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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SOLANO**

AMERICAN CIVIL LIBERTIES
UNION OF NORTHERN
CALIFORNIA,

Petitioner/Plaintiff,

v.

VALLEJO POLICE DEPARTMENT,

Respondent/Defendant.

CASE NO. FCS059257

**NOTICE OF MOTION AND MOTION TO
CLARIFY THE SCOPE OF DISCOVERY
PROTECTIVE ORDER; MEMORANDUM
OF POINTS AND AUTHORITIES**

[Public – Redacts Material from
Conditionally Sealed Record]

Judge: Hon. Stephen Gizzi
Department: 3 *September 24, 2024*
Hearing date: ~~August 21, 2024~~, 1:30 p.m.
Action filed: November 22, 2022

TO: VALLEJO CITY ATTORNEY; THE VALLEJO POLICE DEPARTMENT; AND THE
CLERK OF THE ABOVE ENTITLED COURT:

PLEASE TAKE NOTICE that on the above date and time, or as soon thereafter
as the matter can be heard, the American Civil Liberties Union of Northern California (ACLU)
will move the court to clarify the scope of a discovery protective order previously issued in this
matter on December 20, 2023. In particular, ACLU seeks an order clarifying that Respondent’s
responses to Petitioner’s Requests for Admission (Set Two), request numbers 23 and 24, served
on March 20, 2024 are not confidential or subject to protective order, and may be publicly
disclosed.

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This motion will be based upon this notice, the accompanying memorandum of points and authorities, the declaration of counsel and exhibits filed herewith, and such additional evidence and arguments as may be presented at the hearing.

Dated: June 26, 2024

Respectfully submitted,

AMERICAN CIVIL LIBERTIES UNION OF
NORTHERN CALIFORNIA

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1 MEMORANDUM OF POINTS AND AUTHORITIES

2 STATEMENT OF THE CASE

3 This suit seeks to enforce a Public Records Act request for records in the possession of the
4 Vallejo Police Department (“VPD”). Specifically, the ACLU seeks records concerning a third-
5 party investigation by Robert Giordano commissioned by VDP in response to allegations that its
6 officers bent their badges to commemorate participation in officer-involved shootings and civilian
7 deaths. The City, on behalf of VPD, has asserted that any such records are exempt from disclosure
8 pursuant to Penal Code section 832.7(a), and further contends that Penal Code section 832.7(b)(1)
9 does not apply.

10 In November 2023, Petitioner filed a *Pitchess* motion seeking disclosure of various
11 documents Defendant contended were withheld in discovery pursuant to California Penal Code
12 section 832.7(a). (Young Decl., ¶ 2.) As noted in that motion, the Parties stipulated to use of the
13 *Pitchess* procedure without conceding the records sought were in fact properly categorized as
14 confidential personnel records.

15 On December 20, 2023, following a hearing on the *Pitchess* motion and *in camera* review
16 of records, the Court ordered disclosure of various documents sought by Petitioners. (Young
17 Decl., ¶ 3.) The Court also signed a “Protective Order for Records Ordered Disclosed Pursuant to
18 *Pitchess* Motion” (hereafter “Protective Order”) which was filed on the same day. (Young Decl.,
19 Exhibit A1.) In relevant part, the Protective Order prohibited the release, dissemination, or
20 disclosure of “any material disclosed to the parties in this case in response to the instant *Pitchess*
21 motion” for any purpose outside of preparation of the civil case. (*Ibid.*)

22 On March 5, 2024, Petitioner served a Second Set of Requests for Admission (“2nd
23 RFA”) on Respondents. (Young Decl., ¶ 5.) This discovery request sought admissions that: 1) “no
24 discipline was imposed as a result of badge bending” (request no. 23); and 2) the Vallejo Police
25 Department “did not impose any discipline for “conduct unbecoming of an officer” or
26 “unauthorized use of a badge” based on Robert Giordano’s report” (request no. 24). (*Ibid.*)

27 Prior to serving the 2nd RFA on Respondent, Petitioner provided a draft of the requests
28 and met and conferred with Ms. Knight, counsel for Respondent, regarding the scope of intended

1 discovery. (Young Decl., ¶ 6.) To avoid further delay in the discovery process, the parties agreed
2 the City could initially produce responses to the disciplinary questions under the existing
3 Protective Order, notwithstanding that such records were not produced pursuant to the *Pitchess*
4 order, and without prejudice to Petitioner’s right to move the Court to order public disclosure at a
5 later time. (Young Decl., Exhibit B1.)

6 On March 20, 2024, the City served its responses to the 2nd RFA, including two it
7 labelled as “confidential.” (Young Decl., Exhibit C1.) Petitioner now moves the Court to review
8 said disclosures and order that they may be publicly disclosed and reproduced without violating
9 the Protective Order.

10 ARGUMENT

11 **A. Disclosure of the City’s 2nd RFA Responses is in the Public Interest, and No Good** 12 **Cause Supports Expansion of the Protective Order.**

13 Although the Parties have thus far stipulated to nondisclosure of the 2nd RFA responses,
14 the question before the Court is whether the Protective Order *should be* extended to cover the
15 responses at issue here.¹ The California Civil Discovery Act provides that a trial court may, on
16 good cause shown, make any order that justice requires to protect a party from unwarranted
17 annoyance, embarrassment, or oppression. (Code Civ. Proc., § 2033.080, subd. (b).) This includes
18 the authority to issue a protective order limiting public disclosure of answers to requests for
19 admission. (*Ibid.*) Where the court does not find good cause to grant a protective order, it has
20 broad discretion to order discovery on “terms and conditions that are just.” (Code Civ. Proc., §
21 2033.080, subd. (c).)

22 “It is well-established that the fruits of pretrial discovery are, in the absence of a court
23 order to the contrary, presumptively public.” (*San Jose Mercury News, Inc. v. U.S. Dist. Ct.-N.*
24 *Dist. (San Jose)* (9th Cir. 1999) 187 F.3d 1096, 1103.) Thus, the burden is on the party seeking
25 nondisclosure to demonstrate good cause for the scope of protection sought. (*Nativi v. Deutsche*
26

27 ¹ This is functionally the same analysis as whether a new protective order should be issued for
28 these responses, given that the prior Protective Order was limited on its face to records disclosed
pursuant to *Pitchess*.

1 *Bank Nat'l Tr. Co.* (2014) 223 Cal. App. 4th 261, 318.) In deciding whether Respondent has met
2 its burden of demonstrating good cause, the court must weigh the interest in “the search for truth
3 and promot[ion of] justice” with the “legitimate privacy interests of the litigants and third
4 parties.” (*Stadish v. Superior Court* (1999) 71 Cal. App. 4th 1130, 1145.) Because “[s]ecrecy
5 agreements and protective orders impair the public’s access to discovery records as well as the
6 parties’ First Amendment right to disseminate information to the public . . . courts frequently
7 consider the public interest when determining whether good cause exists for a protective order.”
8 (*Westinghouse Elec. Corp. v. Newman & Holtzinger* (1995) 39 Cal. App. 4th 1194, 1208
9 [recognizing public interest in discovery materials related to safety of power plants]; *see also*
10 *Stadish, supra*, 71 Cal. App. 4th at 1145-46 [requiring consideration of public interest in access to
11 public health-related discovery materials].

12 **i. The Public Interest Weighs Against Extension of the Protective Order.**

13 The City seeks to prevent access to RFA responses that address whether the Vallejo Police
14 Department has ever imposed discipline for badge bending, as a general matter, or for
15 “unauthorized use of a badge” or “conduct unbecoming an officer” in relation to badge bending.
16 (Exhibit C1.) The public has a strong interest in access to these responses [REDACTED]

17 [REDACTED].
18 As discussed in the concurrently filed Memorandum of Points and Authorities in Support
19 of Motion for Judgment, the public initially learned of badge bending within the Department
20 because of an article published by local news outlet Open Vallejo, alleging that a clique within
21 the Department bent the points of their badges “each time they kill in the line of duty.”² Public
22 officials like then-City Manager Greg Nyhoff subsequently acknowledged they were aware of
23 “disturbing allegations” about badge bending before the Open Vallejo story broke,³ and the
24 Vallejo Police Department issued a press release stating that “[w]e’ve received statements from

25 ² Geoffrey King, *Vallejo Police Bend Badges to Mark Fatal Shootings*, Open Vallejo (July 28,
26 2020) <<https://openvallejo.org/2020/07/28/vallejo-police-bend-badge-tips-to-mark-fatal-shootings/>> (as of June 21, 2024).

27 ³ Erik Ortiz, *Officers in Vallejo, California, Bent Badges to Mark Each Fatal Police Killing, Ex-*
28 *Captain Says*, NBC News (July 31, 2020) <<https://www.nbcnews.com/news/us-news/officers-vallejo-california-bent-badges-mark-each-fatal-police-killing-n1235374>> (as of June 21, 2024).

1 two different sources within the Vallejo Police Department that badge bending has occurred” and
2 announcing an independent investigation of the allegations that officers took part in the act after
3 shootings. (See Exhibit 7 to Young Decl. ISO Motion for Judgment.) But despite this
4 corroboration of the practice by the City and Department, and notice of an outside investigation,
5 the public never learned whether discipline resulted. (Young Decl., ¶ 11.)

6 The public unquestionably has an interest in such information. “The public's legitimate
7 interest in the . . . activities of peace officers is even greater than its interest in those of the average
8 public servant.” (*Commission on Peace Officer Standards and Training v. Superior Court* (2007)
9 42 Cal.4th 278, 297.) Moreover, “[t]he public has a legitimate interest not only in the conduct of
10 individual officers, but also in how the [oversight] Commission and local law enforcement
11 agencies conduct the public's business.” (*Id.* at 300.) Here, the City’s admissions are relevant to
12 voters and taxpayers’ understanding of how the Department manages its employees and responds
13 to allegations of misconduct, particularly when it has acknowledged that such conduct occurred.

14 **ii. There is No Legitimate Privacy Interest Against Disclosure.**

15 Preliminarily, the RFA responses do not implicate the privacy interests of any individual
16 peace officers in their personnel records. (Pen. Code, § 832.7(a).) “Personnel records” are files
17 “maintained under that individual’s name by his or her employing agency” that pertain to the
18 categories of information enumerated in Penal Code section 832.8. [REDACTED]

19 [REDACTED]
20 [REDACTED]
21 [REDACTED]

22 [REDACTED] Thus, Respondents cannot assert individual officer interests as the
23 rationale for nondisclosure.

24 Nor can the City credibly claim that – as party to this action – it has an independent and
25 cognizable privacy interest in the information disclosed. As discussed, such a position is
26 incompatible with the recognized public interest in understanding how government agencies
27 conduct the public’s business.

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CONCLUSION

For the foregoing reasons, Petitioner respectfully requests the Court clarify that Respondent’s responses to the 2nd RFA are not subject to protective order and may be publicly disclosed.

Dated: June 26, 2024

Respectfully submitted,

AMERICAN CIVIL LIBERTIES UNION OF
NORTHERN CALIFORNIA

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