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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF MONTEREY
10

11 DEPUTY SHERIFF'S ASSOCIATION OF)
MONTEREY COUNTY; JOHN DOE 1;)
12 JOHN DOE 2; JOHN DOE 3; JOHN DOE 4;)
JOHN DOE 5; JOHN DOE 6; and JANE ROE)
13 1,)

14 Plaintiffs,)

15 v.)

16 COUNTY OF MONTEREY; STEVEN)
BERNAL, in his official capacity; SOES 1)
17 through 50,)

18 Defendants.)
19)
20)

CASE NO.: 18CV001499

COMPLAINT FOR:

1. **Violation of California Constitutional Right to Privacy**
2. **Invasion of Privacy - Intrusion into Private Affairs - Common Law**
3. **Intentional Infliction of Emotional Distress**
4. **Negligent Infliction of Emotional Distress**
5. **Declaratory Relief**
6. **Violation of Penal Code section 832.7**

Demand for Jury Trial

21 Plaintiffs, DEPUTY SHERIFF'S ASSOCIATION OF MONTEREY COUNTY; JOHN DOE
22 1; JOHN DOE 2; JOHN DOE 3; JOHN DOE 4; JOHN DOE 5; JOHN DOE 6; and JANE ROE 1,
23 (herein collectively referred to as "Plaintiffs,") hereby complain and allege against Defendants, as
24 follows:
25

26 **PARTIES**

- 27 1. Plaintiff DEPUTY SHERIFF'S ASSOCIATION OF MONTEREY COUNTY ("MCDSA")
28 is the exclusively recognized employee organization representing individuals employed by

1 the County of Monterey in the job classifications of Deputy Sheriff - Corrections, Deputy
2 Sheriff - Operations, District Attorney Investigator I, District Attorney Investigator II,
3 District Attorney Investigator III, Correctional Sergeant, Sheriff's Sergeant, and Sheriff's
4 Investigative Sergeant. The MCDSA's organizational purpose includes representing
5 employees in bargaining over terms and conditions of its members' employment with the
6 County of Monterey.

7 2. Plaintiff JOHN DOE 1 (hereinafter "DOE 1") is, and at all times herein was, a resident of
8 Monterey County, California. Defendant COUNTY OF MONTEREY employed DOE 1 as
9 a peace officer within the meaning of California Penal Code section 830.1.

10 3. Plaintiff JOHN DOE 2 (hereinafter "DOE 2") is, and at all times herein was, a resident of
11 Monterey County, California. Defendant COUNTY OF MONTEREY employed DOE 2 as
12 a peace officer within the meaning of California Penal Code section 830.1.

13 4. Plaintiff JOHN DOE 3 (hereinafter "DOE 3") is, and at all times herein was, a resident of
14 Monterey County, California. Defendant COUNTY OF MONTEREY employed DOE 3 as
15 a peace officer within the meaning of California Penal Code section 830.1.

16 5. Plaintiff JOHN DOE 4 (hereinafter "DOE 4") is, and at all times herein was, a resident of
17 Monterey County, California. Defendant COUNTY OF MONTEREY employed DOE 4 as
18 a peace officer within the meaning of California Penal Code section 830.1.

19 6. Plaintiff JOHN DOE 5 (hereinafter "DOE 5") is, and at all times herein was, a resident of
20 Monterey County, California. Defendant COUNTY OF MONTEREY employed DOE 5 as
21 a peace officer within the meaning of California Penal Code section 830.1.

22 7. Plaintiff JOHN DOE 6 (hereinafter "DOE 6") is, and at all times herein was, a resident of
23 Monterey County, California. Defendant COUNTY OF MONTEREY employed DOE 6 as
24 a peace officer within the meaning of California Penal Code section 830.1.

25 8. Plaintiff, JANE ROE 1 (hereinafter "ROE 1") is, and at all times herein was, a resident of
26 Monterey County, California. ROE 1 is, and was at all times relevant herein, employed as
27 a peace officer within the meaning of California Penal Code section 830.1.

28 9. Plaintiffs file this action anonymously, because they have substantial privacy and security

1 interests in protecting their confidentiality. Plaintiffs challenge Defendants' unlawful
2 disclosure of their private personnel records, and allege the Defendants' disclosure infringed
3 on their privacy interests. Filing under their given names would subject Plaintiffs to the
4 unwarranted invasion of privacy they are suing to stop.

5 10. A substantial part of the events giving rise to this action occurred in Monterey County,
6 California.

7 11. Defendant STEVEN BERNAL is the current Sheriff of the County of Monterey. He is sued
8 in his official capacity.

9 12. Defendant COUNTY OF MONTEREY ("COUNTY") is a political subdivision of the State
10 of California and employed the Plaintiffs. COUNTY is a public safety employer within the
11 meaning of California Government Code sections 3300 *et seq.*

12 13. Plaintiffs do not currently possess knowledge of the true names and capacities of SOES 1
13 through 30, inclusive. Plaintiffs, therefore, sue said Defendants by the use of such fictitious
14 names. Plaintiffs will identify the true names and capacities of SOES 1 through 30, inclusive,
15 when and if they are ascertained. Plaintiffs are informed and believe, and thereon allege, that
16 each of the said fictitiously named Defendants is in some manner responsible for the
17 occurrences herein-alleged or affected a real party in interest.

18 **JURISDICTION AND VENUE**

19 14. This Court has original jurisdiction in this case for a writ of mandamus, pursuant to the
20 California Constitution, article VI, section 10 and Code of Civil Procedure section 1085.

21 15. Venue is proper in this Court against Defendants, and each of them, pursuant to Code of
22 Civil Procedure sections 394 and 395, as a majority of Defendants are domiciled within, and
23 the common nucleus of operative facts giving rise to the causes of action articulated herein
24 arose within the County of Monterey.

25 **FACTS**

26 16. Plaintiffs were peace officers employed by the County of Monterey whose rights were
27 violated when one or more employees of the County of Monterey unlawfully appropriated,
28 disclosed and widely disseminated Plaintiffs' personal private records and confidential

1 personnel records, to third persons and entities who were not entitled to these records.
2 Among these records was correspondence related to a *Skelly* request (hereafter referred to as
3 the “*Skelly* letter.”)

4 17. The *Skelly* letter contained information about the identity of peace officers subject to
5 disciplinary proceedings, as well as the witnesses interviewed in connection with those
6 proceedings.

7 18. This information was private and confidential to the Plaintiffs by statute. They did not
8 consent to its release to third persons or entities, or to the employees and/or agents of these
9 entities. They were not given advanced or any type of notice, written or oral, regarding the
10 Defendants’ intent to release the information.

11 19. Plaintiffs are informed and believe and thereon allege Defendants had no right to distribute
12 copies of the *Skelly* letter to anyone, or to make comments using said records to third persons
13 as there was no current investigation, either civil or criminal, or any citizen’s complaint, or
14 any legal reason to release the Plaintiffs’ personal and confidential personnel records to any
15 third party or third person.

16 20. The Defendants did not give Plaintiffs any notice of its intent to release the documents to
17 third parties or to third persons pursuant to Evidence Code section 1043, et seq. The
18 Plaintiffs did not have an opportunity to protest the release of the document or to bring any
19 type of legal or administrative action to prevent the release of the document or information
20 contained therein.

21 21. Defendants’ disclosure of the *Skelly* letter resulted in further disclosures of its contents,
22 including confidential personnel employment information and private personal information,
23 as described above. Plaintiffs are informed and believe, and therefore allege, Defendants’
24 disclosures resulted in the seizure, use and improper dissemination of their personnel records
25 and personal information to third persons.

26 22. Plaintiffs are informed and believe and therefore allege that the existence, use and disclosure
27 of the *Skelly* letter became widely known throughout the County of Monterey Sheriff’s
28 Office and was published and provided to other third persons, entities and agencies by

1 Defendants' employees and agents.

2 23. Plaintiffs are informed and believe and therefore allege that as a result of Defendants'
3 disclosure, use, distribution and publication of the *Skelly* letter, Plaintiffs' confidential
4 personnel records and confidential personal information became widely known throughout
5 the County of Monterey, law enforcement communities in the region, and to other third
6 persons and agencies.

7 24. Plaintiffs are informed and believe, and therefore allege that as a result of Defendant's
8 disclosure of the *Skelly* letter, electronic and physical copies of Plaintiffs' confidential
9 personnel records and personal records have been seized, disclosed, used and disseminated
10 throughout the Sheriff's Office, and to third persons and third party entities, without the
11 consent and/or authorization of the Plaintiffs.

12 25. As a result of Defendant's disclosure of the *Skelly* letter, Plaintiffs have been stigmatized,
13 embarrassed and humiliated and will continue to be stigmatized, embarrassed and humiliated
14 throughout their law enforcement careers. Their confidential personal information has been
15 disclosed to third persons, resulting in risks to their status as law enforcement officers, and
16 risks to the chance of promotions and employment with the Sheriff's Office and other
17 potential employers.

18 26. On or around March 30, 2018 Plaintiffs' legal counsel sent a letter to the County of Monterey
19 demanding information regarding the disclosure of the *Skelly* letter. To date, Defendant has
20 not formally responded to this demand.

21 27. Based upon information and belief, and alleged thereon, Plaintiffs do not know if all copies,
22 written or on computers, have been destroyed.

23 28. The *Skelly* letter contained significantly more detailed information concerning the alleged
24 misconduct.

25 29. The facts and information contained in said documents (IA Report/personal/personnel
26 records) are prohibited from disclosure under the Public Records Act of California,
27 specifically California Government Code section 6254. These records are not available to the
28 general public. They are confidential records under state law. California Penal Code section

1 832.7 provides in pertinent part:

2 "Peace officer or custodial officer personnel records and records
3 maintained by any state or local agency pursuant to section 832.5 or
information obtained from these records, are confidential . . ."

4 30. At all times mentioned herein, the *Skelly* letter was part of the Plaintiffs' personnel files and
5 personal records protected by California Penal Code section 832.7.

6 31. The *Skelly* letter Defendants disclosed was not redacted. It contained Plaintiffs' names,
7 identified the Plaintiffs as subjects of disciplinary proceedings, and revealed the nature of the
8 charges against them. The copies were not redacted, and in fact were disclosed to third
9 persons.

10 32. The *Skelly* letter was not disclosed pursuant to California Evidence Code section 1043. It was
11 not disclosed pursuant to California Evidence Code section 1046. Plaintiffs are informed and
12 believe there was no pending civil or criminal proceeding or case, and there was no *Pitchess*
13 motion pending regarding Plaintiffs' confidential personnel records.

14 33. The Plaintiffs have never authorized, consented to or agreed to the seizure and subsequent
15 disclosure of their confidential personnel employment records and personal records by said
16 Defendant to third persons and entities. The Plaintiffs were never given notice of this
17 unauthorized disclosure, and were denied their right to take any legal/administrative actions
18 to prevent the release of the information, pursuant to their California due process rights. The
19 Plaintiffs have never waived their state privacy rights, any other common law, statutory
20 rights, or any of their California Constitutional rights relating to said seizures, improper use
21 of and improper disclosure of their confidential personnel and private personal records to any
22 one or to any agency.

23 34. The *Skelly* letter contained complaints and investigations of complaints against Plaintiffs,
24 which constitute "personnel records" within the meaning of Penal Code section 832.8 and
25 are expressly deemed confidential under Penal Code section 832.7.

26 35. Defendant's failure to safeguard, affirmatively disseminating and intentionally permitting the
27 dissemination of these records prior to their expungement has resulted in the duplication and
28 continued existence of an undetermined number of copies of said files in the possession,

1 custody or control of employees of the Defendant, and unknown third party individuals,
2 entities and members of the public.

3 36. Concurrent with the filing of this complaint, Plaintiffs filed a claim for damages with the
4 Defendant COUNTY pursuant to California Government Code section 910. Plaintiffs reserve
5 the right to amend this complaint once the Defendant responds to that claim.

6
7 **FIRST CAUSE OF ACTION**
8 **(Violation of California Constitutional Right to Privacy, Cal. Const. Art. I, § 1; Cal. Pen.
Code § 832.7; Cal. Gov. Code § 6254)**

9 **(Plaintiffs DOE 1-6 and ROE 1, against all Defendants)**

10 37. The allegations of Paragraph Nos. 1 - 36, inclusive, are incorporated herein by reference and
11 made part of Plaintiffs' First Cause of Action.

12 38. Plaintiffs have an inalienable right to privacy, including the right to prevent dissemination
13 of personal, confidential information, guaranteed by the California Constitution, article I,
14 section 1, which is self-executing, creating a legal and enforceable right of privacy. It states:

15 All people are by nature free and independent and have inalienable
16 rights. Among these are enjoying and defending life and liberty,
17 acquiring, possessing, and protecting property, and pursuing and
obtaining safety, happiness, and privacy. (Cal. Constitution, art. I,
§ 1.)

18 39. Plaintiffs are and at all times mentioned herein were peace officers under California Penal
19 Code section 830.1. Plaintiffs had a privacy interest in their confidential peace officer
20 personnel records, which are protected by Penal Code section 832.7, California Government
21 Code section 6254(c), and the California Constitution. The Plaintiffs had a reasonable
22 expectation of privacy in their confidential peace officer personnel employment records and
23 their personal information.

24 40. Defendants caused a serious and unwarranted invasion of the privacy interests of Plaintiffs
25 by disclosing sensitive and personal information and confidential personnel records to third
26 persons, other employees and to other third party entities. At no time did the Plaintiffs
27 authorize or consent to the invading, seizing, use of, or publication of, their personal
28 information and/or their private confidential personnel and employment records, as alleged

1 herein. Defendants had no legal right to disclose said private confidential information to any
2 third persons, fellow employees or other third party entities/agencies.

3 41. Defendants had a duty to protect the privacy interests of the Plaintiffs, and Defendants
4 breached this duty by invading, seizing, using and disclosing said personal information and
5 confidential peace officer personnel records in the manner alleged herein.

6 42. As a result of Defendants' violation of Plaintiffs' privacy rights, Plaintiffs suffered actual
7 damages. Defendants' conduct was a substantial factor in causing Plaintiffs' harm. Plaintiffs
8 are entitled to recover all damages resulting from Defendant's invasion of their privacy,
9 including compensatory damages, general damages, personal injury damages, attorney's fees
10 and other damages, according to proof.

11
12 **SECOND CAUSE OF ACTION**
(Invasion of Privacy- Intrusion into Private Affairs-Common Law)
13 **(Plaintiffs DOE 1-6 and ROE 1, against all Defendants)**

14 43. The allegations of Paragraph Nos. 1 - 42, inclusive, are incorporated herein by reference and
15 made part of Plaintiffs' Second Cause of Action.

16 44. Defendants' intentional use and/or disclosure of private personal and confidential personnel
17 information (property) regarding Plaintiffs constituted an intrusion into Plaintiffs' private
18 affairs and would be objectionable to a reasonable person.

19 45. As a direct and proximate result of Defendants' violation of Plaintiffs' rights, Plaintiffs have
20 suffered actual damages due to the release of their personal property. Defendants' conduct
21 was a substantial factor in causing Plaintiffs' harm. Plaintiffs are entitled to recover all
22 damages resulting from Defendants' intrusion into Plaintiffs' privacy rights, including
23 compensatory damages, general damages, personal injury damages, attorney's fees and other
24 damages, according to proof.

25
26 **THIRD CAUSE OF ACTION**
(Intentional Infliction of Emotional Distress)
27 **(Plaintiffs DOE 1-6 and ROE 1, against all Defendants)**

28 46. The allegations of Paragraph Nos. 1 - 45, inclusive, are incorporated herein by reference and

1 made part of Plaintiffs' Third Cause of Action.

2 47. The conduct of Defendants, as alleged herein, was extreme and outrageous, and it was
3 undertaken intentionally or in reckless disregard of the probability of causing extreme
4 emotional distress for Plaintiffs. The intentional disclosure of personal and private
5 confidential personnel records belonging to the Plaintiffs to persons, individuals and
6 agencies, who were not authorized to receive said information were acts of extreme and
7 outrageous conduct.

8 48. Defendants are liable for injuries proximately caused by an act or omission of an employee,
9 under California Government Code section 815.2(a).

10 49. The above-described conduct did in fact cause Plaintiffs to suffer extreme emotional distress.
11 As a direct and proximate result of said conduct, Plaintiffs suffered embarrassment, anxiety,
12 humiliation and emotional distress and will continue to suffer said emotional distress in the
13 future, and they are entitled to damages in an amount, according to proof.

14
15 **FOURTH CAUSE OF ACTION**
16 **(Negligent Infliction of Emotional Distress)**
(Plaintiffs DOE 1-6 and ROE 1, against all Defendants)

17 50. The allegations of Paragraph Nos. 1 - 49, inclusive, are incorporated herein by reference and
18 made part of Plaintiffs' Fourth Cause of Action.

19 51. Defendants had a duty as the custodians of confidential information belonging to the
20 Plaintiffs to protect and ensure that the information was not disclosed without waiver,
21 authorization or a court order.

22 52. When Defendants disclosed the Plaintiffs' private personal information and their private
23 confidential personnel and employment records, it breached its duty to the Plaintiffs.

24 53. Defendants knew or should have known that failure to exercise due care by the disclosure
25 of Plaintiffs' confidential personnel records would lead to severe emotional distress.

26 54. As a direct and proximate result of the action of Defendants, Plaintiffs suffered
27 embarrassment, anxiety, humiliation and severe emotional distress, and will continue to
28 suffer said emotional distress in the future in an amount according to proof.

1 55. Plaintiffs further suffered physical and emotional injuries, including general physical upset
2 and manifestations of severe emotional distress, according to proof.

3 **FIFTH CAUSE OF ACTION**
4 **(Declaratory and Injunctive Relief)**
5 **(Plaintiffs DOE 1-6 and ROE 1, against all Defendants)**

6 56. The allegations of Paragraph Nos. 1 - 55, inclusive, are incorporated herein by reference and
7 made part of Plaintiffs' Fifth Cause of Action.

8 57. A declaratory judgment is sought against Defendants ordering it to retrieve all written copies
9 of the *Skelly* letter and any written information related to the *Skelly* letter that has been sent
10 to any third person or entities. Plaintiffs further seek and order granting declaratory relief,
11 ordering the destruction of all said property and information, both written and electronic.

12 58. A permanent injunction is sought from the Court prohibiting the Defendants from the further
13 copying, producing, releasing, using, distributing or making said *Skelly* letter and
14 accompanying information to any third person or entity.

15 **SIXTH CAUSE OF ACTION**
16 **(Petition for Mandamus)**
17 **(Plaintiffs MCDSA, DOE 1-6 and ROE 1, against all Defendants)**

18 59. The allegations of Paragraph Nos. 1-58, inclusive, are incorporated herein by reference and
19 made part of Plaintiffs' Sixth Cause of Action.

20 60. Pursuant to Penal Code section 832.7, Defendants, and each of them, had a ministerial duty
21 to protect Plaintiffs DOE 1-6 and ROE 1's personnel records as confidential.

22 61. As peace officers, and the employee organization representing peace officers, Plaintiffs had
23 a clear, present, and beneficial interest in Defendant preserving the confidentiality of their
24 personnel records.

25 62. Defendants breached their duty to the Plaintiffs by disclosing the *Skelly* letter to individuals
26 who had no legal basis for receiving the letter.

27 63. Plaintiffs seek a writ of mandamus compelling Defendants to perform their ministerial duty
28 to keep their personnel records confidential, and ensure they are not disclosed to
unauthorized individuals or entities.

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PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for judgment against Defendants, and each of them, as follows:


1. For special and economic damages according to proof;
2. For general damages according to proof;
3. For interest on the damages award;
4. For the maximum statutory penalties under the Public Safety Officers' Procedural Bill of Rights (POBRA) of \$25,000.00 for each Plaintiff;
5. For reasonable attorneys fees and costs, under applicable state statutes, including but not limited to POBRA;
6. A writ compelling the Defendants to refrain from disclosing employees' confidential personnel records;
7. For costs of suit herein incurred;
8. For injunctive, equitable relief and declaratory relief; and
9. For such other and further relief as the Court deems just and proper.

JURY TRIAL DEMAND

Plaintiffs hereby demand a trial by jury on all claims for relief, except for their Declaratory Relief and Injunctive Relief Claims.

DATED: April 26, 2018

MASTAGNI HOLSTEDT, APC



ISAAC S. STEVENS
Attorneys for Plaintiffs