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ELECTRONICALLY FILED
Superior Court of California,
County of San Diego

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Clerk of the Superior Court
By Carolina Miranda, Deputy Clerk

To the benefit of the City of San Diego

6 Attorneys for Defendant/Cross-Defendant
7 CITY OF SAN DIEGO

8 **SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO**

9 ANGELO PIZARRO, ARCELIO GARCIA,)

10 Plaintiffs,)

11 v.)

12 TREVOR JAMES HEITMANN, Deceased;)
13 CYNTHIA CHIHAK and/or DOES 31-40, as)
14 Administrator of the ESTATE OF TREVOR)
15 JAMES HEITMANN, Deceased; ESTATE OF)
16 TREVOR JAMES HEITMAN, Deceased; TJH)
17 HOLDINGS, LLC; CITY OF SAN DIEGO;)
18 COUNTY OF SAN DIEGO; and DOES 1)
19 through 100, inclusive,)

20 Defendants.)

21 ESTATE OF TREVOR JAMES HEITMANN,)
22 Deceased and TJH HOLDINGS, LLC,)

23 Cross-Complainants,)

24 v.)

25 CITY OF SAN DIEGO; COUNTY OF SAN)
26 DIEGO; and ROES 1 through 100, inclusive,)

27 Cross-Defendants.)

Case No. 37-2019-00044450-CU-PO-CTL

**DEFENDANT CITY OF SAN DIEGO'S
EX PARTE APPLICATION FOR
PROTECTIVE ORDER OR, IN THE
ALTERNATIVE, TO STAY DISCOVERY
RESPONSES UNTIL A MOTION FOR
PROTECTIVE ORDER CAN BE HEARD**

[IMAGED FILE]

I/C Judge: Hon. Richard E. L. Strauss

Date: June 17, 2020

Time: 9:00 a.m.

Dept.: 75

Complaint filed: August 22, 2019

Trial: Not Yet Set

28 **TO: PLAINTIFFS AND THEIR ATTORNEYS OF RECORD**

PLEASE TAKE NOTICE that on **June 17, 2020 at 9:00 a.m.**, or as soon thereafter as
the matter can be heard, in Department 75 of the above-entitled court, located at 330 W. Broadway,
San Diego, California, Defendant City of San Diego ("City") via remote appearance technology

DEFENDANT CITY OF SAN DIEGO'S *EX PARTE* APPLICATION FOR PROTECTIVE ORDER OR,
IN THE ALTERNATIVE, TO STAY DISCOVERY RESPONSES UNTIL
A MOTION FOR PROTECTIVE ORDER CAN BE HEARD

1 will, and hereby does, move the Court for a protective order regarding materials sought by
2 Plaintiffs in their requests for production or, in the alternative, for a stay of the discovery until a
3 motion for a protective order may be heard.

4 This *ex parte* application will be based upon this Notice, the Memorandum of Points and
5 Authorities in support thereof, the files and records in this case and the related cases, the
6 Declaration of Stacy J. Plotkin-Wolff and such other and further oral and documentary evidence
7 as may be presented at the hearing.

8 Dated: June 15, 2020

MARA W. ELLIOTT, City Attorney

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Stacy J. Plotkin-Wolff

By _____
Stacy J. Plotkin-Wolff
Deputy City Attorney

Attorneys for Defendant/Cross-Defendant
CITY OF SAN DIEGO

1 MEMORANDUM OF POINTS AND AUTHORITIES

2 Defendant City of San Diego (“City”) asks the Court to issue a protective order to preclude
3 the discovery of the confidential records from police officer personnel files, and shield
4 confidential, yet relevant, information from being released to non-parties. In the alternative, the
5 City asks that the Court grant a stay to permit the City to withhold the confidential documents until
6 such time that a motion for protective order can be heard.

7 I. STATEMENT OF FACTS

8 This matter arises from a high-profile motor vehicle collision in which Trevor James
9 Heitmann, a well-known YouTuber, drove his very expensive Lamborghini the wrong way in the
10 HOV lanes of Interstate 805 killing himself and two other people. The collision has garnered much
11 media attention.

12 Approximately 8 hours before the collision, at approximately 8:30 a.m. on August 23,
13 2018, a friend of Bita and Kurt Heitmann (“the Heitmanns”) called the San Diego Police
14 Department because 18-year-old Trevor James Heitmann (“Decedent Heitmann”) was acting
15 abnormally. The Heitmanns wanted officers to assess Decedent Heitmann and take him on a 5150
16 hold. When the officers arrived, Decedent Heitmann was sleeping in his bedroom. The officers
17 spoke with the Heitmanns and a family friend who was a psychiatrist but had not evaluated or
18 treated Decedent Heitmann. The conversation was recorded on the body worn cameras of two of
19 the responding officers. Eventually, the officers left the Heitmann residence without assessing
20 Decedent Heitmann. (Declaration of Stacy J. Plotkin-Wolff, which is filed herewith).

21 Approximately eight hours later, Decedent Heitmann drove his car the wrong way in the
22 HOV lanes of Interstate 805 and crashed, head-on, into a vehicle driven by Decedent Aileen Lydia
23 Pizarro, in which her young daughter, Decedent Aryana Lamore Heitmann, was a passenger. All
24 three individuals died as a result of the collision. (Decl. Plotkin-Wolff).

25 Three lawsuits were filed as a result of this collision: 1) *Miguel Angel Pizarro, et al. v.*
26 *Estate of Trevor James Heitmann, et al.*, San Diego Superior Court Case Number 37-2019-
27 00039360-CU-PA-CTL, which was filed on July 29, 2019 (“Pizarro 1”); 2) the instant case, which
28 was filed on August 22, 2019 (“Pizarro 2”); and 3) *Kurt Heitmann, et al. v. City of San Diego, et*

1 *al.*, San Diego Superior Court Case Number 37-2019-00060502-CU-PA-CTL, which was filed on
2 November 13, 2019. (Decl. Plotkin-Wolff). Once the lawsuits were filed, attempts were made to
3 reach an agreement to consolidate the cases. Agreement was finally reached on June 2, 2020.
4 (Decl. Plotkin-Wolff).

5 In the meantime, the parties began serving discovery requests on each other. In the
6 *Heitmann* matter, Plaintiffs Heitmann served the City with interrogatories and requests for
7 production, which requested, among other things, the documents from the San Diego Police
8 Department (“SDPD”) regarding the incidents that occurred involving Decedent Heitmann on
9 August 23, 2018 as well as the body worn camera footage and the audios from 911 calls that were
10 made regarding the mental status of Decedent Heitmann. (Decl. Plotkin-Wolff). The City
11 requested that the parties to the *Heitmann* matter – Plaintiffs Heitmann, the County of San Diego,
12 the City of San Diego, Kurt Heitmann; Bitia Heitmann; and the Estate of Trevor James Heitmann
13 – enter into a protective order that would preclude the signatories from disseminating the audios
14 and videos to persons outside of the litigation. All parties to the *Heitmann* matter signed the
15 requested protective order. (Decl. Plotkin-Wolff).

16 As the cases were on the precipice of being consolidating, counsel for the City then asked
17 the parties to *Pizarro 1* and *Pizarro 2* if they wished to obtain copies of the confidential material
18 and, if so, whether they would sign the protective order. All but counsel for Plaintiffs Angelo
19 Pizarro and Arcelio Garcia (“Plaintiffs”) signed the stipulation. (See Ex. 1 to Decl. Plotkin-Wolff).
20 Plaintiffs’ counsel and defense counsel entered into meet and confer attempts to seek an agreement
21 on the proposed protective order but those attempts were unsuccessful. (Decl. Plotkin-Wolff).
22 Consequently, defense counsel submitted the protective order, without Plaintiff counsel’s
23 signature, to the Honorable Kenneth Medel who is presiding over the *Heitmann* case. Judge Medel
24 signed the order. (See Ex. 1 to Decl. Plotkin-Wolff).

25 On May 6, 2020, Plaintiffs Angelo Pizarro and Arcelio Garcia served discovery on the
26 City. The discovery propounded included interrogatories and requests for production. In
27 Plaintiffs’ Request for Production, Set One (“RFPs 1”), Plaintiffs seek the “complete unredacted .
28 . . . Police Dispatch Record” for three incidents involving Decedent Heitmann on August 23, 2018

1 (RFP 1, Request Nos. 1-3), as well as all documents “prepared by anyone at the San Diego Police
2 Department referring to the 5150 Mental Case call on August 23, 2018” (RFP 1, Request No. 4),
3 all audio recordings of “any and all 911 and 5150 calls” (RFP 1, Request No. 5), all video
4 recordings of any visits to the Heitmann residence on that date (RFP 1, Request No. 6), all
5 documents “reflecting witness statements” regarding “any police event” at the Heitmann residence
6 that day (RFP 1, Request No. 7), all documents from a specific SDPD event number (the call to
7 the Heitmann residence that morning) (RFP 1, Request No. 9). (See RFPs 1, which is attached as
8 Ex. 2 to Decl. Plotkin-Wolff). Plaintiffs also seek:

9 **REQUEST FOR PRODUCTION NO. 1:**

10 Produce all DOCUMENTS and/or WRITINGS that show, list or otherwise
11 evidence and/or identify all of the SDPD, inclusive of any and all "beat" or patrol
12 officers who were present at any PERT in-person or virtual training, including
13 POST certified PERT Academy training, PERT Clinicians training, POST certified
San Diego County Regional De-escalation & Crisis Management training and/or
POST certified De-escalation and Mental Health Training for Dispatchers that took
place from January 1, 2015 to August 23, 2018.

14 (Ex. 2 to Decl. Plotkin-Wolff).

15 On June 8, 2020, Plaintiffs served their second set of requests for production (“RFPs 2”),
16 in which Plaintiffs seek:

17 **REQUEST FOR PRODUCTION NO. 18:**

18 All body warn [sic] camera recordings of San Diego Police Department
19 Officer Pollock regarding the INCIDENT at 13106 Sea Knoll Ct., San Diego, CA
on August 23, 2018.

20 **REQUEST FOR PRODUCTION NO. 19:**

21 All body warn [sic] camera recordings of San Diego Police Department
22 Officer Rosbrook regarding the INCIDENT at 13106 Sea Knoll Ct., San Diego, CA
on August 23, 2018.

23 **REQUEST FOR PRODUCTION NO. 20:**

24 All body warn [sic] camera recordings of San Diego Police Department
25 Officer Illiano regarding the INCIDENT at 13106 Sea Knoll Ct., San Diego, CA
on August 23, 2018.

26 **REQUEST FOR PRODUCTION NO. 21:**

27 All body warn [sic] camera recordings of San Diego Police Department
28 Officer Cassidy regarding the INCIDENT at 13106 Sea Knoll Ct., San Diego, CA
on August 23, 2018.

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REQUEST FOR PRODUCTION NO. 22:

Any and all notes of San Diego Police Department Detective Sergeant Wes Albers regarding the INCIDENT of August 23, 2018 involving Trevor James Heitmann.

REQUEST FOR PRODUCTION NO. 23:

Any and all video recordings made by San Diego Police Department employee Wes Albers regarding the INCIDENT of August 23, 2018 involving Trevor James Heitmann.

REQUEST FOR PRODUCTION NO. 24:

The Ashley Falls Crime Report number 18026495 prepared by the San Diego Police Department regarding the INCIDENT of August 23, 2018 involving Trevor James Heitmann.

REQUEST FOR PRODUCTION NO. 25:

The Ashley Falls Investigator Report prepared by the San Diego Police Department Detective Boerum regarding the INCIDENT of August 23, 2018 involving Trevor James Heitmann.

REQUEST FOR PRODUCTION NO. 26:

San Diego Fire Department Incident Detail Report of August 23, 2018 regarding the INCIDENT involving Trevor James Heitmann.

REQUEST FOR PRODUCTION NO. 27:

San Diego Police Department audio files (2) for incident EI8080038116.

REQUEST FOR PRODUCTION NO. 28:

San Diego Police Department audio files (6) for incident EI8080038843.

REQUEST FOR PRODUCTION NO. 29:

San Diego Police Department audio files (3) for incident EI8080038855.

REQUEST FOR PRODUCTION NO. 30:

San Diego Police Department audio files (1) for incident EI8080038899.

REQUEST FOR PRODUCTION NO. 31:

San Diego Police Department audio files (3) for incident EI8080038889.

REQUEST FOR PRODUCTION NO. 32:

San Diego Police Department audio files (1) for incident EI8080038959.

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REQUEST FOR PRODUCTION NO. 33:

San Diego Police Department audio files (3) for incident EI8080039210.

REQUEST FOR PRODUCTION NO. 34:

San Diego Police Department audio files (6) for incident EI8080040396.

(RFPs 2, which are attached as Exhibit 3 to Decl. Plotkin-Wolff).

Defense counsel and Plaintiffs’ counsel have met and conferred via email and correspondence regarding the reasons for the proposed protective order when discussing the proposed protective order in the *Heitmann* matter. (See Exh. 4, 5, 6, and 7 to Decl. Plotkin-Wolff). Plaintiffs’ counsel declined to sign the stipulation for a protective order. Accordingly, this Court’s assistance is now required.

II. AUTHORITY AND ARGUMENT

California Code of Civil Procedure § 1005(b) and California Rule of Court 3.1300(b) gives the Court authority to prescribe a shorter time for filing and service of papers for a Motion than the times specified in Code of Civil Procedure § 1005. California Rules of Court, Rule 3.1300(b) states,

The court, on its own motion or on application for an order shortening time supported by a declaration showing good cause, may prescribe shorter time for the filing and service of papers than the time specified in Code of Civil Procedure section 1005.

Good cause exists because the Court does not have an available hearing date for a Motion for a Protective Order until after the responses are due on June 19, 2020 and July 8, 2020. The City will suffer irreparable harm if this Order is not granted because, without the Order, the City may suffer unwarranted annoyance, embarrassment, and oppression, as well as undue burden. Code. Civ. Proc. § 2030.090(b). Moreover, providing the materials requested will expose the City to liability for violating the privacy rights of third parties including information about the mental health of Decedent Heitmann.

California Code of Civil Procedure § 2031.060 controls when protective orders can be issued regarding the production or inspection of documents and other things, providing, in relevant part as follows:

1 (a) When an inspection, copying, testing, or sampling of documents, tangible
2 things, places, or electronically stored information has been demanded, the party to
3 whom the demand has been directed, and any other party or affected person, may
promptly move for a protective order. This motion shall be accompanied by a meet
and confer declaration under Section 2016.040.

4 (b) The court, for good cause shown, may make any order that justice requires to
5 protect any party or other person from unwanted annoyance, embarrassment, or
6 oppression, or undue burden and expense. This protective order may include, but is
not limited to, one or more of the following directions:

7 (1) That all or some of the items specified in the demand need not be produced or
made available at all.

8 (2) That the time specified in Section 2030.060 to respond to the set of demands, or
9 to a particular item or category in the set, be extended.

10

11 (4) That the inspection, copying, testing, or sampling be made only on specified
terms and conditions.

12

13 (6) That the items produced be sealed and thereafter opened only on order of the
14 court.

15 On May 6, 2020, Plaintiffs Angelo Pizarro and Arcelio Garcia (“Plaintiffs”) served, among
16 other things, their Requests for Production of Documents Propounded to Defendant City of San
17 Diego (Set One) on Defendant City of San Diego, pursuant to C.C.P. §§ 2031.010 et seq. These
18 inspection demands comprised of Request Nos. 1 through 17, and called for the production and
19 inspection of documents, video recordings, and audio recordings from the San Diego Police
20 Department regarding a series of events pertaining to the mental health of Decedent Heitmann. In
21 the related *Heitmann* case, Plaintiffs Heitmann sought the same documents. The documents were
22 produced on June 1, 2020 to Plaintiffs Heitmann and all the parties involved in the related cases
23 of *Pizarro 1* and *Pizarro 2* except the plaintiffs in this matter after counsel for the other parties
24 signed a stipulation for a protective order. (Decl. Plotkin-Wolff).

25 On June 2, 3 and 4, counsel for Plaintiffs and counsel for the City entered into meet and
26 confer attempts. Unfortunately, the parties were unable to reach an agreement that would permit
27 the City to provide the documents to Plaintiffs’ counsel and still protect the privacy rights and
28 privileges involved in this matter.

1 The City now seeks a protective order from this Court, establishing 1) that some of the
2 items or categories of items in the inspection demand need not be produced (C.C.P.
3 § 2031.060(b)(1)) and; 2) that some of the categories of items shall be protected from
4 dissemination (C.C.P. § 2031.060(6)(4)). This motion is based on the ground(s) that the requested
5 documents are privileged and protected by privacy rights.

6 **A. The Requested Materials are Privileged and Protected from Disclosure.**

7 Code of Civil Procedure § 2017.010 provides as follows:

8 Unless otherwise limited by order of the court in accordance with this title,
9 any party may obtain discovery regarding any matter, **not privileged**, that is
10 relevant to the subject matter involved in the pending action ... if the matter either
is itself admissible in evidence or appears reasonably calculated to lead to the
discovery of admissible evidence.

11 (Emphasis added.)

12 *1. The Documents and Materials Sought Contain Information from*
13 *Confidential Police Officer Personnel Files and Police Officer*
Personally Identifying Information.

14 Plaintiffs seek the disclosure of portions of the personnel files of various officers within
15 the San Diego Police Department as well as personal identifying information of the officers
16 depicted on the audio and video recordings. These records are confidential police officer records,
17 which are protected disclosure by California Penal Code § 832.7(a), California Evidence Code
18 §§ 1043, 1046 and California Government Code § 3300 *et seq.* The information is also protected
19 by the right to privacy afford to the individuals by the California Constitution, is privileged
20 pursuant to the Official Information Privilege.

21 Under California Evidence Code §§ 1043 and 1046, the contents of a police officer's
22 personnel files are privileged and can only be obtained upon a proper motion. Plaintiffs have not
23 filed such a motion. Accordingly, the Court should issue an order finding that the City need not
24 produce any portions of the personnel files of any SDPD officers.

25 *2. The Documents and Materials Sought Contain Information Protected*
26 *from Disclosure by the Right to Privacy.*

27 Plaintiffs also seek production of SDPD records containing the names and contact
28 information of various persons that called the police regarding the conduct they observed and, in

1 some cases, persons having no connection whatsoever with the subject incident(s) as some of the
2 SDPD records contain information from other non-related incidents to which the SDPD were
3 responding. Further, Plaintiffs seek production of all audio and video recordings regarding the
4 events of August 23, 2018 without regard to who is depicted in those audios and videos and
5 whether those persons chose to be depicted. Those same audios and videos discuss the mental
6 status of Decedent Heitmann as well.

7 There can be no question that these matters – persons’ identities and personal identifying
8 information as well as conversations about Decedent Heitmann’s mental status are protected by
9 the right to privacy. The right of privacy in the California Constitution (art. I, § 1), “ ‘protects the
10 individual's *reasonable* expectation of privacy against a *serious* invasion.’ ” *Puerto v. Superior*
11 *Court*, 158 Cal. App. 4th 1242, 1250 (2008) quoting *Pioneer Electronics (USA), Inc. v. Superior*
12 *Court*, 40 Cal.4th 360, 370 (2007). The right to a protected zone of privacy is codified, among
13 other places, at Evid. Code § 1010.5 (regarding educational psychological records); Evid. Code
14 § 1040 (regarding official records); and Ed. Code § 49076 (regarding academic records).
15 “California accords privacy the constitutional status of an inalienable right, on a par with defending
16 life and possessing property.” Therefore, “courts must balance the right of civil litigants to discover
17 relevant facts against privacy interests of persons subject to discovery.” *Vinson v. Superior Court*,
18 43 Cal. 3d 833 (1987); California Constitution, Article I, § 1. “Privacy interests generally fall into
19 one of two categories: ‘(1) interests in precluding the dissemination or misuse of sensitive and
20 confidential information (“informational privacy”); and (2) interests in making intimate personal
21 decisions or conducting personal activities without observation, intrusion, or interference
22 (“autonomy privacy”).’ ” *Coronado Police Officers Ass’n v. Carroll*, 106 Cal. App. 4th 1001, 1011–
23 1012 (2003) citing (1994).

24 If the City were to disclose this information, it could be sued for violating those privacy
25 rights. However, the City also agrees that the identities of witnesses, the documents related to the
26 subject incident(s), the audio recordings and video recordings are relevant to the subject matter of
27 this lawsuit. Accordingly, to protect the privacy rights and avoid potential liability, the City
28 respectfully requests that the Court issue a protective order finding that the materials indicated

1 above are confidential and that Plaintiffs must abide by the language in the protective order agreed
2 upon by the other attorneys in this and the related cases, which was entered by Judge Medel.

3 3. *The City of San Diego Cannot Disclose the Information due to the*
4 *Official Information Privilege.*

5 Evidence Code § 1040 provides a privilege from disclosing “information acquired in
6 confidence by a public employee in the course of his or her duty and not open, or officially
7 disclosed, to the public prior to the time the claim of privilege is made.” Because the information
8 sought is protected by the privacy right discussed above, the City may not disclose it absent a court
9 order protecting it from dissemination. Even if the Court finds that the disclosure is not forbidden,
10 the City still has a qualified privilege as disclosure is “against the public interest because there is
11 a necessity for preserving the confidentiality” of the officers’ personal identifying information as
12 well as police tactics. Ev. Code § 1040(b)(1). The identity of a percipient witness may be covered
13 by the privilege. *Torres v. Superior Court*, 80 Cal. App. 4th 867 (2000).

14 Here, the documents, audios and videos contain personal identifying information of
15 witnesses to the incident(s), witnesses to unrelated incidents, personal identifying information of
16 police officers, mental health information of Decedent Heitmann, and information regarding police
17 tactics. Accordingly, the City of San Diego respectfully requests that this Court either enter an
18 order precluding the discovery of the requested materials or enter an order consistent with the order
19 entered by Judge Medel in the related *Heitmann* case to preclude the unnecessary embarrassment
20 of any of the parties or disclosure of personally identifying information. A protective order would
21 allow Plaintiffs to have the information but yet protect third parties – i.e., witnesses and the SDPD
22 officers involved – from the public disclosure of their personal identifying information.

23 **B. The City Unsuccessfully Attempted to Resolve these Issues Informally with**
24 **Plaintiffs.**

25 The City has complied with the meet and confer requirements of a protective order. Code
26 of Civil Procedure § 2016.040 provides that “[a] meet and confer declaration in support of a motion
27 shall state facts showing a reasonable and good faith attempt at an informal resolution of each issue
28 presented by the motion.” Here, counsel for the City attempted to reach an agreement with

1 Plaintiffs' counsel that would allow disclosure of the requested information and yet protected the
2 interests of the third parties and the City is keeping the documents confidential. Counsel were not
3 able to reach an agreement.

4 **C. Sanctions are Required.**

5 The City does not seek sanctions unless Plaintiffs' counsel seeks sanctions in her response
6 to this motion. Code of Civil Procedure § 2033.080(d) provides as follows:

7 The court shall impose a monetary sanction under Chapter 7 (commencing with
8 Section 2023.010) against any party, person, or attorney who unsuccessfully makes or
9 opposes a motion for a protective order under this section, unless it finds that the one
subject to the sanction acted with substantial justification or that other circumstances
make the imposition of the sanction unjust.

10 For the reasons argued above and stated in the Declaration of Stacy J. Plotkin-Wolff, the
11 City respectfully requests this Court to issue a protective order precluding the discovery of the
12 personnel files of police officers and their personal identifying information and finding that the
13 SDPD documents pertaining to the incident(s) of August 23, 2018 including the audio and video
14 recordings are confidential and may not be disseminated to third parties. Further, under C.C.P.
15 § 2033.080(d), if Plaintiffs seek sanctions in their opposition brief, the City requests an order
16 awarding monetary sanctions against Plaintiffs Angelo Pizarro and Arcelio Garcia in the amount
17 of \$1,000.00 for unsuccessfully opposing this motion without substantial justification.

18 **III. CONCLUSION**

19 For all of the above reasons, the City respectfully requests that the Court issue a Protective
20 Order in conformance with the protective order entered by the Honorable Kenneth Medel in the
21 related *Heitmann* matter. In the alternative, the City requests that the Court stay the deadline for
22 producing the documents until such time as a full motion may be heard and decided upon.

23 Dated: June 15, 2020

MARA W. ELLIOTT, City Attorney

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Stacy J. Plotkin-Wolff

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By

Stacy J. Plotkin-Wolff
Deputy City Attorney

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Attorneys for Defendant/Cross-Defendant
CITY OF SAN DIEGO

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1 DECLARATION OF STACY J. PLOTKIN-WOLFF

2 I, STACY J. PLOTKIN-WOLFF, declare as follows:

3 1. I am an attorney duly licensed to practice law in the State of California, and am a
4 Deputy City Attorney with the Office of the City Attorney. I am the attorney of record for
5 Defendant City of San Diego (“City”). I am familiar with this matter and I could and would testify
6 as to the matters set forth herein if called as a witness.

7 2. According to the report from the California Highway Patrol, at approximately
8 4:30 p.m. on August 23, 2018, 18-year-old Trevor Heitmann drove his 2015 Lamborghini
9 McLaren the wrong way in the HOV lanes for northbound Interstate 805 and crashed, head-on,
10 into a vehicle driven by Aileen Lydia Pizarro. Ms. Pizarro’s daughter, Aileen Lydia Pizarro was
11 a passenger in the vehicle. All three people died as a result of the collision.

12 3. Earlier that day, at approximately 8:00 a.m., a family friend of the Heitmanns, who
13 was a psychiatrist but had never treated Decedent Heitmann, called 911 asking for officers to come
14 the Heitmann residence because she believed Decedent Heitmann was a danger to himself or
15 others.

16 4. San Diego Police Department (“SDPD”) and body worn camera (“BWC”) footage
17 show that three SDPD officers went to the Heitmann residence. The BWC footage shows that,
18 when the officers arrived, Decedent Heitmann was sleeping in his bedroom. The BWC shows the
19 officers speaking with the Heitmanns and their family. Eventually, the officers left the Heitmann
20 residence without assessing Decedent Heitmann.

21 5. Three lawsuits were filed as a result of this collision: 1) *Miguel Angel Pizarro, et*
22 *al. v. Estate of Trevor James Heitmann, et al.*, San Diego Superior Court Case Number 37-2019-
23 00039360-CU-PA-CTL ,which was filed on July 29, 2019 (“Pizarro 1”); 2) the instant case, which
24 was filed on August 22, 2019 (“Pizarro 2”) ; and 3) *Kurt Heitmann, et al. v. City of San Diego, et*
25 *al.*, San Diego Superior Court Case Number 37-2019-00060502-CU-PA-CTL, which was filed on
26 November 13, 2019.

27 6. After the lawsuits were filed, attempts were made to reach an agreement to
28 consolidate the cases. Agreement was finally reached on June 2, 2020.

1 7. In the meantime, the plaintiffs in the *Heitmann* matter served the City with
2 interrogatories and requests for production, which requested, among other things, documents,
3 video recordings and audio recordings from the SDPD regarding the incidents that occurred
4 involving Decedent Heitmann on August 23, 2018.

5 8. I asked the parties to the *Heitmann* matter – Plaintiffs Heitmann, the County of San
6 Diego, the City of San Diego, Kurt Heitmann; Bitia Heitmann; and the Estate of Trevor James
7 Heitmann – to enter into a protective order that would preclude the signatories from disseminating
8 the audios and videos to persons outside of the litigation.

9 9. As the cases were on the precipice of being consolidated, as a courtesy to all parties
10 and to streamline discovery, I asked the attorneys for the parties in *Pizarro 1* and *Pizarro 2* if they
11 wished to obtain copies of the confidential material and, if so, whether they would sign the
12 protective order.

13 10. All but counsel for Plaintiffs Angelo Pizarro and Arcelio Garcia (“Plaintiffs”),
14 Cynthia Chihak, signed the stipulation.

15 11. When it became clear that Ms. Chihak would not sign the stipulation, I submitted
16 the protective order, without her signature, to the Honorable Kenneth Medel who is presiding over
17 the *Heitmann* case. Judge Medel signed the order.

18 12. On May 6, 2020, Plaintiffs Angelo Pizarro and Arcelio Garcia served discovery on
19 the City. The discovery propounded included interrogatories and requests for production. In
20 Plaintiffs’ Request for Production, Set One (“RFPs 1”), Plaintiffs requested the same records for
21 which all of the other parties in these related cases agreed to a protective order.

22 13. On June 8, 2020, Plaintiffs served their second set of requests for production
23 (“RFPs 2”), in which Plaintiffs again seek all the materials to which all the other parties agreed to
24 a protective order.

25 14. Ms. Chihak and I entered into meet and confer attempts to seek an agreement on
26 the proposed protective order but those attempts were unsuccessful.

27 15. Specifically, we exchanged emails and correspondence regarding the reasons for
28 the proposed protective order when discussing the proposed order in the *Heitmann* matter.

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16. Attached hereto as exhibits are true and correct copies of the following documents:

- Exhibit 1:** Stipulation for and Protective Order;
- Exhibit 2:** Plaintiffs' Requests for Production of Documents Propounded to Defendant City of San Diego (Set One);
- Exhibit 3:** Plaintiffs' Requests for Production of Documents Propounded to Defendant City of San Diego (Set Two);
- Exhibit 4:** Two email chains between Plaintiffs' counsel and defense counsel from June 2, 3 and 4, 2020;
- Exhibit 5:** Plaintiff counsel's letter of June 3, 2020;
- Exhibit 6:** Defense counsel's letter of June 4, 2020; and
- Exhibit 7:** Defense counsel's email of June 11, 2020 giving notice of this *ex parte* application.

17. I also had a telephonic meet and confer conference with Ms. Chihak the afternoon of June 15, 2020 in an attempt to reach an informal resolution. Our attempt was unsuccessful.

I declare under penalty of perjury, under the laws of the State of California, that the above is true and correct.

Executed this 15th day of June, 2020 in San Diego, California.

Stacy J. Plotkin-Wolff

Stacy J. Plotkin-Wolff