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## IN THE UNITED STATES DISTRICT COURT

## FOR THE NORTHERN DISTRICT OF CALIFORNIA

FREDERICK JACKSON, ASHLEY NICOLE  
 JACKSON, a minor, BRIANA  
 FREDRANIQUE ANNETTE JACKSON, a  
 minor, and SHAWNA YVETTE MARTIN,

No. C 09-01016 WHA

Plaintiffs,

v.

CITY OF PITTSBURG, AARON L. BAKER,  
 individually and in his official capacity as  
 Chief of Police of the City of Pittsburg Police  
 Department, G. LOMBARDI, individually and  
 as an officer of the City of Pittsburg Police  
 Department (Badge # 275), C. SMITH,  
 individually and as an officer of the City of  
 Pittsburg Police Department (Badge # 285),  
 P. DUMPA, individually and as an officer of  
 the City of Pittsburg Police Department (Badge  
 # 291), WILLIAM BLAKE HATCHER,  
 individually and as an officer of the City of  
 Pittsburg Police Department (Badge # 274),  
 SARA SPIRES, individually and as an officer of  
 the City of Pittsburg Police Department,  
 and DOES 1–100, inclusive,

Defendants.

**ORDER DENYING PLAINTIFFS’  
 ADMINISTRATIVE MOTION TO  
 FILE UNDER SEAL TESTIMONY  
 OF ROGER CLARK AND  
 VACATING HEARING**

Plaintiffs’ renewed motion to seal the trial testimony of expert witness Roger Clark  
 is **DENIED**.

True, Expert Clark has a privacy right in his personnel record from his  
 employment long ago with the Los Angeles Sheriff’s Department. But, as a threshold  
 matter, it is unclear that the personnel record itself is at issue. In their original motion to  
 seal, plaintiffs asserted that defense counsel “presented” the personnel record to Expert  
 Clark and “used” it in the trial (*see* Dkt. No. 211). But, plaintiffs now cast doubt on

1 whether defense counsel read portions or merely “pretended to read” (Br. 2). What is  
2 clear is that the personnel record was not admitted into evidence, marked as an exhibit, or  
3 shown to the jury. It is tenuous to claim that the personnel record has entered the public  
4 record.

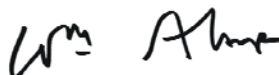
5 As the previous order denying plaintiffs’ motion to seal indicated (*see* Dkt. No.  
6 238), plaintiffs must present “compelling reasons” to justify sealing court records.  
7 *Kamakana v. City & County of Honolulu*, 447 F.3d 1172, 1178 (9th Cir. 2006). Plaintiffs  
8 contend that Expert Clark has an overriding privacy interest in his personnel record and  
9 that defense counsel’s purpose in questioning Clark — to preclude him from again  
10 testifying effectively as a police practices expert — was improper. Even assuming  
11 *arguendo* that some contents of the personnel record have bled into the public record,  
12 plaintiffs have failed to meet their burden of showing how these interests outweigh the  
13 public interest in access.

14 Holding himself out as an expert witness, Expert Clark has no privacy right not to  
15 be asked pointed questions during cross examination. Yes, it is possible that in the future  
16 Expert Clark will be impeached in some other litigation with the answers given in our  
17 trial. This, however, goes with the territory of being an expert witness for hire. The  
18 particular answers given here were not so far afield to warrant the extreme relief sought by  
19 this motion. In future trials, the trial judge therein can rule on motions in limine to restrict  
20 any counsel from referencing the testimony given in our trial. That judge will be in a  
21 much better position to see the potential role of the testimony.

22 The hearing set for October 7, 2010, at 8:00 a.m. is hereby **VACATED**. Two  
23 motions now having been made, plaintiffs may make no further motions to seal this  
24 testimony.

25 **IT IS SO ORDERED.**

26  
27 Dated: September 14, 2010.

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WILLIAM ALSUP  
UNITED STATES DISTRICT JUDGE