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NOTE CHANGES MADE BY THE COURT

5 Attorneys for Defendants City of Hemet,
 6 Nelson Gould and Jonathan Montoya

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 8 UNITED STATES DISTRICT COURT
 9 CENTRAL DISTRICT OF CALIFORNIA

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 11 JUSTIN BRYAN, JORDAN BRYAN
 12 MARY PARR, individually and as
 successors in interest to Jerry Bryan,

Case No. CV 11-10690 SJO (DTBx)

**~~PROPOSED~~ STIPULATED
 CONFIDENTIALITY
 AGREEMENT AND
 PROTECTIVE ORDER**

13 Plaintiffs,

14 vs.

15 CITY OF HEMET, a local public entity,
 and DOES 1 - 10,

16 Defendants.

Action Filed: December 27, 2011

Trial: January 29, 2013

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 20 Pursuant to the agreement between the parties to this action, Plaintiffs Justin
 21 Bryan and Jordan Bryan (“Plaintiffs”) and Defendants City of Hemet, Nelson
 22 Gould, and Jonathan Montoya (“Defendants”), (Plaintiffs and Defendants are
 23 collectively referred to as “Parties” and individually as “Party”), and the approval
 24 of this Court, this Confidentiality Agreement and Protective Order (“Protective
 25 Order”) shall govern the production of certain documents, materials or information
 26 produced by Plaintiffs, Defendant and third parties (collectively “the Producing
 27 Parties” or individually “the Producing Party”).

28 The information/items governed by this Protective Order are:

1 1. Certain documents produced by the Producing Parties during
2 discovery in this litigation which contain private and confidential information
3 pertaining to Plaintiffs, Defendants and non-parties. These documents are
4 hereinafter referred to as the “Confidential Material” which is the subject of the
5 Protective Order and shall include, but is not limited to the following records:
6 Hemet Police Department policies, logs, 911 calls, reports, radio calls, documents
7 related to 2010 arrest of decedent Jerry Bryan and documents related to decedent
8 Jerry Bryan’s mental health, criminal investigation files, including audio
9 recordings, photographs and all other investigatory documents subject to the official
10 information privilege which have been maintained with an expectation of
11 confidentiality; and the medical, psychological or mental healthcare records of non-
12 party third persons. Such designation will not apply to any material which has been
13 made public, or which is accessible by the public.

14 2. This Protective Order shall protect from unauthorized disclosure
15 documents, things, or other information (Confidential Material as defined in
16 paragraph 1, above) produced by the Parties in this action or obtained during
17 discovery from third parties. In an effort to maintain the confidentiality of the
18 information, the following terms shall apply:

19 3. Confidential Material shall be classified as confidential by
20 stamping/watermarking copies with “CONFIDENTIAL” in a manner that will not
21 obscure the content of the document. Stamping “CONFIDENTIAL” on the cover
22 of a multiple page document shall classify all pages of the document as
23 confidential, unless otherwise indicated by the Parties. Other unambiguous written
24 notice that material is being classified as Confidential shall also be sufficient.

25 4. Immediately upon production of the Confidential Material, counsel
26 shall personally secure and maintain said material in counsel’s possession. Counsel
27 shall not cause or knowingly permit disclosure to any person or entity of the
28 contents of the Confidential Material in any manner, including orally, any statement

1 of information, or portions thereof, beyond the disclosure permitted under the terms
2 and conditions of this Protective Order.

3 5. The Confidential Material shall be used only for the purpose of the
4 prosecution, including any appeal, and settlement of this action. No person to
5 whom Confidential Material is disclosed shall cause or permit it to be used for any
6 other purpose.

7 6. All copies, summaries, abstracts, notes, extracts of the contents of, or
8 other documents derived from the Confidential Material are protected under this
9 Protective Order, and shall be treated in the manner set forth in Paragraph No. 8
10 below.

11 7. Production of Confidential Material shall be made solely to Plaintiffs'
12 counsel and counsel for Defendants, in this action. No counsel may disseminate the
13 information to any person or entity, for any purpose, absent a prior court Protective
14 Order, except that Confidential Material may be provided to:

- 15 (a) Staff personnel employed by counsel for any Party;
- 16 (b) The Court and its personnel, in connection with this litigation;
- 17 (c) Experts or consultants retained to work on this case by counsel
18 for any Party to this case;
- 19 (d) Investigators retained by counsel for any Party to this case; and
- 20 (e) Non-party witnesses only in connection with the deposition of
21 that non-party witness as described below.

22 The Parties may review their own witness statements even if these statements are
23 deemed to be Confidential Material. Additionally, a non-party witness may be
24 provided with Confidential Material that is part of any deposition transcript for the
25 deposition of that non-party witness for purposes of reviewing the deposition
26 testimony and/or making changes to the deposition testimony. The non-party
27 witness must promptly return all Confidential Material to Plaintiffs' counsel and/or
28 counsel for Defendants, as indicated at the deposition of the non-party witness, after

1 the non-party witness completes his or her review and makes his or her changes.
2 The non-party witness may not keep any copies of the Confidential Material.

3 8. In the event that counsel finds it necessary to employ such experts
4 and/or investigators, prior to the disclosure of any Confidential Material, counsel
5 shall first cause the substance of this Protective Order to be communicated to any
6 such person and provide him or her with a copy of this Protective Order and shall
7 cause him or her to execute, on a second copy, which counsel shall thereafter serve
8 on counsel for the other Party within ten (10) days the following acknowledgment:

9 “I, _____, do solemnly swear that
10 I am fully familiar with the terms of the Stipulated Protective Order
11 entered into in this action and am bound by the terms and conditions of
12 said Protective Order with respect to the handling, use and disclosure
13 of the Confidential Material. I hereby consent to the jurisdiction of
14 said Court for purposes of enforcing this nondisclosure Protective
15 Order.

16 Dated: _____, _____/s/_____”

17 All Parties agree that if a person is provided with Confidential Material and
18 should that person’s identity become disclosed via their execution of the
19 confidentiality provision of this Protective Order, and said person is not designated
20 as an expert in this matter, the other side(s) agrees not to contact or seek records
21 from said person.

22 9. If Confidential Material is used, directly or indirectly, in any
23 depositions taken, the confidential portions of the transcript of the deposition, and
24 all copies thereof shall be stamped “CONFIDENTIAL” and shall be sealed
25 pursuant to this Protective Order. Any such testimony referring or relating or
26 retelling the events disclosed in the protected documents shall be taken under seal.
27 A copy of this Protective Order shall be attached as an exhibit to said deposition
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1 transcript and the court reporter shall be subject to said Protective Order and
2 precluded from providing the original deposition transcript or portions thereof, any
3 copies thereof, or portions of copies thereof, to any persons or entities other than
4 counsel of record in the instant action. Furthermore, any confidential portions of an
5 audiotape and/or videotape of said deposition shall be sealed pursuant to this
6 Protective Order. A copy of this Protective Order shall be attached as an exhibit to
7 said audiotape/videotape and the court videographer shall be subject to said
8 Protective Order and precluded from providing the original deposition videotape or
9 portions thereof, any copies thereof, or portions of copies thereof, to any persons or
10 entities other than counsel of record in the instant action. Any audiotape shall
11 similarly be subject to this Protective Order and all persons shall be precluded from
12 producing the original deposition audiotape or portions thereof, any copies thereof,
13 or portions of copies thereof, to any persons or entities other than counsel of record
14 in the instant litigation.

15 10. In addition, anyone other than the Parties and the following persons
16 shall be precluded from attending the deposition using Confidential Material:
17 Counsel of record in this action, the court reporter, and the court videographer, if
18 any, and any expert witnesses who have previously agreed to be bound by the
19 instant Stipulation for a Protective Order. Those attending the deposition using
20 Confidential Material shall not disclose to any person or entity, in any manner,
21 including orally, any statements made by the deponent during the course of said
22 deposition and any such disclosure shall be construed as a violation of this
23 Protective Order.

24 11. If any counsel is served with a subpoena or other request seeking
25 Confidential Material, counsel shall immediately give written notice to counsel for
26 the Party producing the Confidential Material, identifying the Confidential Material
27 sought and the time in which production or other disclosure is required; and, object
28 to the request or subpoena on the grounds of this Protective Order, to afford the

1 Party an opportunity to obtain a Protective Order barring production or other
2 disclosure, or to otherwise respond to the subpoena or other request for production
3 or disclosure of Confidential Material. In no event shall production or disclosure be
4 made without written approval by the counsel for the Party producing the
5 Confidential Material, unless required by Court Protective Order. Nothing in the
6 Protective Order shall be construed as authorizing a party to disobey a lawful
7 subpoena issued in another action.

8 12. Any pleadings, motions, briefs, declarations, stipulations, exhibits or
9 other written submissions (collectively, "Papers") filed by counsel with the Court,
10 which contain, incorporate or refer to Confidential Material, shall be accompanied
11 by an application to file the papers under seal, absent further Protective Order of
12 this Court. Pending a ruling on the application, the Papers that are the subject of
13 the application shall be lodged under seal. Any motion challenging a designation
14 brought pursuant to this paragraph will be made in strict compliance with Local
15 Rules 37-1 and 37-2 (including the Joint Stipulation requirement).

16 13. Counsel for any Party may request that any motions, applications or
17 other pre-trial proceedings, which could entail the discussion or disclosure of
18 Confidential Material, be heard by the court outside the presence of the jury or in a
19 closed courtroom. If no request is made by counsel, opposing counsel may reveal
20 confidential information in the courtroom, without violating this Protective Order.
21 In accordance with Local Rule 79-5.1, if any papers to be filed with the Court
22 contain information that has been designated as "Confidential" or "Attorneys' Eyes
23 Only," the proposed filing shall be accompanied by an application to file the papers
24 or the portion thereof containing the designated information (if such portion is
25 segregable) under seal; and the application shall be directed to the judge to whom
26 the papers are directed. For motions, the Parties should file a redacted version of
27 the motion and supporting papers. Neither the fact that counsel have stipulated to
28 an under seal filing nor the fact that a proposed filing contains information that one

1 of the Parties elected to designate as “Confidential” or “Attorneys’ Eyes Only” in
2 accordance with the terms of the protective order is sufficient in itself for the Court
3 to find that good cause exists to file the papers or the portion containing the
4 designated information under seal. At the very least, the Parties will need to
5 convince the Court in their application that protection clearly is warranted for the
6 designated information or documents. For declarations with exhibits, this means
7 making the requisite showing on an exhibit by exhibit basis.

8 14. Nothing herein shall prejudice a Party’s rights to object to the
9 introduction of any Confidential Material into evidence, on grounds, including, but
10 not limited to, relevance and privilege.

11 15. Within thirty (30) days following the termination of the instant action
12 or any appellate proceedings relating thereto, all of the above-referenced
13 Confidential Material, and all copies or documents derived from the Confidential
14 Material, in the possession, custody, or control of counsel and any other person to
15 whom counsel provided the Confidential Material, shall be returned to the Party
16 producing the Confidential Material. The Parties respectively agree to bear the
17 costs associated with retrieval and destruction of the Confidential Material.

18 16. This Protective Order shall survive the termination of this action, and
19 the court retains jurisdiction to resolve any dispute concerning the use or disclosure
20 of the Confidential Material disclosed pursuant to this Protective Order.

21 17. This Protective Order applies to Confidential Material disclosed or to
22 be used in this matter entitled, *JUSTIN BRYAN, JORDAN BRYAN, MARY PARR,*
23 *individually and as successors in interest to Jerry Bryan, vs. CITY OF HEMET, et.*
24 *al*, Case No. CV 11-10690 SJO (DTBx).

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18. Nothing in this Protective Order is intended to prevent officials or employees of the Hemet Police Department, individual Hemet Police Officers, or other authorized individuals from having access to Confidential Material or information to which they would have access in the normal course of their duties.

ALL APPLICATIONS TO FILE UNDER SEAL MUST BE IN COMPLIANCE WITH THIS COURT'S STANDING ORDER.

It is SO ORDERED this 7th day of September 2012.



THE HONORABLE S. JAMES OTERO
UNITED STATES DISTRICT JUDGE