

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA – FRESNO DIVISION

KIMBERLY BARSAMIAN,

Plaintiff,

vs.

CITY OF KINGSBURG, MARTIN SOLIS,
individually and in his official capacity as a
Police Officer for the City of Kingsburg Police
Department and DOES 1 through 100,
inclusive,

Defendants.

Case No. 1:07-cv-00316 OWW/GSA

**ORDER ALLOWING DEFENDANT,
MARTIN SOLIS', FILINGS OF
MOTIONS IN LIMINE 1 THROUGH 6
AND MOTION TO ADMIT EVIDENCE
OF PRIOR AND POST-INCIDENT
SEXUAL ACTS UNDER SEAL**

Date: February 20, 2009

Time: 12:15 p.m.

Courtroom: 3

Trial: March 3, 2009

On July 23, 2007, the Court entered a protective order related to certain documents based on a stipulation between the parties. (Document 16) In the Stipulation, Defendant City of Kingsburg indicated its belief that documents requested by Plaintiff Kimberly Barsamian including the personnel file of Martin Solis, contain information that is:

1. Confidential, sensitive, or potentially invasive of an individual's privacy interest as protected by Article I, § 1 to the California Constitution;
2. Protected from disclosure pursuant to the provisions of California Penal Code §§ 832.5 AND 832.7, as well as Evidence Code § 1045;

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3. Substantially and sufficiently dissimilar in nature so as to be irrelevant and not subject to production;
4. Not generally known or available to the general public; and/or
5. Not normally revealed to the public or third parties or, if disclosed to third parties would require such third parties to maintain the information in confidence.

5 Pursuant to said stipulation and order, on January 9, 2009, Defendant, Martin
6 Solis, filed the following Motions:

1. Motion in Limine Number 1 to Exclude Lay and Expert Testimony (Opinion) as to Whether Plaintiff Consented to Oral Sex with Officer Martin Solis;
2. Motion in Limine Number 2 to Exclude Plaintiff's Expert Testimony and Opinion as to Plaintiff's Damages;
3. Motion in Limine Number 3 to Exclude Witnesses from the Courtroom Prior to His or Her Testimony;
4. Motion in Limine Number 4 to Exclude Testimony Regarding Insurance and/or Indemnity;
5. Motion in Limine Number 5 to Exclude Testimony Regarding Settlement Offers; and,
6. Motion in Limine Number 6 to Exclude Incidents Involving Martin Solis Prior to the Subject Incident.

15 Further, pursuant to the stipulation and order, and Federal Rules of Evidence,
16 Rule 412(c)(2), on January 10, 2009, Defendant, Martin Solis, filed the following Motion:

1. Motion to Admit Evidence of Prior and Post-Incident Sexual Acts (Fed Rule of Evid, Rule 412(b)(2)).

19 Defendant Martin Solis has requested the Court seal the above-entitled
20 documents due to the sensitivity and nature of said documents not only with regard to
21 privileged information concerning Officer Solis, but also as to Plaintiff.

Analysis

24 Defendant Martin Solis has asserted a constitutional right of privacy based on the
25 California Constitution and protections from disclosure based on the California Penal
26 Code and Evidence Code sections, as well as general objections that the documents are
27 not generally known, available or revealed to the public. In federal question cases,
28 privileges asserted in Federal Rules of Evidence, Rule 501; United States v. Zolin, 491

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1 U.S. 554, 562 (1989); Kerr v. United States District Court for the Northern District of
2 California, 511 F.2d 192, 197 (9th Cir. 1975). Federal common law recognizes a qualified
3 privilege for official information, also known as the governmental privilege, or state secret
4 privilege. Kerr, 511 F.2d at 198. The application of the official information privilege is
5 “contingent upon the competing interests of the requesting litigant and subject to
6 disclosure especially where protective measures are taken.” Id. Ana, 936 F.2d 1027,
7 1033 (9th Cir. 1990) (finding city police personnel files not subject to discovery for general
8 search). To determine whether the information sought is privileged, courts must “weigh
9 the potential benefits of disclosure against the potential disadvantages.” Id. At 1033-
10 1034.

12 Further, with regard to the Motion to Admit Evidence of Prior and Post-Incident
13 Sexual Acts, Federal Rules of Evidence, Rule 412(c)(2) states as follows:

15 Before admitting evidence under this rule the court must conduct a hearing
16 in camera and afford the victim and parties a right to attend and be heard.
17 The motion, related papers, and the record of the hearing must be sealed
18 and remain under seal unless the court orders otherwise.

19 After conducting an *in camera* review, the court finds that the above-mentioned
20 documents are sensitive in nature and privileged under California Constitution, and
21 should be filed under seal.

22 IT IS SO ORDERED.

23 DATED: February 10, 2009

24 /s/ OLIVER W. WANGER
25 UNITED STATES JUDGE
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