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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

SHAKINA ORTEGA, et al.,

Plaintiffs,

vs.

SAN DIEGO POLICE DEPARTMENT,
et al.,

Defendants.

CASE NO. 13cv87-LAB (JMA)

**ORDER DENYING REQUEST
FOR LEAVE TO FILE OVER-
LENGTH BRIEF;

ORDER DENYING LEAVE TO
FILE EXHIBITS UNDER SEAL;
AND

ORDER VACATING HEARING
AND RESETTING BRIEFING
SCHEDULE**

Defendants have moved for summary judgment. Plaintiffs first filed a request for leave to file the over-length opposition, then filed an opposition, the body of which is 38 pages long. Defendants have opposed the request to file the over-length opposition. Plaintiffs have also requested leave to file twenty-six exhibits under seal.

Leave to Exceed Page Limits

Defendants' opposition to the request aptly points out that the claim here involves a police chase and shooting, taking place within a ten-minute time period, and that a single officer and decedent are involved. While the Court accepts as true Plaintiffs' characterization of the evidence as voluminous, it is still important to focus on the central issues.

The Court has reviewed the pleadings submitted so far, and it appears that the parties have not focused adequately on the standard for summary judgment, but instead are

1 attempting to put on their respective cases. While the defendants’ motion in chief included
2 unnecessary arguments and evidence, it did come in just within the page limit. There is no
3 reason, however, for Defendants to follow Plaintiffs’ example and put on an entire case. It
4 is worth noting that the complaint itself is only 14 pages long.

5 By way of example, the opposition discusses at length multiple witnesses’ statements
6 that the decedent said “I’m gonna sue you,” just before the shooting, and attempts to show
7 that Defendant McCarthy and other police officers attempted to justify the shooting
8 afterwards. It isn’t clear what part, if any, this plays in demonstrating a triable issue of
9 material fact as to liability, damages, or qualified immunity.

10 The request for leave to file an over-length brief is **DENIED**.

11 **Motion to Seal Exhibits**

12 There is a strong presumption in favor of public access to dispositive pleadings,
13 including motions for summary judgment and related attachments. *Kamakana v. City &*
14 *County of Honolulu*, 447 F.3d 1172, 1178–79 (9th Cir. 2006) (citing *San Jose Mercury News,*
15 *Inc. v. U.S. Dist. Ct.*, 187 F.3d 1096 (9th Cir. 1999), and *Foltz v. State Farm Mutual Auto. ins.*
16 *Co.*, 331 F.3d 1122 (9th Cir. 2003)). Sealing of attachments to a dispositive motion must be
17 supported by “compelling reasons,” even if the attachments were previously filed under seal
18 or protective order. *Id.* (citing *Foltz* at 1136). A court’s decision to seal documents under
19 these circumstances must weigh the public’s interest in access to the documents against the
20 right of the party seeking to seal them, and articulate both the compelling reasons and the
21 factual basis for its ruling, without relying on hypothesis or conjecture. *Id.* at 1179.

22 Here, the motion to seal merely says the supporting documentation ought to be
23 sealed because it is subject to a protective order. This isn’t enough to satisfy the moving
24 party’s burden, nor could the Court issue an order to seal based on information in the
25 motion.

26 The motion to file documents under seal is therefore **DENIED**.

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Hearing and Briefing Schedule

The hearing currently on calendar for Monday, June 2, 2014 at 11:30 a.m. on the motion for summary judgment is **VACATED**, along with the briefing deadlines. Plaintiffs shall file an amended opposition by **June 6, 2014**, and Defendants may file their reply by **June 16, 2014**. After the briefing is filed, the Court may reset a hearing if appropriate, but otherwise the matter will be taken under submission on the papers.

IT IS SO ORDERED.

DATED: May 20, 2014


HONORABLE LARRY ALAN BURNS
United States District Judge