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

10 JAIRO CERVANTES, *et al.*,
11
12 Plaintiffs,
13 v.

14 SAN DIEGO POLICE CHIEF
15 SHELLEY ZIMMERMAN, *et al.*,
16 Defendants.

17 BRYAN PEASE,
18 Plaintiff,
19 v.
20 SAN DIEGO COUNTY SHERIFF
21 WILLIAM GORE, *et al.*,
22 Defendants.

CONSOLIDATED ACTIONS:

Case No. 17-cv-1230-BAS-AHG
Case No. 18-cv-1062-BAS-AHG

**ORDER DENYING PLAINTIFFS’
EX PARTE APPLICATION TO
SUPPLEMENT RECORD FOR
SUMMARY JUDGMENT MOTION**

[ECF No. 157]

23 Before the Court is Plaintiffs’ *Ex Parte* Application to supplement the record on
24 summary judgment with the bodyworn camera (BWC) footage of three officers. (ECF No.
25 157.) The City opposes. (ECF No. 160.)

26 “The ‘opportunities for legitimate *ex parte* applications are extremely limited.’”
27 *Horne v. Wells Fargo Bank, N.A.*, 969 F. Supp. 2d 1203, 1205 (C.D. Cal. 2013) (quoting
28 *In re Intermagnetics America, Inc.*, 101 B.R. 191, 193 (C.D. Cal. 1989)). To warrant relief,
an *ex parte* application must demonstrate good cause to allow the moving party “to go to

1 the head of the line in front of all other litigants and receive special treatment.” *Mission*
2 *Power Eng’r Co. v. Cont’l Cas. Co.*, 883 F. Supp. 488, 492 (C.D. Cal. 1995). To warrant
3 *ex parte* relief, the moving party must show that it will suffer irreparable harm if the motion
4 is not heard on an expedited schedule and that it either did not create the circumstances
5 warranting *ex parte* relief or that the circumstances occurred as a result of excusable
6 neglect. *Id.* at 492.

7 Plaintiffs have failed to make either showing in their Application. First, in a lengthy
8 declaration, Plaintiffs’ counsel recites a chronology of events beginning in May 2016,
9 during which Defendant City of San Diego (“City”) allegedly delayed production of almost
10 600 BWC videos until June 2019 and prevented him from downloading the videos himself.
11 (Decl. of Bryan Pease (“Pease Decl.”) ¶¶ 7–11, ECF No. 157-1.) However, Plaintiffs offer
12 no specific argument explaining the harm that will result from the omission of these videos,
13 including by reference to any specific merits of their Cross Motion for Summary Judgment.
14 *See Mission Power*, 883 F. Supp. at 492 (“A showing of irreparable prejudice usually
15 requires reference to the merits of the underlying motion.”). Mr. Pease only states that the
16 videos “would show without question that Defendants conspired to violate Plaintiffs’ civil
17 rights[.]” (Pease Decl. ¶ 10.) This conclusory statement is not sufficient to satisfy
18 Plaintiffs’ burden for *ex parte* relief.


19 Second, this appears to be a rehashing of a discovery dispute that was raised before
20 the Court in August 2018. At that time, the parties jointly requested an extension of time
21 to file a discovery dispute regarding the release of BWC footage of the underlying
22 incidents. (ECF No. 48.) Noting noncompliance with chambers’ rules, Magistrate Judge
23 Stormes allowed Plaintiffs to supplement the joint motion to demonstrate the timeliness of
24 the request for the extension. (ECF No. 49.) After two weeks during which Plaintiffs
25 failed to file a supplemental response, Magistrate Judge Stormes denied the joint motion.
26 (ECF No. 50.) Thus, it appears that Plaintiffs had the opportunity to address this dispute
27 over a year before their deadline to file their Cross Motion for Summary Judgment, and yet
28

1 failed to do so. Thus, Plaintiffs have not shown that the circumstances allegedly warranting
2 this Application were not of Plaintiffs' own making or the result of excusable neglect.

3 Accordingly, Plaintiffs' *Ex Parte* Application (ECF No. 157) is **DENIED**.

4 **IT IS SO ORDERED.**

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6 **DATED: April 7, 2020**

7 
8 **Hon. Cynthia Bashant**
9 **United States District Judge**