Douglas S. Gilliland, Esq. (SBN 157427)

The Gilliland Firm

402 West Broadway, Suite 1760

San Diego, California 92101

Telephone: (619) 878-1580

Facsimile: (619) 878-6630

doug@thegillilandfirm.com

Attorneys for Plaintiff BRANDELL SAMPSON

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SACRAMENTO

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| BRANDELL SAMPSON, an individual,Plaintiff, v.SACRAMENTO COUNTY, a municipal corporation, Deputy S. WRIGHT, an individual, and Sgt. TIM MULLIN, an individual, and DOES 3 through 15, inclusive, Defendants. | Case No.: 34-2021-00297987**DECLARATION OF DOUGLAS S. GILLILAND IN SUPPORT OF MOTION FOR AN ORDER REQUIRING PRODUCTION OF PEACE OFFICER RECORDS****(*Pitchess v. Superior Court*)**Date: November 15, 2022Time: 1:30 p.m.Judge: Hon. Richard K. SueyoshiDept.: 53 |
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 I, Douglas S. Gilliland, Esq., declare as follows:

1. I am an attorney duly licensed to practice before all courts of the state of California. I am counsel for plaintiff in the above matter. In that capacity, I have obtained personal knowledge of the facts and circumstances about this case set forth below. If called to testify at the time of trial, I could and would, testify to the matters set forth below based upon my own personal knowledge except as to those matters that state on information and belief. As to those matters, I am informed and reasonably believe them to be true.
2. On March 17, 2020, ABC10 News in Sacramento reported that “The Sacramento County Sheriff’s Department has launched an excessive force investigation after video appearing to show a deputy kicking a man in the back went viral.” A true and correct copy of this story was placed on ABC10 News’ website which I copied and saved and is attached hereto as Exhibit 1.
3. ABC10 News in Sacramento updated their March 17, 2020 story on August 28, 2020. In that story, it reported that a “Sacramento County Sheriff’s spokesperson told ABC10 that ‘The Sheriff’s Office conducted an administrative investigation, the allegations were sustained against the deputy, and appropriate action has been taken.” The spokesperson, later identified as Sacramento Sheriff’s Sergeant Tess Deterding, also stated that, “The officers are still on the job as the investigation continues.” A true and correct copy of this follow-up story was placed on ABC10 News’ website which I copied and saved, and is attached hereto also as Exhibit 1.
4. On August 31, 2020, CBS News Good Day Sacramento reported that “millions” of people had viewed the video on “social media.” This article quoted Sergeant Deterding’s comments on the kick in the back. Sergeant Deterding stated, “This is not a tactic taught to our deputies.” She continued, “nor is it an appropriate use of force under the circumstances.” Sergeant Deterding stated that, “An administrative investigation was completed and the kick to the back was deemed an inappropriate and an *excessive use of force* at the conclusion of the investigation. The deputy was disciplined for his actions.” She concluded, “We are prohibited, by law, from discussing specifics related to discipline that is contained in a peace officer’s confidential personnel file.” A true and correct copy of this story was place on CBS News Good Day Sacramento’s website which I copied and saved, and is attached hereto as Exhibit 2.
5. On September 15, 2020, approximately two weeks after Sergeant Deterding’s comments, the District Attorney moved to dismiss the criminal case against Mr. SAMPSON for resisting arrest. The motion was granted. A true and correct copy of the criminal court minute order is attached hereto as Exhibit 3.

**GOOD CAUSE FOR PRODUCTION OF CATEGORIES 1-5, 6 and 7**

1. **Categories 1-5. GOOD CAUSE:** Good cause exists for production of the peace officer records of Defendants WRIGHT and MULLIN for categories 1-5 in the Appendix of Records Sought. Under current *Pitchess* case law, good cause exists if (1) the information sought is “material” to the issue to be tried, and (2) plaintiff has a reasonable belief that the governmental agency has custody and control over the records or information from the records. **MATERIALITY:** Information is material if it will facilitate the ascertainment of the facts and a fair trial. Plaintiff’s first cause of action alleges excessive force under Civil Code section 52.1. “The elements of the excessive force claim under § 52.1 are the same as under § 1983.” (*Chaudhry v. City of Los Angeles* (2017) F.3d 1096, 1105). According to Sergeant Deterding’s statements, an administrative investigation was performed, and Defendant WRIGHT’s actions were “deemed an inappropriate and excessive use of force at the conclusion of the investigation.” Therefore, ordering production of the information set forth in the Appendix of Records Sought 1-5 “will facilitate the ascertainment of the facts and a fair trial” because SACRAMENTO COUNTY has already admitted the element of this claim. Plaintiff simply seeks the documentary evidence underlying SACRAMENTO COUNTY’s own admissions. **REASONABLE BELIEF:** Reasonable belief that SACRAMENTO COUNTY has the records can be established by a declaration “on information and belief.” The California supreme court specifically addressed an argument that personal knowledge is required and rejected that argument. *City of Santa Cruz*, *supra*, 49 Cal.3d at 91. I am in formed and reasonably believe that SACRAMENTO COUNTY has the records sought in the Appendix of Records Sought, No’s 1-5. That belief is based on the fact that this video went viral which would have put pressure on SACRAMENTO COUNTY to investigate, there was much press coverage which also put pressure on SACRAMENTO COUNTY to investigate, a criminal case was filed against Mr. SAMPSON and later dismissed after Sergeant Deterding’s comments, Defendant WRIGHT is no longer employed by the COUNTY OF SACRAMENTO, and Sergeant Deterding’s comments themselves that an administrative investigation was performed and the actions were deemed an inappropriate and excessive use of force at the conclusion of the investigation. Penal Code section 832.5(b) requires SACRAMENTO COUNTY to maintain custody of these records. Therefore, it is reasonable to believe that SACRAMENTO COUNTY complied with the law and has these records.
2. **Category 6. GOOD CAUSE:** The court in *Haggerty v. Superior Court* has already addressed the production of an internal affairs report. It held that “information contained in the Internal Affairs report is highly probative.” (*Haggerty, supra,* 117 Cal.App4th at 1090). The court continued, “Because of the direct relevance of the information, the courts have generally recognized that the law enforcement records on the investigation at issue my be discoverable and have never imposed any special limitation on this discourse if the requested discovery otherwise meets the statutory criteria. *Id*. (*Citing Robinson v. Superior Court* (1978) 76 Cal.App.3d 968, 978) (noting that “relevancy of an investigation of the incident that is the basis for the lawsuit is ‘self-evident.’”). **MATERIALITY:** Information is material if it will facilitate the ascertainment of the facts and a fair trial. Here, Mr. SAMPSON has alleged that the officers used excessive force. Defendant SACRAMENTO COUNTY conducted an internal affairs investigation into the use of excessive force. And it sustained the allegation of excessive force. As the *Robinson* court stated, “relevancy of an investigation of the incident that is the basis for the lawsuit is ‘self-evident.’” **REASONABLE BELIEF:** Reasonable belief that SACRAMENTO COUNTY has the records can be established by a declaration “on information and belief.” The California supreme court specifically addressed the argument that personal knowledge is required. It specifically rejected that argument. *City of Santa Cruz*, *supra*, 49 Cal.3d at 91. I am in formed and reasonably believe that SACRAMENTO COUNTY has the records sought in the Appendix of Records Sought, No. 6. The county has admitted it performed the investigation and the finding was sustained. Penal Code section 832.5 requires the county to maintain “complaints and reports or findings related to these complaints” for a period of five to 15 years. Penal Code § 832.5(b). Therefore, it is reasonable to believe that the county has complied with this penal code section and has the records sought in category 6.
3. **Category 7. GOOD CAUSE:** In this case, good cause for production of the peace officer records of Defendants WRIGHT and MULLIN exists for category 7. Under current *Pitchess* case law, good cause exists if (1) the information sought is “material” to the issue to be tried, and (2) plaintiff has a reasonable belief that the governmental agency has custody and control over the records or information from the records. **MATERIALITY:** Information is material if it will facilitate the ascertainment of the facts and a fair trial. Plaintiff’s first cause of action alleges excessive force under Civil Code section 52.1. “The elements of the excessive force claim under § 52.1 are the same as under § 1983.” *Chaudhry v. City of Los Angeles* (2017) F.3d 1096, 1105. In addition, Plaintiff has alleged a cause of action under the Ralph Act for violence based on the protected class of race. Prior complaints of “unnecessary and excessive acts of violence or racial prejudice” have been addressed by the court of appeal in *In re. Valerie*. The *Valerie* court held that this request “clearly specified the exact information sought, i.e. all information regarding citizen complaints for excessive force against the two police officers that arrested her. This was sufficient to justify discovery.” *Valerie*, *supra*,50 Cal.App.3d at 218-219. In addition, there are generally three categories of evidence which make prior conduct by an officer discoverable. They are (1) evidence of character, habit, and custom, (2) evidence providing motive for, or disclosing a bias why, an officer would engage in illegal conduct, i.e., the use of excessive force, and (3) evidence used to impeach or attack credibility. Evidence code section 1105 permits the admissibility of character, habit and custom to prove conduct on a specified occasion in conformity with habit or custom. The California supreme court held that “it is undeniable that a witness’s moral depravity of any kind has ‘some tendency in reason’ to shake one’s confidence in his honesty.” *People v. Wheeler* (1992) 4Cal.4th 284, 295. This permits discovery of evidence providing motive for, or disclosing a bias why, an officer would engage in illegal conduct, i.e., the use of excessive force. And finally, the California supreme court has held that “one legitimate goal of discovery is to obtain information for possible use to impeach or cross-examine an adverse witness.” *People v. Memro* (1985) 38 Cal.3d 658, 677. For these three reasons, evidence of prior actions by these officers is discoverable. **REASONABLE BELIEF:** Reasonable belief that SACRAMENTO COUNTY has the records can be established by a declaration “on information and belief.” The California supreme court specifically addressed the argument that personal knowledge is required. It specifically rejected that argument. *City of Santa Cruz*, *supra*, 49 Cal.3d at 91. I am informed and reasonably believe that SACRAMENTO COUNTY has the records sought in the Appendix of Records Sought, No. 7. Again, if there are such complaints, Penal Code section 832.5 requires the county to maintain “complaints and reports or findings related to these complaints” for a period of five to 15 years. Penal Code § 832.5(b). Therefore, it is reasonable to believe that the county has complied with this penal code section and has the records sought in category 7.

**GOOD CAUSE NOT REQUIRED FOR CATEGORIES 8**

1. **Category 8. GOOD CAUSE:** Penal Codes section 832.7 identifies what information is considered non-confidential under the *Pitchess* statutes. One category of non-confidential information under the statute is information regarding “a sustained finding involving a complaint that alleges unreasonable or excessive force.” Therefore, a good cause declaration is not required because this is not confidential information. However, good cause still exists because a sustained finding of excessive force against either officer may be itself admissible to show motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake, or lack of accident under Evidence Code section 404(b)(2). It may also be material under the good cause standard because it may lead to the discovery of admissible evidence to show motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake, or lack of accident. **REASONABLE BELIEF:** On information and belief, I am informed and reasonably believe that SACRAMENTO COUNTY has possession of these records. Both deputies were employed by SACRAMENTO COUNTY. Again, if there are such complaints, Penal Code section 832.5 requires the county to maintain “complaints and reports or findings related to these complaints” for a period of five to 15 years. Penal Code § 832.5(b). Therefore, it is reasonable to believe that the county has complied with this penal code section and has the records sought in categories 8-9.
2. **Category 9. GOOD CAUSE:** Another category of information statutorily exempted as non-confidential is “Any record relating to an incident in which a sustained finding was made by any law enforcement agency or oversight agency involving dishonesty by a peace officer or custodial officer directly relating to the reporting, investigation, or prosecution of a crime, or directly relating to the reporting of, or investigation of misconduct by another peace officer or custodial officer, including but not limited to, false statements, filing false reports, destruction, falsifying, or concealing of evidence, or perjury.” Penal Code § 823.7(b)(1)(C). Therefore, a good cause declaration is not required because this is not confidential information. Regardless, information is material if it will facilitate the ascertainment of the facts and a fair trial. Knowing whether these officers have been dishonest in the past regarding criminal prosecutions will facilitate the ascertainment of facts and a fair trial because it goes to the weight that the jury gives to their testimony. It is also independently material because it may lead to the discovery of other admissible evidence. **REASONABLE BELIEF:** I am informed and reasonably believe that SACRAMENTO COUNTY has the records sought in the Appendix of Records Sought, No. 10. If any such acts were perpetrated by either deputy while they were employed by SACRAMENTO COUNTY, the county would have been required to maintain these records. Penal Code § 832.5(a).

 I certify under the penalty of perjury, pursuant to Code of Civil Procedure section 2015.5, that the forgoing is true and correct, and that this declaration was signed on the date set forth below in San Diego County, California.

DATED: August 29, 2022 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Douglas S. Gilliland, Esq.