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8 **UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**

10	MICHAEL D. FULTON,)	Case No.: CV10-00137 JCG
11)	<i>Honorable Jay C. Gandhi</i>
12	vs.)	STIPULATED PROTECTIVE
13)	ORDER
14	BRIAN THAYER AND EDUARDO)	
15	GARCIA,)	
16	<i>Defendants.</i>)	

17 1. A. PURPOSES AND LIMITATIONS

18 Discovery in this action is likely to involve production of confidential, proprietary,
19 or private information for which special protection from public disclosure and from use
20 for any purpose other than prosecuting this litigation may be warranted. Accordingly, the
21 parties hereby stipulate to and petition the Court to enter the following Stipulated
22 Protective Order. The parties acknowledge that this Order does not confer blanket
23 protections on all disclosures or responses to discovery and that the protection it affords
24 from public disclosure and use extends only to the limited information or items that are
25 entitled to confidential treatment under the applicable legal principles. The parties further
26 acknowledge, as set forth in Section 12.3, below, that this Stipulated Protective Order
27 does not entitle them to file confidential information under seal; Civil Local Rule 79-5
28 sets forth the procedures that must be followed and the standards that will be applied

1 when a party seeks permission from the court to file material under seal.

2 **B. GOOD CAUSE STATEMENT**

3 The Los Angeles Police Department conducts internal administrative investigations
4 of Officer Involved Uses of Force and Complaint Investigations (hereinafter
5 “Administrative Investigations”) and also maintains a personnel file on its officers which
6 includes personnel training information. Once an Administrative Investigation is
7 initiated, a formal investigation number is prepared. Such investigations are reviewed by
8 appropriate command officers in the Department. This review has several purposes: (1)
9 to determine whether the involved officers violated any Department policies or
10 procedures; (2) to determine whether administrative discipline and/or retraining of the
11 involved officers is necessary; and (3) to ascertain if police policies and procedures in
12 such areas as supervision, training, tactics, policies, etc. should be modified.

13 Administrative Investigations are an essential aid to providing critical evaluation of
14 Department officers and policies, and to determine the most effective way to serve the
15 citizens of Los Angeles.

16 The Department strives to maintain the confidentiality of an officer's personnel
17 package and Administrative Investigations, and the information contained therein, in
18 recognition of the protections granted pursuant to Penal Code § § 832.5, 832.7, and 832.8
19 and 1040 et al. of the California Evidence Code. Just as officer's personnel package is
20 maintained as confidential, so too are the Administrative Investigations involving a
21 particular officer(s). Administrative Investigations, like an officer's personnel package,
22 include information which is both personal in nature and could potentially impact the
23 liberty interests of the involved police officers and/or civilians named within. The
24 information obtained from personnel packages and Administrative Investigations can,
25 and have been used to initiate disciplinary action against officers, as well as evidence in
26 disciplinary proceedings where the officer's conduct was considered to be contrary to
27 Department policy. At this time, the parties have agreed that certain Administrative
28 Investigation information will be provided pursuant to the terms set forth in this

1 Protective Order. As a result, the parties have agreed to this Proposed Protective Order
2 covering these records for the following Good Cause reasons:

3 Administrative Investigations are maintained as confidential reports and are
4 considered part of the individual officers' personnel record. Administrative
5 Investigations include information which is both personal in nature and could potentially
6 impact the liberty interests of the involved police officers and/or civilians named within.
7 The information obtained from Administrative Investigations can and have been used to
8 initiate disciplinary action against officers and as evidence in disciplinary proceedings
9 where the use of force or tactics used were considered to be contrary to Department
10 policy.

11 Unfettered release of Administrative Investigations have the potential for untold
12 negative results. In terms of societal interests, it would inhibit the Department's ability to
13 frankly engage in critical self-analysis. Public exposure of many Administrative
14 Investigations could severely threaten the safety and well-being of the individuals, their
15 families and associates. Many Administrative Investigations include embarrassing facts.
16 At a minimum, disclosure of an entire Administrative Investigation would cause needless
17 intrusion of privacy rights and have a negative effect on the Department's effort to
18 conduct these important investigations. Indeed, for all of these reasons, persons
19 interviewed by Investigators are advised that their statements are being taken for the
20 confidential use of the Department.

21 The materials and interview statements of Administrative Investigations are
22 maintained in protected files in order to maintain their confidentiality. They are not
23 routinely shown to other city departments. Even then, information which is not clearly
24 relevant to the rationale governing the request is redacted to ensure the utmost regard for
25 the privacy rights of the mentioned within a given report. The reports are not available to
26 the general public except by court order. In all instances, the Department requests in
27 camera hearing to determine the relevance for releasing all or part of a given report, again
28 to ensure the constitutionally protected privacy rights of those named or otherwise

1 identified within the body of the report.

2 In each case involving court-ordered disclosure of information from a
3 Administrative Investigation sought in state or federal court, it is Department policy to
4 seek a protective order limiting use of the information to the case at trial and identifying
5 those persons who may properly be granted access to the information. Absent a
6 protective order, it becomes unrealistic to conceive that the large numbers of attorneys,
7 secretaries, law clerks, paralegals and witnesses involved in many cases will be able to
8 maintain proper confidence of personal, private material absent an order which clearly
9 delineates their responsibilities. The orders further request that said records be returned
10 to the Department after the case has terminated, either by final judgment or otherwise.
11 This request serves to ensure that intrusion into the privacy and employment rights of
12 those involved is limited to the particular case in which the facts are relevant.

13 Even with a carefully written protective order, the release of portions of an
14 Administrative Investigation, without prior judicial review to determine relevancy and
15 assess privacy concerns, ignores the constitutional protection given to individual privacy
16 under the United States and California Constitutions and which a third-party such as the
17 Department is obligated to assert. The issuance of an appropriate protective order makes
18 certain that these privacy concerns are not compromised beyond that degree necessary to
19 the issues before the court. Accordingly, on behalf of the Los Angeles Police Department
20 and those persons identified within a given Administrative Investigation, the Defendants
21 respectfully request these procedural protections in the instant case.

22 Accordingly, the parties hereby stipulate that the above-referenced Internal Affairs
23 Investigation is confidential in nature and is appropriately produced pursuant to a
24 protective order. (See *Soto v. City of Concord*, 162 F.R.D. 603, 616 (N.D. Cal. 1995.))
25

26 2. DEFINITIONS

27 2.1 Action: *Michael D. Fulton v. Brian Thayer and Eduardo Garcia*, United
28 States District Court Case No. CV10-00137 JCG.

1 2.2 Challenging Party: a Party or Non-Party that challenges the designation of
2 information or items under this Order.

3 2.3 “CONFIDENTIAL” Information or Items: information (regardless of how it
4 is generated, stored or maintained) or tangible things that qualify for protection under
5 Federal Rule of Civil Procedure 26(c), and as specified above in the Good Cause
6 Statement.

7 2.4 Counsel: Outside Counsel of Record and House Counsel (as well as their
8 support staff).

9 2.5 Designating Party: a Party or Non-Party that designates information or items
10 that it produces in disclosures or in responses to discovery as “CONFIDENTIAL.”

11 2.6 Disclosure or Discovery Material: all items or information, regardless of the
12 medium or manner in which it is generated, stored, or maintained (including, among
13 other things, testimony, transcripts, and tangible things), that are produced or generated in
14 disclosures or responses to discovery in this matter.

15 2.7 Expert: a person with specialized knowledge or experience in a matter
16 pertinent to the litigation who has been retained by a Party or its counsel to serve as an
17 expert witness or as a consultant in this Action.

18 2.8 House Counsel: attorneys who are employees of a party to this Action.
19 House Counsel does not include Outside Counsel of Record or any other outside counsel.

20 3

21 2.9 Non-Party: any natural person, partnership, corporation, association, or other
22 legal entity not named as a Party to this action.

23 2.10 Outside Counsel of Record: attorneys who are not employees of a party to
24 this Action but are retained to represent or advise a party to this Action and have
25 appeared in this Action on behalf of that party or are affiliated with a law firm which has
26 appeared on behalf of that party, and includes support staff.

27 2.11 Party: any party to this Action, including all of its officers, directors,
28 employees, consultants, retained experts, and Outside Counsel of Record (and their

1 support staffs).

2 2.12 Producing Party: a Party or Non-Party that produces Disclosure or
3 Discovery Material in this Action.

4 2.13 Professional Vendors: persons or entities that provide litigation support
5 services (e.g., photocopying, videotaping, translating, preparing exhibits or
6 demonstrations, and organizing, storing, or retrieving data in any form or medium) and
7 their employees and subcontractors.

8 2.14 Protected Material: any Disclosure or Discovery Material that is designated
9 as “CONFIDENTIAL.”

10 2.15 Receiving Party: a Party that receives Disclosure or Discovery Material from
11 a Producing Party.

12
13 3. SCOPE

14 The protections conferred by this Stipulation and Order cover not only Protected
15 Material (as defined above), but also (1) any information copied or extracted from
16 Protected Material; (2) all copies, excerpts, summaries, or compilations of Protected
17 Material; and (3) any testimony, conversations, or presentations by Parties or their
18 Counsel that might reveal Protected Material.

19 Any use of Protected Material at trial shall be governed by the orders of the trial
20 judge. This Order does not govern the use of Protected Material at trial.

21
22 4. DURATION

23 Even after final disposition of this litigation, the confidentiality obligations
24 imposed by this Order shall remain in effect until a Designating Party agrees otherwise in
25 writing or a court order otherwise directs. Final disposition shall be deemed to be the later
26 of (1) dismissal of all claims and defenses in this Action, with or without prejudice; and
27 (2) final judgment herein after the completion and exhaustion of all appeals, rehearings,
28 remands, trials, or reviews of this Action, including the time limits for filing any motions

1 or applications for extension of time pursuant to applicable law.

2
3 **5. DESIGNATING PROTECTED MATERIAL**

4 **5.1 Exercise of Restraint and Care in Designating Material for Protection.** Each
5 Party or Non-Party that designates information or items for protection under this Order
6 must take care to limit any such designation to specific material that qualifies under the
7 appropriate standards. The Designating Party must designate for protection only those
8 parts of material, documents, items, or oral or written communications that qualify so that
9 other portions of the material, documents, items, or communications for which protection
10 is not warranted are not swept unjustifiably within the ambit of this Order.

11 Mass, indiscriminate, or routinized designations are prohibited. Designations that are
12 shown to be clearly unjustified or that have been made for an improper purpose (e.g., to
13 unnecessarily encumber the case development process or to impose unnecessary expenses
14 and burdens on other parties) may expose the Designating Party to sanctions.

15 If it comes to a Designating Party's attention that information or items that it designated
16 for protection do not qualify for protection, that Designating Party must promptly notify
17 all other Parties that it is withdrawing the inapplicable designation.

18 **5.2 Manner and Timing of Designations.** Except as otherwise provided in this
19 Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or
20 ordered, Disclosure or Discovery Material that qualifies for protection under this Order
21 must be clearly so designated before the material is disclosed or produced.

22 Designation in conformity with this Order requires:

23 (a) for information in documentary form (e.g., paper or electronic documents, but
24 excluding transcripts of depositions or other pretrial or trial proceedings), that the
25 Producing Party affix at a minimum, the legend "CONFIDENTIAL" (hereinafter
26 "CONFIDENTIAL legend"), to each page that contains protected material. If only a
27 portion or portions of the material on a page qualifies for protection, the Producing Party
28 also must clearly identify the protected portion(s) (e.g., by making appropriate markings

1 in the margins).

2 A Party or Non-Party that makes original documents available for inspection need
3 not designate them for protection until after the inspecting Party has indicated which
4 documents it would like copied and produced. During the inspection and before the
5 designation, all of the material made available for inspection shall be deemed
6 “CONFIDENTIAL.” After the inspecting Party has identified the documents it wants
7 copied and produced, the Producing Party must determine which documents, or portions
8 thereof, qualify for protection under this Order. Then, before producing the specified
9 documents, the Producing Party must affix the “CONFIDENTIAL legend” to each page
10 that contains Protected Material. If only a portion or portions of the material on a page
11 qualifies for protection, the Producing Party also must clearly identify the protected
12 portion(s) (e.g., by making appropriate markings in the margins).

13 (b) for testimony given in depositions that the Designating Party identify the
14 Disclosure or Discovery Material on the record, before the close of the deposition all
15 protected testimony.

16 (c) for information produced in some form other than documentary and for any
17 other tangible items, that the Producing Party affix in a prominent place on the exterior of
18 the container or containers in which the information is stored the legend
19 “CONFIDENTIAL.” If only a portion or portions of the information warrants protection,
20 the Producing Party, to the extent practicable, shall identify the protected portion(s).

21 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure
22 to designate qualified information or items does not, standing alone, waive the
23 Designating Party’s right to secure protection under this Order for such material. Upon
24 timely correction of a designation, the Receiving Party must make reasonable efforts to
25 assure that the material is treated in accordance with the provisions of this Order.

26
27 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

28 6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation

1 of confidentiality at any time that is consistent with the Court’s Scheduling Order.

2 6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution
3 process under Local Rule 37.1 et seq.

4 6.3 The burden of persuasion in any such challenge proceeding shall be on the
5 Designating Party. Frivolous challenges, and those made for an improper purpose (e.g., to
6 harass or impose unnecessary expenses and burdens on other parties) may expose the
7 Challenging Party to sanctions. Unless the Designating Party has waived or withdrawn
8 the confidentiality designation, all parties shall continue to afford the material in question
9 the level of protection to which it is entitled under the Producing Party’s designation until
10 the Court rules on the challenge.

11
12 7. ACCESS TO AND USE OF PROTECTED MATERIAL

13 7.1 Basic Principles. A Receiving Party may use Protected Material that is
14 disclosed or produced by another Party or by a Non-Party in connection with this Action
15 only for prosecuting, defending, or attempting to settle this Action. Such Protected
16 Material may be disclosed only to the categories of persons and under the conditions
17 described in this Order. When the Action has been terminated, a Receiving Party must
18 comply with the provisions of section 13 below (FINAL DISPOSITION).

19 Protected Material must be stored and maintained by a Receiving Party at a location and
20 in a secure manner that ensures that access is limited to the persons authorized under this
21 Order.

22 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise
23 ordered by the court or permitted in writing by the Designating Party, a Receiving Party
24 may disclose any information or item designated “CONFIDENTIAL” only to:

25 (a) the Receiving Party’s Outside Counsel of Record in this Action, as well as
26 employees of said Outside Counsel of Record to whom it is reasonably necessary to
27 disclose the information for this Action;

28 (b) the officers, directors, and employees (including House Counsel) of the

1 Receiving Party to whom disclosure is reasonably necessary for this Action;

2 (c) Experts (as defined in this Order) of the Receiving Party to whom disclosure is
3 reasonably necessary for this Action and who have signed the “Acknowledgment and
4 Agreement to Be Bound” (Exhibit A);

5 (d) the court and its personnel;

6 (e) court reporters and their staff;

7 (f) professional jury or trial consultants, mock jurors, and Professional Vendors to
8 whom disclosure is reasonably necessary for this Action and who have signed the
9 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

10 (g) the author or recipient of a document containing the information or a custodian
11 or other person who otherwise possessed or knew the information;

12 (h) during their depositions, witnesses ,and attorneys for witnesses, in the Action to
13 whom disclosure is reasonably necessary provided: (1) the deposing party requests that
14 the witness sign the form attached as Exhibit 1 hereto; and (2) they will not be permitted
15 to keep any confidential information unless they sign the “Acknowledgment and
16 Agreement to Be Bound” (Exhibit A), unless otherwise agreed by the Designating Party
17 or ordered by the court. Pages of transcribed deposition testimony or exhibits to
18 depositions that reveal Protected Material may be separately bound by the court reporter
19 and may not be disclosed to anyone except as permitted under this Stipulated Protective
20 Order; and

21 (i) any mediator or settlement officer, and their supporting personnel, mutually
22 agreed upon by any of the parties engaged in settlement discussions.

23
24 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN
25 OTHER LITIGATION

26 If a Party is served with a subpoena or a court order issued in other litigation that
27 compels disclosure of any information or items designated in this Action as
28 “CONFIDENTIAL,” that Party must:

1 (a) promptly notify in writing the Designating Party. Such notification shall
2 include a copy of the subpoena or court order;

3 (b) promptly notify in writing the party who caused the subpoena or order to issue
4 in the other litigation that some or all of the material covered by the subpoena or order is
5 subject to this Protective Order. Such notification shall include a copy of this Stipulated
6 Protective Order; and

7 (c) cooperate with respect to all reasonable procedures sought to be pursued by the
8 Designating Party whose Protected Material may be affected. If the Designating Party
9 timely seeks a protective order, the Party served with the subpoena or court order shall
10 not produce any information designated in this action as “CONFIDENTIAL” before a
11 determination by the court from which the subpoena or order issued, unless the Party has
12 obtained the Designating Party’s permission. The Designating Party shall bear the burden
13 and expense of seeking protection in that court of its confidential material and nothing in
14 these provisions should be construed as authorizing or encouraging a Receiving Party in
15 this Action to disobey a lawful directive from another court.

16 9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN
17 THIS LITIGATION

18 (a) The terms of this Order are applicable to information produced by a Non-Party
19 in this Action and designated as “CONFIDENTIAL.” Such information produced by
20 Non-Parties in connection with this litigation is protected by the remedies and relief
21 provided by this Order. Nothing in these provisions should be construed as prohibiting a
22 Non-Party from seeking additional protections.

23 (b) In the event that a Party is required, by a valid discovery request, to produce a
24 Non-Party’s confidential information in its possession, and the Party is subject to an
25 agreement with the Non-Party not to produce the Non-Party’s
26 confidential information, then the Party shall:

27 (1) promptly notify in writing the Requesting Party and the Non-Party that
28 some or all of the information requested is subject to a confidentiality agreement with a

1 Non-Party;

2 (2) promptly provide the Non-Party with a copy of the Stipulated Protective
3 Order in this Action, the relevant discovery request(s), and a reasonably specific
4 description of the information requested; and

5 (3) make the information requested available for inspection by the
6 Non-Party, if requested.

7 (c) If the Non-Party fails to seek a protective order from this court within 14 days
8 of receiving the notice and accompanying information, the Receiving Party may produce
9 the Non-Party's confidential information responsive to the discovery request. If the
10 Non-Party timely seeks a protective order, the Receiving Party shall not produce any
11 information in its possession or control that is subject to the confidentiality agreement
12 with the Non-Party before a determination by the court. Absent a court order to the
13 contrary, the Non-Party shall bear the burden and expense of seeking protection in this
14 court of its Protected Material.

15
16 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

17 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed
18 Protected Material to any person or in any circumstance not authorized under this
19 Stipulated Protective Order, the Receiving Party must immediately (a) notify in writing
20 the Designating Party of the unauthorized disclosures, (b) use its best efforts to retrieve
21 all unauthorized copies of the Protected Material, (c) inform the person or persons to
22 whom unauthorized disclosures were made of all the terms of this Order, and (d) request
23 such person or persons to execute the "Acknowledgment and Agreement to Be Bound"
24 that is attached hereto as Exhibit A.

25
26 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
27 PROTECTED MATERIAL

28 When a Producing Party gives notice to Receiving Parties that certain inadvertently

1 produced material is subject to a claim of privilege or other protection, the obligations of
2 the Receiving Parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B).
3 This provision is not intended to modify whatever procedure may be established in an
4 e-discovery order that provides for production without prior privilege review. Pursuant to
5 Federal Rule of Evidence 502(d) and (e), insofar as the parties reach an agreement on the
6 effect of disclosure of a communication or information covered by the attorney-client
7 privilege or work product protection, the parties may incorporate their agreement in the
8 stipulated protective order submitted to the court.

9
10 12. MISCELLANEOUS

11 12.1 Right to Further Relief. Nothing in this Order abridges the right of any
12 person to seek its modification by the Court in the future.

13 12.2 Right to Assert Other Objections. By stipulating to the entry of this
14 Protective Order no Party waives any right it otherwise would have to object to disclosing
15 or producing any information or item on any ground not addressed in this Stipulated
16 Protective Order. Similarly, no Party waives any right to object on any ground to use in
17 evidence of any of the material covered by this Protective Order.

18 12.3 Filing Protected Material. A Party that seeks to file under seal any Protected
19 Material must comply with Civil Local Rule 79-5. Protected Material may only be filed
20 under seal pursuant to a court order authorizing the sealing of the specific Protected
21 Material at issue. If a Party's request to file Protected Material under seal is denied by the
22 court, then the Receiving Party may file the information in the public record unless
23 otherwise instructed by the court.

24
25 13. FINAL DISPOSITION

26 Upon the final termination of this Action, including any appeal pertaining thereto,
27 including but not limited to any event wherein the case is ever remanded to State Court,
28 all Internal Affairs Investigation reports, addendum, materials, audio recordings, as well

1 as any other Court Ordered Documents provided pursuant to this Protective Order and all
2 copies thereof shall be returned to the Offices of the Los Angeles City Attorney's Office,
3 6th Floor, City Hall East, Los Angeles, California 90012 for destruction/shredding. All
4 Confidential documentation provided to any person or party, pursuant to any provision
5 hereof or of those set forth in the "Acknowledgment and Agreement to Be Bound" that is
6 attached hereto as Exhibit A, shall also be returned to the City Attorney's Office.

7
8 14. Any violation of this Order may be punished by any and all appropriate measures
9 including, without limitation, contempt proceedings and/or monetary sanctions.

10
11
12 **IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.**

13 DATED November 13, 2014

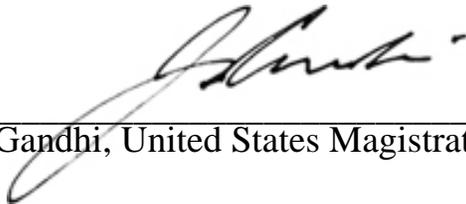
14 _____
15 /s/
16 Derek A. Hahn, Attorneys for Plaintiff

17 DATED: November 13, 2014

18 _____
19 /s/
20 J. Edwin Rathbun, Jr., Attorneys for Defendants

21 **FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.**

22 DATED: November 18, 2014

23 _____
24 
25 Jay C. Gandhi, United States Magistrate Judge
26
27
28