

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
LUFKIN DIVISION

CORY GLENN ROLAND, Individual,	§	
<i>Plaintiff,</i>	§	
	§	CIVIL ACTION NO. 9:21cv254
vs.	§	
	§	<i>JURY DEMANDED</i>
NACOGDOCHES COUNTY, TEXAS;	§	
SALOMON LANDEROS, Individual;	§	"FILED UNDER SEAL"
JUSTIN CODY PIERCE, Individual; and,	§	
JOSHUA TIPTON, Individual,	§	
<i>Defendants.</i>	§	

**DEFENDANT JOSHUA TIPTON'S PARTIALLY OPPOSED  
MOTION FOR PROTECTION, SUBJECT TO RULE 12(b)(6) MOTION TO DISMISS**

COMES NOW, Defendant Joshua Tipton and files this this his Partially Opposed Motion for Protection, Subject to Rule 12(b)(6) Motion to Dismiss, and in support thereof, would show unto the Court as follows:

**I.**

This case was filed on 10/1/2021 and includes allegations of excessive force and bystander liability (Doc. #1). Defendant Tipton filed a Rule 12(b)(6) Motion to Dismiss and Original Answer on 10/26/21 (Doc. #s 5 and 6). The Nacogdoches County Defendants have also answered (Doc. # 4). At this time, no orders have been entered by the Court regarding scheduling, discovery, or trial. Likewise, no Rule 26(f) conference has been held or scheduled.

**II.**

Subsequent to the date Defendant Tipton filed his Motion to Dismiss and Original Answer, counsel for Plaintiff contacted defense counsel with a "SETTLEMENT OFFER"

(see email string attached as Exhibit "1" to Exhibit "A"). Specifically, Plaintiff offered to non-suit and dismiss Tipton in exchange for affidavit testimony. *Id.* Counsel for Tipton, as part of such ongoing settlement discussion, responded by advising that Tipton would not sign an affidavit but that he should still be dismissed given the clear video evidence of the alleged incident. *Id.* Plaintiff's counsel then requested a copy of the video and stated that he ". . . would be happy to discuss dismissing [Tipton] from the case, however, I will not do that until I have seen the video", clearly still as part of the ongoing settlement discussion. *Id.* The video was then provided to him on November 4, 2021, and is identified in the email as part of the "SETTLEMENT OFFER." *Id.* On 11/8/21, counsel for Plaintiff stated he would not dismiss Defendant Tipton and threatened to publicly release the video, which is the reason this motion is filed.

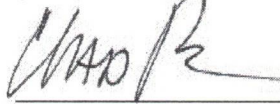
### III.

There has been no Rule 26(f) conference and it has not been scheduled at this time. Further, a party is prohibited from even seeking discovery prior to the parties conferring as required by Rule 26(f). See F.R.C.P. 26(d)(1). Because the video was only produced to Plaintiff as part of ongoing settlement discussions, and no party is yet required to disclose documents in this case or even seek discovery, Plaintiff should be prohibited from publicly disclosing the video and a protective order should be entered pursuant to F.R.C.P. 26(c). Had Plaintiff made any suggestion whatsoever that he would publicly disclose the video, despite it being produced under the auspices of settlement discussions, Defendant would have waited and produced it pursuant to the docket control order once entered and in accordance with the federal rules.

WHEREFORE, Defendant Tipton prays that a protective order be entered.

Respectfully submitted,

**FLOWERS DAVIS, P.L.L.C.**  
1021 ESE Loop 323, Suite 200  
Tyler, Texas 75701  
(903) 534-8063  
(903) 534-1650 Facsimile



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**CHAD C. ROOK**  
State Bar No. 17227750  
[ccr@flowersdavis.com](mailto:ccr@flowersdavis.com)

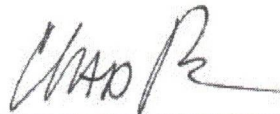
**ROBERT S. DAVIS**  
State Bar No. 05544200  
[rsd@flowersdavis.com](mailto:rsd@flowersdavis.com)  
Lead Attorney

**ATTORNEYS FOR DEFENDANT  
JOSHUA TIPTON**

**CERTIFICATE OF SERVICE**

I hereby certify that the above and foregoing instrument was served upon all counsel of record in the above entitled and numbered cause on November 8, 2021, in the following manner:

  X   Via ECF

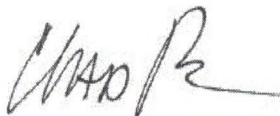


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**CHAD C. ROOK**

**CERTIFICATE OF CONFERENCE**

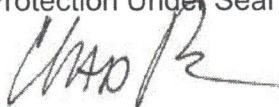
Counsel for the Nacogdoches County defendants does not oppose, and agrees to, this motion. Counsel for Plaintiff opposes this motion, despite a good faith effort to resolve the issue without Court intervention.



\_\_\_\_\_  
**CHAD C. ROOK**

**CERTIFICATE OF AUTHORIZATION TO FILE UNDER SEAL**

This is to certify that Defendant Joshua Tipton's Partially Opposed Motion for Protection, Subject to Rule 12(b)(6) Motion to Dismiss should be filed under seal pursuant to the Motion for Leave to File Motion for Protection Under Seal dated November 8, 2021.



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**CHAD C. ROOK**