

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
EASTERN DISTRICT OF CALIFORNIA**

RAMIRO HUERTA,
Plaintiff,
v.
COUNTY OF TULARE, et al.,
Defendants.

Case No. 1:17-cv-01446-EPG

ORDER

- 1) GRANTING DEFENDANTS’
MOTION FOR CONTEMPT**
- 2) DENYING PLAINTIFF’S MOTION
TO COMPEL WITHOUT
PREJUDICE**
- 3) GRANTING IN PART
PLAINTIFF’S MOTION TO SEAL
AND STRIKE DOCUMENT ECF
NO. 62**
- 4) STAYING CASE PENDING
CRIMINAL CASE**

(ECF Nos. 53, 54, 67)

The Court has before it Defendants’ Motion for Contempt (ECF No. 53), Plaintiff’s Motion to Compel (ECF No. 54), and Plaintiff’s Motion to Seal and Strike Document, ECF No. 62 (ECF No. 67.)

As described at the hearing on the motion for contempt, and as discussed more fully in this order, Plaintiff’s counsel has repeatedly violated their own representations to this Court and this Court’s clear orders. This was not a small oversight or technicality.

On July 2, 2018, Defendants filed a motion to stay this civil case pending the parallel criminal proceedings against Plaintiff, Ramiro Huerta. (ECF No. 31.) This Court denied the motion to stay based on Plaintiff’s promise, affirmed in the Court’s order, that “Plaintiff and his

1 counsel are prohibited from using in his pending criminal case any documents or other evidence
2 produced by Defendants in this civil proceeding unless such documents or other evidence are
3 independently obtained through the pending criminal case.” (ECF No. 36.) Just four months
4 later, Plaintiff’s counsel filed a motion *in limine* in the criminal case based on evidence
5 produced in the civil case. Plaintiff’s counsel attached to the motion *in limine* deposition
6 testimony obtained solely through this civil proceeding and argued that, based on that evidence,
7 “no reasonable jury could find that [the prosecution] could prove the charges beyond a
8 reasonable doubt.” (ECF No. 53-1 at 7.) Because Plaintiff’s counsel clearly violated the terms
9 of this Court’s order, the Court grants Defendants’ Motion for Contempt and stays this civil
10 case while Plaintiff’s criminal case is pending.

11 Although the Court denied Defendant’s motion to fully stay this case, the Court also
12 ordered a stay of discovery of Defendants’ personnel files—“the Court grants a stay of
13 discovery of Defendants’ personnel files”—until the criminal court ruled on the related motion
14 in the criminal case and the parties had either reached agreement in the civil case or brought the
15 dispute to this Court’s attention. (ECF No. 36.) Notwithstanding this stay, Plaintiff’s counsel
16 issued subpoenas seeking Defendants’ personnel files. (*See* ECF No. 60-4.) The issuance of
17 these subpoenas also violated the clear terms of the Court’s order and warrants a finding of
18 contempt and a stay of this case.

19 The Court accordingly grants Defendants’ Motion for Contempt and denies Plaintiff’s
20 Motion to Compel without prejudice. The Court also grants in part the Motion to Seal and
21 Strike Document, ECF No. 62; and stays this case pending the resolution of the related criminal
22 case.

23 **I. BACKGROUND**

24 **A. Defendants’ Motion to Stay**

25 Defendants moved to stay this civil case on July 2, 2018. (ECF No. 31 (“Defendants will
26 move for an Order staying discovery currently directed to them and preventing any future
27 discovery in the civil action until final disposition of the criminal action currently pending in the
28 Tulare County Superior Court known as *People v. Ramiro Huerta* (Case No. PCM358718).

1 Defendants also seek an order of protection prohibiting Mr. Huerta and his counsel from using
2 any documents or other evidence obtained in the civil action in any other action, and
3 specifically his criminal action(s).”) In support of their motion, Defendants argued that “both
4 California and federal law weigh heavily in favor of granting a temporary stay of civil discovery
5 proceedings pending disposition of Mr. Huerta’s related criminal matter. Absent a stay in the
6 civil matter, Mr. Huerta’s quest for information will effectively circumvent the criminal justice
7 process and remove the very protections and integrity the system is founded upon.” (ECF No.
8 31 at 3.) Defendants noted that Plaintiff’s counsel in this case was the same as his counsel in the
9 criminal action, raising the risk that counsel would use in the criminal case discovery obtained
10 through this civil case. Defendants further argued: ““Allowing for competing civil and criminal
11 cases to proceed simultaneously would undermine the public’s right to fair and efficient
12 prosecution of its criminal laws.’ *S.E.C. v. Nicholas*, 569 F. Supp. 2d 1065, 1067 (2008). . . .
13 Absent a stay of civil discovery, Mr. Huerta would be permitted to go around the criminal
14 justice discovery process, thereby removing the protections, integrity and truth-seeking function
15 of the criminal process.” (ECF No. 31 at 15.)

16 Plaintiff opposed the motion to stay. (ECF No. 32.) In the very first section of his
17 opposition, in his Summary of the Argument, Plaintiff stated:

18 During the course of the conference call with the Court and counsel, Plaintiff
19 agreed that, with the exception of initial disclosures, any documents or evidence
20 produced in the civil case *that was not independently produced in the criminal*
21 *case* could not be used in the criminal case. Thus, there is no dispute with respect
22 to the parameters of a protective order already agreed to by Plaintiff. . . . Given
23 the agreed upon protective order, there is no basis to issue a discovery stay
24 pending completion of the criminal trial. . . . Finally, any of the issues raised by
25 overlap of discovery in the criminal and civil case are addressed by the protective
26 order

27 (ECF No. 32 at 2 (emphasis in original).) Plaintiff concluded his opposition to the stay by
28 stating: “Based upon the foregoing, a protective order should issue whereby, with the exception
of initial disclosures, evidence obtained in the civil case is not admissible in the criminal case
unless independently obtained in the criminal case. An additional order should issue denying
Defendants’ request for a discovery stay.” (ECF No. 32 at 10.)

1 **B. Court’s Ruling Staying Discovery of Defendants’ Personnel Files and**
2 **Restricting Use of Documents obtained in Civil Case**

3 At the hearing on Defendants’ motion to stay, the Court explained that, with the
4 protective order prohibiting discovery in the civil case to be used in the criminal case, the Court
5 was inclined to allow discovery in the civil case to proceed—with the exception of discovery of
6 Defendants’ personnel files—because there would be no prejudice to Defendants. As to
7 Defendants’ personnel files, the Court was concerned because the scope of discovery of
8 personnel files differs between criminal and civil cases and thus a stay of discovery of the
9 personnel files in this civil case was warranted. (ECF No. 52 at 5 (“But tentatively, I really only
10 see one part that I think is potential prejudice, especially in light of the agreement which should
11 be written down in a protective order that information and discovery in the civil case is not used
12 in the criminal case, absent it being independently available in the criminal case. But there is
13 one place that there appears to be an argument of prejudice, and that has to do with the Pitchess
14 motion/personnel files. And there is at least an allegation by Defendants that there could be
15 something learned out of the civil proceedings that could be used in forming an argument in the
16 criminal proceedings. . . . As a judge, I would prefer to see what they do in the criminal case
17 before I decide it in the civil case.”).)

18 Accordingly, the Court granted in part and denied in part Defendants’ motion to stay. The
19 Court granted a stay of all discovery regarding Defendants’ personnel files, but allowed other
20 discovery to proceed with the clear limitation that discovery and evidence obtained in the civil
21 case could not be used in the criminal case unless independently obtained in the criminal case.

22 The Court’s order following the hearing states:

23 After hearing from the parties and considering the record, the Court GRANTS IN
24 PART and DENIES IN PART the pending motion. As stated and explained on the
25 record, the Court grants a stay of discovery of Defendants’ personnel files until
26 after the court in the criminal proceeding rules on Plaintiff’s anticipated Pitchess
27 motion or otherwise rules on the scope of discovery of Defendants’ personnel
28 files in the criminal proceedings. Once that ruling in the criminal proceeding has
been issued, the parties are directed to meet and confer regarding discovery of
Defendants’ personnel files in this civil case. After this meet and confer has
occurred, Plaintiff has leave to file a motion to compel, if needed, regarding the

1 discovery of Defendants' personnel files without any informal conference with
2 the Court. . . . The Court reiterates and extends its previous ruling that, with the
3 exception of Defendants' initial disclosures, Plaintiff and his counsel are
4 prohibited from using in his pending criminal case any documents or other
evidence produced by Defendants in this civil proceeding unless such documents

5 (ECF No. 36.)

6 **C. Defendants' Motion for Contempt and Sanctions**

7 On January 23, 2019, Defendants filed the Motion for Contempt, arguing that Plaintiff
8 violated the Court's protective order by using information obtained in the civil case to support a
9 motion *in limine* filed in the criminal case. (ECF No. 53.) Defendants attached to their Motion
10 for Contempt a copy of the motion *in limine* that Plaintiff's counsel in this case (i.e., Mr.
11 Huerta's defense counsel in the criminal case) had filed in the criminal case on Plaintiff's
12 behalf. The motion *in limine* clearly relied on evidence produced in this civil case, stating:

13 This case is unique among criminal cases because the Tulare County Sheriff's
14 deputies involved therein (the TCS deputies) have had their depositions taken in
15 the Federal Civil Rights Case. . . . Highlighted portions of the TCS deputies'
16 transcripts are attached to the Owdom Declaration as Exhibits C (Coldren), D
17 (Dillon), E (Hernandez), F (Ceja), and G (Torres-Salcido). . . . This sworn
testimony renders it unnecessary to proceed to trial because, even drawing all
inferences in the Plaintiff's favor, no reasonable jury could find that the
[prosecution] could prove the charges beyond a reasonable doubt.

18 (ECF No. 53-1 at 7.) The conclusion of the motion *in limine* similarly argued: "This case is
19 unique because this Court has been presented with the testimony of essentially all material
20 witnesses prior to trial. As a matter of law, no criminal case can be made against Huerta for the
21 misdemeanor charges offered." (*Id.* at 19.)

22 In the Motion for Contempt, Defendants seek an order holding Plaintiff in civil contempt
23 for violating this Court's protective order precluding Plaintiff from using in his pending
24 criminal case "any documents or other evidence produced by Defendants in this proceeding
25 unless such documents or other evidence are independently obtained through the pending
26 criminal case." (ECF No. 53 at 1-2 (citing ECF Nos. 30, 36).) Defendants seek as relief an order
27 (1) finding Plaintiff in civil contempt for violating the Court's orders, (2) requiring Plaintiff to
28 reimburse Defendants for their attorney's fees and costs, and (3) requiring Plaintiff to come into

1 full compliance with the Court's orders within 5 days of the Court's ruling or be subject to
2 \$1,000 per day coercive sanction for future non-compliance.¹ (*Id.*)

3 In Plaintiff's opposition to the Motion for Contempt, he concedes that his counsel filed a
4 motion *in limine* in the criminal case based on and attaching depositions obtained in this civil
5 proceeding. (ECF No. 59.) However, Plaintiff argues that he has not violated this Court's
6 protective order because the motion *in limine* has not yet been heard in the criminal case due to
7 a continuance of the trial. (*Id.* at 2.) Additionally, Plaintiff argues, "No State Court jury has ever
8 been empaneled in the Criminal Action; there has never been any request that any jury consider
9 any material in the MIL [motion *in limine*], nor any matter related to the Civil Rights Action
10 whatsoever. Not a shred of 'document[s]' or 'evidence' in the Federal Civil Rights Action has
11 been used in evidence before any State Court jury." (*Id.*) Plaintiff also argues that "the DA
12 [district attorney] has long since been in possession of the transcripts and [] they are 'in play' in
13 the criminal case." (*Id.*) Plaintiff's counsel goes on to claim that Defendants' Motion for
14 Contempt "is completely without merit and frivolous, and that I [Plaintiff's counsel] would seek
15 sanctions in the event it is not withdrawn." (*Id.* at 3 (further claiming that motion for sanctions
16 "is utterly without evidence supporting Defendants' assertion that this Court's Discovery Order
17 was violated").) Plaintiff also claims that there was no violation because "these items are in the
18 possession of the DA [District Attorney], and because they uniformly contain exculpatory
19 evidence." (*Id.* at 4.) Plaintiff then represents, in italics: "*the Tulare County DA is and has been*
20 *in possession the [sic] deposition transcripts taken in the Federal Civil Rights Action long*
21 *before the filing of this motion by Myers and TCC.*" (*Id.* at 6.) Plaintiff further argues that "it
22 borders on the outrageous to suggest that there are certain matters which the State Court Judge
23 should not see, where there is a parallel federal proceeding." (*Id.* at 7.)

24 In their reply in support of the Motion for Contempt (ECF No. 60), Defendants respond

25 ¹ Defendants subsequently requested that severe sanctions be imposed based on Plaintiff's counsel's filing of a
26 declaration that attached "hundreds of unredacted personnel records wrongfully obtained in violation of this
27 Court's Order including full social security numbers, driver's license numbers, dates of birth and more." (ECF No.
28 Plaintiff's filing of these confidential documents and related issues will be addressed below in connection with
Plaintiff's motion to seal.

1 to Plaintiff's arguments and provide new evidence that Plaintiff's counsel also violated this
2 Court's stay of discovery of Defendants' personnel files by issuing subpoenas in this civil case
3 to six different law enforcement agencies seeking Defendants' personnel records. (See ECF No.
4 60-4 (subpoenas issued in this civil case by Plaintiff's counsel to the Hayden Police Department
5 for "Deputy Hector Hernandez's entire personnel file from Hayden Police Department for the
6 years for which he was employed from 2013-2014"; to the Bakersfield Police Department
7 for "Deputy James Dillon's entire personnel file from Bakersfield Police Department for the
8 years for which he was employed from 2014 to 2017"; to the City of Visalia Police
9 Department for "Officer Michale Coldren's entire personnel file from City of Visalia Police
10 Department for the years for which he was employed since August of 2018"; to the Santa
11 Ana Police Department for "Lieutenant Ron Smith's entire personnel file from Santa Ana
12 Police Department for the years for which he was employed from 1987-1988"; to the
13 Porterville Police Department for "Lieutenant Ron Smith's entire personnel file from Porterville
14 Police Department for the years for which he was employed from 1988-1999"; and to the
15 Mammoth Police Department for "Deputy Hector Hernandez's entire personnel file from
16 Mammoth Police Department for the years for which he was employed from 2012-2013".)

17 **D. Hearing on Motion for Contempt**

18 The Court held a hearing on the Motion for Contempt on February 22, 2019. (See ECF
19 No. 61.) During the hearing, counsel for Plaintiff primarily argued that they did not violate the
20 Court's protective order because the DA already had the documents that were attached to the
21 motion *in limine* that was filed in the criminal case. (Plaintiff's counsel did not reiterate other
22 arguments made in Plaintiff's opposition, such as the fact that documents were sent to the judge
23 in the criminal case, rather than the jury, or that the protective order could be ignored because it
24 would improperly prevent a judge in the criminal case to see relevant and exculpatory
25 evidence.)

26 In support of counsel's argument, Plaintiff's counsel represented that the DA issued a
27 subpoena for the deposition transcripts in the civil case and then produced those transcripts to
28 Plaintiff's counsel as part of the criminal case. When the Court pressed Plaintiff's counsel on

1 whether the DA had produced those transcripts before counsel filed the motion *in limine*,
2 Plaintiff's counsel stated, "I believe so, your honor." After some discussion, Plaintiff's counsel
3 further explained that throughout the Fall of 2018, there had been discussions in the criminal
4 case about getting the civil depositions for use in the criminal case, and that the DA had
5 obtained the civil transcripts independently, continuing "and so that's why I believed that it was
6 not a violation of the Court's order because the DA had independently produced them to
7 counsel." The Court also asked, "At any time when you were talking with the DA, did you ever
8 tell them that there's a Court order though that none of that evidence is supposed to be used
9 here?" Plaintiff's counsel responded, "No your honor, I did not."

10 Regarding the subpoenas for the personnel files, the Court asked Plaintiff's counsel,
11 "Why are you subpoenaing them before the motion to compel is done?" Plaintiff's counsel, Mr.
12 Rothen, responded "that's total error on my part. [inaudible] That should not have gone out and
13 I don't know how it went out."²

14 **E. Submissions Following the Hearing**

15 On February 26, 2019, counsel for Plaintiff submitted a supplemental declaration stating
16 that counsel had withdrawn the motion *in limine* in the criminal case, and that counsel had
17 received an email indicating that deposition transcripts had been produced to the DA on
18 November 19, 2018, and thus "I believed that such materials were available for use in the
19 Criminal Case." (ECF No. 66 at 2.)

20 On February 25, 2019, Defendants filed additional submissions which, they argued,
21 established that Plaintiff's counsel had made misrepresentations to the Court during the
22 February 22, 2019, hearing. (ECF No. 63.) One of those submissions is the Declaration of Joe
23 L. Alindajao, the Deputy District Attorney in Mr. Huerta's criminal case. (ECF No. 63-2.) Mr.
24 Alindajao explains that the DA's office issued subpoenas for depositions and rulings in this civil
25 case on November 19, 2018. Regarding production of that information to Mr. Huerta's counsel,
26 Mr. Alindajao states: "On December 11, 2018 I produced to counsel for Ramiro Huerta via
27

28 ² These quotations are taken from the audio file of the hearing, which is available upon request.

1 Damion e-Discovery the written deposition transcripts” from the civil case. (ECF No. 63-2 at
2 3.) Furthermore, “[o]n or about December 12, 2019 [sic], the Damion e-Discovery system
3 time/date stamp indicated that the written deposition transcripts were successfully downloaded
4 by Huerta’s counsel on December 12, 2019 [sic] at approximately 8:25 am.” (ECF No. 63-2 at
5 3.) Notably, Plaintiff’s counsel filed the motion *in limine* at issue, which relied on evidence
6 from the civil case, on November 28, 2018, thirteen days before Plaintiff received those
7 documents from the DA.

8 Defendants also submitted correspondence between Plaintiff’s counsel, including
9 Mr. Rochen, and counsel for the Visalia Police Department regarding one of the subpoenas for
10 personnel files. In that correspondence, Mr. Rochen, the same attorney who told this Court that
11 issuance of the subpoenas was “a mistake,” wrote the following to justify requesting the
12 personnel files despite this Court’s stay on all discovery regarding such documents:

13 I should inform you that said stay applies only to the Tulare County Sheriff’s
14 Department personnel records. As you are not a party to the civil suit, the order is
15 not applicable to your department and we maintain we are entitled to any such
relevant records”

16 (ECF No. 63-3 at 4-5.)

17 **II. ANALYSIS**

18 “The standard for finding a party in civil contempt is well settled: The moving party has
19 the burden of showing by clear and convincing evidence that the contemnors violated a specific
20 and definite order of the court. The burden then shifts to the contemnors to demonstrate why
21 they were unable to comply.” *FTC v. Affordable Media, LLC*, 179 F.3d 1228, 1239 (9th Cir.
22 1999) (citation omitted). “[The contemnors] must show they took every reasonable step to
23 comply.” *Stone v. City & County of San Francisco*, 968 F.2d 850, 856 n.9 (9th Cir. 1992).
24 “Intent is irrelevant to a finding of civil contempt and, therefore, good faith is not a defense.” *Id.*
25 at 856.

26 Here, the Court has no difficulty finding that Defendants met their burden of showing by
27 clear and convincing evidence that Plaintiff’s counsel violated a specific and definite order of
28 the Court. The Court also has no difficulty finding that Plaintiff’s counsel has failed to

1 demonstrate that they were unable to, nor that they took every reasonable step to, comply with
2 the Court's order.

3 The Court's order stated that "with the exception of initial disclosures, Plaintiff and his
4 counsel are prohibited from using in his pending criminal case any documents or other evidence
5 produced by Defendants in this civil proceeding unless such documents or other evidence are
6 independently obtained through the pending criminal case." (ECF No. 36.) Here, Plaintiff's
7 counsel used evidence in his pending criminal case that was produced by Defendants in the civil
8 case by submitting the deposition transcripts in connection with a motion filed in the criminal
9 case. (ECF No. 53-1.)

10 The only real dispute appears to be surrounding the word "independently." Plaintiff's
11 counsel seems to argue that the depositions from the civil case were independently obtained
12 through the pending criminal case because the DA subpoenaed that information and produced
13 them to Mr. Huerta's counsel. Thus, they argue, so long as the DA also had evidence from the
14 civil case, Mr. Huerta was allowed to use in his criminal case any evidence obtained in the civil
15 case notwithstanding this Court's order.

16 This argument fails for many reasons.

17 First, the depositions were not independently obtained in the criminal case because there
18 was nothing independent about their production and use in the criminal case. It is undisputed
19 that the depositions did not come from independent discovery in the criminal case. These were
20 depositions obtained solely in the civil case. Indeed, Plaintiff's counsel argued in the motion *in*
21 *limine* in the criminal case that "[t]his case is unique among criminal cases because the Tulare
22 County Sheriff's deputies involved therein . . . have had their depositions taken in the Federal
23 Civil Rights case." (ECF No. 53-1 at 7.) This statement makes clear that Mr. Huerta had this
24 information solely because of the civil case and could not and did not obtain the information
25 through the criminal case. There was nothing independent about it.

26 The civil depositions were also not independently produced because Mr. Huerta's
27 attorneys facilitated their production. Although no one could remember exactly how the DA
28 learned about the depositions, such information must have come from Mr. Huerta's attorneys

1 because only they knew about the depositions in the civil case. Mr. Huerta’s attorneys also
2 failed to tell the DA or the criminal court that the depositions could not be used in the criminal
3 case, per this Court’s order. Thus, it was only due to Mr. Huerta’s attorneys’ actions that the
4 information in the civil case went to the DA at all.

5 Furthermore, even under counsel’s strained interpretation of the Court’s order, the
6 evidence was not “independently obtained through the pending criminal case” when counsel
7 used that evidence in the criminal case because the DA did not produce the transcripts to
8 Plaintiff’s counsel until after counsel had filed the *motion in limine*. Again, despite Plaintiff’s
9 counsel telling the Court at the hearing that “that’s why I believed that it was not a violation of
10 the Court’s order because the DA had independently produced them to counsel,” in fact the DA
11 had not yet produced the documents to Plaintiff’s counsel when counsel filed the motion *in*
12 *limine*. Rather, the DA produced the documents two weeks after the motion *in limine* was filed.
13 Thus, under no circumstances did Plaintiff’s counsel have the ability to use the evidence based
14 on the exception when “such documents or other evidence are independently obtained through
15 the pending criminal case.” The evidence was indisputably not obtained through the pending
16 criminal case before Plaintiff’s counsel used that evidence in the criminal case.

17 Plaintiff’s counsel’s excuse for using the documents also does not fit with the entire
18 purpose of this Court’s order, and their own promise not to use information from the civil case
19 in the criminal case. As summarized above, the protective order issued as a result of
20 Defendant’s motion to stay discovery in the civil case in order to prevent Mr. Huerta from
21 obtaining information in the civil case to which he was not entitled in the criminal case. It was
22 Plaintiff’s counsel who opposed that motion on the basis that a protective order limiting use of
23 such information in the criminal case would satisfy any fears of proceeding in parallel. In that
24 context, it is disingenuous to claim that the protective order allowed counsel to use evidence
25 uniquely obtained in the civil case so long as the DA also had access to such information. Such
26 a hollow protective order would have done nothing to allay Defendants’ and the Court’s
27 concerns with proceeding with civil discovery in parallel with the criminal case. Put another
28 way, if Plaintiff’s counsel had responded to Defendants’ motion to stay by saying “we will

1 make sure the DA also has the evidence in the civil case if we decide to use it in the criminal
2 case,” the Court would have granted the motion to stay.

3 Plaintiff’s counsel also clearly violated the stay of discovery of Defendants’ personnel
4 files. Plaintiff’s counsel issued multiple subpoenas in this case for production of Defendants’
5 personnel files while the stay was in place. They did so without either consent from Defendants’
6 counsel or an order from this Court.

7 Then, when confronted, Plaintiff’s counsel made misrepresentations to both to the Court
8 and to subpoena recipients. Mr. Rochen said during the hearing on the Motion for Contempt
9 that issuance of the subpoenas was “a mistake.” But Mr. Rochen is one of the issuing officers
10 of the subpoenas. He is also one of the signatories of a letter addressing whether the subpoenas
11 complied with the Court’s stay order. Specifically, just eight days before Mr. Rochen told his
12 Court that issuance of the subpoenas was a mistake, he and his co-counsel wrote to Visalia
13 Police Department as follows:

14 As it is apparent you have spoken to Tulare County Counsel regarding the District
15 Court’s July 27, 2018 order staying discovery as to the personnel files of the
16 Tulare County Sherriff Deputies named in the civil complaint, I should inform
17 you that said stay applies only to the Tulare County Sheriff’s Department
personnel records. As you are not a party to the civil suit, the order is not
applicable to your department

18 (ECF No. 63-3 at 4.) That is simply not true. Nothing in the Court’s order limits the stay to
19 personnel files held by the Tulare County Sherriff’s Department. (ECF No. 36 (“the Court
20 grants a stay of discovery of Defendants’ personnel files”)) The fact that subpoena
21 recipients are not parties to this action makes no difference. Mr. Huerta is a party to this action.
22 The stay of discovery applies to him. It is Mr. Huerta (and his counsel) who violated the stay
23 when he sought discovery of Defendants’ personnel files. Indeed, Plaintiff’s counsel did not
24 even mention this false justification to the Court. Instead, they pretended issuance of the
25 subpoenas was a mistake. But it was no mistake. Plaintiff’s counsel knowingly and
26 intentionally violated the Court’s stay order.

27 The conduct of Plaintiff’s counsel taken as a whole shows a deliberate disregard of the
28 Court’s orders. The Court finds that there is clear and convincing evidence that Plaintiff violated

1 the Court's specific and definite protective order, as stated during the June 14 and July 27
2 hearings and summarized in minute orders ECF Nos. 30 and 36, which prohibits Plaintiff from
3 using in the criminal case any information obtained in the civil case unless such information is
4 independently obtained in the criminal case. The Court also finds clear and convincing evidence
5 that Plaintiff violated the Court's specific and definite stay order regarding Defendants'
6 personnel files. (ECF No. 36.) The Court further finds that Plaintiff did not take every
7 reasonable step to comply with the Court's protective order. (ECF Nos. 30, 36.) Accordingly,
8 the Court finds Plaintiff in Contempt of Court for violating this Court's orders.

9 As to the remedy for the contempt, during the January 22, 2019, hearing, the Court
10 ordered Plaintiff's counsel to provide to the criminal court judge a copy of this Court's
11 protective order. The Court did not require Plaintiff to withdraw the motion *in limine* filed in the
12 criminal case because the issue of whether and to what extent the deposition transcripts that
13 have now been disclosed in the criminal case can be used in that proceeding is within the
14 discretion of the criminal court judge. However, the Court notes that Plaintiff's counsel has now
15 voluntarily filed a notice of withdrawal of the motion *in limine* in the criminal case and has
16 provided the criminal court with a copy of one of the two minute orders that summarize the
17 Court's protective order. (ECF No. 66 at 5-6 (attaching ECF No. 36).) Accordingly, the Court
18 will not order further action regarding the motion *in limine*.

19 Plaintiff's counsel is ordered to pay Defendants' costs and attorneys fees associated with
20 filing the motion for contempt and sanctions, including costs and fees associated with meet and
21 confer and investigation to uncover Plaintiff's violation. *See* Fed. R. Civ. P. 16(f)(2) ("Instead
22 of or in addition to any other sanction, the court must order the party, its attorney, or both to pay
23 the reasonable expenses—including attorneys fees—incurred because of any noncompliance
24 with this rule, unless the noncompliance was substantially justified or other circumstances make
25 an award of expenses unjust.").

26 In light of the Court's finding that Plaintiff has violated the Court's protective order,
27 which was the basis for denying Defendants' stay of discovery, the Court is staying this case
28 pending resolution of the criminal case.

1 The Court will also deny Plaintiff's Motion to Compel without prejudice. Plaintiff may
2 re-file that motion when the stay is lifted.

3 **III. PLAINTIFF'S MOTION TO SEAL AND STRIKE**

4 During the January 22, 2019, the Court determined that Plaintiff's subpoenas seeking
5 Defendants' personnel files violated the Court's stay of discovery. The Court directed Plaintiff
6 to withdraw those subpoenas and to file a declaration of counsel certifying that the subpoenas
7 had been withdrawn.

8 On February 25, 2019, Plaintiff filed a declaration (ECF No. 62) which includes as
9 attachments confidential employment records Plaintiff received in response to the subpoenas.³
10 In the Motion to Seal and Strike, Plaintiff seeks to strike and remove this declaration from the
11 docket, explaining that the confidential personnel records were attached in error. The Court
12 grants the request to strike and permanently seal this document but denies the request to remove
13 the document from the docket. Because the filing of this declaration with the confidential
14 information appears to have been inadvertent, and Plaintiff immediately attempted to correct the
15 error, the Court does not find sanctions for this filing to be warranted.

16 **IT IS ORDERED:**

17 1. Defendants' Motion for Contempt (ECF No. 53) is GRANTED. The Court finds
18 Plaintiff in civil contempt of this Court's protective order and stay order set forth during the
19 June 14, 2018, and July 27, 2018, hearings and summarized in the Court's minute orders (ECF
20 Nos. 30 and 36).

21 2. This case is STAYED pending resolution of the related state criminal proceeding
22 and until further order of the Court. The parties are directed to file a joint notice of resolution of
23 the state criminal proceeding within thirty days of such resolution.

24 3. Plaintiff's Motion to Compel (ECF No. 54) is DENIED without prejudice.

25 4. Plaintiff is directed to withdraw all subpoenas that have been issued seeking
26 Defendants' personnel files, and to file a declaration certifying that such subpoenas have been

27
28 ³ Plaintiff's counsel filed a subsequent replacement declaration that did not include the confidential personnel files. (See ECF No. 64.)

1 withdrawn. To the extent Plaintiff has already complied with this requirement and filed
2 certification of the same, Plaintiff need not repeat that process.

3 5. Plaintiff is directed to destroy any personnel records already received and to file,
4 within 14 days from today, a declaration certifying the same.

5 6. Plaintiff's Motion to Seal and Strike Document, ECF No. 62 (ECF No. 67) is
6 GRANTED in part. The Clerk of the Court is directed to STRIKE and permanently SEAL
7 document ECF No. 62, Declaration of Douglas A. Rochen, filed on February 25, 2019. To the
8 extent Plaintiff seeks to have this document removed from the docket, the motion is DENIED.

9 7. Plaintiff's counsel shall pay Defendants' reasonable attorneys fees and costs
10 incurred in bringing the Motion for Contempt. Such sanction shall be divided equally between
11 the Owdom Law Firm and the Abir, Cohen Treyzon Salo, LLP law firm unless the two firms
12 reach a separate agreement. The parties shall meet and confer regarding such an amount and
13 contact the Court if there is a dispute regarding the amount of sanctions.

14
15 IT IS SO ORDERED.

16 Dated: March 25, 2019

17 /s/ Eric P. Grogan
18 UNITED STATES MAGISTRATE JUDGE
19
20
21
22
23
24
25
26
27
28