LINDA MILLER SAVITT, SBN 094164
PHILIP L. REZNIK, SBN 204590
CRAIG M. HOETGER, SBN 275809
BALLARD, ROSENBERG, GOLPER & SAVITT LLP
500 North Brand Boulevard
Twentieth Floor
Glendale, CA 91203-9946
Tel. 818-508-3700; Fax: 818-506-4827

LAWRENCE A. MICHAELS, SBN 107260
SARAH T. WIRTZ, SBN 217434
VERONICA T. VON GRABOW, SBN 259859
MITCHELL SILBERBERG & KNUPP LLP
11377 West Olympic Boulevard
Los Angeles, California 90064-1683
Tel: 310-312-2000; Fax: 310-312-3100

CAROL A. HUMISTON, SBN 115592
Senior Assistant City Attorney
City of Burbank
275 East Olive Avenue
Burbank, California 91510
Tel: 818-238-5707; Fax: 818-238-5724

Attorneys for Defendant CITY OF BURBANK, including the Police Department of the City of Burbank

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CITY ATTORNEY
2011 MAY -9 AM 10: 3

Government Code Section 6103; appearance fees not required.

BALLARD ROSENBERG GOLPER & SAVITT LLP
500 N. BRAND BLVD., TWENTIETH FLOOR
GLENDALE, CA 91203

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

OMAR RODRIGUEZ; CINDY GUILLEN-GOMEZ; STEVE KARAGIOSIAN; ELFEGO RODRIGUEZ; AND JAMAL CHILDS,

Plaintiffs,

-vs-

BURBANK POLICE DEPARTMENT; CITY OF BURBANK; TIM STEHR; KERRY SCHILF; JAMIE "J.J." PUGLISI; DAN YADON; KELLY FRANK; PAT LYNCH; MIKE PARRINELLO; AARON KENDRICK; DARIN RYBURN; AND DOES 1 THROUGH 100, INCLUSIVE.

Defendants.

CASE NO: BC 414602

[Assigned to Hon. Joanne O'Donnell, Dept. 37]

DEFENDANT'S NOTICE OF MOTION AND MOTION TO PLACE UNDER SEAL EXHIBITS D, E AND F OF PLAINTIFF'S EVIDENCE IN OPPOSITION TO DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

Date: May 10, 2011
Time: 9:00 a.m.
Location: 37

Action filed: May 28, 2009
Trial Date: July 27, 2011

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TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD

PLEASE TAKE NOTICE that on May 10, 2011 at 9:00 a.m. or as soon thereafter as the matter can be heard before the Honorable Joanne O'Donnell in Department 37 of the above-entitled Court located at 111 North Hill Street, Los Angeles, CA, Defendant CITY OF BURBANK, including the Police Department of the City of Burbank, ("Defendant") will move for a court order to:

(1) remove from the public record Exhibits D, E and F of Plaintiff's Evidence in Opposition to Defendant's Motion for Summary Judgment ("Evid. Opp. MSJ");

(2) place under seal Exhibits D, E and F of Plaintiff's Evid. Opp. MSJ;

(3) remove Plaintiff's Evid. Opp. MSJ from the Los Angeles Superior Court online database; and

(4) scan Plaintiff's Evid. Opp. MSJ into the Los Angeles Superior Court online database without Exhibits D, E, and F.

This motion is made on the grounds that good cause exists for the order requested herein. The documents that Defendant seeks to place under seal constitute peace officer personnel records under *Penal Code* section 832.8. Accordingly, there is an overriding interest in the confidentiality of these documents that outweighs the right of public access to such records. This interest would be prejudiced if the documents at issue are not placed under seal.

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BALLARD ROSENBERG GOLPER & SAVITT LLP
500 N. BRAND BLVD., TWENTIETH FLOOR
GLENDALE, CA 91203

This motion is made pursuant to *California Rules of Court*, Rules 2.550-2551, as well as *Penal Code* sections 832.7 and 832.8 and *Evidence Code* sections 1040, and is based on this Notice, the attached Memorandum of Points and Authorities, the attached Declaration of Craig M. Hoetger, all the papers and pleadings on file herein, and such further oral and documentary evidence as may be presented at the time of the hearing.

DATED: May 6, 2011

BALLARD, ROSENBERG,
GOLPER & SAVITT LLP

By: _____
CRAIG M. HOETGER
Attorney for Defendant
CITY OF BURBANK, including the Police Department of the City of Burbank

BALLARD ROSENBERG GOLPER & SAVITT LLP
500 N. BRAND BLVD., TWENTIETH FLOOR
GLENDALE, CA 91203

MEMORANDUM OF POINTS AND AUTHORITIES

1. INTRODUCTION

On May 2, 2011, Plaintiff Omar Rodriguez filed his Evidence in Opposition to Defendant's Motion for Summary Judgment. This document contained 16 exhibits. Among them are the following: (1) a July 16, 2008 memorandum to Burbank Police Department Deputy Chief Bill Taylor from Sgt. Gerry Misquez regarding Internal Affairs Investigation No. 4-26-08-1 (Exhibit D); (2) a June 19, 2009 summary of an interview of Burbank Police Department Detective Angelo Dahlia by Captain Craig Varner and another police officer regarding Internal Affairs Investigation No. 4-26-08-1 (Exhibit E); and (3) photographs of the alleged victim of police misconduct related to Internal Affairs Investigation No. 4-26-08-1 (Exhibit F). These documents are confidential peace officer personnel records under Penal Code sections 832.7 and 832.8, as well as Evidence Code sections 1043 and 1045.

The parties have stipulated that because of the confidentiality of these documents, they should be removed from the public record and placed under seal.

II. GOOD CAUSE EXISTS TO PLACE UNDER SEAL EXHIBITS D, E, AND F OF PLAINTIFF'S EVIDENCE IN OPPOSITION TO DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

A law enforcement officer "'has a strong privacy interest in his or her personnel records and ... such records should not be disclosed unnecessarily.' [Citations.]" (*Zanone v. City of Whittier* (2008) 162 Cal.App.4th 174, 186.) To protect this privacy interest, Penal Code section 832.7 provides that peace officer personnel records are "confidential and shall not be disclosed in any civil or criminal proceeding except by discovery pursuant to Sections 1043 and 1046 of the Evidence Code."

Penal Code section 832.8 defines "personnel records" as "any file maintained under that individual's name by his or her employing agency and containing records relating to any of the following": (a) specified "personal data"; (b) medical history; (c) employee benefit elections; (d) employee "advancement, appraisal, or discipline"; (e) **complaints or investigations thereof "concerning an event or transaction in which he or she**

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GLENDALE, CA 91203

participated, or which he or she perceived, and pertaining to the manner in which he or she performed his or her duties"; and (f) "[a]ny other information the disclosure of which would constitute an unwarranted invasion of personal privacy." (Pen. Code, § 832.8 [emphasis added].)

Penal Code sections 832.7 and 832.8 establish an overriding interest in the confidentiality of peace officer personnel records that outweighs the right of public access to such records. Numerous cases interpreting Penal Code section 832.7 have noted the importance of maintaining the confidentiality of such records. *See, e.g., Rosales v. City of Los Angeles* (2000) 82 Cal. App. 4th 419, 426-27.

In the present case, good cause exists for placing the documents at issue under seal. The following exhibits were filed with this Court as part of Plaintiff's Evidence in Opposition to Defendant's Motion for Summary Judgment: (1) a July 16, 2008 memorandum to Burbank Police Department Deputy Chief Bill Taylor from Sgt. Gerry Misquez regarding Internal Affairs Investigation No. 4-26-08-1 (Exhibit D); (2) a June 19, 2009 summary of an interview of Burbank Police Department Detective Angelo Dahlia by Captain Craig Varner and another police officer regarding Internal Affairs Investigation No. 4-26-08-1 (Exhibit E); and (3) photographs of the alleged victim of police misconduct related to Internal Affairs Investigation No. 4-26-08-1 (Exhibit F). Because these documents are part of an official police investigation, they constitute confidential peace officer personnel records under Penal Code section 832.8.

This interest in maintaining the confidentiality of peace officer personnel records requires Exhibits D, E, and F of Plaintiff's Evidence in Opposition to Defendant's Motion for Summary Judgment be removed from the public record and placed under seal. If the exhibits in question are not removed from the public record and placed under seal, the confidentiality established by Penal Code section 832.7 and 832.8 will be eviscerated.

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500 N. BRAND BLVD., TWENTIETH FLOOR
GLENDALE, CA 91203

III. THE PARTIES HAVE AGREED THAT THESE CONFIDENTIAL DOCUMENTS SHOULD BE PLACED UNDER SEAL

Counsel for Plaintiff agrees that, because of the confidential nature of Exhibits, D, E, and F of Plaintiff's Evidence in Opposition to Defendant's Motion for Summary Judgement, these records should be removed from the public record and placed under seal. (Hoetger Decl., ¶ 3.) Accordingly, the parties have signed a joint stiuplation to this effect, which is attached to this notice. (Hoetger Decl., ¶ 3, Exh. A.).

IV. CONCLUSION

For the reasons stated above, Defendant respectfully requests this Court to order:

(1) the removal from the public record Exhibits D, E and F of Plaintiff's Evidence in Opposition to Defendant's Motion for Summary Judgment ("Evid. Opp. MSJ");

(2) the placement under seal Exhibits D, E and F of Plaintiff's Evid. Opp. MSJ;

(3) the removal of Plaintiff's Evid. Opp. MSJ from the Los Angeles Superior Court online database; and

(4) the placement of Plaintiff's Evid. Opp. MSJ into the Los Angeles Superior Court online database without Exhibits D, E, and F.

DATED: May 6, 2011

BALLARD, ROSENBERG,
GOLPER & SAVITT LLP

By: _____
CRAIG M. HOETGER
Attorney for Defendant
CITY OF BURBANK, including the Police Department of the City of Burbank

BALLARD ROSENBERG GOLPER & SAVITT LLP
500 N. BRAND BLVD., TWENTIETH FLOOR
GLENDALE, CA 91203

DECLARATION OF CRAIG M. HOETGER

I, CRAIG M. HOETGER, hereby declare:

1. I am an attorney at law, duly licenced to practice in all courts of the State of California and an associate at Ballard, Rosenberg, Golper & Savitt, LLP, attorney of record for Defendant CITY OF BURBANK herein. I have personal knowledge of the following facts and, if asked, could and would testify competently thereto.

2. On May 4, 2011, my office received Plaintiff's Evidence in Opposition to Defendant's Motion for Summary Judgement ("Evid. Opp. MSJ"). Exhibits D, E, and F of Plaintiff's Evid.Opp. MSJ are confidential peace officer personnel records.

3. Plaintiff's counsel India Thompson agreed to stipulate to remove from the public record and place under seal Exhibits, D, E, and F of Plaintiff's Evid. Opp. MSJ. Attached hereto as **Exhibit A** is a true and correct copy of the parties' stipulation.

I declare, under penalty of perjury, under the laws of the State of California, that the above facts are true to my knowledge.

Signed this 6th day of May, 2011, in Glendale, California.

CRAIG M. HOETGER

BALLARD ROSENBERG GOLPER & SAVITT LLP
500 N. BRAND BLVD., TWENTIETH FLOOR
GLENDALE, CA 91203

(SPACE BELOW FOR FILING STAMP ONLY)

LINDA MILLER SAVITT, SBN 094164
PHILIP L. REZNIK, SBN 204590
CRAIG M. HOETGER, SBN 275809
BALLARD, ROSENBERG, GOLPER & SAVITT LLP
500 North Brand Boulevard
Twentieth Floor
Glendale, CA 91203-9946
Telephone: 818-508-3700
Facsimile: 818-506-4827

LAWRENCE A. MICHAELS, SBN: 107260
MITCHELL SILBERBERG & KNUPP
11377 W. Olympic Blvd.
Los Angeles, CA 90064
Telephone: (310) 312-2000
Facsimile: (310) 312-3100

CAROL A. HUMISTON, SBN: 115592
Senior Assistant City Attorney
City of Burbank
275 E. Olive Avenue
Burbank, CA 91510
Telephone: (818) 238-5707
Facsimile: (818) 238-5724

Attorneys for Defendant
CITY OF BURBANK, including the Police
Department of the City of Burbank

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

OMAR RODRIGUEZ; CINDY GUILLEN-GOMEZ; STEVE KARAGIOSIAN; ELFEGO RODRIGUEZ; AND JAMAL CHILDS, Plaintiffs, -vs- BURBANK POLICE DEPARTMENT; CITY OF BURBANK; TIM STEHR; KERRY SCHILF; JAMIE "J.J." PUGLISI; DAN YADON; KELLY FRANK; PAT LYNCH; MIKE PARRINELLO; AARON KENDRICK; DARIN RYBURN; AND DOES 1 THROUGH 100, INCLUSIVE. Defendants.	CASE NO: BC 414602 [*Assigned to Hon. Joanne O'Donnell, Dept. 37*] **STIPULATION TO PLACE UNDER SEAL EXHIBITS D, E AND E OF PLAINTIFF'S EVIDENCE IN OPPOSITION TO DEFENDANT'S MOTION FOR SUMMARY JUDGMENT; [PROPOSED] ORDER** Action filed: May 28, 2009

BALLARD ROSENBERG GOLPER & SAVITT LLP
500 N. BRAND BLVD., TWENTIETH FLOOR
GLENDALE, CA 91203

IT IS HEREBY STIPULATED by and between Plaintiffs OMAR RODRIGUEZ; CINDY GUILLEN-GOMEZ, and STEVE KARAGIOSIAN, and Defendant CITY OF BURBANK, including the Police Department of the City of Burbank, through their respective counsel of record, that the following exhibits contained in Plaintiff's Evidence in Opposition to Defendant's Motion for Summary Judgment be removed from the public record and placed under seal because they contain confidential law enforcement information under *California Penal Code* section 832.8:

1. Exhibit D - July 16, 2008 Memo to Deputy Chief Bill Taylor from Sgt. Gerry Misquez re: Internal Affairs Investigation No. 4-26-08-1 (Skelly Report);
2. Exhibit E - Summary of June 19, 2009 Dahlia Interview
3. Exhibit F - Photograph of David Romero.

DATED: May 5, 2011

BALLARD ROSENBERG GOLPER & SAVITT, LLP

By: CRAIG M. HOETGER
Attorneys for Defendant
CITY OF BURBANK, including the Police Department of the City of Burbank

DATED: May 5, 2011

LAW OFFICES OF RHEUBAN & GRESEN

By: INDIA S. THOMPSON
Attorneys for Plaintiffs OMAR RODRIGUEZ; CINDY GUILLEN-GOMEZ; STEVE KARAGIOSIAN; ELFEGO RODRIGUEZ; AND JAMAL CHILDS

BALLARD ROSENBERG GOLPER & SAVITT LLP
500 N. BRAND BLVD., TWENTIETH FLOOR
GLENDALE, CA 91203

PROOF OF SERVICE

I am a citizen of the United States, and am employed in the County of Los Angeles in the office of a member of the bar of this Court at whose directions this service was made. I am over the age of 18, and not a party to the within action. My business address is Ballard, Rosenberg, Golper & Savitt, 500 North Brand Boulevard, Twentieth Floor, Glendale, California 91203-9946.

On May 6, 2011, I served the foregoing document described as: **DEFENDANT'S NOTICE OF MOTION AND MOTION TO PLACE UNDER SEAL EXHIBITS D, E AND F OF PLAINTIFF'S EVIDENCE IN OPPOSITION TO DEFENDANT'S MOTION FOR SUMMARY JUDGMENT** on the interested parties in this action, by placing a true copy thereof in a sealed envelope addressed as follows:

Solomon E. Gresen, Esq.
Steven V. Rheuban, Esq.
Law Offices of Rheuban & Gresen
15910 Ventura Boulevard, Suite 1610
Encino, CA 91436
Tel: (818) 815.2727
Fax: (818) 815-2737
seg@rglawyers.com
Attorneys for Plaintiffs

Carol A. Humiston
Senior Assistant City Attorney
City of Burbank
275 E. Olive Avenue
Burbank, CA 91510
Telephone: (818) 238-5707
Facsimile: (818) 238-5724
chumiston@ci.burbank.ca.us
Attorney for Defendant

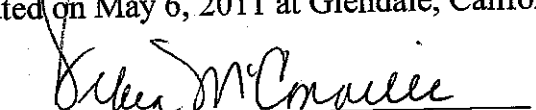
Lawrence A. Michaels, Esq.
Sarah T. Wirtz, Esq.
Veronica T. Von Grabow, Esq.
Mitchell Silberberg & Knupp
11377 W. Olympic Blvd.
Los Angeles, CA 90064
Tel: (310) 312-2000
Fax: (310) 312-3100
lam@msk.com
stw@msk.com
vtv@msk.com
Attorneys for Defendant

X **VIA FACSIMILE**; and

X **(BY MAIL)** and personally placing such envelope with postage fully prepaid for collection and mailing on the above-referenced date following the ordinary business practices of this office. I am readily familiar with our office's practice for collection and processing of correspondence for mailing with the United States Postal Service. In the ordinary course of business, correspondence, including said envelope, will be deposited with the United States Postal Service at Glendale on the above-referenced date.

____ **(BY PERSONAL SERVICE)** I delivered such envelope(s) by hand to the above-addressee(s).

I declare under penalty of perjury that the foregoing is true and correct under the laws of the State of California. Executed on May 6, 2011 at Glendale, California.



Debra McConville

BALLARD ROSENBERG GOLPER & SAVITT LLP
500 N. BRAND BLVD., TWENTIETH FLOOR
GLENDALE, CA 91203