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8 **UNITED STATES DISTRICT COURT**  
9 **EASTERN DISTRICT OF CALIFORNIA – FRESNO DIVISION**  
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11 KIMBERLY BARSAMIAN,

12 Plaintiff,

13 vs.

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

17 Defendants.  
18

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

**ORDER ALLOWING DEFENDANT,  
MARTIN SOLIS', FILING OF TRIAL  
BRIEF UNDER SEAL**

**Trial: March 3, 2009**

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

- 25
- 26 1. Confidential, sensitive, or potentially invasive of an individual's privacy  
interest as protected by Article I, § 1 to the California Constitution;
  - 27 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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ORDER ALLOWING DEFENDANT, MARTIN SOLIS', FILING OF TRIAL BRIEF UNDER SEAL

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.

Pursuant to said stipulation and order, on February 17, 2009, Defendant, Martin Solis, needs Court approval to file the following document under seal:

1. Defendant, Martin Solis', Trial Brief.

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

### **Analysis**

Defendant Martin Solis has asserted a constitutional right of privacy based on the California Constitution and protections from disclosure based on the California Penal Code and Evidence Code sections, as well as general objections that the documents are not generally known, available or revealed to the public, including those that are regarding Plaintiff's sexual history. In federal question cases, privileges asserted in Federal Rules of Evidence, Rule 501; United States v. Zolin, 491 U.S. 554, 562 (1989); Kerr v. United States District Court for the Northern District of California, 511 F.2d 192, 197 (9<sup>th</sup> Cir. 1975). Federal common law recognizes a qualified privilege for official information, also known as the governmental privilege, or state secret privilege. Kerr, 511 F.2d at 198. The application of the official information privilege is "contingent upon the competing interests of the requesting litigant and subject to disclosure especially where protective measures are taken." Id. Ana, 936 F.2d 1027, 1033 (9<sup>th</sup> Cir. 1990) (finding city police personnel files not subject to discovery for general search). To

1 determine whether the information sought is privileged, courts must “weigh the potential  
2 benefits of disclosure against the potential disadvantages.” Id. At 1033-1034.

3 After conducting an *in camera* review, the court finds that the above-mentioned  
4 document is sensitive in nature and privileged under California Constitution, and should  
5 be filed under seal.

6 IT IS SO ORDERED.

7 DATED: February 19, 2009

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9 /s/ OLIVER W. WANGER  
10 UNITED STATES JUDGE  
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