

**JOEL KOSH, ESQ.**  
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At **IAS PART 33** of the Supreme Court of the State of New York, held in and for the County of Bronx at the courthouse located at 851 Grand Concourse, Room 707, Bronx, NY, 10451 on the \_\_\_\_ day of \_\_\_\_\_ 18, 2018.

P R E S E N T :

HONORABLE \_\_\_\_\_ 18, J.S.C.

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JOSE LASALLE

x

Plaintiff,

-against-

THE CITY OF NEW YORK; POLICE OFFICER FELIX BAEZ, TAX ID # 953654, INDIVIDUALLY AND AS A POLICE OFFICER POLICE OFFICER ELVIS DURAN, SHIELD # 21865, INDIVIDUALLY AND AS A POLICE OFFICER; DET. JUAN TEJERA, TAX ID # 919967, MTS DET. SQUAD, INDIVIDUALLY AND AS A POLICE OFFICER; SGT. MIGUEL FRIAS, TAX ID # 930184, INDIVIDUALLY AND AS A POLICE OFFICER; ASSISTANT CHIEF, LARRY W. NIKUNEN, COMMANDING OFFICER BOROUGH BRONX, TAX ID # 882753, INDIVIDUALLY AND AS A POLICE OFFICER; LT. ERIC DYM, TAX ID # 933762, INDIVIDUALLY AND AS A POLICE OFFICER; DEPUTY INSPECTOR JERRY P. O’SULLIVAN, COMMANDING OFICER, PSA 7, TAX ID # 902151, INDIVIDUALLY AND AS A POLICE OFFICER; LT. JOE DOE, IDENTITY PRESENTLY UNKNOWN, INDIVIDUALLY AND AS POLICE OFFICER; SGT. JIM DOE, IDENTITY PRESENTLY UNKKNOWN, INDIVIDUALLY AND AS POLICE OFFICER; P.O. JOHN DOES # 1-10, IDENTITIES PRESENTLY UNKNOWN, INDIVIDUALLY AND AS POLICE OFFICERS

Defendants.

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x

**ORDER TO SHOW CAUSE**

Index No.: 23941/2017E

Law Dep’t No.: 2016-037992

**PLEASE TAKE NOTICE**, that upon the annexed Affirmation of **JOEL KOSH** in Support affirmed on June 18, 2018, all exhibits annexed thereto, and all of the papers, pleadings and proceedings heretofore had and filed herein, and sufficient cause having been shown,

**LET** the Plaintiff JOSE LASALLE or Plaintiff's attorney ("Plaintiff"), appear and show cause before this Court at the Courthouse located at 851 Grand Concourse, Room 707, Bronx, New York, on the \_\_\_\_ day of \_\_\_\_\_18, 2018, at 9:30 o'clock in the forenoon of that day, or as soon thereafter as counsel can be heard,

**WHY** an order should not be made pursuant to Section 3103 of the Civil Practice Laws and Rules ("CPLR"):

(1) vacating the Preliminary Conference Order, dated May 2, 2018 (the "Order"), insofar as it requires Defendants to produce:

(a) the affidavit in support of a search warrant as it was sealed by the issuing court;

(b) monthly stop, question and frisk reports for 2014-2016 of PO Felix Baez, PO Elvis Duran, and Sgt. Miguel Frias since these records are irrelevant because plaintiff does not allege he was stopped and questioned; and

(c) Police Service Area 7 stop and frisk reports for 5 year period preceding this incident for the same reasons stated above;

(d) "call log from the precinct to members of District Attorney Office" as there are no such logs or records maintained by Defendants;

(e) "communication log with members of the Bronx District Attorney's office" as there are no such logs or records maintained by Defendants; and

(2) modifying Defendants' obligation pursuant to the Order insofar as it requires them to produce:

- (a) “reports generated by [Lt. Eric] Dym, [Assistant Chief Larry] Nikunen, and/or [Deputy Inspector Jerry] O’Sullivan” by limiting the time period and clarifying the nature of the vague term “reports” to be searched for;
  - (b) “complete Civilian Complaint Review Board and Internal Affairs Bureau files for the subject incident” by permitting Defendants to withhold voting sheets privileged under the deliberative process privilege and ordering all produced records to be deemed confidential and subject to use only in this litigation; and
- (3) in the alternative, if this Court does not vacate and/or modify the Order as requested above, this Court should bifurcate Plaintiff’s 42 U.S.C. § 1983 claim for municipal liability against the City of New York and stay all Monell discovery until if and when liability for an underlying constitutional violation is established at trial in the interest of judicial economy, to avoid burdensome discovery and potential prejudice to the individual officers;
- (4) extending the time by which Defendants must comply with those components of the Order Defendants seek to vacate and/or modify to 60 days from the resolution of this motion; and
- (5) granting for such other and further relief as this Court may deem just and proper.

**PENDING THE RESOLUTION OF THIS MOTION IT IS ORDERED THAT,** the Order is stayed insofar as it requires disclosure of the:

- (1) affidavit in support of a search warrant;
- (2) monthly stop and frisk reports for 2014-2016 of PO Felix Baez, PO Elvis Duran, and Sgt. Miguel Frias;
- (3) Police Service Area 7 stop and frisk reports for 5 year period preceding this incident;

- (4) reports generated by Lt. Eric Dym, Assistant Chief Larry Nikunen, and/or Deputy Inspector Jerry O'Sullivan;
- (5) call log from the precinct to members of District Attorney Office;
- (6) communication log with members of the Bronx District Attorney's office; and
- (7) complete Civilian Complaint Review Board and Internal Affairs Bureau files for the subject incident.

**SUFFICIENT REASONING APPEARING THEREFORE**, let personal service of a copy of this Order to Show Cause, together with a copy of the papers upon which it was granted, upon Plaintiff's counsel EMDIN & RUSSELL, LLP, located at 499 Seventh Avenue, 12N, New York, New York 10018 on or before the \_\_\_ day of \_\_\_\_\_18, 2018 be deemed good and sufficient service.

The above-entitled action is for personal injuries. No previous application for the relief sought herein has been made.

ENTER

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J.S.C.