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COUNTY OF STANISLAUS

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ATTORNEY FOR Defendant, WALTER WESTLEY WELLS

SUPERIOR COURT OF CALIFORNIA, COUNTY OF STANISLAUS

MODESTO COURTHOUSE

PEOPLE OF THE STATE OF CALIFORNIA)	No. 1490969
)	
Plaintiff,)	DEFENDANT WALTER WELLS'
)	OPPOSITION TO THE
vs.)	PROSECUTION'S REQUEST
)	FOR RELEASE OF
WALTER WESTLEY WELLS,)	COMPELLED INTERNAL
)	AFFAIRS STATEMENT
)	(Government Code § 3300)
Defendant.)	
)	

Defendant, WALTER WELLS, by and through his attorneys of record, *THE LAW OFFICES OF TIMOTHY B. RIEN*, hereby objects to the release of former California Highway Patrol Officer Walter Wells compelled internal affairs statement in the current criminal proceedings, and submits the following authorities and arguments in support of his opposition:

I.
THE PROSECUTION REQUEST FOR USE OF THE INTERNAL AFFAIRS STATEMENT IS PREMATURE

As a general rule, the *Peace Officer's Public Safety Officers Procedural Bill of Rights Act* as articulated in *Government Code* § 3300 et seq. prohibits the use of a "compelled" administrative statement for any purpose other than internal affairs investigative purposes. *Government Code* § 3303(f). A limited exception for impeachment purposes, following an in

1 camera review, is carved out under subdivision (3) of subsection (f) for the use of such a
2 statement:

3 (3) This subdivision shall not prevent statements made by a public
4 safety officer under interrogation from being used to impeach the
5 testimony of that officer after an in camera review to determine
6 whether the statements serve to impeach the testimony of the officer.

7 While the language of the statute appears to limit use of the compelled statement in the
8 context of civil proceedings, the California Supreme Court in *Lybarger v. City of Los Angeles*
9 (1985) 40 Cal.3d 822, 221, has extended the protections of the statute to criminal proceedings
10 as well:

11 As a matter of constitutional law, it is well established that a public employee
12 has no absolute right to refuse to answer potentially incriminating questions posed by
13 his employer. Instead, his self-incrimination rights are deemed adequately protected by
14 precluding any use of his statements at a subsequent criminal proceeding. (See
15 *Lefkowitz v. Turley* (1973) 414 U.S. 70, 77-79 [38 L.Ed.2d 274, 281, 283, 94 S.Ct.
16 316]; *Garrity v. New Jersey* (1967) 385 U.S. 493, 500 [17 L.Ed.2d 562, 567, 87 S.Ct.
17 616].) [Emphasis added]

18 There are no proceedings currently calendared in connection with Officer Wells—
19 preliminary hearing or trial—that could conceivably call for his testimony, much less
20 impeachment of such testimony. Moreover, even if such a hearing were calendared, Mr. Wells
21 would have to elect to testify before the substance of his testimony was placed in issue.

22 Accordingly, the prosecution's request that an in camera hearing be conducted now is
23 premature.

24 II.

25 ***THE PROSECUTION'S PROPOSED ORDER THAT THE STATEMENT BE 26 FURNISHED DIRECTLY TO THE DISTRICT ATTORNEY'S OFFICE IS IMPROPER***

27 The prosecution is not entitled to any portion of the compelled internal affairs
28 statement without an appropriate judicial in camera review to determine what, if anything, in
the statement is impeaching. *Government Code* § 3303(f)(3)

Conclusion

For each and all of the foregoing reasons, it is respectfully requested that the court deny
the prosecution's premature and overly broad request for the release of Officer Wells'

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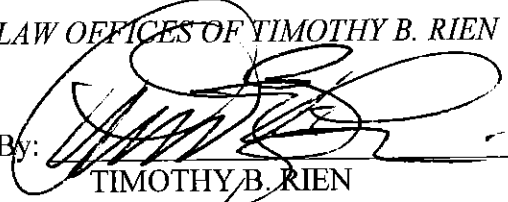
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California Highway Patrol internal affairs statement.

Dated: September 24, 2015.

Respectfully Submitted,

LAW OFFICES OF TIMOTHY B. RIEN

By: 

TIMOTHY B. RIEN
Attorneys for Defendant,
WALTER WESTLEY WELLS

PROOF OF SERVICE BY ELECTRONIC MAIL
(Code Civil Procedure §§ 1010.6, California Rules of Court §§ 2.251)

STATE OF CALIFORNIA, COUNTY OF ALAMEDA

I, Alisha Perdue, declare as follows:

I am over eighteen years of age and not a party to the within action; my business address is 39 South Livermore Avenue, Suite 209, Livermore, California 94550; my electronic service address is rienlaw@sbcglobal.net; I am employed in Alameda County, California. I am readily familiar with my employer's practices for collection and processing of correspondence for electronic service.

On September 24, 2015, I electronically served a copy, with all attachments, of the following documents: **DEFENDANT WALTER WELLS' OPPOSITION TO THE PROSECUTION'S REQUEST FOR RELEASE OF COMPELLED INTERNAL AFFAIRS STATEMENT** on the interested parties by placing a true copy of the above-referenced document(s) as a PDF attachment by electronic mail to Stanislaus County District Attorney, Marlisa A. Ferreira at marlisa.ferreira@standa.org, Larry Niermeyer at ltniermeyer@aol.com, Tim Allen Pori at tim@defense-attorney-pori.com, Martha Carlton-Magana at carltnm@hotmail.com, Preciliano Martinez at attymartinez@yahoo.com, Hans Hjertonsson at hans.hjertonsson@gmail.com, Alonzo Gradford at gradfordlaw@gmail.com, Ryan Roth at rroth@roth-legal.com, Stephanie Mitchell at stephanie.mitchell@stanct.org, and Bruce Perry at bruceperry@msn.com.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed on September 24, 2015.


ALISHA PERDUE