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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, Sgt. TIM MULLIN, an individual, and DOES 3 through 15, inclusive,  Defendants. | Case No.: 34-2021-00297987  **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR AN ORDER COMPELLING DISCOVERY AND DISCLOSURE OF PEACE OFFICER RECORDS**  **(*Pitchess v. Superior Court*)**  Date: XX-XX-XXX  Time: XX:XX  Judge: Hon.  Dept.: 53 or 59 |
|  |  |

COMES NOW, Plaintiff BRANDELL SAMPSON, by and through his attorneys of record, The Gilliland Firm, by Douglas S. Gilliland, Esq., and submits this Memorandum of Points and Authorities in support of his Motion for an Order Compelling Production of Peace Officer Records.

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**I.**

**INTRODUCTION**

This is a lawsuit alleging state law claims for (1) excessive force, (2) false arrest, (3) violence based on race, (4) assault and battery, and (5) negligence. The plaintiff is an AT&T installation technician named BRANDELL SAMPSON. The defendants are SACRAMENTO COUNTY and SACRAMENTO COUNTY sheriff deputies TIM MULLIN and S. WRIGHT.

1. **Facts Surrounding the Arrest**

On March 10, 2020, Mr. SAMPSON was having brunch with a lady-friend at the Stagecoach restaurant on Florin Road in Sacramento. They were there celebrating Mr. SAMPSON’s 27th birthday. At the same time, many officers, including Defendants MULLIN and WRIGHT, were assigned to the Sacramento County Sheriff’s Office Post Release Community Supervision Task Force (hereafter, “Task Force”). They were looking for a fugitive named Lemar Mitchell.

On March 10, 2020, Mr. SAMPSON’s DMV records showed he was 27 years old, 5’05 tall, and weighed 250 pounds. At the same time, SACRAMENTO COUNTY Sheriff’s records showed that the fugitive Mitchell was 48 years old, 6’00 tall and weighed 200 pounds. The records also showed fugitive Mitchell’s career in crime began with a 1988 arrest (four years before Mr. Sampson was born). The SACRAMENTO COUNTY Sheriff’s records also contained fugitive Mitchell’s booking photographs from 2007, January 2009, March 2009, April 2009, May 2011, July 2011, April 2012, December 2012, and June 2015 (the only appreciable time between arrests was due to incarceration). Despite the twenty-year difference in age, seven-inch difference in height, and 50-pound difference in weight, Mr. SAMPSON and fugitive Mitchell had one thing in common; they were both Black males.

By March 10, 2020, a warrant had previously issued to track the cell phone of fugitive Mitchell’s mother. On that date, fugitive Mitchell’s mother’s cell phone showed she was at the Stagecoach restaurant where Mr. SAMPSON was enjoying his birthday brunch. Task Force officers arrived at the restaurant and saw fugitive Mitchell’s mother walking out the front door with another woman. A short time later, they reported seeing 27-year-old Mr. SAMPSON and his companion also walk out of the restaurant.

The officers observed Mr. SAMPSON and his companion get into a black Ford Fusion and drive out of the parking lot. Despite the twenty-year difference in age, seven-inch difference in height, and 50-pound difference in weight, the deputies started following Mr. SAMPSON and his companion. They conducted a felony stop of Mr. SAMPSON’s vehicle. Many other Task Force members responded in multiple law enforcement vehicles; some were marked as police vehicles and others were unmarked.

Mr. SAMPSON, surprised and scared, was ordered out of the vehicle at gunpoint. A K-9 unit arrived, and a police dog was barking aggressively at Mr. SAMPSON. Mr. SAMPSON was ordered to put his hands on his head, and he complied. As deputies yelled commands, Mr. SAMPSON, still having no idea what was happening, said, “I am not going near that dog” or words to that effect. Mr. SAMPSON kicked off his shoes and stood in the street in his socks with his hands on his head to show the deputies that he was not going to run.[[1]](#footnote-1)

Deputies MULLIN and WRIGHT then circled around behind Mr. SAMPSON who was still standing in the street in sock feet with his hands on his head. Deputy WRIGHT shot Mr. SAMPSON in the back with his Taser in dart-mode. But the dart deflected off Mr. SAMPSON. Deputy WRIGHT then ran at Mr. SAMPSON and kicked him in the back while he stood in the street in his sock feet with his hands on his head. Deputy MULLIN then put Mr. SAMPSON in a headlock as Deputy WRIGHT kicked Mr. SAMPSON’s legs and the two slammed Mr. SAMPSON on the pavement. While on the ground, Deputy WRIGHT hit Mr. SAMPSON repeatedly in the head with his Taser (in a pistol whipping fashion, not shooting him again). Mr. SAMPSON was then placed in handcuffs and walked to a police SUV and shoved against the hood. Deputy MULLIN then lifted Mr. SAMPSON’s cuffed wrists so high behind his back that Mr. SAMPSON’s feet left the ground.

1. **Mr. SAMPSON’s Arrest for Resisting Arrest**

After Mr. SAMPSON was handcuffed, his wallet was taken by officers. Once they saw his identification, they realized they had followed, pulled over, shot, beaten, and arrested the wrong person. Undeterred by their own wrongful conduct, the officers arrested Mr. SAMPSON for resisting arrest. Mr. SAMPSON was taken to jail, booked, and placed in a jail cell. The sheriff then sent information to the District Attorney which caused a criminal case to be filed against Mr. SAMPSON for violation of Penal Code section 148(a)(1) (resisting arrest).

1. **Press Statements by SACRAMENTO COUNTY**

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.” **(Gilliland declaration, ¶ 2; Exhibit 1).**

ABC10 News in Sacramento ran a follow-up to that 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.” **(Gilliland declaration, ¶ 3; Exhbibit 1).**

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.” **(Gilliland declaration, ¶ 4; Exhibit 2**) (emphasis added). She concluded, “We are prohibited, by law, from discussing specifics related to discipline that is contained in a peace officer’s confidential personnel file.” **(Gilliland declaration, ¶ 4; Exhibit 2).**

1. **Dismissal of the Criminal Case**

On September 15, 2020, approximately two weeks after Sergeant Deterding’s comments to ABC and CBS news, the District Attorney moved to dismiss the criminal case against Mr. SAMPSON for resisting arrest. The motion was granted. **(Gilliland declaration ¶5; Exhibit 3).**

**II.**

***PITCHESS* AND STATUTORY AUTHORITY**

*Pitchess v. Superior Court* is a California supreme court decision that held a defendant criminally charged with battery on a peace officer had a “conditional” right to discover, from the peace officer’s employer, the existence of previous complaints about the officer’s use of excessive force. *Pitchess v. Superior Court* (1974) 11 Cal.3d 531, 537-538. In reaction to the *Pitchess* decision, the legislature enacted several statutes which, read together, codified *Pitchess* and its procedures into law. *Long Beach Police Officers Ass’n v. City of Long Beach* (2014) 59 Cal.4th 59, 68. These “*Pitchess* statutes,” as the supreme court has called them, are set forth in Penal Code sections 832.5, 832.7, and 832.8 and Evidence Code sections 1043-1047. *Id*. Although these issues are now completely statutory, motions brought pursuant to this statutory scheme are still colloquially called *Pitchess* motions.

The *Pitchess* statutes applicable to this motion are Penal Code sections 832.5, 832.7 and Evidence Code sections 1043 and 1045. Penal Code sections 832.5 and 832.7 define what records in a peace officer’s personnel file are considered confidential and which records are not confidential. Then, evidence code sections 1043 through 1047 sets forth the procedure for obtaining those records. Once the moving party makes the required statutory showing, the Court will conduct an *in camera* review of the records to determine which records will be produced to the moving party.

1. **Penal Code Sections 832.5 and 832.7**

California Penal Code section 832.5 requires municipalities to establish procedures regarding complaints by the public against their peace officers. In relevant part, section 832.5 states as follows:

1. Each department or agency in this state that employs peace officers shall establish a procedure to investigate complaints by members of the public against the personnel of these departments or agencies, and shall make a written description of the procedures available to the public.

\* \* \*

1. Complaints and reports or findings related to these complaints, including all

complaints and reports currently in the possession of the department or agency shall be retained for a period of no less than 5 years for records where there was not a sustained finding of misconduct and for not less than 15 years where there was a sustained finding of misconduct . . . .

1. Complaints by members of the public that are determined by the peace or correctional officer’s employing agency to be frivolous, as defined in Section 128.5 of the Code of Civil Procedure, or unfounded or exonerated, or any portion of a complaint that is determined to be frivolous, unfounded, or exonerated, shall not be maintained in that officer’s general personal file. However, these complaints shall be retained in other, separate files that shall be deemed personnel records for the purposes of the California Public Records Act . . . . Cal. Penal Code § 832.5(a)-(c).

California Penal Code section 832.7 sets forth what records are confidential and how to obtain confidential records. Importantly, it also sets forth what records are *not* confidential. In relevant part, section 832.7 states as follows:

1. Except as provided in subdivision (b), the personnel records of peace officers and custodial officers and records maintained by state or local agencies pursuant to Section 832.5, or information obtained from these records, are confidential and shall not be disclosed in any criminal or civil proceeding except by discovery pursuant to Sections 1043 and 1046 of the Evidence Code.

(b)(1) Notwithstanding subdivision (a) . . . or any other law, the following peace officer or custodial officer personnel records and records maintained by the state or local agency shall *not* be confidential and shall be made available for public inspection pursuant to the California Public Records Act . . . :

(A) A record relating to the report, investigation, or findings of any of the following: (i) an incident involving the discharge of a firearm at a person by a peace officer, (ii) an incident involving the use of force against a person by a peace officer or custodial officer that resulted in death or great bodily injury, (iii) *a sustained finding involving a complaint that alleges unreasonable or excessive force*, (iv) a sustained finding that an officer failed to intervene against another officer using force that is clearly unreasonable or excessive. . . .

(C) Any record relating to an incident in which a sustained finding was made by any law enforcement agency or oversight agency of 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, any sustained finding of perjury, false statements, filing false reports, destruction, falsifying, or concealing of evidence.

(b)(2) Records that shall be released pursuant to this subdivision include all investigative reports; photographic, audio, and video evidence; transcripts or recordings of interviews; autopsy reports; all materials compiled and presented for review to the district attorney or to any person or body charged with determining whether to file criminal charges against an officer in connection with an incident, or whether the officer's action was consistent

with law and agency policy for purposes of discipline or administrative action, or what discipline to impose or corrective action to take; documents setting forth findings or recommended findings; and copies of disciplinary records relating to the incident, including any letters of intent to impose discipline, any documents reflecting modifications of discipline due to the *Skelly* or grievance process, and letters indicating final imposition of discipline or other documentation reflecting implementation of corrective action. Cal. Penal Code § 832.7(a)(b) (emphasis added).

**B. Evidence Code Sections 1043 and 1045**

California Evidence Code section 1043 sets forth the notice and motion requirements for a *Pitchess* motion and its interplay with section 832.5. In relevant part, section 1043 states,

1. In any case in which discovery or disclosure is sought of peace or custodial officer personnel records or records maintained pursuant to Section 832.5, or information from those records, the party seeking the discovery or disclosure shall file a written motion with the appropriate court . . . upon written notice to the governmental agency which has custody and control of the records. The

written notice shall be given at the times prescribed by subdivision (b) of Section 1005 of the Code of Civil Procedure. Upon receipt of the notice the government agency served shall immediately notify the individual whose records are sought.

1. The motion shall include all of the following:
2. Identification of the proceeding in which discovery or disclosure is sought, the party seeking discovery or disclosure, the peace or custodial officer whose records are sought, the governmental agency which has custody and control of the records, and the time and place at which the motion for discovery or disclosure shall be heard.
3. A description of the type of records or information sought.
4. Affidavits showing good cause for the discovery or disclosure sought, setting forth [1] the materiality thereof to the subject matter involved in the pending litigation and [2] stating upon reasonable belief that the governmental agency identified has the records or information from the records.
5. No hearing upon a motion for discovery or disclosure shall be held without full compliance with the notice provisions of this section . . . . Cal. Evid. Code § 1043(a)-(c).

California Evidence Code section 1045 sets forth the type of records that the *Pitchess* statutes do not protect, i.e., they are discoverable without the need for a *Pitchess* motion. In relevant part, section 1045 states,

/ / /

1. Nothing in this article shall be construed to affect the right of access to records of complaints, or investigations of complaints, or discipline imposed as a result of those investigations, concerning an event or transaction in which the

peace officer or custodial officer participated, or which he or she perceived, and pertaining to the manner in which he or she performed his or her duties, provided that information is relevant to the subject matter involved in the pending litigation. Cal. Evid. Code § 1045(a).

**III.**

**THE SHOWING REQUIRED TO TRIGGER AN *IN CAMERA* REVIEW**

A peace officer has a strong privacy interest in his or her personnel records. *Haggerty v. Superior Court* (2004) 117 Cal.App.4th 1079, 1085. But the *Pitchess* statutes recognize that evidence contained in a peace officer’s personnel records may also be relevant in a lawsuit. To balance these competing interests, the Legislature requires “a neutral trial judge” to examine these records *in camera*, and order production of those records that satisfy the required statutory showing. *Id. at 1085, 1087* (citing *City of San Jose v. Superior Court* (1993) 5 Cal.4th 47, 53.

The California Supreme Court requires a party seeking *Pitchess* information, to identify the records with “some specificity.” *Warrick v. Superior Court* (2005) 35 Cal.4th 1011, 1021. And the request must be supported by a declaration showing “good cause.” Evid. Code § 1043(b)(3). Good cause requires the declarant to show two things: (1) that the information sought is “material” to the case, and (2) a “reasonable belief” that the governmental entity has the information. *City of Santa Cruz v. Municipal Court* (1989) 49 Cal.3d 79, 90. However, personal knowledge of the declarant is not required. The legislature “expressly considered and *rejected* a requirement of personal knowledge” for section 1043(b)(3) declarations. [[2]](#footnote-2) *Id*. at 88-89 (emphasis original). As stated by the California supreme court, the declaration can be based on “information and belief.” (*City of Santa Cruz v. Municipal Court* (1989) 49 Cal.3d 74, 80).

The California Supreme Court has held that the trial court is not tasked with evaluating the moving party’s theories, weighing or assessing the allegations; a party must simply present a plausible factual foundation for the discovery, a scenario that could or might have occurred. *Warrick*, *supra*, 35 Cal.4th at 1025-1026. Therefore, good cause is a “relatively low threshold for discovery.” *Id*. at 1019. Importantly, the *Pitchess* statutes have been defined as “expansive.” *Haggerty*, *supra*, 117 Cal.App.4th at 1087. In other words, “[r]elevant information under section 1045 is “not limited to facts that may be admissible at trial, but may include facts that *could lead to the discovery of admissible evidence*.” *Id*. (emphasis added). The “relatively relaxed standards” serve to ensure that “all potentially relevant documents” are produced for the trial court’s *in camera* review. [[3]](#footnote-3) *Warrick,* *supra,* 35 Cal.4th at 1016.

**IV.**

**THE IN CAMERA REVIEW**

If the trial court concludes the moving party has fulfilled the statutory prerequisites and made a showing of good cause, the custodian of the records will bring to the court all documents “potentially relevant” to the motion. *People v. Mooc* (2001) 26 Cal.4th 1216, 1226. The trial court examines the information in chambers of the presence and hearing of all persons except the person authorized to possess the records and such other persons the custodian of records is willing to have present. *Id*. The trial court will then disclose to the moving party such information that is relevant to the subject matter of the litigation. *Id*.

**V.**

**CONFIDENTIAL INFORMATION SOUGHT AND GOOD CAUSE THEREFOR**

Here, Mr. SAMPSON seeks the following information from SACRAMENTO COUNTY.

1. **Administrative Investigation, Allegations, and Action Taken**

**Regarding this Incident (Appendix No. 1-5)**

Penal Code section 832.7 provides a guide for the *types of records* that “shall” be released pursuant to a request.

Records that shall be released pursuant to this subdivision include all [1] *investigative reports*; *photographic*, *audio*, and *video evidence*; *transcripts or recordings of interviews;* . . . [2] all *materials compiled and presented for review to the district attorney* or to any person *or body charged with determining whether to file criminal charges against an officer in connection with an incident*, or [3] *whether the officer's action was consistent with law and agency policy for purposes of discipline or administrative action, or what discipline to impose or corrective action to take*; [4] *documents setting forth findings or recommended findings*; and copies of *disciplinary records relating to the incident*, including any *letters of intent to impose discipline*, any *documents reflecting modifications of discipline due to the Skelly or grievance process*, and *letters indicating final imposition of discipline or other documentation reflecting implementation of corrective action*. Cal. Penal Code § 832.7(a)(b)(3) (hereafter, “Section 832.7 Information”) (emphasis added).

Again, on August 28, 2020, ABC10 News in Sacramento reported that “The Sacramento County Sheriff’s spokesperson told ABC10 Friday that ‘The Sheriff’s Office conducted an administrative investigation, the allegations were sustained against the deputy, and appropriate action has been taken.” (Gilliland declaration, ¶ 3). The spokesperson, SACRAMENTO COUNTY Sheriff Sergeant Tess Deterding, told CBS News Good Day Sacramento, “[a]n 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.” (Gilliland declaration, ¶ 4) (emphasis added).

Therefore, Plaintiff seeks all Section 832.7 Information related to this incident, including: (1) *investigative reports*; *photographic*, *audio*, and *video evidence*; *transcripts or recordings of interviews;* . . . (2) all *materials compiled and presented for review to the district attorney* or to any person *or body charged with determining whether to file criminal charges against Mr. SAMPSON in connection with an incident*,[[4]](#footnote-4) or (3) *whether the officers’ actions were consistent with law and agency policy for purposes of discipline or administrative action, or what discipline to impose or corrective action to take*; (4) *documents setting forth findings or recommended findings*; and copies of *disciplinary records relating to the incident*, including any *letters of intent to impose discipline*, any *documents reflecting modifications of discipline due to the Skelly or grievance process*, and *letters indicating final imposition of discipline or other documentation reflecting implementation of corrective action*. Cal. Penal Code § 832.7(a)(b)(3) (Appendix of Records Sought, Nos. 1-4)

In addition, Defendant WRIGHT is no longer employed by SACRAMENTO COUNTY. Importantly, Section 832.7 Information includes “records relating to an incident . . . in which the peace officer or custodial officer resigned before the law enforcement agency or oversight agency concluded its investigation into the alleged incident.” Cal. Penal Code § 832.7(b)(3). Therefore, if this employment status changed (resigned or fired) because of the incident with Mr. SAMPSON, Plaintiff seeks all information related to that change in employment. (Appendix of Records Sought, No. 5).

Good cause exists for compelling disclosure of all information in this request because the information is “material” to the issues to be tried, and Plaintiff has a “reasonable belief that the governmental agency has custody and control of the records or information from the records.” (See Gilliland declaration, ¶ 6; *City of Santa Cruz,* *supra,* 49 Cal.3d at 90). “Information is ‘material’ if it ‘will facilitate the ascertainment of the facts and a fair trial.’” *Haggerty, supra*, 117 Cal.App4th at 1086. Under the *Pitchess* statutes, relevant information “is not limited to facts that may be admissible at trial, but may include facts that could lead to the discovery of admissible evidence.” *Haggerty*, *supra*, 117 Cal.App.4th at 1087.

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* (9th Cir. 2017) F.3d 1096, 1105. According to Sergeant Deterding’s admissions against the interests of SACRAMENTO COUNTY, an administrative investigation was performed, and Deputy WRIGHT’s actions were “deemed an inappropriate and *excessive use of force* at the conclusion of the investigation.” (Gilliland declaration, ¶ 4) (emphasis added). Therefore, ordering production of the information set forth in the Appendix of Records Sought, No’s 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 which is certainly in their possession. (Gilliland declaration, ¶ 6).

1. **The Internal Affairs Report Regarding This Incident[[5]](#footnote-5) (Appendix No. 6)**

In *Haggerty v. Superior Court*, the court of appeal addressed a *Pitchess* motion seeking the internal affairs report in an excessive force case. 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’”). Therefore, “good cause” exists for the production of these records which are in possession of SACRAMENTO COUNTY. (See Gilliland declaration, ¶ 7).

1. **All Records Involving Prior Complaints for Unnecessary and**

**Excessive Acts of Violence and Acts of Racial Prejudice**

**(Appendix No. 7).**

In *City of Santa Cruz v. Municipal Court*, the California supreme court addressed a *Pitchess* request for prior complaints against the officers for unnecessary and excessive force. *City of Santa Cruz*, *supra*, 49 Cal.3d at 91. In opposition, the city argued that counsel’s “good cause” declaration was a mere “fishing expedition” because it was based on information and belief, not personal knowledge of prior complaints. *Id*.

The supreme court rejected this argument. It noted that the legislature specifically discussed a “personal knowledge” requirement and rejected it when passing section 1043. *Id*. at 89. Therefore, it reasoned, a declaration based on information and belief is adequate as long as the “type” of records are adequately set forth. *Id*. at 89-90. It held, “Clearly, an affidavit which describes the information sought as consisting of prior ‘complaints of excessive force’ by specific officers . . . has specified a class, group, or ‘type’ of information within the plain meaning of the statute.” *Id*. at 91.

In so doing, the supreme court noted the case of *In re. Valerie E*. In that case, the *Pitchess* request was for “all records involving complaints against the officers for unnecessary and excessive acts of violence or racial prejudice.” *In re. Valerie* (1975) 50 Cal.App.3d 213, 217. Addressing this specific request, the *Valerie* court noted that this “clearly specified the exact information sought, i.e. all information regarding citizen complaints for excessive force against he two police officers that arrested her. This was sufficient to justify discovery.” *Id*. at 218-219 (quoted by *City of Santa Cruz*, *supra*, 49 Cal.3d at 92).

Here, plaintiff’s first cause of action is for excessive force. His fourth cause of action is brought under the Ralph Act for violence based on race. Plaintiff seeks, pursuant to the *Valerie* case, all records involving complaints against Defendants MULLIN or WRIGHT for unnecessary and excessive acts of violence or racial prejudice. This information is material for the same reasons set forth in *Valerie*. *In re. Valerie*, *supra*, 50 Cal.App.3d at 218-219. Therefore, good cause exists for production of these documents. (See Gilliland declaration, ¶ 8).

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.

**VI.**

**NON-CONFIDENTIAL INFORMATION SOUGHT**

1. **Information Regarding Complaints of Excessive Force (Appendix No. 8).**

Penal Code section 832.7(b) states 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.” Penal Code § 832.7(b)(1)(A)(iii). Therefore, Mr. SAMPSON seeks disclosure of all complaints against Defendants MULLIN and WRIGHT for which there was a sustained finding of excessive force. Although not required (because the information is not confidential), good cause exists for the production of these records. (See Gilliland declaration, ¶ 9).

1. **Dishonesty of an Officer in Reporting (Appendix 9).**

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, plaintiff seeks all such information from both Defendant MULLIN’s and WRIGHT’s personnel files. Although not required (because the information is deemed not confidential), good cause exists for the production of these records. (See Gilliland declaration, ¶ 10).

**VII.**

**CONCLUSION**

For the foregoing reasons, Plaintiff BRANDELL SAMPSON respectfully asserts that the documents set forth above and in the Appendix of documents sought be ordered produced to the court for an *in camera* review and production to plaintiff’s counsel.

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DATED: August 29, 2022 The Gilliland Firm

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Douglas S. Gilliland, Esq., attorneys

for Plaintiff BRANDELL SAMPSON

1. Regardless, Deputy WRIGHT would later write in his incident report that Mr. SAMPSON removing his shoes and standing in his sock feet was a sign he *was* going to run. Sergeant MULLIN wrote that it was a sign Mr. SAMPSON was going to fight them. [↑](#footnote-ref-1)
2. Because the requesting party often does not know what documents exist, *a general description of categories of documents will suffice*. *City of Santa* Cruz, *supra*, 49 Cal.3d at 90-91 (a request seeking “other complaints of excessive force” sufficiently describes the type of documents sought and meets the standard for good cause) (emphasis added). [↑](#footnote-ref-2)
3. In 2004, California voters passed an initiative which amended the California constitution. It requires trial courts to “narrowly construe” statutes that limit public access to government information (arguably the *Pitchess* statutes). *Long Beach Police Officers Association*, *supra*, 59 Cal.4th at 68 (citing Cal. Const., art. I, § 3, subd. (b)(2)). However, this constitutional amendment, by its own terms, does not affect any statute regulating disclosure of information concerning “official performance or professional qualifications of a peace officer.” *Id*. Therefore, the oft cited rule of narrow construction is not applicable to the *Pitchess* statutes nor this court’s *Pitchess* analysis. [↑](#footnote-ref-3)
4. This clause applies to charges against an officer. It has been modified to seek records given to the district attorney for charges brought against Mr. SAMPSON due to the false arrest claim. [↑](#footnote-ref-4)
5. Plaintiff understands that some these requests may be duplicative. However, the relatively relaxed threshold for discovery under section 1043 is to ensure that “all potentially relevant documents” are produced for the trial court to review. *Warrick*, *supra*, 35 Cal.4th at 1025-1026. Plaintiff’s requests may be duplicative at times to ensure the trial court has all potentially relevant documents to review. *Warrick,* *supra,* 35 Cal.4th at 1016. [↑](#footnote-ref-5)