative Investigations are an essential aid to providing critical evaluation of
6 Department officers and policies, and to determine the most effective way to serve the
7 citizens of Los Angeles.

8 3. The Department strives to maintain the confidentiality of an officer's
9 personnel package and Administrative Investigations, and the information contained
10 therein, in recognition of the protections granted pursuant to Penal Code § § 832.5, 832.7,
11 and 832.8 and 1040 et al. of the California Evidence Code. Just as officer's personnel
12 package is maintained as confidential, so too are the Administrative Investigations
13 involving a particular officer(s). Administrative Investigations, like an officer's personnel
14 package, include information which is both personal in nature and could potentially
15 impact the liberty interests of the involved police officers and/or civilians named within.
16 The information obtained from personnel packages and Administrative Investigations can,
17 and have been used to initiate disciplinary action against officers, as well as evidence in
18 disciplinary proceedings where the officer's conduct was considered to be contrary to
19 Department policy. At this time, the parties have agreed that certain Administrative
20 Investigation information will be provided pursuant to the terms set forth in this Protective
21 Order. As a result, the parties have agreed to this Proposed Protective Order covering
22 these records for the following Good Cause reasons:

23 4. Administrative Investigations are maintained as confidential reports and are
24 considered part of the individual officers' personnel record. Administrative Investigations
25 include information which is both personal in nature and could potentially impact the
26 liberty interests of the involved police officers and/or civilians named within. The
27 information obtained from Administrative Investigations can and have been used to
28 initiate disciplinary action against officers and as evidence in disciplinary proceedings

1 where the use of force or tactics used were considered to be contrary to Department
2 policy.

3 5. Unfettered release of Administrative Investigations have the potential for
4 untold negative results. In terms of societal interests, it would inhibit the Department's
5 ability to frankly engage in critical self-analysis. Public exposure of many Administrative
6 Investigations could severely threaten the safety and well-being of the individuals, their
7 families and associates. Many Administrative Investigations include embarrassing facts.
8 At a minimum, disclosure of an entire Administrative Investigation would cause needless
9 intrusion of privacy rights and have a negative effect on the Department's effort to
10 conduct these important investigations. Indeed, for all of these reasons, persons
11 interviewed by Investigators are advised that their statements are being taken for the
12 confidential use of the Department.

13 6. The materials and interview statements of Administrative Investigations are
14 maintained in protected files in order to maintain their confidentiality. They are not
15 routinely shown to other city departments. Even then, information which is not clearly
16 relevant to the rationale governing the request is redacted to ensure the utmost regard for
17 the privacy rights of the mentioned within a given report. The reports are not available
18 to the general public except by court order. In all instances, the Department requests in
19 camera hearing to determine the relevance for releasing all or part of a given report, again
20 to ensure the constitutionally protected privacy rights of those named or otherwise
21 identified within the body of the report.

22 7. In each case involving court-ordered disclosure of information from a
23 Administrative Investigation sought in state or federal court, it is Department policy to
24 seek a protective order limiting use of the information to the case at trial and identifying
25 those persons who may properly be granted access to the information. Absent a protective
26 order, it becomes unrealistic to conceive that the large numbers of attorneys, secretaries,
27 law clerks, paralegals and witnesses involved in many cases will be able to maintain
28 proper confidence of personal, private material absent an order which clearly delineates

1 their responsibilities. The orders further request that said records be returned to the
2 Department after the case has terminated, either by final judgment or otherwise. This
3 request serves to ensure that intrusion into the privacy and employment rights of those
4 involved is limited to the particular case in which the facts are relevant.

5 8. Even with a carefully written protective order, the release of portions of an
6 Administrative Investigation, without prior judicial review to determine relevancy and
7 assess privacy concerns, ignores the constitutional protection given to individual privacy
8 under the United States and California Constitutions and which a third-party such as the
9 Department is obligated to assert. The issuance of an appropriate protective order makes
10 certain that these privacy concerns are not compromised beyond that degree necessary to
11 the issues before the court. Accordingly, on behalf of the Los Angeles Police Department
12 and those persons identified within a given Administrative Investigation, the Defendants
13 respectfully request these procedural protections in the instant case.

14 9. Accordingly, the parties hereby stipulate that the above-referenced Internal
15 Affairs Investigation is confidential in nature and is appropriately produced pursuant to
16 a protective order. (See *Soto v. City of Concord*, 162 F.R.D. 603, 616 (N.D. Cal. 1995.))

17 **TERMS OF THE PROTECTIVE ORDER**

18 10. If the Protective Order is issued, Defendants will produce the above-
19 referenced documents wherein the documents will be marked in one of the following
20 ways: “Confidential,” “Confidential Documents,” “Confidential Material,” “Subject to
21 Protective Order” or words of similar effect. Documents, writings, or other tangible items,
22 so designated, and all information derived therefrom (hereinafter, collectively referred to
23 as “Confidential Information”), shall be treated in accordance with the terms of this
24 stipulation and protective order.

25 11. Confidential Information may be used by the persons receiving such
26 information only for the purpose of this litigation.

27 12. Subject to the further conditions imposed by this stipulation, Confidential
28 Information may be disclosed only to the following persons:

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2 (a) Counsel for the parties, parties, and to experts, investigators, paralegal
3 assistants, office clerks, secretaries and other such personnel working under
4 their supervision.

5 (b) Such other parties as may be agreed by written stipulation among the parties
6 hereto, or by Court order.

7 13. Prior to the disclosure of any Confidential Information to any person
8 described in paragraph 12(a) or 12(b), counsel for the party that has received and seeks
9 to use or disclose such Confidential Information shall first provide any such person with
10 a copy of this stipulation, and shall cause him or her to execute, on a second copy which
11 counsel shall thereafter serve on the other party the following acknowledgment:

12 "I understand that I am being given access to Confidential
13 Information pursuant to the foregoing stipulation and order. I
14 have read the Order and agree to be bound by its terms with
15 respect to the handling, use and disclosure of such Confidential
16 Information.

17 Dated: _____/s/_____"

18 14. Upon the final termination of this litigation, including any appeal pertaining
19 thereto, all Confidential Information and all copies thereof shall be returned to the
20 Defendants City of Los Angeles through the City Attorney's Office.

21 15. If any party who receives Confidential Information receives a subpoena or
22 other request seeking Confidential Information, he, she or it shall immediately give written
23 notice to the Defendants' counsel, identifying the Confidential Information sought and the
24 time in which production or other disclosure is required, and shall object to the request or
25 subpoena on the grounds of this stipulation so as to afford the Defendants an opportunity
26 to obtain an order barring production or other disclosure, or to otherwise respond to the
27 subpoena or other request for production or disclosure of Confidential Material. Other
28 than objecting on the grounds of this stipulation, no party shall be obligated to seek an

1 order barring production of Confidential Information, which obligation shall be borne by
2 the Defendants. However, in no event should production or disclosure be made without
3 written approval by the Defendants' counsel unless required by court order. ~~arising from~~
4 ~~a motion to compel production or disclosure of Confidential Information.~~

5 16. Any pleadings, motions, briefs, declarations, stipulations, exhibits or other
6 written submissions to the Court in this litigation which contain, reflect, incorporate or
7 refer to Confidential Information shall be **submitted with an application that the**
8 **document be filed and maintained under seal either pursuant to Ex Parte**
9 **Application and Order of the Court or Stipulation of the parties and Order of the**
10 **Court. (Local Rule 79-5, et seq.) and in accordance with the District Court's existing**
11 **Pilot Program for the filing of sealed documents. Good cause for the under seal**
12 **filing must be shown.** If a document or pleading submitted to the Court, as described in
13 this paragraph, makes only a general reference to any document or information contained
14 therein covered by this protective order, but does not quote or describe its contents in any
15 specific way, and does not include the protected document itself, then the party or parties
16 need not enter into a Stipulation or otherwise seek an order to file the documents under
17 seal. In entering into a Stipulation for the filing of Confidential Information under seal,
18 neither one of the parties waives its right to object to the admissibility of said information
19 in connection with that proceeding or to move to exclude said information prior to or
20 during the time of trial.

21 17. The parties agree that the spirit of confidentiality as protected in this order
22 will apply to all proceedings. To that end, before any protected document or any
23 information derived therefrom is to be put forward, admitted into evidence, discussed in
24 detail or otherwise publicized in Court, the party raising the protected document will
25 inform the other parties and allow for a motion to the Court to close the proceedings to the
26 public.

27 18. Nothing herein shall prejudice any party's rights to object to the introduction
28 of any Confidential Information into evidence, on grounds including but not limited to

1 relevance and privilege.

2 19. During the course of depositions, when counsel makes an objection to a
3 question concerning a protected document or information contained therein, which is the
4 subject of this Stipulation and protective order, or concerning a general area that counsel
5 believes should be covered by the scope of this Stipulation and protective order, those
6 witnesses (as identified in Paragraph 3(a) herein) may answer the question, without
7 waiving the objections, and the questions and answers to those questions will be sealed
8 and covered by the terms of this protective order. Counsel and the parties reserve the right
9 to object to the disclosure of confidential or private information which is not the subject
10 of this Stipulation and protective order. Any documents deemed confidential pursuant to
11 this protective order will be sealed, if they are used as exhibits in any deposition. This
12 agreement does not waive any objections counsel may make, including objections
13 unrelated to the reasons for this protective order.

14 20. Each person receiving or reviewing Confidential Information must
15 consent to the jurisdiction of the United States District Court for the Central District of
16 California, including the Magistrate Judge assigned to this case, with respect to any
17 proceeding relating to enforcement of this Order, including, without limitation, any
18 proceeding for contempt and/or monetary sanctions

19 21. This Protective Order survives until the time the commencement of trial.
20 The parties hereto, however, may make a request to the District Judge, in advance of
21 trial, that the Confidential Information disclosed pursuant to the Protective Order
22 remain confidential and/or be kept and maintained pursuant to the terms of the
23 Protective Order.

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1 22. This Stipulation may be signed in sub-parts and may be transmitted by
2 facsimile as if it was the original document. Defendants will lodge this executed
3 Stipulation with the Court for approval.
4

5 ***IT IS SO ORDERED.***

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7 *Carla M. Woehrle*

8 Dated: March 31, 2014

By: _____
HONORABLE CARLA M. WOEHRLE
UNITED STATES MAGISTRATE JUDGE

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