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and Officers No. 1 and Officer No. 2

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ORANGE-CENTRAL

SANTA ANA POLICE OFFICERS
ASSOCIATION and DOE OFFICER 1
AND DOE OFFICER 2

Plaintiffs,

vs.

CITY OF SANTA ANA, a Municipal
Corporation; SANTA ANA POLICE
DEPARTMENT, a public safety
department; CARLOS ROJAS, Chief of
Police; DOES I-X, inclusive

Defendants.

Case 30-2015-00801604-CU-OE-CJC
Assigned to Hon. Ronald L. Bauer

EX PARTE APPLICATION FOR
TEMPORARY RESTRAINING ORDER
AND ORDER TO SHOW CAUSE;
MEMORANDUM OF POINTS AND
AUTHORITIES, DECLARATION OF
COREY W. GLAVE, IN SUPPORT.

Hearing: August 5, 2015
Time: ~~8:30 a.m.~~
Dept.: C20

Plaintiffs SANTA ANA POLICE OFFICERS ASSOCIATION and DOE OFFICER
1 AND DOE OFFICER 2 are forced to apply, *ex parte*, for a Temporary Restraining
Order, to prevent suffering irreparable harm to Doe Officer 1, Doe Officer 2 and
similarly situated officers of the Santa Ana Police Department if the Department
continues to use, for administrative purposes, an illegally recorded video of Plaintiff
Officers. Plaintiffs' statutory rights will be violated and their livelihood threatened unless
this Court prevents the City of Santa Ana from using the unlawfully obtained evidence
to investigate and/or implement punitive action against the officers involved in the
service of a search warrant that was illegally recorded.

1 The Recording Party¹ (subjects and/or attorney of business that was the subject
2 of the search warrant secretly recorded the officers in a clear violation of California's
3 Invasion of Privacy Act, which criminalizes the non-consensual recording of confidential
4 communications. (Penal Code §632(a)). Defendants then used the unlawful recordings
5 to initiate administrative proceedings against the officers. Plaintiffs seek a Temporary
6 Restraining Order restraining Defendant CITY OF SANTA ANA, a Municipal
7 Corporation; SANTA ANA POLICE DEPARTMENT, a public safety department; and
8 CARLOS ROJAS, Chief of Police, and its/his/their agents, servants and employees,
9 from:

- 10 (A) Initiating, continuing or subjecting the involved officers, including
11 Doe Officer 1, Doe Officer 2 and Doe Officer 3, and all other
12 similarly situated officers, to any judicial, administrative, legislative
13 or other proceeding, including, but not limited to administrative
14 investigations, based on evidence obtained as a result of an illegal
15 eavesdropping upon or recording of confidential communications,
16 or the fruits of said recording, in violation of Penal Code §632;
- 17 (B) Using and/or maintaining any materials/information/statements,
18 and/or the fruits of said materials/information/statements, unlawfully
19 obtained in violation of Government Code §3303;
- 20 (C) Imposing any punitive action for matters/charges/allegations based
21 on (1) the illegally recording of the officers, (2) the unlawfully
22 conducted interrogation of the officers, and/or (3) the fruits of said
23 unlawfully obtained evidence.

24 Plaintiffs also apply for an Order to Show Cause why a preliminary injunction
25

26 ¹The Recording Party already released edited portions of the video in the media
27 causing a firestorm of publicity as the Recording Party, based on intentionally edited
28 portions of videos, falsely accused the officers of ingesting marijuana laced food
commonly called edibles. Plaintiffs are trying to obtain the full video so that legal action
may also be properly brought against the Recording Party.

1 should not be granted enjoining said Defendants from committing the above actions
2 during the pendency of this action.

3 Plaintiffs allege that Defendants engaged in clear violations of Penal Code §632
4 by using evidence obtained from an illegal eavesdropping/recording of communications
5 and that Defendants engaged in a clear violation of the Public Safety Officers
6 Procedural Bill of Right Act ("Act"), Government Code Section 3300, et seq., by
7 unlawfully refusing to provide required documents prior to a second or "subsequent"
8 interrogation of the involved officers. Both Penal Code §637.2 and Government Code
9 §3309.5 authorize this court to grant injunctive relief immediately upon learning of the
10 violations.

11 Where a legislative body has enacted a statutory provision proscribing a certain
12 activity, it has already determined that such activity is contrary to the public interest.
13 Further, where the legislative body has specifically authorized injunctive relief against
14 the violation of such a law, it has already determined (1) that significant public harm will
15 result from the proscribed activity, and (2) that injunctive relief may be the most
16 appropriate way to protect against that harm. (See *Paul v. Wadler* (1962) 209
17 Cal.App.2d 615, 625).

18 Plaintiff stand to suffer irreparable harm² if the Defendants are allowed to
19 proceed with their investigation and/or proceed with proposing punitive action with the
20 unlawfully obtained evidence in that Defendant will have violated numerous provision of
21 state law and public policy, and Plaintiff will be denied a proper remedy for the violation
22 of their rights. Furthermore, if Defendants are allowed to proceed with the
23 administrative case, Plaintiffs will be subjected to punitive action, up to and including

24
25 ²In this case, Plaintiffs officers could have their vested right to continued employment terminated
26 and be removed from the payroll with loss of all medical and other benefits. Plaintiffs will then be inhibited
27 from finding other work in their chosen profession. This alone constitutes irreparable harm. (See
28 *Volpicelli v. Jared Sydney Torrance Memorial Hosp.*, (1980)109 Cal.App.3d 242 (The nature of an
employees' to practice his chose profession is not merely a personal right; it is a property interest which
directly relates to the pursuit of his livelihood. Such interest is clearly a fundamental right. Denying this
right may well have the effect of denying him the right to capably practice his profession (citations
omitted)).

1 termination resulting in Plaintiffs being denied their right to continued employment and a
2 continued paycheck; Plaintiff's only source of revenue. Finally, Plaintiff will be forced to
3 defend the disciplinary action which is based on unlawfully obtained statements and/or
4 evidence .

5 This application is made pursuant to Penal Code §632 and 637.2, together with
6 the Public Safety Officers Procedural Bill of Rights Act, Government Code §3309.5(b)
7 which vests the Superior Court with initial jurisdiction over any proceeding brought by
8 any public safety officer against any public safety department for alleged violations
9 under the Bill of Rights Act, Government code § 3300, et seq. Government Code
10 §3309.5(c) further provides that:

11 "In any case where the superior court finds that a public safety department
12 has violated any of the provisions of this chapter, the court shall render
13 appropriate injunctive or other extraordinary relief to remedy the violation
14 and to prevent future violations of the like or similar nature including, but
15 not limited to the granting of the temporary restraining order, preliminary
16 or permanent injunction prohibiting the public safety department from
17 taking any punitive actions against the public safety officer."

18 Immediate and irreparable injury, loss and/or damages pursuant to Code of Civil
19 Procedure §526 and Government Code §3309.5 will result to Plaintiffs unless this Court
20 immediately enjoins Defendants.

21 Plaintiffs has not previously applied for any judicial relief as herein requested.

22 The name and contract information of the attorney for all Defendants is believed
23 to be Laura Rossinni, Sr. Assistant City Attorney, City of Santa Ana, 20 Civic Center
24 Plaza, M29, Santa Ana, CA 92702, (714) 647-5201, lrossinni@santa-ana.org. Notice
25 was provided to counsel via telephonic notice and e-mail notice on August 3, 2015 (See
26 Glave Declaration and Exhibit 2)

27 This application is based on the verified Complaint on file in this case, on the
28 declarations of Corey Glave, Esq., Doe Officer 1, Doe Officer 2, Doe Officers 3 and on

1 the Memorandum of Points and Authorities filed herein.

2
3 Dated: August 3, 2015

COREY W. GLAVE, ATTORNEY AT LAW

4 /s/ Corey W. Glave

5 By _____
6 Corey W. Glave,
7 Attorney for Plaintiffs
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I. INTRODUCTION

This is a case of a knee jerk response to the public dissemination of illegal video recordings of officers during the service of a search warrant on a marijuana dispensary. Defendants overreacted to rumors and innuendo attached to the publication of the illegal recordings. Not only Defendants initiated an administrative investigation based on evidence unlawfully obtained, but then Defendants, themselves, started violating state law.

Because the Defendants based their administrative investigation on evidence obtained from an unlawful recording, and then violated the involved officers' rights, this Court is mandated by the applicable statutes to render appropriate injunctive or other extraordinary relief to remedy the violation and to prevent future violations of a like or similar nature, including, but not limited to, the granting of a temporary restraining order, preliminary injunction, or permanent injunction prohibiting the public safety department from taking any punitive action against the public safety officer. (Government Code §3309.5(d)(1)); see also Penal Code §637.2).

II. STATEMENT OF FACTS

On or about May 26, 2015, members of the Santa Ana Police Department, including Doe Officer 1 and Doe Officer 2³, participated in the service of a narcotic search warrant on a location in the City of Santa Ana, commonly referred to as the “Sky

³Plaintiff Doe Officer 1 is a male, uniformed officer; Plaintiff Doe Officer 2, is a female, uniformed officer employed by the Santa Ana Police Department. The name of the officer is being withheld pursuant to Penal Code §§832.5-832.8, Evidence Code §§1043-1046, and due to several threats received as a result of the underlying incident. (See *Long Beach Police Officers Association v. City of Long Beach* (2014) 59 Cal.4th 59, 75). There is sufficient information contained herein, and in the Complaint, for Defendants to ascertain the identity and name of each officer. Defendants have agreed to the need to keep the officers' identity concealed at this time. (See Exhibit 1)

1 High Medical Marijuana Dispensary” (“Dispensary”). During the search warrant service,
2 a number of uniformed officer and undercover officers participated in the search. The
3 undercover officers, due to the nature of their continuing investigative work, wore masks
4 to hide their identity from the general public.

5 After making entry into the Dispensary all civilians present in the Dispensary
6 were escorted out of the business and detained outside. The only people to remain
7 inside the Dispensary were Police Department employees, until Fire Authority
8 personnel arrived to open locked safes. After all civilians were escorted/detained
9 outside, Doe Officer 1, as instructed by his superior officers, disabled all known
10 recording devices (video cameras and DVR). At this time, all police personnel present
11 had a reasonable expectation that their conversations and actions were no longer being
12 recorded. In fact, the undercover officers, feeling that they were safe to do so, removed
13 their masks.

14 After the known recording devices were disabled, the officers, including Doe
15 Officer 1 and Doe Officer 2, had an objectively reasonable expectation that their
16 communications (words and actions) were not being overheard or recorded and that
17 their actions, conversations and all forms of communications would be confined to the
18 parties thereto. Their communications were not in a public gathering or in any
19 legislative, judicial, executive or administrative proceeding open to the public. They
20 also did not reasonably expect that their communications may be overheard or
21 recorded. Based on this reasonable belief, the officers engaged in joking behavior and
22 other communications between the officers.

23 Unbeknownst to involved officers, the owners of the business and/or their
24 attorney (collectively “Recording Party”), in anticipation that the Dispensary would be
25 raided, placed additional hidden cameras in the Dispensary to record the
26 communications (actions and words) of law enforcement officers. The Recording Party
27 was not a party to the communications and did not seek nor obtain the consent from
28 any involved officers to have their communications recorded.

1 The Recording Party then released edited portions of the secret and illegal
2 recording to media outlets in a manner to purposely distort the officers actions and
3 statements and to cause problems for both the involved officers and the City's
4 enforcement actions. After the illegal recordings were released to the media,
5 representative of Defendants viewed the videos and, based solely on the content of the
6 edited illegal recordings, initiated internal affairs investigations of each of the officers
7 involved in the warrant service, including internal investigations of Doe Officer 1 and
8 Doe Officer 2.

9 Without the illegal recordings, there would have been no reason to initiate an
10 internal investigation of any officer, including Doe Officer 1 or Doe Officer 2, as there
11 would be no basis to, rightfully or wrongfully, allege any misconduct against the officers
12 involved in the service of the search warrant.

13 On or about June 18, 2015, Doe Officer 2 was interrogated by Defendants. Prior
14 to being interviewed, Doe Officer 2 was shown selective portions of the illegal
15 recordings. Doe Officer 2, via her legal counsel, objected to the investigation based on
16 the fact that the investigation was initiated and based solely on the illegal recordings.
17 Defendants did not deny the basis of the investigation was the illegal recordings, but
18 summarily dismissed the objection and ordered Doe Officer 2 to continue with the
19 interrogation or be subjected to discipline for insubordination.

20 Similarly, on or about June 21, 2015, Doe Officer 1 was interrogated by
21 Defendants. Prior to being interviewed, Doe Officer 1 was shown selective portions of
22 the illegal recordings. Doe Officer 1, via his legal counsel, objected to the investigation
23 based on the fact that the investigation was initiated and based solely on the illegal
24 recordings. Defendants did not deny that the basis of the investigation was the illegal
25 recordings, but summarily dismissed the objection and ordered Doe Officer 1 to
26 continue with the interrogation or be subjected to discipline for insubordination.

27 At some unknown point, Defendants obtained additional footage from the illegal
28 recording referenced above. Based on the additional footage, Doe Officer 1, Doe

Officer 2, and other involved officers were notified of subsequent or second interrogations.

Upon being notified of further proceedings; to wit, further interrogations at a subsequent time, both Doe Officer 1 and Doe Officer 2, via counsel, requested that, pursuant to Government Code §3303(g), Defendants provide, in a reasonable time prior to these subsequent interrogations, all required documents under Government Code §3303. The Officers further reasserted their objections to the investigation in total as it was based on evidence obtained as the result of an unlawful recording of the officers.

The officer's Penal Code §632 objections were ignored, and their requests for materials were denied. The officers were ordered to appear for further investigation without being provided any materials other than the recording of their first interrogation.

Doe Officer 1 was subsequently interrogated for a second time on July 17, 2015, at approximately 1015 hours. Doe Officer 2 was subsequently interrogated for a second time on July 17, 2015, at 1112 hours. Both officers were shown additional illegal recordings and interrogated about the content of the recordings.

Plaintiffs are informed and believe that Defendants, as part of the administrative (internal affairs) investigation into the service of the search warrant, were in possession and control of copies of the other reports and complaints (written by the investigators and/or others), including, but not limited to, copies of the illegal recordings, recorded interviews with other officers, and reports generated throughout the administrative investigation, including summaries of the prior interrogations of Doe Officer 1 and Doe Officer 2.

III. ARGUMENT

As its name suggests, a temporary restraining order or preliminary injunction is an order that is sought by a plaintiff prior to a full adjudication of the merits of its claim. [Citation.] (*White v. Davis* (2003) 30 Cal.4th 528, 554) The purpose of such an order "is to preserve the status quo until a final determination following a trial." (*Scaringe v.*

1 *J.C.C. Enterprises, Inc.* (1988) 205 Cal.App.3d 1536, 1542). It "does not constitute a
2 final adjudication of the controversy." (*Ibid.*, see also *Costa Mesa City Employees'*
3 *Assn. v. City of Costa Mesa*, (2012) 209 Cal.App.4th 298)

4 California Code of Civil Procedure §526 provides that an injunction may be
5 granted when it appears from the complaint or affidavits that the commission of some
6 act during litigation would produce great or irreparable injury to a party to the action.
7 *Public Employment Relations Board v. Modesto City School District* (1982) 136 Cal.3d
8 881. Importantly, where a legislative body has enacted a statutory provision proscribing
9 a certain activity, it has already determined that such activity is contrary to the public
10 interest. Further, where the legislative body has specifically authorized injunctive relief
11 against the violation of such a law, it has already determined (1) that significant public
12 harm will result from the proscribed activity, and (2) that injunctive relief may be the
13 most appropriate way to protect against that harm. (See *Paul v. Wadler* (1962) 209
14 Cal.App.2d 615, 625).

15 In deciding whether to issue preliminary injunctive relief, courts must assess two
16 interrelated factors: (1) the likelihood that the plaintiff will prevail on the merits at trial;
17 and (2) the interim harm that the plaintiff is likely to sustain if the injunctive relief were
18 denied as compared to the harm that the defendant is likely to suffer if the order were
19 issued. (*Church of Christ in Hollywood v. Superior Court*, 99 Cal.App.4th 1244, 1251
20 (2002).

21 Courts evaluate these two factors on a continuum such that "[t]he more likely it is
22 that plaintiffs will ultimately prevail, the less severe must be the harm that they allege
23 will occur if the injunction does not issue. (*Right Site Coalition v. Los Angeles Unified*
24 *School District.*, 160 Cal.App.4th 336, 338-339). Furthermore, "if the party seeking the
25 injunction can make a sufficiently strong showing of likelihood of success on the merits,
26 the trial court has discretion to issue the injunction notwithstanding that party's inability
27 to show that the balance of harms tips in his favor." (*Common Cause v. Board of*
28 *Supervisors*, 49 Cal.3d 432, 441-442 (1989).

1 The two factor test, which represent two points on sliding scale in which required
2 probability of success decreases as degree of irreparable harm increases, applies for
3 determining propriety of Temporary Restraining Orders and/or preliminary injunctions
4 with the moving party required to demonstrate either: (1) a combination of probable
5 success on the merits and the possibility of irreparable injury, or (2) that serious
6 questions are raised and the balance of the hardship tips sharply in favor of the moving
7 party. Whether to issue a TRO or preliminary injunction must be guided by a mix of the
8 potential merit and the interim harm factors; the greater the plaintiff's showing on one,
9 the less must be shown on the other to support relief. (*Price v. City of Stockton* 394 F.
10 Supp.2d 1256 (E.D. Cal. 2005)).

11
12 A. Defendants Are Basing Administrative Investigation on Evidence Obtained
13 from an Illegal Recording

14 In 1967, the California Legislature enacted a broad, protective
15 invasion-of-privacy statute in response to what it viewed as a serious and increasing
16 threat to the confidentiality of private communications resulting from then recent
17 advances in science and technology that had led to the development of new devices
18 and techniques for eavesdropping upon and recording such private communications.
19 (Pen.Code, §§ 630- 637.2.) One of the provisions of the legislation, section 637.2,
20 explicitly created a statutory private right of action, authorizing any person who has
21 been injured by any violation of the invasion-of-privacy legislation to bring a civil action
22 to recover damages and to obtain injunctive relief in response to such violation.
23 (*Kearney v. Salomon Smith Barney, Inc.*, (2006) 39 Cal.4th 95, 115-116.

24 The Act is designed to effectuate California's strong public policy interest in
25 protecting the privacy of its citizens. (*Flanagan v. Flanagan*, 27 Cal.4th 766, 775 (2002).
26 To that end, "courts are required to liberally construe section 632 to effectuate [this]
27 policy." *Right v. CashCall, Inc.*, 231 Cal.App.4th 112, 130 (2014)

1 California Penal Code § 632 makes it illegal for any person⁴ to intentionally and
2 without the consent of all parties to a confidential communication, by means of any
3 electronic amplifying or recording device, eavesdrops upon or records⁵ the confidential
4 communication. The term "confidential communication" is to be construed broadly and
5 a conversation is a "confidential communication," if a party to the conversation has an
6 objectively reasonable expectation that the conversation is not being overheard or
7 recorded. *Flanagan v. Flanagan* (2002) 27 Cal.4th 766; *Frio v. Superior Court* (1988)
8 203 Cal.App.3d 1480.)⁶

9 Plaintiffs will prevail in establishing that the recording of their conversations was
10 illegal. First, all civilian personnel were removed and detained outside; the only people
11 that remained were public safety officials. Next, all known security cameras were
12 disabled and the DVR was confiscated. The officers then began to act and speak freely
13 while going about their duties. In fact, undercover officers felt safe enough to remove
14 their masks—which the illegal recordings then videotaped their faces. The illegal
15 recordings were recorded through a second set of hidden cameras that the officers
16 were not aware of. Finally, none of the officers believed that they were being
17 overheard or recorded, they did not consent to being recorded and they would not have
18

19 ⁴The term "person" includes an individual, business association, partnership,
20 corporation, limited liability company, or other legal entity, and an individual acting or
21 purporting to act for or on behalf of any government or subdivision thereof, whether
22 federal, state, or local, but excludes an individual known by all parties to a confidential
23 communication to be overhearing or recording the communication. (Penal Code
24 §632(b))

25 ⁵Recording includes any audio or video recording of "communication" (which is
26 not limited to conversations or oral communications but rather encompasses any
27 communication, regardless of its form, where any party to the communication desires it
28 to be confined to the parties thereto.) *People v. Gibbons*, (Cal.App. 4 Dist. 1989) 215
Cal.App.3d 1204, 1208.

⁶The high court stated that under the *Frio* test, "confidentiality" requires "nothing
more than the existence of a reasonable expectation by one of the parties that no one
is "listening in" or overhearing the conversation." (*Flanagan, supra*, 27 Cal.4th at pp.
772-773)

1 acted or spoken in the same manner if they had know that they were being recorded.

2 Next, the Penal Code provides that “[E]xcept as proof in an action or prosecution
3 for violation of this section, no evidence obtained as a result of eavesdropping upon or
4 recording a confidential communication in violation of this section shall be admissible in
5 any judicial, administrative, legislative, or other proceeding. (Penal Code §632(d)).

6 Cases interpreting this section have ruled that requires the court or administrative body
7 to excise and disregard the information unlawfully obtained and any other information
8 obtained as the tainted 'fruit' thereof. *People v. Buchanan*, (1972) 26 Cal.App.3d 274,
9 289. Furthermore, §632 prohibits unconsented-to recording or monitoring regardless of
10 the content of the conversation or the purpose of the monitoring. *Kight v. CashCall,*
11 *Inc.*, (2011) 200 Cal.App.4th 1377, 1389.

12 Furthermore, California Penal Code §637.2 provides, in pertinent part, that “[A]ny
13 person who has been injured by a violation of this chapter may, in accordance with
14 Chapter 3 (commencing with Section 525) of Title 7 of Part 2 of the Code of Civil
15 Procedure, bring an action to enjoin and restrain any violation of this chapter, and may
16 in the same action seek damages. (Penal Code §637.2(b)). Finally, it is not a
17 necessary prerequisite to an action pursuant to this section that the plaintiff has
18 suffered, or be threatened with, actual damages. (Penal Code §637.2(c)).

19 Plaintiffs, and each of them, bring this action on behalf of themselves and all
20 similarly situated officers, seeking injunctive relief against Defendants, and each of
21 them, who have violated these Penal Code sections by knowingly using evidence
22 obtained as a result of an illegal eavesdropping/recording against the officers involved
23 in the service of the search warrant, including Doe Officer 1 and Doe Officer 2.

24 Plaintiffs have no plain, speedy or adequate remedy under the law. They have
25 attempted to persuade Defendants to terminate their administrative investigation
26 voluntarily and have repeatedly objected to the use of the illegal recordings and/or the
27 fruits of the illegal recording to no avail. Furthermore, pursuant to Penal Code §637.2,
28 Plaintiffs need not pursue any administrative remedy in order to address this problem

1 nor must they wait to suffer actual damages. Thus, Plaintiffs are excused from or have
2 exhausted his/her/its administrative remedies.

3
4 B. Violation of Government Code §3300, et seq.

5 In 1976 the California State Legislature passed Government Code Section 3300,
6 et. seq., also known as “The Public Safety Officers Procedural Bill of Rights Act. This
7 legislation was created in order to provide public safety officers throughout the State of
8 California with the rights and protections the Legislature found necessary to stop the
9 abusive practices of public safety agencies when conducting internal investigations.
10 These protections consist of restrictions on the manner in which investigation and
11 interviews can be conducted and set out certain rights and procedures. *Pasadena*
12 *Police Officers Ass’n v. City of Pasadena*, (1990) 51 Cal.3d 564. The Act specifies the
13 “basic rights and protections which must be afforded all public safety officers (see §
14 3301) by the public entities which employ them and was a catalogue of the minimum
15 rights to protect employees from abuse or arbitrary treatment. (Ibid; *Baggett v. Gates*,
16 (1982) 32 Cal.3d 128; *White v. County of Sacramento* (1982) 31 Cal.3d 676).

17 In interpreting the public safety officer's rights under the Act, a general rule of
18 statutory construction requires a liberal construction in favor of those persons for whom
19 a statute was designed to protect. *Connolly Development, Inc. v. Superior Court* (1976)
20 17 Cal.3d 803, 826-827. Consequently, in the matter at hand, the construction of
21 Government Code §3300, and its subparts should be liberally constructed to protect the
22 employee’s rights as the Act is remedial, and case law call for a liberal construction of
23 the rights guaranteed by the Act. *Baggett* (supra); *White* (supra); *Lybarger v. Los*
24 *Angeles*, (1985) 40 Cal.3d 822.

25 In the matter at hand, Plaintiffs contend that Defendants violated provisions of
26 the Public Safety Officers Procedural Bill of Rights Act (“Act”). Government Code
27 §3309.5 provides that it shall be unlawful for any public safety department to deny or
28 refuse to any public safety officer the rights and protections guaranteed to them by this

chapter (3309.5(a)). It further provides that in any case where the superior court finds that a public safety department has violated any of the provisions of this chapter, the court **shall render appropriate injunctive** or other extraordinary relief to remedy the violation and to prevent future violations of a like or similar nature, including, but not limited to, the granting of a temporary restraining order, preliminary, or permanent injunction prohibiting the department proceeding in violation of the act (see §3309.5(c)).

The Legislature enacted section 3309.5 of the Act "to allow an officer to pursue a remedy immediately in the courts for violation of these rights during the investigation and not be required to wait for judicial review after administrative consideration of those violations." *Mounger v. Gates* (1987) 193 Cal.App.3d 1248, 1256 (after examining the Legislative History of the Act, determined there was nothing in section 3309.5 which requires an officer to exhaust his or her administrative remedies); see also: *Gales v. Superior Court* (1996) 47 Cal.App.4th 1596, 1602; *Aguilar v. Johnson*, (1988) 202 Cal.App.3d 241.

Plaintiffs acknowledge that officers are not entitled to discovery or documents prior to their first interrogation, and Plaintiffs are not seeking "pre-interrogation" discovery in this case. However, the Act, as interpreted by the California Supreme Court, requires that prior to a second interrogation or "any further interrogation at a subsequent time" that the public safety officer shall be entitled to a transcribed copy of any notes made by a stenographer or to any reports or complaints made by investigators or other persons.

Specifically, Government Code §3303(g) provides: "The complete interrogation of a public safety officer may be recorded. If a tape recording is made of the interrogation, the public safety officer shall have access to the tape if any further proceedings are contemplated or prior to any further interrogation at a subsequent time. The public safety officer shall be entitled to a transcribed copy of any notes made by a stenographer or to any reports or complaints made by investigators or other persons, except those which are deemed by the investigating agency to be confidential. No

1 notes or reports that are deemed to be confidential may be entered in the officer's
2 personnel file.”

3 The California Supreme Court found that subdivision (g) of section 3303 was
4 included in the Act to further the notions of fundamental fairness for police officers.
5 (*Pasadena Police Officers Assn. v. City of Pasadena* (1990) 51 Cal.3d 564, 573). The
6 Court further found that to harmonize subdivision (g) as a whole, then the provision
7 should be interpreted as requiring that, as is the case with recordings and notes, reports
8 and complaints be produced after first interrogation and that the Legislature must have
9 intended the discovery rights in each instance to be coextensive. (*Pasadena Police*
10 *officers Assn, supra*, at 576; See also *Gilbert v. City of Sunnyvale* (2005) 130
11 Cal.App.4th 1264; *San Diego Police Officers Assn. v. City of San Diego* (2002) 98
12 Cal.App.4th 779).

13 Finally, the Act provides that if a public safety officer is interrogated in violation of
14 these procedural guarantees, the trial court has the duty to "render appropriate
15 injunctive or other extraordinary relief to remedy the violation" (§ 3309.5, subd.
16 (d)(1)) including prohibiting any disciplinary action being taken against an officer (See
17 Gov't Code §3309.5; *Breslin v. City and County of San Francisco* (2007) 146
18 Cal.App.4th 1064; *Alameida v. State Personnel Bd.* (2004) 120 Cal.App.4th 46;
19 *Jackson v. City of Los Angeles* (2003) 111 Cal.App.4th 899) or the suppression of the
20 officer's statements (see *Lybarger v. City of Los Angeles* (1985) 40 Cal.3d 822, 829;
21 *Hanna v. City of Los Angeles*, (1989) 212 Cal.App.3d 363; *City of Los Angeles v.*
22 *Superior Court*, 57 Cal.App.4th 1506, 1512-1516) and the fruits of said statements.
23 (See *Perez v. City of Los Angeles* (2008) 167 Cal.App.4th 118 (Evidence that police
24 officer had conducted an inappropriate training exercise by returning a knife to an
25 arrestee's pocket was solely based on officer's statements during interrogation and thus
26 was inadmissible in disciplinary proceeding as the fruit of the poisonous tree); *Mounger*
27 *v. Gates* (1987) 193 Cal.App.3d 1248 (injunctive relief for violations of requirements for
28 interrogations during investigation on basis that interrogations constituted substantial

1 violations of his rights under Gov.Code § 3303 and that he should be granted injunctive
2 relief to prevent department from using fruits of violations and from committing future
3 violations)

4 In the matter at hand, Doe Officer 2 was interviewed on June 18, 2015, and
5 further interrogated on July 17, 2015. Doe Officer 1 was interrogated on June 21, 2015,
6 and further interrogated on July 17, 2015. While they were not entitled to pre-
7 interrogation discovery prior to the June interviews, they were entitled to the production
8 of certain documents prior to their second or “subsequent” interrogations⁷. The City’s
9 failure to produce copies of all transcribed copy of any notes made by a stenographer
10 or to any reports or complaints made by investigators or other persons prior to the
11 second interrogation renders the second interrogation unlawful.

12 As Defendants will concede that they did not provide the officers any information
13 or materials other than a recording of their first interview, they have violated the act and
14 have done so knowingly.

15
16 C. Irreparable Harm

17 Not only is injunctive relief mandated by the statutes,⁸ but immediate and
18

19 ⁷Defendants may argue that Plaintiff is only entitled to such records after the
20 investigation has been completed and punitive action is being proposed. This is simply not
21 true. As the Supreme Court observed in *Pasadena*, “[s]ubdivision (f) [now (g)] defines only
22 disclosure requirements incident to an investigation; it does not address an officer's entitlement
23 to discovery in the event he or she is administratively charged with misconduct.” (*Pasadena*,
supra, 51 Cal.3d at p. 575; *Gilbert v. City of Sunnyvale*, (2005) 130 Cal.App.4th 1264, 1283.
Additionally, such an argument would make the provision “if any further proceedings are
contemplated” unnecessary.

24 ⁸ By prohibiting the proscribed activity and specifically authorizing enforcement by
25 injunction, the Legislature had expressed its intent to prevent the public harm it impliedly
26 determined this conduct would cause. In this case, Penal Code §637.2 authorizes injunctive
27 relief, and Government Code §3309.5 specifically mandates that the Court render appropriate
28 injunctive or other extraordinary relief to remedy the violation and to prevent future violations of
a like or similar nature, including, but not limited to, the granting of a temporary restraining
order, preliminary injunction, or permanent injunction prohibiting the public safety department
from taking any punitive action against the public safety officer. Accordingly, the where a
legislative body has specifically provided injunctive relief for a violation of a statute or ordinance,
a showing by a Plaintiff that he/she is likely to prevail on the merits should give rise to a

1 irreparable injury will result to Plaintiffs' as their rights will have been violated without
2 remedy and to the detriment of plaintiffs. Plaintiffs will have their right to privacy
3 violated by a third party and then be subjected to administrative investigation based on
4 the contents of the illegal recordings (as edited by the Recording Party). Additionally, if
5 Defendants are allowed to continue forward with their effort to appease anti-police
6 factions, Plaintiffs have been informed that they can be subject them to disciplinary
7 action which could range all the way up to and including termination. (See Government
8 Code §3303).

9 Irreparable harm includes harm arising from wrongs of a "continuing character"
10 and harms in which monetary compensation would not afford adequate relief or would
11 be extremely difficult to ascertain. (See *People ex rel. Gow v. Mitchell Brothers' Santa*
12 *Ana Theater*, 118 Cal.App.3d 863, 870-871; *Wind v. Herbert*, 186 Cal.App.2d 276, 285
13 (1960).

14 Any punitive action that involves suspension or separation involves removal from
15 the Department's payroll with the possibility of all wages and benefits being terminated.
16 terminated. As the Supreme Court stated over 50 years ago, the economic position of
17 the average worker and, in particular, his dependence on wages for the necessities of
18 life for himself and his family is essential to the public's welfare. (See *Ex Parte*
19 *Trombely*, (1948) 31 Cal.2d 801, 809-10). While the Defendants may claim this is just
20 an economic issue, it is not.

21 Losing a job, and the income it entails, amounts to irreparable harm. (*White v.*
22 *Davis, supra*, 30 Cal.4th at p. 559 [lost wages and other benefits during lawsuit over
23 budget impasse constituted serious hardship to those affected by impasse]; *Costa*
24 *Mesa City Employees' Assn., supra* 209 Cal.App.4th at 308). In the matter at hand, the
25 evidence will show that the employees were threaten with the possibility of loss of
26 employment depending on the results of the administrative investigation. Importantly, a
27

28

presumption of public harm.

1 plaintiff is "not required to wait until he/she has suffered actual harm before he/she
2 applies for an injunction, but may seek injunctive relief against the threatened
3 infringement of their rights." (*Maria P. v. Riles* (1987) 43 Cal.3d 1281, 1292; *City of*
4 *Torrance v. Transitional Living Centers for Los Angeles, Inc.* (1982) 30 Cal.3d 516,
5 526).

6 Finally, even damage to reputation constitutes irreparable harm (*Regents of*
7 *Univ. Of Cal. v. Am. Broad. Cos.*, 747 F.2d 511, 520 (9th Cir.1984) and injunctive relief
8 is designed precisely to prevent "intangible injuries" such as physical harm, pain,
9 suffering and injury to reputation. (*Arizona Dream Act Coal. v Brewer*, 757 F.3d 1053,
10 1068 (9th Cir. 2014)(because they lack adequate remedies, "intangible injuries"
11 constitute irreparable harm); *Harris v. Bd. of Supervisors, Los Angeles County*, 366
12 F.3d 754, 766 (9th Cir. 2004)(physical harm including pain and suffering, constitute
13 irreparable harm).

14
15 D. Balancing of Harm Favors Plaintiffs and Granting of Temporary
16 Restraining Order and Preliminary Injunction

17 In the instant case, the record establishes the reasonable likelihood that Plaintiffs
18 will prevail on the merits and that if the Court does not issues an injunction to prevent
19 further use of unlawfully obtained evidence Plaintiff will suffer irreparable harm.
20 Defendants will be hard pressed to show any harm if the injunction were issued.
21 Indeed, if an injunction is issued, it will simply serve to maintain the status quo and if
22 relief is denied in the future, they can move forward with their action at that time.

23 Where little harm would result to the city by delaying an investigation and/or
24 disciplinary action, where denial of temporary restraining order or preliminary injunction
25 restraining the disciplinary action pending trial would be tantamount to divesting the
26 employee any remedy at all on his claims, where a TRO or preliminary injunction would
27 serve to promote stable employer- employee relations and where the employee has a
28 likelihood of prevailing at trial, it would be an abuse of discretion to deny an application

1 for a TRO or a preliminary injunction (See *Heyenga v. City of San Diego* (1979) 94
2 Cal.App.3d 756).

3
4 **IV. CONCLUSION**

5 Based upon the foregoing Points and Authorities, Declarations, Verified
6 Complaint and the file herein, it is respectfully requested that the court issue the
7 requested Order to Show Cause and Temporary Restraining Order.

8
9 Dated: August 3, 2015

COREY W. GLAVE, ATTORNEY AT LAW

10 /s/ Corey W. Glave

11 By _____
12 Corey W. Glave,
13 Attorney for Plaintiffs

1 **DECLARATION OF COREY W. GLAVE**

2 I, COREY W. GLAVE, declare as follows:

3 1. I am an attorney at law licensed to practice before all courts of the State of
4 California. My is located at 1042 2nd Street, Hermosa Beach, CA 90254, 90036, (310)
5 379-0065. If called to, I can competently testify to the following of my own person
6 knowledge, except those matters stated on information and belief.

7 **Ex Parte Notice**

8 2. August 3, 2015, at approximately 4:59 p.m., I contacted Sr. Assistant City
9 Attorney Laura Rossini, from the Santa Ana City Attorney's office. Ms. Rossini had
10 previously informed me that she represents the Defendants in all types of these
11 matters. The receptionist transferred me to Ms. Rossini's voice-mail and I left a
12 message with the below information.

13 3. I informed Ms. Rossini that on August 5, 2015, at 1:30 p.m., or as soon
14 thereafter as the matter may be heard, I would be applying, Ex Parte, for a Temporary
15 Restraining Order on behalf of Plaintiffs Santa Ana Police Officers Association and
16 Doe Officers (involved in the May 26, 2015, service of a narcotic search warrant on a
17 location in the City of Santa Ana, commonly referred to as the "Sky High Medical
18 Marijuana Dispensary"), in Department C-20 of the Orange County Superior Court,
19 located at 700 Civic Center Drive-West, Santa Ana, California. I informed her that
20 Plaintiffs will be seeking a Temporary Restraining Order to prevent and/or stay any
21 further administrative disciplinary proceedings, and prohibit the use of unlawfully
22 obtained evidence against the officers involved in the "pot shop raid." The application
23 would also include a request for an Order to Show Cause re Preliminary Injunction, and
24 that the basis for this requested relief was the provisions of Penal Code §632 and 637.2
25 (illegal recording of the officers), as well as the Public Safety Officers Procedural Bill of
26 Rights Act, and mainly the Act's document requirements under Government Code
27 §3303.

28 4. I informed Ms. Rossini that if the Police Department and/or City of Santa

1 Ana would stipulate to holding the punitive actions/proceedings in abeyance, I would
2 stay the Ex Parte Application to see if the parties could resolve this matter without the
3 need for litigation.

4 5. This same information was sent via electronic mail to the e-mail address
5 that I know is Ms. Rossini's, and also to Chief Rojas, on that same day. A true and
6 correct copy of said letter is attached hereto as Exhibit 2.

7 6. On the same date that this Application was filed with the Court, I sent, via
8 e-mail, copies of the Summons, Complaint, and Ex Parte pleadings to Ms. Rossini.

9 7. I asked Ms. Rossini to inform me if they were going to appear and/or
10 oppose this application. At the time of this filing no formal response has been received,
11 but it is anticipated that the City will oppose the application.

12 **Doe Officer Identification**

13 8. I am personally aware of the identities of the Doe Officers referenced in
14 this action. I have confirmed and verified that each officer signed his/her declaration. I
15 have copies of the signature page signed by the Officers and have present such to
16 counsel for Defendants. If the Court requires the actually signature with the officers
17 names, it is requested that they be filed under seal.

18 9. The true identity of each officer is being withheld pursuant to Penal Code
19 §§832.5-832.8, Evidence Code §§1043-1046, and due to several threats received as a
20 result of the underlying incident. (See *Long Beach Police Officers Association v. City of*
21 *Long Beach* (2014) 59 Cal.4th 59, 75). I have been provided a copy of the City of
22 Santa Ana's response to a Request for Public Records, wherein the City indicated that
23 it would not release my name due to the above considerations. A true and correct copy
24 of said letter is attached as Exhibit 1.

25 **Illegal Recordings**

26 10. I am aware that on or about May 26, 2015, members of the Santa Ana
27 Police Department, including the Doe Officers, participated in the service of a narcotic
28 search warrant on a location in the City of Santa Ana, commonly referred to as the "Sky

1 High Medical Marijuana Dispensary" ("Dispensary"). During the search warrant service,
2 a number of other uniformed officer and undercover officers participated in the search.
3 The undercover officers, due to the nature of their continuing investigative work, wore
4 masks to hide their identity from the general public.

5 11. I am informed that after making entry into the Dispensary all civilians
6 present in the Dispensary were escorted out of the business and detained outside by
7 police personnel. The only people to remain inside the Dispensary were Police
8 Department employees, until Fire Authority personnel arrived to open locked safes.
9 After all civilians were escorted/detained outside, as there were instructed to do by the
10 supervisor on scene, the officers disabled all known recording devices (video cameras
11 and DVR). With all civilians removed and the recorders no longer working, I believed
12 that all police personnel present had a reasonable expectation that their conversations
13 and actions were no longer being recorded. In fact, I am informed that the undercover
14 officers present, evidently believing that they were safe to do so, removed their masks.

15 12. I later learned that, unbeknownst to the involved officers, the owners of
16 the business and/or their attorney (collectively "Recording Party"), in anticipation that
17 the Dispensary would be raided, placed additional hidden cameras in the Dispensary to
18 record the communications (actions and words) of law enforcement officers. The
19 Recording Party was not a party to the communications and did not seek nor obtain the
20 officers' consent to have their communications recorded.

21 13. I am aware that the Recording Party then released edited portions of the
22 secret and illegal recording to media outlets. It appears that the editing was done in a
23 manner to purposely distort the other officers' actions and statements and to cause
24 problems for both the involved officers and the City's enforcement actions.

25 14. I have not been provided copies of the actual recordings, but found edited
26 copies on the website:

27 <http://voiceofoc.org/2015/06/santa-ana-to-investigate-police-conduct-in-pot-shop-raid/>

28 15. After the illegal recordings were released to the media, I understand that

1 representative of City of Santa Ana and Santa Ana Police Department viewed the
2 videos and, based solely on the content of the edited and illegal recordings, initiated
3 internal affairs investigations of each of the officers involved in the warrant service.

4 16. It is my understanding that without the illegal recordings, there would have
5 been no reason to initiate an internal investigation of any officer as there would be no
6 basis to allege any misconduct against the officers involved in the service of the search
7 warrant.

8 17. On or about June 18, 2015, I appeared with and represented Doe Officer
9 2 at her interrogation as part of an administrative investigation, commonly referred to as
10 an Internal Affairs investigation. Prior to being interviewed, Doe Officer 2 and I were
11 shown selective portions of the illegal recordings. On behalf of my client, I objected to
12 the investigation based on the fact that the investigation was initiated and based solely
13 on the illegal recordings. Defendants did not deny that the basis of the investigation
14 was the illegal recordings, but summarily dismissed the objection.

15 18. On or about June 21, 2015, I appeared with and represented Doe Officer
16 1 at his interrogation as part of the administrative investigation. Prior to being
17 interviewed, Officer Doe 1 and I were shown selective portions of the illegal recordings.
18 I again objected to the investigation based on the fact that the investigation was
19 initiated and based solely on the illegal recordings. Defendants again did not deny that
20 the basis of the investigation was the illegal recordings, but summarily dismissed the
21 objection.

22 19. Both officers were informed that allegations had been made against them
23 that they might have violated department orders, rules, regulations, policies, or
24 procedures and further informed that a sustained finding on any allegation of
25 misconduct could lead to discipline, up to and including termination. They were also
26 informed, in my presence, that they were being ordered to continue with the
27 interrogation and answer all questions or be subjected to discipline for insubordination,
28 again up to and including termination.

1 20. I am informed and believe that at some unknown point, the City and/or
2 Police Department obtained additional footage from the illegal recording referenced
3 above. Based on the additional footage, I was notified that both Doe Officer 1 and Doe
4 Officer 2 were being ordered to appear for further interrogation.

5 21. Upon being notified of further proceedings; to wit, further interrogations at
6 a subsequent time, I requested that, pursuant to Government Code §3303(g), the
7 officers, via my office, be provided, in a reasonable time prior to the further
8 interrogation, all required documents under Government Code §3303. I further
9 reasserted objections to the investigation in total as it was based on evidence obtained
10 as the result of an unlawful recording of myself and other officers. The objections were
11 ignored and the requests for documents were denied.

12 22. Both officers were ordered to appear for further interrogation without being
13 provided any materials other than the recording of their first interrogation.

14 23. Doe Officer 1 was subsequently interrogated for a second time on July 17,
15 2015, at approximately 1015 hours. He was, in my presence, shown additional footage
16 from the illegal recordings and interrogated about the content of the recordings. Doe
17 Officer 2 was subsequently interrogated for a second time on July 17, 2015, at
18 approximately 1112 hours. She was shown additional footage from the illegal
19 recordings and interrogated about the content of the recordings.

20 24. I am familiar with the Internal Affairs investigative process at the Santa
21 Ana Police Department, and have represented officers at that Department for over
22 twenty (20) years. I am informed and believe that the Police Department, as part of the
23 administrative (internal affairs) investigation into the service of the search warrant, were
24 in possession and control of copies of the other reports and complaints (written by the
25 investigators and/or others), including, but not limited to, copies of the illegal recordings,
26 recorded interviews with other officers, and reports generated throughout the
27 administrative investigation, including summaries of my first interrogation.

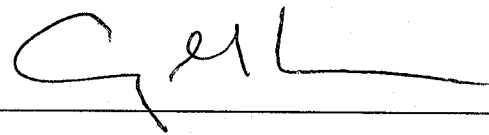
28 25. I believe that the administrative investigation is nearly or actually

1 completed and that officers may be facing immediate and irreparable harm based on
2 the Defendants' action. The City/Police Department is using evidence obtained in
3 violation of the officers' right to privacy and without injunctive relief, there will no remedy
4 for the violations of their rights. Any punitive action that involves suspension or
5 separation involves removal from the Department's payroll with the possibility of all
6 wages and benefits being terminated.

7 26. I am not aware of any additional administrative remedies the officers have
8 and believe we have exhausted all administrative remedies available to the officers.

9 I declare under penalty of perjury under the laws of the State of California that
10 the foregoing is true and correct.

11 Executed on August 3, 2015, at Hermosa Beach, California.

12
13 

14 COREY W. GLAVE
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DECLARATION OF DOE OFFICER 1

I, DOE OFFICER 1, declare as follows:

1. I am an adult, over the age of 18 years of age and referenced in this matter as Doe Officer 1. I am a resident of the State of California and employed by the Santa Ana Police Department. My business address is 60 Civic Center Plaza Santa Ana, CA 92701. If called to, I can competently testify to the following of my own person knowledge, except those matters stated on information and belief.

2. I am a full time, sworn police officer for the City of Santa Ana, Santa Ana Police Department. I was one of the uniformed officer involved in the service of a narcotic search warrant on May 26, 2015, on a location in the City of Santa Ana.

3. I have been informed and believe that my true identity is being withheld pursuant to Penal Code §§832.5-832.8, Evidence Code §§1043-1046, and due to several threats received as a result of the underlying incident. (See *Long Beach Police Officers Association v. City of Long Beach* (2014) 59 Cal.4th 59, 75). I have been provided a copy of the City of Santa Ana's response to a Request for Public Records, wherein the City indicated that it would not release my name due to the above considerations. A true and correct copy of said letter is attached as Exhibit 1.

4. On or about May 26, 2015, members of the Santa Ana Police Department, including myself, participated in the service of a narcotic search warrant on a location in the City of Santa Ana, commonly referred to as the "Sky High Medical Marijuana Dispensary" ("Dispensary"). During the search warrant service, a number of other uniformed officer and undercover officers participated in the search. The undercover officers, due to the nature of their continuing investigative work, wore masks to hide their identity from the general public.

5. The Dispensary is designed such that when the public enters the establishment, they enter a lobby area, and then move into a separate sales/distribution area. The distribution area is not visible to the general public.

1 6. After making entry into the Dispensary all civilians present in the
2 Dispensary were escorted out of the business and detained outside by police
3 personnel. The only people to remain inside the Dispensary were Police Department
4 employees, until Fire Authority personnel arrived to open locked safes. After all
5 civilians were escorted/detained outside, I was instructed by my superior officer
6 disabled all known recording devices (video cameras and DVR). I did this and believe
7 that all recording devices were render inoperable. With all civilians removed and the
8 recorders no longer working, I believed that all police personnel present had a
9 reasonable expectation that their conversations and actions were no longer being
10 recorded. In fact, the undercover officers present, evidently believing that they were
11 safe to do so, removed their masks.

12 7. After this time, I had an objectively reasonable expectation that neither my
13 or my partners' communications (words and actions) were being overheard or recorded
14 and that my actions, conversations and all forms of communications would be confined
15 to the parties thereto. My communications, at that time, were not in a public gathering
16 or in any legislative, judicial, executive or administrative proceeding open to the public.
17 I did not expect that my communications, or those of the other officers present, may be
18 overheard or recorded.

19 8. I later learned that, unbeknownst to myself or the other involved officers,
20 the owners of the business and/or their attorney (collectively "Recording Party"), in
21 anticipation that the Dispensary would be raided, placed additional hidden cameras in
22 the Dispensary to record the communications (actions and words) of law enforcement
23 officers. The Recording Party was not a party to our communications and did not seek
24 nor obtain my consent have our communications recorded.

25 9. I am aware that the Recording Party then released edited portions of the
26 secret and illegal recording to media outlets in a manner to purposely distort mine and
27 the other officers' actions and statements and to cause problems for both the involved
28 officers and the City's enforcement actions.

1 10. After the illegal recordings were released to the media, I understand that
2 representative of City of Santa Ana and Santa Ana Police Department viewed the
3 videos and, based solely on the content of the edited and illegal recordings, initiated
4 internal affairs investigations of each of the officers involved in the warrant service,
5 including internal investigations of myself.

6 11. It is my understanding that without the illegal recordings, there would have
7 been no reason to initiate an internal investigation of any officer, including myself, as
8 there would be no basis to allege any misconduct against the officers involved in the
9 service of the search warrant.

10 12. On or about June 21, 2015, I was interrogated as part of an administrative
11 investigation, commonly referred to as an Internal Affairs investigation. Prior to being
12 interviewed, I was shown selective portions of the illegal recordings. My attorney
13 objected to the investigation based on the fact that the investigation was initiated and
14 based solely on the illegal recordings. Defendants did not deny that the basis of the
15 investigation was the illegal recordings, but summarily dismissed the objection.

16 13. I was informed that a sustained finding on any allegation of misconduct
17 could lead to discipline, up to and including termination. I was also ordered to continue
18 with the interrogation and answer all questions or be subjected to discipline for
19 insubordination, again up to and including termination.

20 14. I am informed and believe that at some unknown point, the City and/or
21 Police Department obtained additional footage from the illegal recording referenced
22 above. Based on the additional footage, I was notified that I was being ordered to
23 appear for further interrogation.

24 15. Upon being notified of further proceedings; to wit, further interrogations at
25 a subsequent time, I, via counsel, requested that, pursuant to Government Code
26 §3303(g), I be provided, in a reasonable time prior to the further interrogation, all
27 required documents under Government Code §3303. I, via my counsel, further
28 reasserted objections to the investigation in total as it was based on evidence obtained

1 as the result of an unlawful recording of myself and other officers.

2 16. My Penal Code §632 objections were ignored, and my request for
3 materials was denied. I was ordered to appear for further interrogation without being
4 provided any materials other than the recording of my first interrogation.

5 17. I was subsequently interrogated for a second time on July 17, 2015, at
6 approximately 1015 hours. I was shown additional footage from the illegal recordings
7 and interrogated about the content of the recordings.

8 18. Understanding the Internal Affairs investigative process, I am informed
9 and believe that the Police Department, as part of the administrative (internal affairs)
10 investigation into the service of the search warrant, were in possession and control of
11 copies of the other reports and complaints (written by the investigators and/or others),
12 including, but not limited to, copies of the illegal recordings, recorded interviews with
13 other officers, and reports generated throughout the administrative investigation,
14 including summaries of my first interrogation.

15 19. I believe that I am facing immediate and irreparable harm based on the
16 Defendants' action. The City/Police Department is using evidence obtained in violation
17 of my right to privacy and without injunctive relief, there will no remedy for the violations
18 of my rights. I have been informed that I could be subjected to termination if the
19 Department finds any violation of departmental policies based on the content and
20 evidence from the illegal recordings. Any punitive action that involves suspension or
21 separation involves removal from the Department's payroll with the possibility of all
22 wages and benefits being terminated. My family and I depend on my wages for the
23 necessities of life and any loss of wages and/or other benefits would constituted a
24 serious hardship to me and my family.

25 I declare under penalty of perjury under the laws of the State of California that
26 the foregoing is true and correct.

27 Executed on August 3, 2015, at Santa Ana, California.
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Doel Officer 1
Doe Officer 1

DECLARATION OF DOE OFFICER 2

I, DOE OFFICER 2, declare as follows:

1. I am an adult, over the age of 18 years of age and referenced in this matter as Doe Officer 2. I am a resident of the State of California and employed by the Santa Ana Police Department. My business address is 60 Civic Center Plaza Santa Ana, CA 92701. If called to, I can competently testify to the following of my own person knowledge, except those matters stated on information and belief.

2. I am a female, full time, sworn police officer for the City of Santa Ana, Santa Ana Police Department. I was one of the uniformed officer involved in the service of a narcotic search warrant on May 26, 2015, on a location in the City of Santa Ana.

3. I have been informed and believe that my true identity is being withheld pursuant to Penal Code §§832.5-832.8, Evidence Code §§1043-1046, and due to several threats received as a result of the underlying incident. (See *Long Beach Police Officers Association v. City of Long Beach* (2014) 59 Cal.4th 59, 75). I have been provided a copy of the City of Santa Ana's response to a Request for Public Records, wherein the City indicated that it would not release my name due to the above considerations. A true and correct copy of said letter is attached as Exhibit 1.

4. On or about May 26, 2015, members of the Santa Ana Police Department, including myself, participated in the service of a narcotic search warrant on a location in the City of Santa Ana, commonly referred to as the "Sky High Medical Marijuana Dispensary" ("Dispensary"). During the search warrant service, a number of other uniformed officer and undercover officers participated in the search. The undercover officers, due to the nature of their continuing investigative work, wore masks to hide their identity from the general public.

5. The Dispensary is designed such that when the public enters the establishment, they enter a lobby area, and then move into a separate sales/distribution

1 area. The distribution area is not visible to the general public.

2 6. After making entry into the Dispensary all civilians present in the
3 Dispensary were escorted out of the business and detained outside by police
4 personnel. The only people to remain inside the Dispensary were Police Department
5 employees, until Fire Authority personnel arrived to open locked safes. After all
6 civilians were escorted/detained outside, officers disabled all known recording devices
7 (video cameras and DVR). With all civilians removed and the recorders no longer
8 working, I believed that all police personnel present had a reasonable expectation that
9 their conversations and actions were no longer being recorded. In fact, the undercover
10 officers present, evidently believing that they were safe to do so, removed their masks.

11 7. After this time, I had an objectively reasonable expectation that neither my
12 or my partners' communications (words and actions) were being overheard or recorded
13 and that my actions, conversations and all forms of communications would be confined
14 to the parties thereto. My communications, at that time, were not in a public gathering
15 or in any legislative, judicial, executive or administrative proceeding open to the public.
16 I did not expect that my communications, or those of the other officers present, were
17 being overheard or recorded.

18 8. I later learned that, unbeknownst to myself or the other involved officers,
19 the owners of the business and/or their attorney (collectively "Recording Party"), in
20 anticipation that the Dispensary would be raided, placed additional hidden cameras in
21 the Dispensary to record the communications (actions and words) of law enforcement
22 officers. The Recording Party was not a party to our communications and did not seek
23 nor obtain my consent have our communications recorded.

24 9. I am aware that the Recording Party then released edited portions of the
25 secret and illegal recording to media outlets in a manner to purposely distort my and the
26 other officers' actions and statements and to cause problems for both the involved
27 officers and the City's enforcement actions.

28 10. After the illegal recordings were released to the media, I understand that

1 representative of City of Santa Ana and Santa Ana Police Department viewed the
2 videos and, based solely on the content of the edited and illegal recordings, initiated
3 internal affairs investigations of each of the officers involved in the warrant service,
4 including internal investigations of myself.

5 11. It is my understanding that without the illegal recordings, there would have
6 been no reason to initiate an internal investigation of any officer, including myself, as
7 there would be no basis to allege any misconduct against the officers involved in the
8 service of the search warrant.

9 12. On or about June 18, 2015, I was interrogated as part of an administrative
10 investigation, commonly referred to as an Internal Affairs investigation. Prior to being
11 interviewed, I was shown selective portions of the illegal recordings. My attorney
12 objected to the investigation based on the fact that the investigation was initiated and
13 based solely on the illegal recordings. Defendants did not deny that the basis of the
14 investigation was the illegal recordings, but summarily dismissed the objection.

15 13. I was informed that a sustained finding on any allegation of misconduct
16 could lead to discipline, up to and including termination. I was also ordered to continue
17 with the interrogation and answer all questions or be subjected to discipline for
18 insubordination, again up to and including termination.

19 14. I am informed and believe that at some unknown point, the City and/or
20 Police Department obtained additional footage from the illegal recording referenced
21 above. Based on the additional footage, I was notified that I was being ordered to
22 appear for further interrogation.

23 15. Upon being notified of further proceedings; to wit, further interrogations at
24 a subsequent time, I, via counsel, requested that, pursuant to Government Code
25 §3303(g), I be provided, in a reasonable time prior to the further interrogation, all
26 required documents under Government Code §3303. I, via my counsel, further
27 reasserted objections to the investigation in total as it was based on evidence obtained
28 as the result of an unlawful recording of myself and other officers.

1 16. My Penal Code §632 objections were ignored, and my request for
2 materials was denied. I was ordered to appear for further interrogation without being
3 provided any materials other than the recording of my first interrogation.

4 17. I was subsequently interrogated for a second time on July 17, 2015, at
5 approximately 1015 hours. I was shown additional footage from the illegal recordings
6 and interrogated about the content of the recordings.

7 18. Understanding the Internal Affairs investigative process, I am informed
8 and believe that the Police Department, as part of the administrative (internal affairs)
9 investigation into the service of the search warrant, were in possession and control of
10 copies of the other reports and complaints (written by the investigators and/or others),
11 including, but not limited to, copies of the illegal recordings, recorded interviews with
12 other officers, and reports generated throughout the administrative investigation,
13 including summaries of my first interrogation.

14 19. I believe that I am facing immediate and irreparable harm based on the
15 Defendants' action. The City/Police Department is using evidence obtained in violation
16 of my right to privacy and without injunctive relief, there will no remedy for the violations
17 of my rights. I have been informed that I could be subjected to termination if the
18 Department finds any violation of departmental policies based on the content and
19 evidence from the illegal recordings. Any punitive action that involves suspension or
20 separation involves removal from the Department's payroll with the possibility of all
21 wages and benefits being terminated. My family and I depend on my wages for the
22 necessities of life and any loss of wages and/or other benefits would constituted a
23 serious hardship to me and my family.

24 I declare under penalty of perjury under the laws of the State of California that
25 the foregoing is true and correct.

26 Executed on July 29, 2015, at Santa Ana, California.

27 Doe Officer 2
28 Doe Officer 2

DECLARATION OF DOE OFFICER 3

I, DOE OFFICER 3, declare as follows:

1. I am an adult, over the age of 18 years of age and referenced in this matter as Doe Officer 3. I am a resident of the State of California and employed by the Santa Ana Police Department. My business address is 60 Civic Center Plaza Santa Ana, CA 92701. If called to, I can competently testify to the following of my own person knowledge, except those matters stated on information and belief.

2. I am a male, full time, sworn police officer for the City of Santa Ana, Santa Ana Police Department. I was one of the uniformed officer involved in the service of a narcotic search warrant on May 26, 2015, on a location in the City of Santa Ana. I stayed at the location until it was being boarded up and I believe I was the last male officer to leave the location of the search warrant service.

3. I have been informed and believe that my true identity is being withheld pursuant to Penal Code §§832.5-832.8, Evidence Code §§1043-1046, and due to several threats received as a result of the underlying incident. (See *Long Beach Police Officers Association v. City of Long Beach* (2014) 59 Cal.4th 59, 75). I have been provided a copy of the City of Santa Ana's response to a Request for Public Records, wherein the City indicated that it would not release my name due to the above considerations. A true and correct copy of said letter is attached as Exhibit 1.

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5. The Dispensary is designed such that when the public enters the

1 establishment, they enter a lobby area, and then move into a separate sales/distribution
2 area. The distribution area is not visible to the general public.

3 6. After making entry into the Dispensary all civilians present in the
4 Dispensary were escorted out of the business and detained outside by police
5 personnel. The only people to remain inside the Dispensary were Police Department
6 employees, until Fire Authority personnel arrived to open locked safes. After all
7 civilians were escorted/detained outside, officers disabled all known recording devices
8 (video cameras and DVR). With all civilians removed and the recorders no longer
9 working, I believed that all police personnel present had a reasonable expectation that
10 their conversations and actions were no longer being recorded. In fact, the undercover
11 officers present, evidently believing that they were safe to do so, removed their masks.

12 7. After this time, I had an objectively reasonable expectation that neither my
13 or my partners' communications (words and actions) were being overheard or recorded
14 and that my actions, conversations and all forms of communications would be confined
15 to the parties thereto. My communications, at that time, were not in a public gathering
16 or in any legislative, judicial, executive or administrative proceeding open to the public.
17 I did not expect that my communications, or those of the other officers present, were
18 being overheard or recorded.

19 8. I later learned that, unbeknownst to me or the other involved officers, the
20 owners of the business and/or their attorney (collectively "Recording Party"), in
21 anticipation that the Dispensary would be raided, placed additional hidden cameras in
22 the Dispensary to record the communications (actions and words) of law enforcement
23 officers. The Recording Party was not a party to our communications and did not seek
24 nor obtain my consent have our communications recorded.

25 9. I am aware that the Recording Party then released edited portions of the
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27 other officers' actions and statements and to cause problems for both the involved
28 officers and the City's enforcement actions.

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2 representative of City of Santa Ana and Santa Ana Police Department viewed the
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5 including internal investigations of myself.

6 11. It is my understanding that without the illegal recordings, there would have
7 been no reason to initiate an internal investigation of any officer, including myself, as
8 there would be no basis to allege any misconduct against the officers involved in the
9 service of the search warrant.

10 12. On or about June 18, 2015, I was interrogated as part of an administrative
11 investigation, commonly referred to as an Internal Affairs investigation. Prior to being
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13 objected to the investigation based on the fact that the investigation was initiated and
14 based solely on the illegal recordings. Defendants did not deny that the basis of the
15 investigation was the illegal recordings, but summarily dismissed the objection.

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18 with the interrogation and answer all questions or be subjected to discipline for
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20 14. I believe that I am facing immediate and irreparable harm based on the
21 Defendants' action. The City/Police Department is using evidence obtained in violation
22 of my right to privacy and without injunctive relief, there will no remedy for the violations
23 of my rights. I have been informed that I could be subjected to termination if the
24 Department finds any violation of departmental policies based on the content and
25 evidence from the illegal recordings. Any punitive action that involves suspension or
26 separation involves removal from the Department's payroll with the possibility of all
27 wages and benefits being terminated. My family and I depend on my wages for the
28 necessities of life and any loss of wages and/or other benefits would constituted a

1 serious hardship to me and my family.

2 I declare under penalty of perjury under the laws of the State of California that
3 the foregoing is true and correct.

4 Executed on July 29, 2015, at Santa Ana, California.

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7 Doe Officer 3
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EXHIBIT 1.

MAYOR
Miguel A. Pulido
MAYOR PRO TEM
Vincent F. Sarmiento
COUNCILMEMBERS
Angelica Amezcua
P. David Benavides
Michele Martinez
Roman Reyna
Sal Tinajero



CITY MANAGER
David Cavazos
CITY ATTORNEY
Sonia R. Carvalho
CLERK OF THE COUNCIL
Maria D. Huizar

CITY OF SANTA ANA
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Santa Ana, California 92702
(714) 647-5201 • Fax (714) 647-6515
www.santa-ana.org

June 22, 2015

SENT VIA U.S. MAIL

Mr. William Sherrill
P. O. Box 5847
Statesville, NC 28687

Re: Request for Information/Public Records Act Request of June 14, 2015

Dear Mr. Sherrill:

This letter is in response to your request for information of June 14, 2015 wherein you requested the names of officers that "raided the Sky High Medical Marijuana Dispensary." The names of the officers are being withheld at this time based upon significant officer safety concerns due to several threats received as a result of this incident. *See, Long Peace Police Officers Association v. City of Long Beach* (2014) 59 Cal.4th 59, 75. In addition, six of the officers involved in this incident were working in an undercover capacity and for that reason the names of the six officers working undercover will not be released.

The person responsible for withholding this information is the undersigned. This response is meant to completely comply with your request. Should you wish to discuss your request further, please do not hesitate to contact me.

Very truly yours,

SONIA R. CARVALHO
City Attorney


Laura A. Rossini
Senior Assistant City Attorney

LAR:ab

SANTA ANA CITY COUNCIL

Miguel A. Pulido
Mayor
MPulido@santa-ana.org

Sal Tinajero
Mayor Pro Tem, Ward 6
STinajero@santa-ana.org

Vincent F. Sarmiento
Ward 1
VSarmiento@santa-ana.org

Michele Martinez
Ward 2
MMartinez@santa-ana.org

Angelica Amezcua
Ward 3
AAmezcua@santa-ana.org

P. David Benavides
Ward 4
DBenavides@santa-ana.org

Roman Reyna
Ward 5
RReyna@santa-ana.org

EXHIBIT 2.

Subj: **Notice of Ex Parte Application**
Date: 8/3/2015 4:56:50 P.M. Pacific Daylight Time
From: Poaattorney@aol.com
To: lrossini@santa-ana.org, crojas@santa-ana.org
CC: poaattorney@aol.com

Ms. Rossini and Chief Rojas,

On August 5, 2015, at 1:30 p.m., or as soon thereafter as the matter may be heard, I will be applying, Ex Parte, for a Temporary Restraining Order on behalf of Plaintiffs Santa Ana Police Officers Association and the Doe Officers (involved in the May 26, 2015, service of a narcotic search warrant on a location in the City of Santa Ana, commonly referred to as the "Sky High Medical Marijuana Dispensary"), in Department C-20 of the Orange County Superior Court, located at 700 Civic Center Drive-West, Santa Ana, California.

The lawsuit regarding this matter was assigned to Judge Ronald Bauer, but he was not available and Judge Chaffe will be hearing the ex parte application. This is a non-appearance "hearing."

Plaintiffs will be seeking a Temporary Restraining Order to prevent and/or stay any further administrative disciplinary proceedings, and prohibit the use of unlawfully obtained evidence against the officers involved in the "pot shop raid." The application would also include a request for an Order to Show Cause re Preliminary Injunction, and that the basis for this requested relief was the provisions of Penal Code §632 and 637.2 (illegal recording of the officers), as well as the Public Safety Officers Procedural Bill of Rights Act, and mainly the Act's document requirements under Government Code §3303.

If the Police Department and/or City of Santa Ana would stipulate to holding the punitive actions/proceedings in abeyance, I would stay the Ex Parte Application to see if the parties could resolve this matter without the need for litigation.

Please inform me if the City will be appearing and/or opposing this application.

Corey Glave
Attorney at Law
1042 2nd Street
Hermosa Beach, CA 90254
Cell: 323-547-0472
Fax: 310-379-0456

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Corey Glave, Attorney at Law, does not accept or consent to the service of process, motions, pleadings, documents or any other items by electronic format. Correspondence via electronic format does not indicate an agreement or consent to acceptance of service in such format.

Thank you and have a great day.

Monday, August 03, 2015 AOL: Poaattorney