

FILED
ALAMEDA COUNTY

JAN 11 2019

CLERK OF THE SUPERIOR COURT
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ERICA BAKER Deputy

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8 Officer Doe 1, Officer Doe 2, Officer Doe 3 and Officer Doe 4.

9
10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **COUNTY OF ALAMEDA**

12 OAKLAND POLICE OFFICERS' ASSOCIATION,
OFFICER DOE 1, OFFICER DOE 2, OFFICER
13 DOE 3 AND OFFICER DOE 4,
14
15 Petitioner,
16
17 v.
18 CITY OF OAKLAND,
19
20 Respondents.

CASE NO. **RG19002328**
**VERIFIED PETITION FOR WRIT OF
MANDATE**
[CODE CIV. PROC. §1085, 1060, GOV. CODE
§§ 3303, 3309.5]

21 Oakland Police Officers' Association, Officer Doe 1, Officer Doe 2, Officer Doe 3 and
22 Officer Doe 4 (Collectively "Petitioners") seek a writ of ordinary mandate pursuant to Code of Civil
23 Procedure section 1085 directed to and against Respondents City of Oakland ("City" or
24 "Respondent") commanding them to comply with the Public Safety Officers Procedural Bill of
25 Rights Act, Government Code section 3300 et seq. ("POBR"), which prohibits Respondent from re-
26 interviewing petitioners during an investigation into allegations of misconduct without first
27 providing them all materials containing notes, complaints or reports concerning the alleged
28 misconduct.

 Petitioner alleges as follows:

BY FAX

1 **PARTIES**

2 1. Petitioner Oakland Police Officers Association (“OPOA”), at all times relevant, was
3 the “recognized employee organization” as that term is defined in Government Code section
4 3501(b), representing sworn employees of the Oakland Police Department (“Department”).

5 2. At all times relevant, Doe 1 was and is a California peace officer employed by the City
6 as a police officer. At all times relevant, Doe 1 was and is a permanent non-probationary employee
7 of the City. At all times relevant, Doe 1 was and is a public safety officer within the meaning of
8 POBR.

9 3. At all times relevant, Doe 2 was and is a California peace officer employed by the City
10 as a police officer. At all times relevant, Doe 2 was and is a permanent non-probationary employee
11 of the City. At all times relevant, Doe 2 was and is a public safety officer within the meaning of
12 POBR.

13 4. At all times relevant, Doe 3 was and is a California peace officer employed by the City
14 as a police officer. At all times relevant, Doe 3 was and is a permanent non-probationary employee
15 of the City. At all times relevant, Doe 3 was and is a public safety officer within the meaning of
16 POBR.

17 5. At all times relevant, Doe 4 was and is a California peace officer employed by the City
18 as a police officer. At all times relevant, Doe 4 was and is a permanent non-probationary employee
19 of the City. At all times relevant, Doe 4 was and is a public safety officer within the meaning of
20 POBR.

21 6. The City is a political subdivision of the State of California duly constituted and
22 operating as a charter city. The City is a public agency that operates the Department. The City is a
23 public agency that operates its Community Police Review Agency (“CPRA”),

24 **GENERAL ALLEGATIONS**

25 7. At all times relevant, POBR affords California peace officers, among other things,
26 various rights and protections in regards to their employment with public safety departments.

27 8. POBR, specifically Government Code Section 3303(g), requires employers of public
28 safety officers to turn over to them, as a matter of law, any materials containing reports or

1 complaints relevant to misconduct allegations against them prior to any follow-up interviews
2 conducted by the employer into those misconduct allegations. (*Santa Ana Police Officers
3 Association v. City of Santa Ana* (2017) 13 Cal.App.5th 317, 328 [holding that the materials required
4 to be turned over pursuant to section 3303(g) were broad, and included private, third-party video
5 evidence in the possession of the Department].)

6 9. Reports and complaints are defined as all materials that contain reports of or
7 complaints concerning the misconduct that is the subject of the investigation. (*San Diego Police
8 Officers Ass'n v. City of San Diego* (2002) 98 Cal.App.4th 779, 783.)

9 10. Government Code section 3309.5 makes it unlawful for Respondent to deny or refuse
10 to any public safety officer the rights and protections guaranteed to him or her by POBR.
11 Government Code section 3309.5 further provides for relief including the award of damages,
12 attorney fees and civil penalties for malicious violations of POBR.

13 11. Petitioners, Officers Doe 1 through 4, were investigated by their employer, the
14 Department, for alleged misconduct occurring on, around or related to December 12, 2017.

15 12. On or about December 12, 2017, the Department came into possession of the body
16 worn camera footage relevant to the events of December 12, 2017.

17 13. As a part of this investigation, Doe 1 was interviewed by the Department on April 22,
18 2018.

19 14. As a part of this investigation, Doe 2 was interviewed by the Department on May 14,
20 2018.

21 15. As a part of this investigation, Doe 3 was interviewed by the Department on April 22,
22 2018.

23 16. As a part of this investigation, Doe 4 was interviewed by the Department on May 7,
24 2018.

25 17. On or about June 1, 2018, the Department concluded its investigation into the events of
26 December 12, 2017. This investigation resulted in full exonerations for each involved officer. (True
27 and correct copies of the case closure forms are attached hereto as Exhibit 1.)

28 18. At the time of the case closure, the Department was in the possession of the notes,

1 reports and complaints of its investigators and other persons, as well as video evidence.

2 19. On or about September 21, 2018, Petitioners, Officers Doe 1 through 4, were notified
3 by the City, through the CPRA, that they would be subjected to follow up interviews related to the
4 same incident as the previous interview.

5 20. On or about October 16, 2018, Justin Buffington, attorney for Officers Doe 1 through
6 4, notified the City, by way of a letter to the CPRA, demanding that the City comply with the
7 provisions of POBR requiring it to turn over all materials containing notes, complaints or reports
8 concerning the alleged misconduct prior to any further interrogation pursuant to *Santa Ana Police*
9 *Officers Association, supra*. Mr. Buffington also advised Anthony Finnell, Interim Executive
10 Director of the CPRA, that, having been made aware of the relevant legal requirements, a denial of
11 Petitioners' rights under POBR would constitute a malicious violation with intent to injure
12 Petitioners, exposing the City to statutory remedies and penalties under Government Code Section
13 3309.5. (A true and correct copy of this letter is attached hereto as Exhibit 2.)

14 21. On or about October 17, 2018, Mr. Finnell, sent an email to Mr. Buffington, stating "I
15 continue to seek legal counsel on the issue" and agreeing to postpone the interviews. (A true and
16 correct copy of this email is attached hereto as Exhibit 3)

17 22. On or about November 5, 2018, Mr. Finnell sent an email to Mr. Buffington,
18 responding to his October 16, 2018 request, stating "Upon the advice of counsel, *the CPRA denies*
19 *your request for 'reports and complaints'* (Emphasis added) and will not produce said material. (See
20 *Pasadena Police Officers Association v. City of Pasadena*, 797 P.2d 608 (1990).)" Mr. Finnell did
21 agree to turn over to involved officers copies of their own previous interrogations. Mr. Finnell
22 further threatened that "[r]efusal to submit to the interviews may subject your clients to punitive
23 action. (Gov. Code sec. 3303(e).)" (A true and correct copy of this email is attached hereto as
24 Exhibit 4.)

25 23. The City, through the Department and the CPRA, ordered Respondents to participate in
26 the further interviews under penalty of discipline.

27 24. When officers are made to appear for interrogation or a factfinding hearing by order of
28 their employer and under penalty of disciplinary sanction up to and including dismissal for failing to

1 comply, this is tantamount to being subjected to interrogation by the officer's commanding officer,
2 or another member of the employing public safety department. (*Berkeley Police Assn. v. City of*
3 *Berkeley* (2008) 167 Cal.App.4th 385, 410.)

4 25. On or about November 6, 2018, Mr. Buffington sent an email to Mr. Finnell explaining
5 that:

6 The *Pasadena* case (Cited by Finnell) only applies to pre-interrogation discovery, not post-
7 interrogation discovery. In fact, the Santa Ana case harmonizes and relies on the Pasadena
8 case in determining that officers are entitled to reports and complaints. Furthermore, the
9 California Supreme Court declined to hear an appeal of the Santa Ana case, making it settled
law. Unfortunately, I will be forced to litigate this matter in Alameda County Superior Court.
Please be advised that reliance on the advice of counsel is not a valid defense.

10 (A true correct copy of this email is attached hereto as Exhibit 5.)

11 26. In relevant part, *Santa Ana, supra*, states:

12 Because *discovery rights to reports and complaints are coextensive with discovery rights to*
13 *tape recordings of interrogations*, and tapes recordings must be produced "prior to any
14 further interrogation," then it follows that reports and complaints also must be produced
"prior to any further interrogation."

15 (*Santa Ana Police Officers Association v. City of Santa Ana* (2017) 13 Cal.App.5th 317, 328,
16 emphasis added.)

17 27. Because Petitioners' rights to reports and complaints are coextensive with their rights
18 to tape recordings, Mr. Finnell's admission that the interrogation recordings should have been turned
19 over was also an admission that the reports and complaints should have been turned over.

20 28. On or about November 14, 2018, the CPRA interviewed Doe 1. At the Commencement
21 of the interview, Mr. Buffington again objected to the further interrogation of his client without the
22 receipt of the discovery he requested under Government Code Section 3303(g) and *Santa Ana Police*
23 *Officers Association, supra*. The City insisted on conducting the interrogation over the multiple
24 objections of Mr. Buffington and contrary to clearly established law. This interrogation constituted a
25 malicious violation of POBR with an intent to injure Doe 1.

26 29. On or about November 13, 2018, the CPRA interviewed Doe 2. At the Commencement
27 of the interview, Mr. Buffington again objected to the further interrogation of his client without the
28 receipt of the discovery he requested under Government Code Section 3303(g) and *Santa Ana Police*

1 *Officers Association, supra.* The City insisted on conducting the interrogation over the multiple
2 objections of Mr. Buffington and contrary to clearly established law. This interrogation constituted a
3 malicious violation of POBR with an intent to injure Doe 2.

4 30. On or about November 9, 2018, the CPRA interviewed Doe 3. At the Commencement
5 of the interview, Mr. Buffington again objected to the further interrogation of his client without the
6 receipt of the discovery he requested under Government Code Section 3303(g) and *Santa Ana Police*
7 *Officers Association, supra.* The City insisted on conducting the interrogation over the multiple
8 objections of Mr. Buffington and contrary to clearly established law. This interrogation constituted a
9 malicious violation of POBR with an intent to injure Doe 3.

10 31. On or about November 13, 2018, the CPRA interviewed Doe 4. At the
11 Commencement of the interview, Mr. Buffington again objected to the further interrogation of his
12 client without the receipt of the discovery he requested under Government Code Section 3303(g) and
13 *Santa Ana Police Officers Association, supra.* The City insisted on conducting the interrogation over
14 the multiple objections of Mr. Buffington and contrary to clearly established law. This interrogation
15 constituted a malicious violation of POBR with an intent to injure Doe 4.

16 32. Because the Police Department and the Citizens' Police Review Agency are under the
17 common control of a single entity, the City, the CPRA has the same obligation to provide the
18 aforementioned and requested discovery as the Police Department, had the Department been
19 conducting the second interview that has been requested. (*Breslin v. City and County of San*
20 *Francisco* (2007) 146 Cal.App.4th 1064, 1084-1085).

21 33. Respondent has further injured Officers Doe 1 through 3 by seeking to advance
22 disciplinary proceedings against them based, in whole or in part, on the second interrogations
23 conducted in violation of POBR.

24 34. Respondent is prohibited from moving forward with disciplinary proceedings based, in
25 whole or in part, on the contents of the second interrogations conducted in violation of POBR. By
26 law, these interrogations should be excluded from the record.

27 35. For these reasons Petitioners bring this Verified Petition for Writ of Mandate for an
28 order correcting the statutory violations of Respondent, enjoining Respondent from going forward

1 with any disciplinary proceedings against Petitioners based, in whole or in part, on the second
2 interrogations conducted in violation of POBR.

3 36. Petitioners have complied with relevant tort claim procedures by filing tort claims with
4 Respondent contemporaneously with the filing of this action.

5 **FIRST CAUSE OF ACTION**

6 **WRIT OF MANDATE**

7 (Code of Civil Procedure § 1085; Government Code §§ 3303, 3309.5)

8 37. Petitioners reallege and incorporate paragraphs 1 through 34 as though fully set forth
9 herein.

10 38. Petitioners are public safety officers entitled to the rights and protections afforded by
11 POBR, including the right not to be re-interviewed during an investigation into allegations of
12 misconduct without first being provided with all materials containing notes, complaints or reports
13 concerning the alleged misconduct.

14 39. Under the circumstances, Government Code section 3303(g) prohibited Respondent
15 from re-interviewing Petitioners during an investigation into allegations of misconduct without first
16 providing them with all materials containing notes, complaints or reports concerning the alleged
17 misconduct.

18 40. The City of Oakland, the Department, and the CPRA all have a mandatory ministerial
19 duty to comply with the provisions of POBRA, including Section 3303, subdivision (g).

20 41. Respondent did re-interview Petitioners without providing the required materials.
21 Respondent intended to cause Petitioners this harm and did so with knowledge that it was unlawful.

22 42. Petitioners have a beneficial interest in the issuance of the writ in order to obtain the
23 rights and protections guaranteed by POBR.

24 43. Petitioners have attempted to enforce the duty imposed on Respondent by POBR by
25 demanding that Respondent comply with POBR.

26 44. Respondent has been able to comply with POBR, but has unlawfully denied, and
27 continue to deny, Petitioners their statutory rights not to be re-interviewed during an investigation
28 into allegations of misconduct without first being provided with all materials containing notes,

1 complaints or reports concerning that alleged misconduct, or to be subjected to disciplinary
2 proceedings based, in whole or in part, on such unlawful interviews.

3 45. Petitioners are not required to exhaust administrative remedies before initiating judicial
4 proceedings. Government Code section 3309.5(c) specifies that “[t]he superior court shall have
5 initial jurisdiction over any proceeding brought by any public safety officer against any public safety
6 department for alleged violations of this chapter.”

7 46. Government Code section 3309.5(d)(1) specifies that the superior court shall render
8 appropriate injunctive or other extraordinary relief to remedy established violations of POBR and to
9 prevent future violations of a like or similar nature.

10 47. Government Code section 3309.5(e) provides a remedy of attorney fees and civil
11 penalties up to \$25,000 for malicious violations of POBR.

12 48. Petitioners have no plain, speedy and adequate remedy in the ordinary course of law,
13 other than the relief sought in this Petition, in that money damages are inadequate to compensate for
14 the loss of statutory rights guaranteed by POBR.

15 49. Petitioners have suffered, and will continue to suffer, great and irreparable harm from
16 the loss of statutory rights guaranteed by POBR.

17 50. Respondents will not suffer any legitimate harm by complying with POBR and its
18 prohibition against re-interviewing peace officers during an investigation into allegations of
19 misconduct without first providing them with all materials containing notes, complaints or reports
20 concerning the alleged misconduct.

21 **SECOND CAUSE OF ACTION**

22 **DECLARATORY RELIEF**

23 (Code of Civil Procedure § 1060)

24 51. Petitioners reallege paragraphs 1 through 47 as though fully set forth hereinabove and
25 further alleges as follows:

26 52. An actual and justiciable controversy has arisen, and now exists, between Petitioners
27 and Respondent as to whether Respondents may re-interview petitioners during an investigation into
28 allegations of misconduct without first providing them all materials containing notes, complaints or

1 reports concerning the alleged misconduct.

2 53. This controversy is a proper subject for declaratory relief because the parties are in
3 fundamental disagreement over the extent of Petitioners' rights to be free from such interrogation.

4 54. There are no effective administrative remedies available to Petitioners to compel the
5 relief sought herein.

6 55. The successful prosecution of this action will result in the enforcement of important
7 rights affecting public interest and Petitioners are entitled to award of attorney's fees under Section
8 1021.5 of the California Code of Civil Procedure.

9 WHEREFORE, Petitioners pray for the relief set forth below.

10 **PRAYER**

11 Petitioners respectfully request that the court enter judgment in their favor and against
12 Respondents, their agents, employees and anyone acting on their behalf as follows:

13 1. For a peremptory writ of mandate commanding Respondents to comply immediately
14 with Government Code sections 3303 and 3309.5 by destroying all records of the unlawful
15 interrogations and ceasing any disciplinary proceedings based in whole or in part on the contents of
16 the unlawful interrogations;

17 2. For a Temporary Restraining Order, Preliminary Injunction and Permanent Injunction
18 restraining Respondents: a) from maintaining any records of the unlawful interrogations; and b)
19 continuing with any disciplinary proceedings based, in whole or in part, on the contents of the
20 unlawful interrogations;

21 3. For a judicial declaration that Respondent's re-interviewing Petitioners during an
22 investigation into allegations of misconduct without first providing them all materials containing
23 notes, complaints or reports concerning the alleged misconduct violated the statutory protections of
24 POBR.

25 4. For an award of attorney fees pursuant to Code of Civil Procedure section 1021.5,
26 Government Code sections 800 and 3309.5, or as otherwise authorized by law;

27 5. For an award of a \$25,000 civil penalty to each Petitioner against Respondent for
28 each malicious violation of POBR;

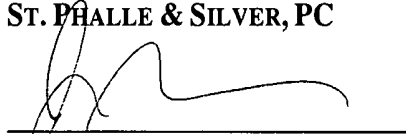
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- 6. For an award of costs of suit incurred in this action; and
- 7. For such other and further relief as the court deems just and proper.

Dated: January 11, 2019

Respectfully submitted,

RAINS LUCIA STERN
ST. PHALLE & SILVER, PC



By: Jonathan Murphy
Attorneys for Oakland Police Officers'
Association and Officer Doe 1, Officer Doe 2,
Officer Doe 3 and Officer Doe

VERIFICATION

I, Justin Buffington, am counsel for Petitioner Officer Doe 4 in the above-captioned matter. I have read the foregoing Verified Petition for Writ of Mandate and knows its contents. The matters stated in the Petition are true of my own knowledge and belief except as to those matters stated on information and belief, and as to those matters I believe them to be true.

My client, Officer Doe 4, has signed a separate verification using their real name and indicating that same. I retain that verification at my office. This Verification is being signed by counsel on behalf of Officer Doe 4 to protect their confidentiality.

I declare under penalty of perjury under the law of the State of California that the foregoing is true and correct to the best of my knowledge. Executed on January 11, 2019, at Pleasant Hill, California.



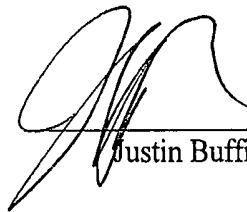
Justin Buffington

VERIFICATION

I, Justin Buffington, am counsel for Petitioner Officer Doe 3 in the above-captioned matter. I have read the foregoing Verified Petition for Writ of Mandate and knows its contents. The matters stated in the Petition are true of my own knowledge and belief except as to those matters stated on information and belief, and as to those matters I believe them to be true.

My client, Officer Doe 3, has signed a separate verification using their_real name and indicating that same. I retain that verification at my office. This Verification is being signed by counsel on behalf of, Officer Doe 3 to protect their_confidentiality.

I declare under penalty of perjury under the law of the State of California that the foregoing is true and correct to the best of my knowledge. Executed on January 11, 2019, at Pleasant Hill, California.



Justin Buffington

VERIFICATION

I, Justin Buffington, am counsel for Petitioner Officer Doe 2 in the above-captioned matter. I have read the foregoing Verified Petition for Writ of Mandate and knows its contents. The matters stated in the Petition are true of my own knowledge and belief except as to those matters stated on information and belief, and as to those matters I believe them to be true.

My client, Officer Doe 2, has signed a separate verification using their real name and indicating that same. I retain that verification at my office. This Verification is being signed by counsel on behalf of Officer Doe 2 to protect their confidentiality.

I declare under penalty of perjury under the law of the State of California that the foregoing is true and correct to the best of my knowledge. Executed on January 11, 2019, at Pleasant Hill, California.



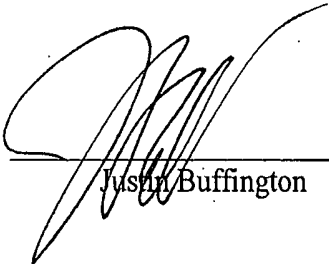
Justin Buffington

VERIFICATION

I, Justin Buffington, am counsel for Petitioner Officer Doe 1 in the above-captioned matter. I have read the foregoing Verified Petition for Writ of Mandate and knows its contents. The matters stated in the Petition are true of my own knowledge and belief except as to those matters stated on information and belief, and as to those matters I believe them to be true.

My client, Officer Doe 1, has signed a separate verification using their real name and indicating that same. I retain that verification at my office. This Verification is being signed by counsel on behalf of Officer Doe 1 to protect their confidentiality.

I declare under penalty of perjury under the law of the State of California that the foregoing is true and correct to the best of my knowledge. Executed on January 11, 2019, at Pleasant Hill, California.

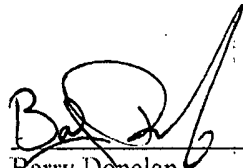


Justin Buffington

VERIFICATION

1. I, Barry Donelan, I am the President of the Oakland Police Officers' Association, a Petitioner in the above matter. I have read the foregoing Verified Petition for Writ of Mandate and knows its contents. The matters stated in the Petition are true of my own knowledge and belief except as to those matters stated on information and belief, and as to those matters I believe them to be true.

I declare under penalty of perjury under the law of the State of California that the foregoing is true and correct to the best of my knowledge. Executed on 11 JAN 2019, at OAKLAND, California.



Barry Donelan
President, Oakland Police Officers' Association