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By R. Perez, Deputy Clerk

8 Attorneys for Plaintiff CITY OF LOS ANGELES  
9  
10 [No Fee- Govt. Code §6103]

11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
12 **FOR THE COUNTY OF LOS ANGELES**

13 CITY OF LOS ANGELES, a municipal  
14 corporation;

15 Plaintiff,

16 v.

17  
18 BEN CAMACHO, STOP LAPD SPYING  
19 COALITION and DOES 1-50 inclusive.

20 Defendants.

**CASE NO. 23STCP01060**

[Assigned for all purposes to the Honorable  
Mitchell L. Beckloff, Dept 86]

**PLAINTIFF CITY OF LOS ANGELES' EX  
PARTE APPLICATION FOR TEMPORARY  
RESTRAINING ORDER AND ORDER TO  
SHOW CAUSE AS TO WHY A  
PRELIMINARY INJUNCTION SHOULD  
NOT ISSUE; MEMORANDUM OF POINTS  
AND AUTHORITIES IN SUPPORT  
THEREOF**

[Declarations of Christen Sproule, Jonathan  
Tippet, Hasmik Badalian Collins, Felix Lebron,  
and John Doe-1; Proposed Order and Order to  
Show Cause Filed Concurrently]

Date: April 25, 2023

Time: 8:30 a.m.

Dept: 86

Complaint Filed: April 7, 2023

1 **TO ALL PARTIES AND THEIR RESPECTIVE COUNSEL OF RECORD:**

2 **PLEASE TAKE NOTICE ON** April 25, 2023 at 8:30 a.m. or as soon thereafter as the matter  
3 may be heard in Department 86 of the above-entitled Court, located at 111 North Hill Street, Los  
4 Angeles California 90012, Plaintiff City of Los Angeles (“City”) will and hereby does submit its *ex*  
5 *parte* application for a Temporary Restraining Order and Order to Show Cause re Preliminary  
6 Injunction. The City’s *ex parte* application is made pursuant to Code of Civil Procedure (“C.C.P.”)  
7 Sections 513.010(b) and 527 and California Rules of Court (“C.R.C.”) Rule 3.1200 *et seq.* Specifically,  
8 the City requests that the Court enter on an *ex parte* basis a temporary restraining order enjoining  
9 Defendants Ben Camacho (“Camacho”) and Stop LAPD Spying Coalition (“SLSC” and collectively  
10 with Camacho “Defendants”) from transferring, concealing, removing or otherwise disposing of  
11 personal property pending the Court’s resolution of the City’s application for writ of possession of said  
12 personal property. The personal property consists of a flash drive produced in response to a California  
13 Public Records Act Request, Government Code § 7920.000 *et seq.* (“CPRA”), containing over 9,300  
14 digital file images of officer photographs records, including inadvertently produced images of sworn  
15 personnel working in an undercover capacity that are exempt under the CPRA.

16  
17 The City’s application for writ of possession (Judicial Council Form CD-100), notice of  
18 application for writ of possession (CD-110), application for temporary restraining order (CD-190),  
19 temporary restraining order (CD-200) and supporting declarations were filed immediately before this *ex*  
20 *parte* application. The City’s application for writ of possession is currently scheduled for hearing on  
21 August 9, 2023.

22 Good cause exists for the requested *ex parte* relief under C.C.P. § 513.010(b) because the City  
23 has established the probable validity of its claim to possession of the property, and that there is an  
24 immediate danger that the claimed property may become unavailable by reasons of being transferred,  
25 concealed, removed, or otherwise disposed of before the hearing on the City’s writ of possession.  
26 C.C.P. § 513.010(b). The City is exempt from the undertaking requirement under C.C.P.  
27 § 513.010(b)(2). C.C.P. § 995.220(b); *City of South San Francisco v. Cypress Lawn Cemetery Ass’n*  
28 (1992) 11 Cal.App.4th 916, 921-22.

1 The City provided notice to Defendants of this *ex parte* application pursuant to C.R.C. Rules  
2 3.1203 and 3.1204 as set forth in the Lebron Declaration. Defendant Camacho opposes the application  
3 and intends to appear at the hearing. Lebron Decl. ¶¶ 2-3, Ex. 1. Defendant SLSC did not confirm  
4 whether they opposed the application before the City filed this application. *Id.* ¶¶ 4-5.

5 This *ex parte* application is based on this application, the Memorandum of Points and  
6 Authorities, the Declarations of Jonathan Tippet, Christen Sproule, Hasmik Badalian Collins, Felix  
7 Lebron, and John Doe 1, and the pleadings, papers and records on file herein.

8 DATED: April 24, 2023

9 HYDEE FELDSTEIN SOTO, City Attorney  
10 SCOTT MARCUS, Chief Assistant City Attorney  
11 GABRIEL S. DERMER, Assistant City Attorney  
12 FELIX LEBRON, Deputy City Attorney  
13 CHRISTEN A. SPROULE, Deputy City Attorney

14 By: /s/Felix Lebron

15 FELIX LEBRON, Deputy City Attorney  
16 Attorneys for Plaintiff  
17 CITY OF LOS ANGELES  
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**MEMORANDUM OF POINTS AND AUTHORITIES**

**I. INTRODUCTION**

Our public servants are under attack. From health officials to election workers to public safety officers, people who have answered the call of public service are increasingly being berated, harassed, threatened, and assaulted at work, at home, or in public spaces. These attacks are not efforts to petition government for redress nor are they protected First Amendment criticism of public policy. Rather, these efforts should be seen as they are intended—blatant attempts to bully and intimidate individual public employees to stop them from doing the job the public relies on them to do.

As employers, cities and public agencies are responsible for recruiting highly qualified individuals to provide public services; for training them to provide those services under effective and constitutional principles consistent with the values of the public agency; and for providing safe workplaces for individual employees to provide those services, often in direct and close contact with the public constituents those employers serve. As public employers, cities and other government entities have additional duties to the people they serve: to be open and transparent about the services they provide and, to a large extent, the people who provide them. As a result of the nature of their work, government employees often come into close contact with members of the public they serve in ways that non-government employees do not. Usually, this results in better services by building relationships within the community these employees serve, but it can also lead to dangerous consequences.

For example:

- Just a few weeks into the COVID-19 pandemic, Orange County’s chief health officer resigned after she received death threats and her home address was publicized. <https://www.latimes.com/california/story/2020-06-09/orange-county-public-health-officer-resigns-amid-controversy-over-face-coverings>. Other public health officers (including here in Los Angeles—<https://www.latimes.com/california/story/2020-06-22/la-county-health-director-receives-death-threats-over-coronavirus-rules>) were harassed and threatened but bravely stayed in their jobs. As the American Journal of Public Health reported in May 2022, approximately half of local health departments reported at least one type of harassment, and one in three health officials who left their positions during the first 10

1 months of the pandemic did so due to harassment.

2 <https://ajph.aphapublications.org/doi/10.2105/AJPH.2021.306649>.

- 3 • A Nevada County, California judge had to issue workplace violence restraining orders  
4 against residents who charged into the county’s election office.

5 [https://apnews.com/article/2022-midterm-elections-covid-health-presidential-local-](https://apnews.com/article/2022-midterm-elections-covid-health-presidential-local-91fe788870e35dfe4763d78fe0ca6ef7)

6 [91fe788870e35dfe4763d78fe0ca6ef7](https://apnews.com/article/2022-midterm-elections-covid-health-presidential-local-91fe788870e35dfe4763d78fe0ca6ef7). Colorado’s secretary of state received multiple

7 threatening posts on social media, including one that read: “Do you feel safe? You

8 shouldn’t.” [https://www.pbs.org/newshour/politics/facing-harassment-and-death-threats-](https://www.pbs.org/newshour/politics/facing-harassment-and-death-threats-some-election-workers-weigh-whether-to-stay)

9 [some-election-workers-weigh-whether-to-stay](https://www.pbs.org/newshour/politics/facing-harassment-and-death-threats-some-election-workers-weigh-whether-to-stay). Threats to and intimidation of election

10 workers reached such extreme levels that the U.S. Department of Justice launched an election

11 threats task force to deal with the issue. [https://www.cnbc.com/2022/10/27/were-going-to-](https://www.cnbc.com/2022/10/27/were-going-to-hang-you-doj-cracks-down-on-threats-to-election-workers-ahead-of-high-stakes-midterms.html)

12 [hang-you-doj-cracks-down-on-threats-to-election-workers-ahead-of-high-stakes-](https://www.cnbc.com/2022/10/27/were-going-to-hang-you-doj-cracks-down-on-threats-to-election-workers-ahead-of-high-stakes-midterms.html)

13 [midterms.html](https://www.cnbc.com/2022/10/27/were-going-to-hang-you-doj-cracks-down-on-threats-to-election-workers-ahead-of-high-stakes-midterms.html).

- 14 • In February of this year, Santa Maria Police arrested a man for threatening officers and their  
15 families in social media posts and for targeting and stalking officers’ homes.

16 [https://keyt.com/news/santa-maria-north-county/2023/02/18/santa-maria-resident-arrested-](https://keyt.com/news/santa-maria-north-county/2023/02/18/santa-maria-resident-arrested-for-criminal-threats-directed-at-smpd-officers-over-social-media/)

17 [for-criminal-threats-directed-at-smpd-officers-over-social-media/](https://keyt.com/news/santa-maria-north-county/2023/02/18/santa-maria-resident-arrested-for-criminal-threats-directed-at-smpd-officers-over-social-media/).

18  
19 The current state of the law provides woefully inadequate protection for California’s public  
20 servants. Under the California Public Records Act, Gov’t. Code § 7920.000 *et seq.* (“CPRA”), a  
21 government employer may be compelled to produce records that provide a great deal of personally  
22 sensitive information about those employees, including their salaries and other details that non-  
23 government employers can keep confidential. *See, e.g., Int’l Fed’n of Prof. & Tech. Engineers, Local*  
24 *21, AFL-CIO v. Superior Court* (2007) 42 Cal.4th 319. While the “home addresses, home telephone  
25 numbers, personal cellular telephone numbers, and birthdates” of public employees are confidential and  
26 not subject to disclosure under the CPRA, that list ends there. Gov’t Code § 7928.300. In addition,  
27 elected and appointed officials have a statutory right to protect themselves by demanding the removal of  
28 publicly posted personal information—including from the internet—but there are no similar protections



1 for the average employee working under those officials. Gov't Code §§ 7928.210, 7928.215.<sup>1</sup>

2 Protections for peace officers are particularly inadequate. Personnel records are confidential and  
3 exempt from disclosure under the CPRA (Gov't Code § 7927.705; Penal Code § 832.7), but “personnel  
4 records” is narrowly defined (Penal Code § 832.8) and even more narrowly construed. *See Commission*  
5 *on Peace Officer Standards & Training v. Superior Court* (2007) 42 Cal.4th 278, 296 (“*POST*”).

6 However, even while narrowly construing the scope of the “personnel records” exemption under the  
7 CPRA and the Penal Code’s protection of peace officer personnel records, the California Supreme Court  
8 recognized that the privacy interests of individual officers and the public interest in maintaining a safe  
9 and efficacious law enforcement agency could outweigh the public interest in disclosure of information  
10 about particular peace officers. *POST*, 42 Cal.4th at 301 (“the duties of particular officers, such as those  
11 who operate undercover, demand anonymity [and] the need to protect the officer’s safety....”).

12 There will always be tension between the public’s legitimate right to know (especially when it  
13 comes to their government) and a person’s equally legitimate right to privacy (even when that person is  
14 a public servant). There also is tension between the public’s right to know and the legitimate interests of  
15 government in doing its job – especially when it comes to the sensitive, difficult, and often dangerous  
16 work of law enforcement, particularly in an undercover capacity. The current imbalance between those  
17 various rights has led to the dangerous instances of harassment and intimidation of our civil servants and  
18 government employees, including the examples described above, and—until that imbalance gets  
19 corrected—will inevitably result in more public employees being harassed, intimidated, and harmed for  
20 doing nothing more than their job.

21 Fortunately, this Court does not need to correct that imbalance in this case. Rather, the City  
22 seeks a modest remedy that is entirely consistent with existing case law and protections for personnel  
23 records and personal identifying information of public employees: to claw-back the inadvertent  
24 disclosure of photographs of undercover police officers (including, potentially, officers eligible for

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25  
26 <sup>1</sup> Intimidation and confrontation of elected officials has also gotten out of hand, but that is not at issue  
27 here. Rank and file police officers like those whose personal identifying information was released are  
28 not public figures like elected officials, nor have they deliberately inserted themselves into a discussion  
of a matter of public interest; rather, they are sworn to do the difficult job of preserving public safety  
which is one of the core functions of government.

1 undercover assignments as the need for additional officers arises as recognized by the Court in *POST*).

2 In this case, the City informed defendant Camacho it was withholding photographs of  
3 undercover officers as exempt records under the CPRA, and he did not object. Unfortunately,  
4 photographs of some officers in undercover assignments were inadvertently produced to Camacho, and  
5 Camacho shared the photos with defendant Stop LAPD Spying Coalition and likely others, including the  
6 photos of current and future undercover officers. That puts defendants in possession of property which  
7 they have no right to possess, and the City has asked for it back. Defendants refused, so the City seeks a  
8 writ of possession for the return of those photos.

9 A photograph, unlike a name or badge number, is personal data that makes officers instantly  
10 recognizable in circumstances where they are unaware that their identity has been revealed: anytime the  
11 officer is in public, in or out of uniform, on duty or off, and even while on an undercover or other  
12 sensitive assignment where recognition can jeopardize the officer's safety. Ten years ago, the Court of  
13 Appeals of this Second District recognized that officers who work or anticipate working undercover, or  
14 have duties now or in the future that require anonymity, have a substantial privacy interest in  
15 maintaining the confidentiality of their photos. *Ibarra v. Superior Court* (2013) 217 Cal.App.4th 695,  
16 705. It also recognized that the "unmonitored display" of photographs posed "an unreasonable risk of  
17 harm" of generating "anger, resentment and attempts at retribution" aimed at the officers in the photos,  
18 which risk demanded measures to "ensure that the disclosure does not create a threat to the officers'  
19 safety and security" including the imposition of a protective order prohibiting the copying, publication  
20 or dissemination of the photographs even though there was "no indication that the officers here either  
21 have worked undercover or anticipate working undercover in the future", or that "their duties now or in  
22 the future require anonymity." *Id.* at 705-6. While that case involved the unmonitored display of photos  
23 of correctional officers within the jail they work, one only needs to look at social media since LAPD's  
24 inadvertent disclosure of photos in this case to see the Court of Appeal's concern playing out on a much  
25 larger and scarier scale. *See, e.g.*, Declaration of Jonathan Tippet ("Tippet Decl."). And the *Ibarra*  
26 Court did not have to contend with how facial recognition technology can be used today by every  
27 criminal organization to sift through those photos to find the undercover officer who infiltrated their  
28 ranks—or who might walk through their doors tomorrow.

1 This is a matter of grave concern for individual officers, for the Police Department, for our City,  
2 and for the people and communities that our police officers protect and serve. For these reasons, the  
3 City requests this Court grant its temporary restraining order enjoining the transfer, concealment,  
4 removal or other disposition of the inadvertently produced photographs until the Court hears and decides  
5 the City’s application for writ of possession seeking return of photographs.

6 **II. EX PARTE NOTICE**

7 The City gave notice of this *ex parte* application to Defendants on April 24, 2023 by email and  
8 phone call before 10:00 a.m. in accordance with C.R.C. Rules 3.1203 and 3.1204. *See* Lebron Decl.  
9 ¶¶ 2-5, Exs. 1-2. Defendant Camacho opposes the application and intends to appear at the *ex parte*  
10 hearing. *Id.* ¶ 4. Defendant SLSC did not confirm whether they opposed the application and intended to  
11 appear at the hearing before the City filed this *ex parte* application. *Id.* at ¶ 5.

12 **III. STATEMENT OF FACTS**

13 On April 6, 2023, the City filed its Complaint for Possession of Personal Property by Claim and  
14 Delivery (Civil Code § 3379 *et seq.*), Declaratory Relief, and Petition for Return of Government  
15 Records (Gov. Code § 6204 *et seq.*) against Defendants Ben Camacho and Stop LAPD Spying Coalition  
16 (“SLSC”) and DOES 1-50.

17 On October 11, 2021, defendant Camacho made a request under the California Public Records  
18 Act, Gov. Code § 7920.000 *et seq.* (“CPRA”), to LAPD, Request No. 21-8914, which sought “[T]he  
19 most up-to-date roster of LAPD names, badge numbers, serial numbers, division, sworn status. The  
20 department headshot photos of all of the same officers referenced above.” *See* Decl. of Defendant Ben  
21 Camacho filed ISO Special Motion to Strike “Camacho Decl.” at ¶ 6.<sup>2</sup> On January 25, 2022, LAPD  
22 responded to Camacho’s CPRA request. LAPD produced certain documents, including a roster  
23 containing names and other requested information, but denied the request for photographs of officers.  
24 Compl. ¶ 9; Camacho Decl. ¶ 9.

25 On May 27, 2022, Camacho filed a Petition for Writ of Mandate or in the Alternative a  
26

27  
28 <sup>2</sup> The Camacho Declaration filed in support of Defendant’s Special Motion to Strike is attached as Exhibit 3 to the Sproule Declaration and is also available in the Court’s files in this action.

1 Complaint for Declaratory and Injunctive Relief against the City relating to the City’s CPRA response,  
2 *Ben Camacho v. City of Los Angeles*, LASC Case No. 22STCP02029. Camacho Decl. ¶ 10.

3 The City and Camacho subsequently agreed to settle the dispute. Camacho Decl. ¶ 12. The City  
4 provided pictures of all full-time, active duty, sworn officers as of July 3, 2022 that were available in  
5 LAPD’s system, except for images of officers working in an undercover capacity. Collins Decl. ¶ 2, Ex.  
6 1. The City objected to production of any records that are exempt under the CPRA, including  
7 photographs of any officers assigned to undercover duties. *See id.* Camacho’s counsel agreed that any  
8 production of photographs or images would expressly exclude images of officers working in an  
9 undercover capacity. *Id.* ¶ 4, Ex. 2.

10 On September 16, 2022, a flash drive containing over 9,300 digital file images of officer  
11 photographs was produced to Camacho’s counsel. Camacho Decl. ¶ 13; Collins Decl. ¶ 5. The City’s  
12 cover letter enclosing the flash drive expressly stated “[a]s discussed and agreed upon by all counsel,  
13 images of officers working in an undercover capacity as of the time the pictures were downloaded (end  
14 of July 2022) are not included.” Collins Decl. ¶ 4, Ex. 2; Camacho Decl. ¶ 13, Ex. B. Unbeknownst to  
15 the City, the flash drive provided to Camacho’s counsel on September 16, 2022 inadvertently produced  
16 exempt records containing images of officers working in an undercover capacity. Collin Decl. ¶¶ 5-7;  
17 Tippet Decl. ¶¶ 11. Undercover officers work in capacity where their identity as a law enforcement  
18 officer is concealed. Tippet Decl. ¶ 7. These officers generally dress and act in a manner to assimilate  
19 into the community and environment that they are attempting to infiltrate. *Id.* Undercover operations  
20 include vice officers posing as prostitutes, officers posing as controlled substance or firearms  
21 purchasers, or officers posing as members of the public to conduct surveillance for the purposes of  
22 gathering evidence to support criminal investigations. *Id.*

24 Defendant Camacho subsequently provided Defendant SLSC with the records contained on the  
25 flash drive. Camacho Decl. ¶ 15. On March 17, 2023, SLSC then transferred the photographs,  
26 including exempt records of undercover officers, onto its “Watch the Watcher” website. Camacho Decl.  
27 ¶ 15; Tippet Decl. ¶¶ 11; Doe-1 Decl. ¶ 4. At that time, the City discovered that the flash drive  
28 inadvertently disclosed photos of undercover officers. Compl. ¶ 15. On March 20, 2023, Camacho also

1 transferred the records obtained on the flash drive. Camacho Decl. ¶ 17.

2 Defendants’ possession of undercover officers’ identifying information and photographs,  
3 including on Defendants’ website Watch the Watchers, subjects these officers and their families to  
4 potential threats and danger, and harms the efficacy of LAPD’s undercover operations that require  
5 anonymity. See Tippet Decl. ¶¶ 7-23; Doe-1 Decl. ¶¶ 2-7.

6 On March 30, 2023, the City sent Camacho a demand for return of government records pursuant  
7 to Government Code § 6204.2 in a letter demanding the return of the flash drive and destruction of all  
8 electronic and physical copies of photographs obtained from that production. Camacho Decl. ¶ 18, Ex.  
9 C; Sproule Decl. ¶ 2, Ex. 1. On April 3, 2023, the City sent SLSC a demand for return of government  
10 records pursuant to Government Code § 6204.2 in a letter demanding the return of the flash drive and  
11 destruction of all electronic and physical copies of photographs obtained from that production. Sproule  
12 Decl. ¶ 3, Ex. 2. Defendants have not returned the flash drive or confirmed that Defendants have  
13 destroyed all electronic and physical copies of such records in their possession, custody or control.  
14 Sproule Decl. ¶ 4. Defendants continue to possess undercover officer photographs, including on the  
15 Watch the Watchers website. Camacho Decl. ¶¶ 15-17; Tippet Decl. ¶ 11.

#### 16 **IV. ARGUMENT**

##### 17 **A. The City Meets the Requirements for the Issuance of an *Ex Parte* TRO under C.C.P. §** 18 **513.010(b).**

19 C.C.P. § 512.010(a) states that “[u]pon the filing of the complaint or at any time thereafter, the  
20 plaintiff may apply pursuant to this chapter for a writ of possession by filing a written application for the  
21 writ with the court in which the action is brought.” The City filed its application for writ of possession  
22 (Judicial Council Form CD-100) immediately before this filing and the application is currently set for  
23 hearing on August 9, 2023. California law allows a plaintiff to apply for a TRO upon filing an  
24 application for writ of possession. See C.C.P. § 513.010(a). The City filed its request for TRO (CD-  
25 190) concurrently with this filing. The TRO may be granted *ex parte* if all of the following are found:  
26 “(1) The plaintiff has established the probable validity of his claim to possession of the property; (2) The  
27 plaintiff has provided an undertaking as required by § 515.010; and (3) The plaintiff has established the  
28

1 probability that there is an immediate danger that the property claimed may become unavailable to levy  
2 by reason of being transferred, concealed, or removed or may become substantially impaired in value.”  
3 C.C.P. § 513.010(b).<sup>3</sup>

4 As discussed below, the City satisfies all of the requirements for issuance of an *ex parte* TRO.

5 1. The Probable Validity of the City’s Claim to Possession of Property.

6 In order to obtain a writ of possession, the City must show that it has the right to immediate  
7 possession of the property claimed and that the property is wrongfully detained by defendants. C.C.P.  
8 § 512.010(b); *see also* Civil Code § 3379 (“person entitled the immediate possession of specific personal  
9 property may recover the same in the manner provided by the [C.C.P.]”); Civil Code § 3380 (“person  
10 having the possession or control of a particular article of personal property, of which he is not the owner,  
11 may be compelled to specifically deliver it to the person entitled to its immediate possession.”). A claim  
12 for possession of personal property is an action in claim and delivery or replevin. *Steel v. Marlborough*  
13 *Hall Corp.* (1929) 100 Cal.App. 491, 494. California’s procedures for statutory replevin are provided  
14 under C.C.P. Sections 511.010 through 516.050. *Pillsbury, Madison & Sutro v. Schectman* (1997) 55  
15 Cal.App.5th 1279, 1285; *see also Waffer Int’l Corp. v. Khorsandi* (1999) 82 Cal.App.4th 1261, 1271  
16 (“Claim and delivery is a remedy by which a party with a superior right to a specific item of personal  
17 property ... may record possession of that specific property before judgment.”).

18 The City’s writ of possession seeks the return of the flash drive containing exempt records  
19 inadvertently disclosed – specifically photographs reflecting the images of officers working in an  
20 undercover capacity – and destruction of all electronic and physical copies of photographs obtained from  
21 that production. There is no dispute that the photographs of officers assigned to undercover duties are  
22 exempt from disclosure under the CPRA and California law. *See POST*, 42 Cal.4th at 301; *Ibarra*, 217  
23 Cal.App.4th at 703, 705; *Long Beach Police Officers Ass’n v. City of Long Beach* (2014) 59 Cal.4th 59;  
24 74; *Int’l Fed’n of Prof. & Tech. Engineers*, 42 Cal.4th at 337; Gov. Code §§ 7922.000; 7927.700.

26 \_\_\_\_\_  
27 <sup>3</sup> As a government entity, the City is exempt from the undertaking requirement in § 513.010(b)(2).  
28 C.C.P. § 995.220(b); *City of South San Francisco v. Cypress Lawn Cemetery Ass’n* (1992) 11  
Cal.App.4th 916, 921-22.

1 In *POST*, the California Supreme Court found:

2 We readily acknowledge that throughout the state there are some officers working  
3 in agencies who, because of their particular responsibilities, require anonymity in  
4 order to perform their duties effectively to protect their own safety....***If the duties***  
5 ***of a particular officer, such as one who is operating undercover, demand***  
6 ***anonymity, the need to protect the officer’s safety and effectiveness would***  
7 ***certainly justify the Commission in withholding information identifying him or***  
8 ***her*** under Government Code section 6255, subdivision (a), which permits records  
9 to be withheld if on the facts of a particular case the public interest served by not  
10 disclosing the record clearly outweighs the public interest served by disclosure of  
11 the record. ***The public has a strong interest in maintaining the safety and efficacy***  
12 ***of its law enforcement agencies.***

13 *POST*, 42 Cal.4th at 301 (internal citations and quotations omitted).

14 California courts have consistently recognized this well-established exemption for officers  
15 working undercover or in positions whose duties require anonymity. See *Long Beach Police Officers*  
16 *Ass’n*, 59 Cal.4th at 74 (“Of course, if it is essential to protect an officer’s anonymity for safety reasons  
17 or for reasons peculiar to the officer’s duties—as, for example, in the case of an undercover officer—  
18 then the public interest in disclosure of the officer’s name may need to give way.”); *Int’l Fed’n of Prof.*  
19 *& Tech. Engineers*, 42 Cal.4th at 337 (“If an officer’s anonymity is essential to his or her safety, the  
20 need to protect the officer would outweigh the public interest in disclosure and would justify  
21 withholding the officer’s name.”); *Ibarra*, 217 Cal.App.4th at 703 (in dispute over disclosure of officer  
22 service photographs, noting “exception for circumstances where ‘the duties of a particular officer, such  
23 one who is operating undercover, demand anonymity.’”) quoting *POST*, 42 Cal.4th at 301.

24 The City informed defendant Camacho of its intent to withhold exempt records containing  
25 images of LAPD officers working in undercover assignments from the City’s production in response to  
26 Camacho’s CPRA writ petition. Collins Decl. ¶¶ 2, Ex. 1. Camacho did not object to the withholding  
27 of these exempt records. See *id.* Moreover, the City’s letter transmitting the flash drive containing  
28

1 images to Camacho’s counsel expressly stated “[a]s discussed and agreed upon by all counsel, images of  
2 officers working in an undercover capacity as of the time the pictures were downloaded (end of July  
3 2022) are not included.” *Id.* ¶ 4, Ex. 2. Notwithstanding this express agreement and understanding, the  
4 City’s flash drive inadvertently disclosed images of undercover officers. *See id.* ¶¶ 5-7.

5 The City’s claim for return of personal property through a writ of possession and TRO is an  
6 appropriate vehicle for seeking return of documents, such as the City’s exempt records. *See Pillsbury,*  
7 *Madison & Sutro*, 55 Cal.App.4th at 1285-1289 (granting injunction for return of documents wrongfully  
8 possessed by the defendant under C.C.P. § 512.070); *see also In re IBP Business Documents Litig.*, 754  
9 F.2d 787, 789 (8th Cir. 1985) (confirming that an action for replevin was appropriate to compel delivery  
10 of documents); *United States v. Navarro*, No. 22-2292 (CKK), 2023 WL 2424625 at \*10-11 (D.D.C.  
11 Mar. 9, 2023) (District of Columbia’s replevin statute provides a cause of action for government to seek  
12 return of documents unlawfully retained under the Presidential Records Act, 44 U.S.C. §§ 2201-2209).

13 The City’s inadvertent production of records exempt from disclosure does not waive the  
14 exemption. *See Ardon v. City of Los Angeles* (2016) 62 Cal.4th 1176, 1183. In *Ardon*, the California  
15 Supreme Court found “it is doubtful the Legislature intended to enact a statutory scheme that would  
16 prevent government agencies from minimizing the damage caused by the inadvertent disclosure of  
17 private and confidential information. Nor is it likely the Legislature intended to adopt a rule that  
18 inadvertent disclosure requires confidential information to be made generally available to the public.”  
19 *Id.*; *see also id.* at 1189 (“But, considering the language of [Government Code] section 6254.5 in its  
20 proper context, we conclude that it does not apply to inadvertent disclosures); *Rocky Mountain Wild Inc.*  
21 *v. United States Forest Serv.*, 56 F.4th 913, 930-931 (10th Cir. 2022) (government’s inadvertent  
22 disclosure of exempt records, and third party’s subsequent dissemination of exempt records, does not  
23 erase their exempt status or preclude their claw-back).

24 The Tenth Circuit’s analysis in *Rocky Mountain* of the inadvertent disclosure of exempt records  
25 and subsequent claw-back under the Freedom of Information Act, 5 U.S.C. § 552 (“FOIA”), is  
26 instructive. *See Times Mirror Co. v. Superior Court* (1991) 53 Cal.3d 1325, 1338 (because the CPRA  
27 was modeled on FOIA, judicial constructions of FOIA “serve to illuminate the interpretation of its  
28



1 California counterpart.”). In *Rocky Mountain*, the United States Forest Service inadvertently disclosed  
2 documents exempt under FOIA and sought an order for the return or destruction of the exempt  
3 documents. *Rocky Mountain*, 56 F.4th at 930. The plaintiff record requestor argued that the documents  
4 were no longer confidential because another organization posted them online and thus the district court  
5 could not order their return. *Id.* The Tenth Circuit rejected this argument for several reasons. *Id.*

6 **First**, the court distinguished between an intentional and inadvertent disclosure. *Id.* “It is one  
7 thing to afford no confidentiality to a journal containing information purposefully made public, but it is  
8 quite another to afford no confidentiality to documents mistakenly disclosed and then made public after  
9 Plaintiff shared those documents with another organization to disseminate.” *Id.* **Second**, the court found  
10 that the Forest Service inadvertently turned over documents that the plaintiff never had a right to possess  
11 under FOIA. *Id.* The issue was not who received the exempt records, but “whether any member of the  
12 public had a right to receive them.” *Id.* **Third**, the court confirmed that the government only waived the  
13 ability to exempt a document under FOIA after an intentional – not inadvertent – disclosure to the  
14 public. *Id.* **Fourth**, the court noted that there was no authority barring courts from ordering the return  
15 or destruction of inadvertently disclosed records subject to FOIA exemptions. *Id.* at 931. For these  
16 reasons, the court affirmed the district court’s claw-back order and finding that the public dissemination  
17 by a third party of inadvertently disclosed documents did not erase their exempt status. *Id.*

18  
19 Similar to *Rocky Mountain*, the City here inadvertently produced photographs of undercover  
20 officers, which are exempt under the CPRA and California law for the reasons discussed above. No  
21 member of the public had a right to receive the exempt photographs. Camacho gave SLSC access to the  
22 flash drive to copy the records. Camacho Decl. ¶ 15. SLSC disseminated the photographs by posting  
23 them to its “Watch the Watchers” website. Camacho Decl. ¶ 15-16; Tippet Decl. ¶ 11; Doe-1 Decl. ¶ 4.  
24 Camacho also transferred a copy of the records online. Camacho Decl. ¶ 17. For the same reasons  
25 identified by the Tenth Circuit, this Court can and should issue a claw-back order for the return of the  
26 records. *Rocky Mountain*, 56 F.4th at 930.

1 In sum, the City has established the probable validity of its claim for possession of its records  
2 sufficient for the Court to enter the TRO.<sup>4</sup>

3 2. Immediate Danger that the Property May Be Transferred, Concealed or Removed.

4 Camacho has already transferred to SLSC the records contained on the flash drive, including  
5 exempt records reflecting the images of undercover officers. Camacho ¶ 15; Tippet Decl. ¶ 11. SLSC  
6 transferred these same records onto its “Watch the Watchers” website. Camacho Decl. ¶ 16; Tippet  
7 Decl. ¶ 11. Camacho further transferred these records online. Camacho Decl. ¶ 17. The City issued  
8 written demands to Camacho and SLSC for return of the flash drive containing the exempt records  
9 inadvertently produced. Camacho Decl. ¶ 18, Ex. C; Sproule Decl. ¶¶ 2-3, Exs. 1-2. Defendants have  
10 refused to return the records. Sproule Decl. ¶ 4. Absent a TRO, the City faces the immediate risk that  
11 Defendants will further transfer the exempt records or attempt to conceal them from a claw-back order.  
12 Camacho Decl. ¶¶ 17-18; Sproule Decl. ¶¶ 5-6.

13  
14 B. Additional Good Cause Exists for Granting Emergency Ex Parte Relief Because of Existing  
15 Threats to LAPD’s Undercover Officers and Operations.

16 The City’s entitlement to an *ex parte* TRO under C.C.P. § 513.010(b) requires no additional  
17 showing of irreparable harm. And while the public dissemination online of the inadvertently produced  
18 exempt records does not preclude the City’s rightful claw-back of the records for reasons discussed  
19 above, additional good cause exists for granting emergency *ex parte* relief because of the existing threats  
20 to LAPD’s undercover officers and operations requiring anonymity. *See* Tippet Decl. ¶¶ 7-23.

21 Exempt records inadvertently disclosed include, among others, undercover officers in the Special  
22 Investigation Section (“SIS”) of LAPD’s Robbery-Homicide Division (“RHD”) and Narcotics  
23 Enforcement Detail (“NED”). Tippet Decl. ¶¶ 7-11; Doe-1 Decl. ¶ 1-5. These officers are used in  
24 significant cases that require close contact with a suspect, such as murder investigations and kidnapping

25 \_\_\_\_\_  
26 <sup>4</sup> In addition, when the City provides public records under the CPRA, it does not confer, grant, or  
27 transfer any titles, rights, or licenses protected under any privacy or intellectual property laws, whether  
28 those rights are owned by the City or third parties. The City reserves all rights and remedies against  
Defendants, including Doe Defendants, for any violation of any independent rights, including copyright,  
trademark, or rights to publicity.

1 cases, where exposure could not only prevent officers from solving the case but allow suspects to  
2 murder or kidnap again. Tippet Decl. ¶ 14. Continued exposure jeopardizes the ability to stop other  
3 major crimes, including drug trafficking and terrorism. *Id.* Moreover, continued exposure creates risk  
4 for undercover officers to be ambushed and killed. Tippet Decl. ¶ 14; Doe-1 Decl. ¶¶ 5-6.

5 Websites have already put literal bounties on officers' heads following the dissemination of the  
6 photographs on the SLSC's "Watch the Watchers" website. Tippet Decl. ¶ 18. One such website named  
7 "killercop.com" posted a tweet under the handle @KillerCop1984 saying "Remember, #Rewards are  
8 double all year for #detectives and #female cops." *Id.* ¶ 18, Ex. 7.<sup>5</sup> The tweet included an image of a  
9 financial reward for the killing of an LAPD officer while another tweet allegedly included a link to the  
10 database of the officer photos at issue in this lawsuit, along with the caption "Clean head-shots on these  
11 #LAPD officers A to Z." *Id.* ¶ 19.

12 Moreover, websites already exist now supporting the "doxxing" of officers exposed in the  
13 inadvertently disclosed photographs. Tippet Decl. ¶ 21. "Doxxing" is the intentional revelation of a  
14 person's private information online without their consent, often with malicious intent. *Id.* This includes  
15 sharing an officer's phone number, home address and previously private information. *Id.* ¶ 21, Ex. 9.  
16 The posting of the exempt photos makes the threat of doxxing of undercover officers even more  
17 dangerous. These threats to LAPD's undercover operations have caused an experienced undercover  
18 officer to retire early and many others have expressed the desire to leave LAPD in order to protect  
19 themselves and their families. *Id.* ¶ 22. Finally, facial recognition technology through Artificial  
20 Intelligence (AI) and continued public availability of these photographs further compromise undercover  
21 officers because AI programs quickly scan databases against a photograph putting officers and their  
22 families at risk. *See id.* ¶¶ 15-16, Exs. 3-5.  
23  
24  
25  
26

27 \_\_\_\_\_  
28 <sup>5</sup> The threats posted on Killercop.com is the subject of a separate lawsuit, *Adam Gross, et al. v. Steven William Sutcliffe, et al.*, Los Angeles Superior Court Case No. 23STCV06529.

1           C. The City’s Request for TRO Based on a Writ of Possession for Return of Inadvertently  
2           Disclosed Exempt Records under the CPRA Is Not Barred By First Amendment Concerns.

3           The remedy sought by the City in this *ex parte* application—a temporary restraining order  
4 pending the resolution of the writ of possession—does not unreasonably interfere with any First  
5 Amendment rights to free speech or freedom of the press that Defendants may claim. The  
6 Constitution’s free speech protections are not absolute. When considering public disclosures of private  
7 information, the U.S. Supreme Court recognizes “[t]he tension between the right which the First  
8 Amendment accords to a free press, on the one hand, and the protections which various statutes and  
9 common-law doctrines accord to personal privacy against the publication of truthful information, on the  
10 other.” *The Florida Star v. B.J.F.* (1984) 491 U.S. 524, 530. Importantly, the Supreme Court has  
11 repeatedly refused to “accept (the) invitation to hold broadly that truthful publication may never be  
12 punished consistent with the First Amendment.” *Id.* at 532; *see also Smith v. Daily Mail Publishing Co.*  
13 (1979) 443 U.S. 97, 103. Instead, the Court employs a balancing test. *Smith*, 443 U.S. at 103; *The*  
14 *Florida Star*, 491 U.S. at 541 [“We hold only that where a newspaper publishes truthful information  
15 which it has lawfully obtained, punishment may be imposed, if at all, only when narrowly tailored to a  
16 state interest of the highest order . . . .”].)

17           Here, of course, Defendants are not in lawful possession of the inadvertently released photos of  
18 undercover officers; those records are exempt from disclosure under the CPRA and defendants should  
19 never have obtained possession of them. The City is not seeking to “punish” Defendants criminally or  
20 civilly; rather, it seeks only the return of its inadvertently produced property.

21           Similarly, the anti-SLAPP motion defendant Camacho filed in this matter on April 18, 2023,  
22 does not affect or preclude the City’s requested relief.<sup>6</sup> The filing of an anti-SLAPP motion only stays  
23 discovery in an action, nothing else. C.C.P. § 425.16(g); *see also* Cal. Prac. Guide: Anti-SLAPP  
24 Litigation (The Rutter Group Sept. 2022) §§ 2:56-2:59.

25           Moreover, the issuance of a TRO under C.C.P. § 513.010(b) here is not inconsistent with the  
26

27 \_\_\_\_\_  
28 <sup>6</sup> The City will separately oppose the anti-SLAPP motion, demonstrating both that C.C.P. § 425.16 does not apply to the City’s requests for return of property and that it has a likelihood of success on its claims.

1 anti-SLAPP law. For example, in *Association for Los Angeles Deputy Sheriffs v. Los Angeles Times*  
2 (2015) 239 Cal.App.4th 808 (2015) (“ALADS”), plaintiff ALADS sought an *ex parte* restraining order  
3 to prevent the Times from publishing an article that allegedly contained “confidential” information that  
4 the Times must have acquired illegally. *See id.* at 812-814. The Court of Appeals affirmed the denial of  
5 the *ex parte* application because ALADS presented no evidence or law to support its allegations that the  
6 Times had confidential information that it was precluded from possessing; ALADS did not show a  
7 likelihood of success on their cause of action which was based solely on a general constitutional right of  
8 privacy; and enjoining the Times before it could publish amounted to a prior restraint. *See id.* at 820-24.

9 Here, the City invokes a specific statutory scheme for the return of property, and has set forth  
10 both factual and legal support that its property is government records exempt under the CPRA, which  
11 Defendants have no right to possess. The City’s *ex parte* application does not seek a prior restraint  
12 because Defendants have already published the records. Rather, the City seeks only a statutory TRO  
13 enjoining the transfer, concealment, removal, or other disposition of the property in Defendants’  
14 (improper) possession until the Court determines the City’s right to return of that property based on its  
15 statutory writ of possession.

16 **V. CONCLUSION**

17 For the foregoing reasons, and for any reasons that may arise at the hearing on this matter, the  
18 City respectfully requests that the Court enter enjoin defendants Camacho and SLSC from transferring,  
19 concealing, removing or otherwise disposing of the flash drive and/or electronic copies of the  
20 photographs contained therein and issue an Order to Show Cause why a preliminary injunction should  
21 not issue pending the Court’s resolution of the City’s application for writ of possession.

22 DATED: April 24, 2023

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