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

ERIK ELZY,
Plaintiff,
vs.
**TORRANCE POLICE
DEPARTMENT, OFFICER #18848,
OFFICER 18061 and OFFICER
#16459**
Defendants.

CASE NO. CV15-9559 GW (RAOx)

Hon. George H. Wu
Courtroom 10 – Spring St.

Hon. Rozella A. Oliver, Magistrate Judge
Courtroom F – Spring St.

**PROTECTIVE ORDER RE
CONFIDENTIAL DOCUMENTS**

*[Motion for Protective Order; and
Declaration of Della Thompson-Bell
filed concurrently herewith]*

**Date: February 24, 2016
Time: 10:00 a.m.
Courtroom: F**

**Complaint Filed: 12/11/15
Trial Date: Not Set**

Defendants, A. FONTANEZ, G. SANDOVAL, P. YAPELLI and
CITY OF TORRANCE’s Motion for Protective Order Regarding
Confidential Documents came regularly for hearing on February 24, 2016, at
10:00 a.m., before the Honorable Rozella A. Oliver, Magistrate Judge.

1 After considering the moving, opposing and reply papers and having
2 have heard oral argument, the Court grants Defendants' Motion for
3 Protective Order Regarding Confidential Documents.

4 IT IS HEREBY ORDERED that:

5 1. The parties, in the production or disclosure of documents,
6 records, information, or tangible things in this case (hereafter "documents")
7 may designate certain documents as "Confidential" (collectively herein as
8 "Confidential Documents"). The types of documents which may be
9 designated as Confidential Documents hereunder include: (1) peace officer
10 personnel files and all records which are typically contained within or
11 associated with such peace officer personnel files according to the regular
12 practices of the law enforcement agency which is the custodian of such
13 records – including but not limited to internal affairs investigations and
14 related interviews and reports, peace officer personal financial and asset
15 information, peace officer medical records in the custody of the peace
16 officer's law enforcement agency employer, records regarding peace
17 officer discipline, associated law enforcement agency employment/internal
18 affairs investigations and related interviews and reports, interviews and
19 reports related to personnel complaints by peace officers and/or citizen
20 complaints against peace officers, and peace officer training records; and
21 (2) comparable records of the parties that may otherwise be privileged from
22 disclosure but which the parties may agree to produce pursuant to the terms
23 of this [Proposed] Protective Order, including a party's medical records,
24 financial records, or other privileged or confidential records, documents, or
25 information. However, nothing in this [Proposed] Protective Order shall be
26 construed as to *require* or mandate that any party disclose or produce
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1 privileged information or records or other Confidential Documents in this
2 action.

3 2. This [Proposed] Protective Order also requires each party to
4 this action to return the Confidential Documents produced to that party at the
5 conclusion of this lawsuit, subject to certain exceptions specified *infra*: this
6 requirement is intended to ensure that the use of Confidential Documents is
7 limited to the particular case in which the facts or documents are relevant or
8 at issue. This [Proposed] Protective Order applicable only to the above
9 entitled matter and may not be used in the proceedings of any other matter
10 for the purpose of establishing good cause for a similar stipulation or
11 protective order, nor as a basis for any contention that certain documents or
12 records should or should not be produced in another matter.

13 3. The mechanism by which parties may designate documents as
14 Confidential Documents is either: (a) by marking the individual documents
15 as being “Confidential,” such as on the footer of a specific/individual
16 document, or (b) by enclosing, with the documents such party intends to be
17 treated as Confidential Documents hereunder, written disclosures or
18 discovery responses or correspondence specifically and individually
19 identifying those enclosed documents as “Confidential” such party intends to
20 be treated as Confidential Documents hereunder. The preferred method of
21 designating documents as Confidential Documents is to employ all of the
22 aforementioned means of designation, but such is not required hereunder.

23 4. Documents marked as “Confidential” shall be so marked in a
24 manner that does not obstruct the substance of that document’s text or
25 content. No party shall be permitted to alter or copy a document or record
26 designated as “Confidential” so as to make it appear that such copy of such
27 document or record was not a Confidential Document subject to the terms
28 of this [Proposed] Protective Order; such alteration or copying shall subject

1 the party or counsel who engages in such action regarding such documents
2 to sanctions, at the discretion of the Court. Nothing in this paragraph shall
3 be construed so as to prohibit transparent “highlighting” of any
4 Confidential Document for emphasis, provided that prior to filing any such
5 “highlighted” document with the Court and/or prior to publishing such
6 “highlighted” document to the finder of fact or jury in this matter, the party
7 adding such “highlighting” emphasis informs the Court or the fact finder,
8 as applicable, that the “highlighting” party has added such “highlighting”
9 emphasis to the document at issue.

10 5. Hereafter, a party who has designated documents as
11 Confidential Documents shall be referred to as the “producing-disclosing
12 party [or counsel]” and the party to whom such documents are produced or
13 disclosed shall be referred to as the “recipient party [or counsel].”

14 6. Confidential Documents shall be used only in preparation for
15 the above entitled action, up to and including the completion of judicial
16 proceedings, as well as any appellate phase of this action, and not for *any*
17 other purpose, including any other litigation or dispute, and may not be
18 disclosed or disseminated to any other persons, including to any other
19 counsel, other than as set forth in this [Proposed] Protective Order.

20 7. In the event that a recipient party or counsel contends that any
21 Confidential Documents were already in the possession of that party, or that
22 party’s counsel, prior to the date of this Protective Order, or prior to such
23 documents’ production in this matter by the producing-disclosing party, the
24 recipient party or counsel shall have the burden of proving that any such
25 documents were in fact already in the possession of the recipient party or
26 that party’s counsel prior to the date of this Protective Order, or prior to
27 such documents’ production in this matter.

1 8. The parties shall attempt to resolve any issue regarding
2 such disputed documents or records pursuant to Federal Rule of Civil
3 Procedure 37(a)(1) before submitting any such dispute-issue to the
4 Court.

5 9. Notwithstanding the foregoing, and despite any dispute as
6 to whether any documents produced should be subject to the terms of
7 the [Proposed] Protective Order as a result of prior possession, the
8 parties will continue to treat the document(s) at issue as confidential
9 and subject to this Protective Order until the Court rules upon the
10 dispute or until the parties reach agreement on the issue, whichever
11 comes first.

12 10. If, upon review of such a dispute, the Court determines that the
13 disputed Confidential Documents were already in the possession of the
14 recipient party or counsel prior to the date of this [Proposed] Protective
15 Order, or prior to such documents' production in this matter, those specific
16 documents shall not be subject to the provisions on destruction of copies (§
17 24) nor to the provisions on return of documents at the conclusion of
18 litigation (§ 25), nor shall the recipient party or counsel be prohibited from
19 using those specific documents in other litigation or at trial of this action:
20 otherwise, the remaining provisions of this [Proposed] Protective Order shall
21 continue to apply to such documents as Confidential Documents hereunder.

22 11. The recipient parties to the above entitled action, and/or their
23 counsel, and/or their agents or the agents or employees of their counsel,
24 shall secure and maintain the confidentiality of any and all Confidential
25 Documents in their possession, and shall ensure that such Confidential
26 Documents are used only for the purposes set forth herein below, and for
27 no other purpose, and subject to the terms and provisions of this [Proposed]
28 Protective Order.

1 12. Nothing in this [Proposed] Protective Order shall be construed
2 so as to prevent the admission of Confidential Documents into evidence at
3 the trial of this matter, or in appellate proceedings on this matter, solely on
4 the basis of the documents' designation as Confidential Documents.

5 13. Nothing in this [Proposed] Protective Order shall affect any
6 right that any party would otherwise have to object to disclosing or
7 producing any information or documents on any ground not specifically
8 addressed in this Protective Order, including but not limited to objections
9 pursuant to the California Government Code, California Evidence Code,
10 California Penal Code, the Official Records Privilege, the federal Official
11 Information Privilege, the federal Executive Deliberative Process Privilege,
12 the law enforcement-investigative privilege, the attorney-client privilege,
13 the physician-patient privilege, the therapist-patient privilege, the attorney
14 work product protection, the taxpayer privilege, or the right to Privacy
15 under the United States Constitution, the California Constitution or any
16 other applicable state or federal authority (as underscored and/or
17 augmented by the statutory peace officer personnel records privileges
18 pursuant to California Penal Code sections 832.5 through 832.8, as well as
19 California Evidence Code sections 1040 through 1048, and the associated
20 case law), or any other privilege against disclosure or production available
21 under any provision of federal or California law. Nothing in this [Proposed]
22 Protective Order shall be construed as *requiring* the production or
23 disclosure of documents or information that may be or have been
24 designated as Confidential Documents. Nothing in this [Proposed]
25 Protective Order shall affect any right any party would otherwise have to
26 obtain, acquire, or discover documents or records from any party to the
27 extent permitted under federal or California law, as applicable.

1 14. Confidential Documents produced in this action shall remain
2 in the sole custody of recipient counsel to whom such documents are
3 produced, who shall be prohibited from releasing or disseminating, to any
4 other persons – including but not limited to legal counsel – any or all such
5 Confidential Documents, except as specifically delineated in this
6 [Proposed] Protective Order.

7 15. All those permitted by a recipient counsel or party to review
8 any Confidential Documents must be informed of the terms of this
9 [Proposed] Protective Order and must agree to abide by such [Proposed]
10 Protective Order before the recipient party or counsel may produce or
11 disclose such documents to such person(s).

12 16. Confidential Documents may be disseminated, released,
13 copied, shared, or otherwise reproduced by a recipient party or counsel
14 only to the following persons:

- 15 (a) counsel for any party to this action who is also a party to this
16 Stipulation;
- 17 (b) paralegal, stenographic, clerical and/or secretarial personnel
18 regularly employed by counsel referred to in paragraph (a);
- 19 (c) court personnel, including stenographic reporters engaged in such
20 proceedings as are necessary incident to preparation for the trial
21 and pretrial proceedings in the above entitled action;
- 22 (d) any outside expert or consultant retained in connection with this
23 action, and not otherwise employed by either of the parties –
24 provided that such expert or consultant understands and agrees to
25 abide by the terms of this [Proposed] Protective Order;
- 26 (e) any “in-house” or outside experts designated by the defendant(s)
27 to testify at trial in this matter; and/or
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1 (f) any party or witnesses to this action, provided that such party or
2 witness understands and agrees to abide by the terms of this
3 [Proposed] Protective Order.

4 17. Confidential Documents may be submitted in all law and
5 motion proceedings before the Court if done so under seal pursuant to
6 Federal Rules of Civil Procedure 5.2 and 26 and/or United States District
7 Court, Central District of California Local Rules 79-5.1 and 79-5.2 as
8 applicable and pursuant to the provisions of this paragraph. If any party
9 attaches any Confidential Documents to any pleading, motion, or other
10 paper to be filed, lodged, or otherwise submitted to the Court, that
11 Confidential Document(s) shall be filed/lodged under seal pursuant to
12 Federal Rules of Civil Procedure 5.2 and 26 and/or United States District
13 Court, Central District of California Local Rules 79-5.1 and 79-5.2 to the
14 extent applicable. However, this paragraph shall not be construed so as to
15 prevent a producing-disclosing party or counsel from submitting, filing,
16 lodging, or publishing any document it has previously designated as a
17 Confidential Document without compliance with this paragraph's
18 requirement to do so under seal (i.e., a producing-disclosing party or
19 counsel may submit or publish its own Confidential Documents without
20 being in violation of the terms of this [Proposed] Protective Order).

21 18. Furthermore, a recipient party or counsel shall be exempted
22 from the requirements of the foregoing paragraph (§ 17) as to any
23 specifically identified Confidential Document(s) where the counsel for the
24 producing-disclosing party of such specifically identified Confidential
25 Document(s) serves an express, written waiver as to such specifically
26 identified Confidential Document(s) prior to the submission or publication
27 of the Confidential Document(s) at issue, either upon request by a recipient
28 party or upon the producing-disclosing party's own initiative. A recipient

1 party or counsel shall also be exempted from the requirements of such
2 paragraph as to any specifically identified Confidential Document(s) where
3 such Confidential Document(s) is/are not documents, records, or
4 information regarding (1) private, personal information contained in peace
5 officer personnel files (such as social security numbers, driver's license
6 numbers or comparable personal government identification numbers,
7 residential addresses, compensation or pension or personal property
8 information, credit card numbers or credit information, dates of birth, tax
9 records and information, information related to the identity of an officer's
10 family members or co-residents, and comparable personal information
11 about the officer or his family); (2) any internal affairs or comparable
12 investigation by any law enforcement agency into alleged officer
13 misconduct; or (3) the medical records or records of psychiatric or
14 psychological treatment of any peace officer or party to this action. The
15 parties shall confer in good faith regarding any request for waiver from this
16 sealing requirement. Prior to submitting in any law and motion
17 proceedings before the Court any Confidential Document(s) exempted
18 from the sealing requirement of this [Proposed] any associated Protective
19 Order, a recipient party or counsel shall confer in good faith with the
20 producing-disclosing party or counsel on the issue of whether the parties
21 can agree on whether such exempted Confidential Document(s) should be
22 filed under seal or whether, if the parties cannot agree, the producing-
23 disclosing party or counsel should move to have such Confidential
24 Document(s) placed under seal by the Court. Additionally, nothing in this
25 paragraph shall be construed to bind the Court so as to limit or prevent the
26 publication of any Confidential Documents to the jury or fact finder, at the
27 time of trial of this matter, where the Court has deemed such Confidential
28 Documents to be admissible into evidence.

1 19. Nothing in this [Proposed] Protective Order shall be construed
2 as requiring a producing-disclosing party or counsel to waive the
3 requirements hereunder of filing, lodging, or otherwise submitting
4 confidential Documents to the Court only pursuant to the terms of this
5 Protective Order and/or to applicable federal or local rules.

6 20. If, in connection with any deposition taken in this action,
7 counsel questions a witness regarding materials subject to this [Proposed]
8 Protective Order, or use(s) Confidential Documents as deposition exhibits,
9 at the request of opposing counsel or party, the portions of the transcripts of
10 such deposition testimony wherein such materials are discussed, and the
11 applicable attached exhibits, shall be designated as Confidential
12 Documents and shall be subject to the provisions of this [Proposed]
13 Protective Order. However, only deposition *exhibits* that are designated as
14 Confidential Documents shall be subject to the end-of-litigation return
15 requirement of this [Proposed] Protective Order, *infra* (¶¶ 24-25);
16 deposition *transcripts* designated as Confidential Documents shall *not* be
17 subject to the aforementioned end-of-litigation return requirement of this
18 [Proposed] Protective Order.

19 21. This [Proposed] Protective Order is not intended, and shall not
20 be construed, to prevent current officials or current employees of the City,
21 or Police Department, or Defendant(s), or other authorized government
22 officials, from having access to any document(s) to which such officials or
23 employees would have had access in the normal course of their job duties.

24 22. Confidential Documents shall not be shown, produced, shared,
25 copied to, published, or otherwise disseminated or produced to any person
26 by any recipient party or counsel, or their agents or persons to whom such
27 recipient party or counsel discloses or produces such Confidential
28 Documents, other than as specified in this [Proposed] Protective Order.

1 23. Confidential Documents shall not be shown, produced, shared,
2 copied to, published, or otherwise disseminated or produced by any
3 recipient party or recipient party's counsel, or their agents or employees, to
4 any member of the press or news or entertainment media under any
5 circumstances or at any time.

6 24. Electronic copies of any Confidential Documents may be made
7 by any recipient party or counsel but such copies, and their dissemination
8 by any means or medium, shall also be subject to the terms of this
9 [Proposed] Protective Order, and all such copies in the possession of any
10 recipient party or counsel, or their agents, shall be destroyed or permanently
11 deleted at the conclusion of the legal proceedings in the above entitled
12 matter.

13 25. At the conclusion-end of the legal proceedings in the above
14 entitled matter, each person or entity – except court personnel – who has
15 received any Confidential Documents, or any copy thereof, and who is not
16 the producing-disclosing party thereof, shall return all such Confidential
17 Documents to the producing-disclosing counsel within thirty (30) calendar
18 days of the conclusion of such proceedings, or be subject to monetary or
19 other sanctions at the Court's discretion. No recipient party or counsel may
20 retain any Confidential Documents, or copies thereof, or permit any person
21 or entity to whom the recipient party or counsel provided such document(s)
22 to retain any Confidential Documents, after legal proceedings in the above
23 entitled matter have concluded.

24 26. All counsel in the above entitled action specifically agree not
25 to cause or knowingly permit any disclosure or production of any
26 Confidential Documents, or the contents thereof, except as permitted by the
27 terms of this [Proposed] Protective Order.
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1 27. Any restriction or obligation of this [Proposed] Protective
2 Order that applies to any recipient party likewise applies to any recipient
3 counsel, and vice versa.

4 28. In the event that any party, person, or entity subject to the
5 terms of this [Proposed] Protective Order violates the terms or provisions
6 thereof, in a manner consistent with the requirements of Due Process and
7 the applicable provisions governing motions for sanctions under federal
8 law, including but not limited to the Federal Rules of Civil Procedure and
9 the United States District Court, Central District of California Local Rules,
10 to the extent applicable, at the Court's discretion, the Court may impose
11 sanctions against the party, person, or entity that the Court finds to have
12 violated of the terms of this [Proposed] Protective Order. However, nothing
13 in this paragraph shall be construed so as to subject *counsel* for any party in
14 the above entitled action to sanctions for any violation(s) of this [Proposed]
15 Protective Order that are committed by other persons or entities – including
16 but not limited to any agent or employee of any recipient party or counsel or
17 any consultants or experts retained by any recipient party or counsel –
18 provided that, in the event of the filing of a motion for sanctions for
19 violation of the terms of this Protective Order, or within thirty (30) days of
20 the termination of this action (whichever is sooner), recipient counsel files a
21 sworn declaration with this Court affirming that: (a) the alleged violator was
22 informed of all of the applicable terms and provisions of this [Proposed]
23 Protective Order prior to being provided with any Confidential Documents;
24 (b) the alleged violator agreed to abide by the applicable terms and
25 provisions of this [Proposed] Protective Order prior to being provided with
26 any Confidential Documents; and (c) the recipient party and recipient
27 counsel otherwise complied with the end-of-litigation return/destruction
28 provisions of this [Proposed] Protective Order (*e.g.*, ¶¶ 24-25), to the extent

1 applicable. Nothing in this [Proposed] Protective Order shall be construed
2 as providing for sanctions or the enforcement of any Court orders beyond
3 the powers conferred upon the Court under existing law.

4 29. The provisions of this Protective Order shall be in effect until
5 further Order of the Court or written Stipulation by the parties by and
6 through their attorneys of record.

7
8 **IT SO ORDERED.**

9
10 Dated: February 9, 2016

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12 _____
13 UNITED STATES MAGISTRATE JUDGE