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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
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11 DOLORES ROSALES,
12 Plaintiff,
13 v.
14 COUNTY OF SAN DIEGO, et al.,
15 Defendants.

Case No.: 19-cv-2303-JLS-DEB

**ORDER GRANTING JOINT
MOTION FOR PROTECTIVE
ORDER [DKT. NO. 41] AND
PROTECTIVE ORDER**

16
17 The Court recognizes that at least some of the documents and information
18 (“materials”) being sought through discovery in the above-captioned action contain
19 private, privileged or confidential information that is not generally available to the public,
20 including but not limited to: law enforcement personnel records, reports obtained from the
21 California Law Enforcement Telecommunications System (CLETS), autopsy photographs,
22 and other materials containing confidential sensitive information maintained for law
23 enforcement purposes. The purpose of this Protective Order is to protect the confidentiality
24 and regulate the dissemination of such materials during the litigation. The parties have
25 agreed to be bound by the terms of this Protective Order (“Order”) in this action.

26 Accordingly, to expedite the flow of information, to facilitate the prompt resolution
27 of disputes over confidentiality of discovery materials, to adequately protect information
28 the parties are entitled to keep confidential, to ensure that the parties are permitted

1 reasonable and necessary uses of such material in preparation for and in the conduct of
2 trial, to address their handling at the end of the litigation, and serve the ends of justice, a
3 protective order for such information is justified in this matter. It is the intent of the parties
4 that information will not be designated as confidential for tactical reasons and that nothing
5 be so designated without a good faith belief that it has been maintained in a confidential,
6 non-public manner, and there is good cause why it should not be part of the public record
7 of this case. THEREFORE:

8 **DEFINITIONS**

9 1. The term “confidential information” will mean and include information, as
10 defined below, contained or disclosed in any discovery and/or trial materials in this matter.
11 The following categories will be deemed “confidential information,” which are subject to
12 this Protective Order:

13 a. Information that contains personal medical, employment or financial
14 information, including, but not limited to:

- 15 1) Law enforcement personnel records, including internal affairs
16 investigations
- 17 2) Un-redacted body-worn camera footage that is not subject to
18 disclosure under the California Public Records Act;
- 19 3) Materials related to investigations by the Citizens Law
20 Enforcement Review Board that are not subject to disclosure under the
21 California Public Records Act; and
- 22 4) Financial information of the parties.

23 2. The term “materials” will include, but is not be limited to: documents;
24 correspondence; memoranda; bulletins; blueprints; specifications; minutes; telegrams;
25 letters; statements; cancelled checks; contracts; invoices; drafts; books of account;
26 worksheets; notes of conversations; desk diaries; appointment books; expense accounts;
27 recordings; photographs; videos; motion pictures; compilations from which information
28 can be obtained and translated into reasonably usable form through detection devices;

1 sketches; drawings; notes (including laboratory notebooks and records); reports;
2 instructions; disclosures; other writings; models, prototypes, and other physical objects.

3 3. The term “counsel” will mean counsel of record, and other attorneys,
4 paralegals, secretaries, and other support staff employed in the law firms identified below:
5 Office of County Counsel and the Jesus Eduardo Arias Esq. LLM.

6 **GENERAL RULES**

7 4. Each party to this litigation that produces or discloses any materials, answers
8 to interrogatories and requests for admission, trial testimony, deposition testimony, and
9 transcripts of trial testimony and depositions, or information that the producing party
10 believes should be subject to this Order may designate the same as “CONFIDENTIAL” or
11 “CONFIDENTIAL – FOR COUNSEL ONLY.”

12 a. Designation as “CONFIDENTIAL”: A party or non-party subject to
13 this Order may only designate documents or other information in this action as
14 “CONFIDENTIAL” if the designating party or non-party has an articulable, good
15 faith basis to believe that each document or other information designated as
16 confidential qualifies for protection under Federal Rule of Civil Procedure 26(c).

17 b. Designation as “CONFIDENTIAL – FOR COUNSEL ONLY”: Any
18 party may designate information as “CONFIDENTIAL – FOR COUNSEL ONLY”
19 only if, in the good faith belief of such party and its counsel, the information is
20 among that considered to be most sensitive by the party, including but not limited to
21 trade secret or other confidential research, development, financial or other
22 commercial information.

23 5. In the event the producing party elects to produce materials for inspection, no
24 marking need be made by the producing party in advance of the initial inspection. For
25 purposes of the initial inspection, all materials produced will be considered as
26 “CONFIDENTIAL – FOR COUNSEL ONLY,” and must be treated as such pursuant to
27 the terms of this Order. Thereafter, upon selection of specified materials for copying by
28 the inspecting party, the producing party must, within a reasonable time prior to producing

1 those materials to the inspecting party, mark the copies of those materials that contain
2 confidential information with the appropriate confidentiality marking.

3 6. Whenever a deposition taken on behalf of any party involves a disclosure of
4 confidential information of any party:

5 a. the deposition or portions of the deposition must be designated as
6 containing confidential information subject to the provisions of this Order; such
7 designation must be made on the record whenever possible, but a party may
8 designate portions of depositions as containing confidential information after
9 transcription of the proceedings; a party will have until 14 calendar days after receipt
10 of the deposition transcript to inform the other party or parties to the action of the
11 portions of the transcript to be designated “CONFIDENTIAL” or
12 “CONFIDENTIAL – FOR COUNSEL ONLY.”

13 b. the disclosing party will have the right to exclude from attendance at
14 the deposition, during such time as the confidential information is to be disclosed,
15 any person other than the deponent, counsel (including their staff and associates),
16 the court reporter, and the person(s) agreed upon pursuant to Paragraph 9 below; and

17 c. the originals of the deposition transcripts and all copies of the
18 deposition must bear the legend “CONFIDENTIAL” or “CONFIDENTIAL – FOR
19 COUNSEL ONLY,” as appropriate, and the original or any copy ultimately
20 presented to a court for filing must not be filed unless it can be accomplished under
21 seal, identified as being subject to this Order, and protected from being opened
22 except by order of the Court.

23 7. All confidential information designated as “CONFIDENTIAL” or
24 “CONFIDENTIAL – FOR COUNSEL ONLY” must not be disclosed by the receiving
25 party to anyone other than those persons designated within this Order and must be handled
26 in the manner set forth below and, in any event, must not be used for any purpose other
27 than in connection with this litigation, unless and until such designation is removed either
28 by agreement of the parties or by order of the Court.

1 8. Information designated “CONFIDENTIAL – FOR COUNSEL ONLY” must
2 be viewed only by counsel (as defined in Paragraph 3) of the receiving party, and by
3 independent experts under the conditions set forth in this Paragraph. The right of any
4 independent expert to receive any confidential information will be subject to the advance
5 approval of such expert by the producing party or by permission of the Court. The party
6 seeking approval of an independent expert must provide the producing party with the name
7 and curriculum vitae of the proposed independent expert, and an executed copy of the form
8 attached hereto as Exhibit A, in advance of providing any confidential information of the
9 producing party to the expert. Any objection by the producing party to an independent
10 expert receiving confidential information must be made in writing within 14 calendar days
11 following receipt of the identification of the proposed expert. Confidential information
12 may be disclosed to an independent expert if the fourteen-day period has passed and no
13 objection has been made. The approval of independent experts must not be unreasonably
14 withheld.

15 9. Information designated “confidential” must be viewed only by counsel (as
16 defined in Paragraph 3) of the receiving party, by independent experts (pursuant to the
17 terms of Paragraph 8), by court personnel, and by the additional individuals listed below,
18 provided each such individual has read this Order in advance of disclosure and has
19 executed a copy of the form attached hereto as Exhibit A:

20 a. Executives who are required to participate in policy decisions with
21 reference to this action;

22 b. Technical personnel of the parties with whom counsel for the parties
23 find it necessary to consult, in the discretion of such counsel, in preparation for trial
24 of this action; and

25 c. Stenographic and clerical employees associated with the individuals
26 identified above.

27 10. With respect to material designated “CONFIDENTIAL” or
28 “CONFIDENTIAL – FOR COUNSEL ONLY,” any person indicated on the face of the

1 document to be its originator, author, or a recipient of a copy of the document, may be
2 shown the same.

3 11. All information which has been designated as “CONFIDENTIAL” or
4 “CONFIDENTIAL – FOR COUNSEL ONLY” by the producing or disclosing party, and
5 any and all reproductions of that information, must be retained in the custody of the counsel
6 for the receiving party identified in Paragraph 3, except that independent experts authorized
7 to view such information under the terms of this Order may retain custody of copies such
8 as are necessary for their participation in this litigation.

9 12. No party may file any document under seal, except pursuant to a court order
10 that authorizes the filing of the document, or portion of the document, under seal. A sealing
11 order will issue only upon a showing that the information is privileged or protectable under
12 the law. The party seeking to file under seal must limit its sealing request to the specific
13 portion of the document that contains the confidential or privileged material.

14 13. At any stage of the proceedings, any party may object to a designation of
15 materials as confidential information. The objecting party must notify the designating
16 party, in writing, of the materials objected to and the ground(s) for the objection.
17 Thereafter, lead counsel (or attorneys with full authority to make decisions and bind the
18 client without later seeking approval from a supervising attorney) must promptly meet and
19 confer, pursuant to Local Rule 26.1.a. If the dispute is not resolved within seven (7) days
20 of receipt of the objections, and after counsel have thoroughly and completely met and
21 conferred, the parties must place a joint call to the assigned magistrate judge’s chambers
22 to explain the dispute and the parties’ respective positions. The materials at issue must be
23 treated as confidential until the Court has ruled on the objection or the matter has been
24 otherwise resolved.

25 14. All confidential information must be held in confidence by those inspecting
26 or receiving it and must be used only for purposes of this action. Counsel for each party,
27 and each person receiving confidential information, must take reasonable precautions to
28 prevent the unauthorized or inadvertent disclosure of such information. If confidential

1 information is disclosed to any person other than a person authorized by this Order, the
2 party responsible for the unauthorized disclosure must immediately bring all pertinent facts
3 relating to the unauthorized disclosure to the attention of the other parties and, without
4 prejudice to any rights and remedies of the other parties, make every effort to prevent
5 further disclosure by the party and by the person(s) receiving the unauthorized disclosure.

6 15. No party will be responsible to another party for disclosure of confidential
7 information under this Order if the information in question is not labeled or otherwise
8 identified as such in accordance with this Order.

9 16. If a party, through inadvertence, produces any confidential information
10 without labeling or marking or otherwise designating it as such in accordance with this
11 Order, the designating party may give written notice to the receiving party that the
12 document or thing produced is deemed confidential information, and that the document or
13 thing produced should be treated as such in accordance with that designation under this
14 Order. The receiving party must treat the materials as confidential once the designating
15 party so notifies the receiving party. If the receiving party has disclosed the materials
16 before receiving the designation, the receiving party must notify the designating party in
17 writing of each such disclosure.

18 17. Nothing within this Order will prejudice the right of any party to object to the
19 production of any discovery material on the grounds that the material is protected as
20 privileged, violative of an individual's privacy rights, on the grounds that the materials
21 require a signed authorization, or as attorney work product.

22 18. Nothing in this Order will bar counsel from rendering advice to their clients
23 with respect to this litigation and, in the course thereof, relying upon any information
24 designated as confidential information, provided that the contents of the information must
25 not be disclosed.

26 19. This Order will be without prejudice to the right of any party to oppose
27 production of any information for lack of relevance or any other ground other than the mere
28 presence of confidential information. The existence of this Order must not be used by

1 either party as a basis for discovery that is otherwise improper under the Federal Rules of
2 Civil Procedure.

3 20. Nothing within this Order will be construed to prevent disclosure of
4 confidential information if such disclosure is required by law or by order of the Court.

5 21. Upon final termination of this action, including any and all appeals, counsel
6 for each party must, upon request of the producing party, return all confidential information
7 to the party that produced the information, including any copies, excerpts, and summaries
8 of that information, or must destroy same at the option of the receiving party, and must
9 purge all such information from all machine-readable media on which it resides.
10 Notwithstanding the foregoing, counsel for each party may retain all pleadings, briefs,
11 memoranda, motions, and other documents filed with the Court that refer to or incorporate
12 confidential information and will continue to be bound by this Order with respect to all
13 such retained information. Further, attorney work product materials that contain
14 confidential information need not be destroyed, but, if they are not destroyed, the person
15 in possession of the attorney work product will continue to be bound by this Order with
16 respect to all such retained information.

17 23. The restrictions and obligations set forth within this Order will not apply to
18 any information that:

- 19 a. the parties agree should not be designated confidential information;
- 20 b. the parties agree, or the Court rules, is already public knowledge;
- 21 c. the parties agree, or the Court rules, has become public knowledge other
22 than as a result of disclosure by the receiving party, its employees, or its agents in
23 violation of this Order; or
- 24 d. has come or will come into the receiving party's legitimate knowledge
25 independently of the production by the designating party. Prior knowledge must be
26 established by pre-production documentation.

1 24. The restrictions and obligations within this Order will not be deemed to
2 prohibit discussions of any confidential information with anyone if that person already has
3 or obtains legitimate possession of that information.

4 25. Transmission by e-mail or some other currently utilized method of
5 transmission is acceptable for all notification purposes within this Order.

6 26. This Order may be modified by agreement of the parties, subject to approval
7 by the Court.

8 27. The Court may modify the protective order in the interest of justice or for
9 public policy reasons.

10 28. Without separate court order, this Order and the parties' stipulation do not
11 change, amend, or circumvent any court rule or local rule.

12 **IT IS SO ORDERED.**

13 Dated: November 8, 2021



Honorable Daniel E. Butcher
United States Magistrate Judge

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ (name), of _____
(address), declare under penalty of perjury that I have read in its entirety and understand
the Protective Order (“Order”) that was issued by the United States District Court for the
Southern District of California on _____ (date), in the case of
Dolores Rosales v. County of San Diego, et al., No. 19-cv-2303-JLS-DEB. I agree to
comply with and to be bound by all the terms of the Order, and I understand and
acknowledge that failure to so comply could expose me to sanctions and punishment in the
nature of contempt. I solemnly promise that I will not disclose in any manner any
information or item that is subject to the Order to any person or entity, except in strict
compliance with the provisions of the Order.

I further agree to submit to the jurisdiction of the United States District Court for the
Southern District of California for the purpose of enforcing the terms of the Order, even if
such enforcement proceedings occur after termination of this action.

Date: _____

Name: _____