

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

NOTE CHANGES MADE BY THE COURT.

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

**MANNING & KASS
ELLROD, RAMIREZ, IRESTER LLP**
ATTORNEYS AT LAW

JUAN SIMENTAL; and REBECA
SIMENTAL,

Plaintiffs,

v.

CITY OF AZUSA; and DOES 1-10,
inclusive,

Defendants.

Case No. 2:15-cv-08372 DSF(AGR)x
[Hon. Dale S. Fischer]

NOTE CHANGES MADE BY THE COURT.

~~PROPOSED~~ **PROTECTIVE
ORDER RE CONFIDENTIAL
DOCUMENTS**

Filed Date: 10/27/15
Trial Date: N/A

PURSUANT TO THE STIPULATION OF THE PARTIES (“Stipulation for Entry of Protective Order re Confidential Documents” – herein after as “Stipulation”), and pursuant to the Court’s inherent and statutory authority, including but not limited to the Court’s authority under all applicable statutes and rules (including but not limited to Fed. R. Civ. P. 5.2, 7, 26, and 29, as well as U.S. Dist. Ct., C.D. Cal., L.R. 7-3, 37-1, and 52-4.1 ; and all applicable Federal Rules of Civil Procedure and/or Federal Rules of Evidence and U.S. Dist. Ct., C.D. Cal. Local Rules); after due consideration of all of the relevant pleadings, papers, and records in this action; and upon such other evidence or argument as was presented to the Court; Good Cause appearing therefor, and in furtherance of the interests of justice,

1 IT IS HEREBY ORDERED that:

2 **1. SCOPE OF PROTECTION.**

3 1.1. The protections conferred by the parties' Stipulation and this Order
 4 cover not only Protected Material/Confidential Documents (as defined herein), but
 5 also (1) any information copied or extracted from Protected Material; (2) all copies,
 6 excerpts, summaries, or compilations of Protected Material; and (3) any testimony,
 7 conversations, or presentations by Parties or their Counsel that might reveal
 8 Protected Material. However, the protections conferred by the parties' Stipulation
 9 and this Order do *not* cover the following information: (a) any information that is in
 10 the public domain at the time of disclosure to a Receiving Party or becomes part of
 11 the public domain after its disclosure to a Receiving Party as a result of publication
 12 not involving a violation of this Order, including becoming part of the public record
 13 through trial or otherwise; and (b) any information known to the Receiving Party
 14 prior to the disclosure or obtained by the Receiving Party after the disclosure from a
 15 source who obtained the information lawfully and under no obligation of
 16 confidentiality to the Designating Party. ~~Except to the extent specified herein (if~~
 17 ^A ~~any)~~ ₃₁ any use of Protected Material at trial shall not be governed by this Order, but
 18 may be governed by a separate agreement or order.

19 1.2. The "Definitions" of the parties' Stipulation (§ 2 thereof) are
20 incorporated here into this Order by reference.

21 **2. DURATION OF PROTECTION.**

22 2.1. Even after final disposition of this litigation, the confidentiality
23 obligations imposed by this Order shall remain in effect until a Designating Party
24 agrees otherwise in writing or a court order otherwise directs.

25 2.2. Final disposition shall be deemed to be the later of (1) dismissal of all
26 claims and defenses in this action, with or without prejudice; and (2) final judgment
27 herein after the completion and exhaustion of all appeals, rehearings, remands,
28

MANNING & KASS
ELLROD, RAMIREZ, TRESTER LLP
ATTORNEYS AT LAW

AGL

1 trials, or reviews of this action, including the time limits for filing any motions or
2 applications for extension of time pursuant to applicable law.

3 **3. DESIGNATION OF PROTECTED MATERIAL/CONFIDENTIAL**
4 **DOCUMENTS.**

5 3.1. Exercise of Restraint and Care in Designating Material for Protection.

6 Each Party or non-party that designates information or items for protection
7 under the parties' Stipulation and this Order must take care to limit any such
8 designation to specific material that qualifies under the appropriate standards. A
9 Designating Party must take care to designate for protection only those parts of
10 material, documents, items, or oral or written communications that qualify – so that
11 other portions of the material, documents, items or communications for which
12 protection is not warranted are not swept unjustifiably within the ambit of this
13 Order.

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

19 If it comes to a Party's or a non-party's attention that information or items
20 that it designated for protection do not qualify for protection at all, or do not qualify
21 for the level of protection initially asserted, that Party or non-party must promptly
22 notify all other parties that it is withdrawing the mistaken designation.

23 3.2. Manner and Timing of Designations. Except as otherwise provided in
24 this Order, or as otherwise stipulated or ordered, material that qualifies for
25 protection under this Order must be clearly so designated before the material is
26 disclosed or produced.

27 ///

28 ///

MANNING & KASS
ELLROD, RAMIREZ, TRESTER LLP
ATTORNEYS AT LAW

1 Designation in conformity with this Order requires:

2 (a) for information in documentary form (apart from transcripts of
3 depositions or other pretrial or trial proceedings, and regardless of whether produced
4 in hardcopy or electronic form), that the Producing Party affix the legend
5 “CONFIDENTIAL” to each page that contains Protected Material. If only a portion
6 or portions of the material on a page qualifies for protection, the Producing Party
7 also must clearly identify the protected portion(s) (e.g., by making appropriate
8 markings in the margins) and must specify, for each portion that it is
9 “CONFIDENTIAL.” The placement of such “CONFIDENTIAL” stamp on such
10 page(s) shall not obstruct the substance of the page’s (or pages’) text or content.

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

23 (b) for testimony given in deposition or in other pretrial proceedings, that
24 the Party or non-party offering or sponsoring the testimony identify on the record,
25 before the close of the deposition, hearing, or other proceeding, all protected
26 testimony, and further specify any portions of the testimony that qualify as
27 “CONFIDENTIAL.” When it is impractical to identify separately each portion of
28 testimony that is entitled to protection, and when it appears that substantial portions

MANNING & KASS
ELLROD, RAMIREZ, IRESTER LLP
ATTORNEYS AT LAW

1 of the testimony may qualify for protection, the Producing Party may invoke on the
2 record (before the deposition or proceeding is concluded) a right to have up to
3 twenty (20) days to identify the specific portions of the testimony as
4 “CONFIDENTIAL.” Only those portions of the testimony that are appropriately
5 designated as “CONFIDENTIAL” for protection within the 20 days shall be covered
6 by the provisions of the parties’ Stipulation and this Protective Order.

7 Transcript pages containing Protected Material must be separately bound by
8 the court reporter, who must affix to each such page the legend “CONFIDENTIAL,”
9 as instructed by the Producing Party.

10 (c) for information produced in some form other than documentary, and for
11 any other tangible items (including but not limited to information produced on disc
12 or electronic data storage device), that the Producing Party affix in a prominent
13 place on the exterior of the container or containers in which the information or item
14 is stored the legend “CONFIDENTIAL.” If only portions of the information or item
15 warrant protection, the Producing Party, to the extent practicable, shall identify the
16 protected portions, specifying the material as “CONFIDENTIAL.”

17 3.3. Inadvertent Failures to Designate. If timely corrected (preferably,
18 though not necessarily, within 30 days of production or disclosure of such material),
19 an inadvertent failure to designate qualified information or items as
20 “CONFIDENTIAL” does not, standing alone, waive the Designating Party’s right to
21 secure protection under the parties’ Stipulation and this Order for such material. If
22 material is appropriately designated as “CONFIDENTIAL” *after* the material was
23 initially produced, the Receiving Party, on timely notification of the designation,
24 must make reasonable efforts to assure that the material is treated in accordance
25 with the parties’ Stipulation and this Order.

26 3.4. Alteration of Confidentiality Stamp Prohibited. A Receiving Party
27 shall not alter, edit, or modify any Protected Material so as to conceal, obscure, or
28 remove a “CONFIDENTIAL” stamp or legend thereon; nor shall a Receiving Party

MANNING & KASS
ELLROD, RAMIREZ, TRESTER LLP
A DIVISION OF LAW

1 take any other action so as to make it appear that Protected Material is not subject to
2 the terms and provisions of the parties' Stipulation and this Order. However,
3 nothing in this section shall be construed so as to prevent a Receiving Party from
4 challenging a confidentiality designation subject to the provisions of section 4, *infra*.

5 **4. CHALLENGING CONFIDENTIALITY DESIGNATIONS.**

6 4.1. Timing of Challenges. Any Party or Non-Party may challenge a
7 designation of confidentiality at any time prior to the final pre-trial conference with
8 the Court in the matter. Unless a prompt challenge to a Designating Party's
9 confidentiality designation is necessary to avoid foreseeable substantial unfairness,
10 unnecessary economic burdens, or a later significant disruption or delay of the
11 litigation, a Party does not waive its right to challenge a confidentiality designation
12 by electing not to mount a challenge promptly after the original designation is
13 disclosed.

14 4.2. Meet and Confer. Prior to challenging a confidentiality designation, a
15 Challenging Party shall initiate a dispute resolution process by providing written
16 notice of each specific designation it is challenging, and describing the basis (and
17 supporting authority or argument) for each challenge. To avoid ambiguity as to
18 whether a challenge has been made, the written notice must recite that the challenge
19 to confidentiality is being made in accordance with this specific paragraph of this
20 Protective Order. The parties shall attempt to resolve each challenge in good faith
21 and must begin the process by conferring directly (in voice to voice dialogue, either
22 in person, telephonically, or by other comparable means, but *not* by correspondence)
23 within 14 days of the date of service of notice.

24 In conferring, the Challenging Party must explain the specific basis for its
25 belief that the confidentiality designation was not proper and must give the
26 Designating Party an opportunity to review the designated material, to reconsider
27 the circumstances, and, if no change in designation is offered, to explain the basis
28 for the chosen designation. A Challenging Party may proceed to the next stage of

MANNING & KASS
ELLROD, RAMIREZ, TRESTER LLP
ATTORNEYS AT LAW

1 the challenge process only if it has engaged in this meet and confer process first or
2 establishes that the Designating Party is unwilling to participate in the meet and
3 confer process in a timely manner.

4 4.3. Judicial Intervention. If the Parties cannot resolve a confidentiality
5 challenge without court intervention, the Challenging Party shall file and serve a
6 motion to remove confidentiality (under the applicable rules for filing and service of
7 discovery motions) within 14 days of the parties agreeing that the meet and confer
8 process will not resolve their dispute; or by the first day of trial of this matter,
9 whichever date is earlier – unless the parties agree in writing to a longer time. Each
10 such motion must be accompanied by a competent declaration affirming that the
11 movant has complied with the meet and confer requirements imposed in the
12 preceding paragraph. In addition, the Challenging Party may file a motion
13 challenging a confidentiality designation at any time if there is good cause for doing
14 so, including a challenge to the designation of a deposition transcript or any portions
15 thereof. Any motion brought pursuant to this provision must be accompanied by a
16 competent declaration affirming that the movant has complied with the meet and
17 confer requirements imposed by the preceding paragraph.

18 The burden of persuasion in any such challenge proceeding shall be on the
19 Designating Party, regardless of whether the Designating Party is the moving party
20 or whether such Party sought or opposes judicial intervention. Frivolous challenges,
21 and those made for an improper purpose (e.g., to harass or impose unnecessary
22 expenses and burdens on other parties) may expose the Challenging Party to
23 sanctions. Unless the Designating Party has waived the confidentiality designation
24 by failing to oppose a motion to remove confidentiality as described above, all
25 parties shall continue to afford the material in question the level of protection to
26 which it is entitled under the Producing Party's designation until the court rules on
27 the challenge.

28 ///

MANNING & KASS
ELLROD, RAMIREZ, TRESTER LLP
ATTORNEYS AT LAW

1 4.4. Withdrawal of “CONFIDENTIAL” Designation. At its discretion, a
2 Designating Party may remove Protected Material/Confidential Documents from
3 some or all of the protections and provisions of the parties’ Stipulation and this
4 Order at any time by any of the following methods:

5 (a) Express Written Withdrawal. A Designating Party may withdraw a
6 “CONFIDENTIAL” designation made to any specified Protected
7 Material/Confidential Documents from some or all of the protections of the parties’
8 Stipulation and this Order by an express withdrawal in a writing signed by such
9 Party (or such Party’s Counsel, but not including staff of such Counsel) that
10 specifies and itemizes the Disclosure or Discovery Material previously designated as
11 Protected Material/Confidential Documents that shall no longer be subject to all or
12 some of the provisions of the parties’ Stipulation and Order. Such express
13 withdrawal shall be effective when transmitted or served upon the Receiving Party.
14 If a Designating Party is withdrawing Protected Material from only some of the
15 provisions/protections of the parties’ Stipulation and this Order, such Party must
16 state which specific provisions are no longer to be enforced as to the specified
17 material for which confidentiality protection hereunder is withdrawn: otherwise,
18 such withdrawal shall be construed as a withdrawal of such material from all of the
19 protections/provisions of the parties’ Stipulation and this Order;

20 (b) Express Withdrawal on the Record. A Designating Party may
21 withdraw a “CONFIDENTIAL” designation made to any specified Protected
22 Material/Confidential Documents from all of the provisions/protections of the
23 parties’ Stipulation and this Order by verbally consenting in court proceedings on
24 the record to such withdrawal – provided that such withdrawal specifies the
25 Disclosure or Discovery Material previously designated as Protected
26 Material/Confidential Documents that shall no longer be subject to any of the
27 provisions of the parties’ Stipulation and this Order. A Designating Party is not
28

MANNING & KASS
ELLROD, RAMIREZ, IRESTER LLP
ATTORNEYS AT LAW

1 permitted to withdraw Protected Material from only some of the protections/
2 provisions of the parties' Stipulation and this Order by this method;

3 (c) Implicit Withdrawal by Publication or Failure to Oppose Challenge. A
4 Designating Party shall be construed to have withdrawn a "CONFIDENTIAL"
5 designation made to any specified Protected Material/Confidential Documents from
6 all of the provisions/protections of the parties' Stipulation and this Order by either
7 (1) making such Protected Material/Confidential Records part of the public record –
8 including but not limited to attaching such as exhibits to any filing with the court
9 without moving, prior to such filing, for the court to seal such records; or (2) failing
10 to timely oppose a Challenging Party's motion to remove a "CONFIDENTIAL"
11 designation to specified Protected Material/Confidential Documents. Nothing in the
12 parties' Stipulation and this Order shall be construed so as to require any Party to
13 file Protected Material/Confidential Documents under seal, unless expressly
14 specified herein.

15 **5. ACCESS TO AND USE OF PROTECTED MATERIAL.**

16 5.1. Basic Principles. A Receiving Party may use Protected Material that is
17 disclosed or produced by another Party or by a non-party in connection with this
18 case only for preparing, prosecuting, defending, or attempting to settle this litigation
19 – up to and including final disposition of the above-entitled action – and not for any
20 other purpose, including any other litigation or dispute outside the scope of this
21 action. Such Protected Material may be disclosed only to the categories of persons
22 and under the conditions described in the parties' Stipulation and this Order. When
23 the above entitled litigation has been terminated, a Receiving Party must comply
24 with the provisions of section 10, below (FINAL DISPOSITION).

25 Protected Material must be stored and maintained by a Receiving Party at a
26 location and in a secure manner that ensures that access is limited to the persons
27 authorized under the parties' Stipulation and its Order.

28 ///

MANNING & KASS
ELLROD, RAMIREZ, IRESTER LLP
ATTORNEYS AT LAW

MANNING & KASS
ELLROD, RAMIREZ, TRESTER LLP
ATTORNEYS AT LAW

1 5.2. Disclosure of “CONFIDENTIAL” Information or Items. Unless
2 otherwise ordered by the Court or permitted in writing by the Designating Party, a
3 Receiving Party may disclose any information or item designated CONFIDENTIAL
4 only to:

5 (a) the Receiving Party’s Outside Counsel of record in this action, as well
6 as employees of such Counsel to whom it is reasonably necessary to disclose the
7 information for this litigation;

8 (b) the officers, directors, and employees (including House Counsel) of the
9 Receiving Party to whom disclosure is reasonably necessary for this litigation – each
10 of whom, by accepting receipt of such Protected Material, thereby agree to be bound
11 by the parties’ Stipulation and this Order;

12 (c) Experts (as defined in the parties’ Stipulation and this Order) of the
13 Receiving Party to whom disclosure is reasonably necessary for this litigation – each
14 of whom, by accepting receipt of such Protected Material, thereby agree to be bound
15 by the parties’ Stipulation and this Order;

16 (d) the Court and its personnel;

17 (e) court reporters, their staffs, and Professional Vendors to whom
18 disclosure is reasonably necessary for this litigation – each of whom, by accepting
19 receipt of such Protected Material, thereby agree to be bound by the parties’
20 Stipulation and this Order;

21 (f) during their depositions, witnesses in the action to whom disclosure is
22 reasonably necessary – each of whom, by accepting receipt of such Protected
23 Material, thereby agree to be bound by the parties’ Stipulation and this Order. Pages
24 of transcribed deposition testimony or exhibits to depositions that reveal Protected
25 Material must be separately bound by the court reporter and may not be disclosed to
26 anyone except as permitted under the parties’ Stipulation and this Protective Order.

27 ///

28 ///

1 (g) the author or custodian of a document containing the information that
2 constitutes Protected Material, or other person who otherwise possessed or knew the
3 information.

4 5.3. Notice of Confidentiality. Prior to producing or disclosing Protected
5 Material/Confidential Documents to persons to whom the parties' Stipulation and
6 this Order permits disclosure or production (see section 5.2, *supra*), a Receiving
7 Party shall provide a copy of the parties' Stipulation and Order to such persons so as
8 to put such persons on notice as to the restrictions imposed upon them herein: except
9 that, for court reporters, Professional Vendors, and for witnesses being provided
10 with Protected Material during a deposition, it shall be sufficient notice for Counsel
11 for the Receiving Party to give the witness a verbal admonition (on the record, for
12 witnesses) regarding the provisions of the parties' Stipulation and this Order and
13 such provisions' applicability to specified Protected Material at issue.

14 5.4. Reservation of Rights. Nothing in the parties' Stipulation and this
15 Order shall be construed so as to require any Producing Party to designate any
16 records or materials as "CONFIDENTIAL." Nothing in the parties' Stipulation or
17 this Order shall be construed so as to prevent the admission of Protected Material
18 into evidence at the trial of this action, or in any appellate proceedings for this
19 action, solely on the basis that such Disclosure or Discovery Material has been
20 designated as Protected Material/Confidential Documents. Notwithstanding the
21 foregoing, nothing in the parties' Stipulation or this Order shall be construed as a
22 waiver of any privileges or of any rights to object to the use or admission into
23 evidence of any Protected Material in any proceeding; nor shall anything herein be
24 construed as a concession that any privileges asserted or objections made are valid
25 or applicable. Nothing in the parties' Stipulation or this Order shall be construed so
26 as to prevent the Designating Party (or its Counsel or custodian of records) from
27 having access to and using Protected Material designated by that Party in the
28 manner in which such persons or entities would typically use such materials in the

MANNING & KASS
ELLROD, RAMIREZ, IRESTER LLP
ATTORNEYS AT LAW

1 normal course of their duties or profession – except that the waiver of
2 confidentiality provisions shall apply (see section 4.4(c), *supra*).

AGR

3 5.5. Requirement to File Confidential Documents Under Seal. Confidential
4 Documents may be submitted in all law and motion proceedings before the Court if
5 with an application to file done so/under seal pursuant to Central District of California Local Rules 79-5.1 and
6 79-5.2 (as applicable) and pursuant to the provisions of the parties' Stipulation and
7 this Order. If any Receiving Party attaches any Confidential Documents to any
8 pleading, motion, or other paper to be filed, lodged, or otherwise submitted to the
9 Court, such Confidential Document(s) shall be filed/lodged with an application to file under seal pursuant to
10 Central District of California Local Rules 79-5.1 and 79-5.2, to the extent
11 applicable.

AGR

MANNING & KASS
ELLROD, RAMIREZ, TRESTER LLP
ATTORNEYS AT LAW

12 However, this paragraph (§ 5.5) shall not be construed so as to prevent a
13 Designating Party or counsel from submitting, filing, lodging, or publishing any
14 document it has previously designated as a Confidential Document without
15 compliance with this paragraph's requirement to do so under seal (i.e., a producing-
16 disclosing party or counsel may submit or publish its own Confidential Documents
17 without being in violation of the terms of the parties' Stipulation and this Protective
18 Order).

19 Furthermore, a Receiving Party shall be exempted from the requirements of
20 this paragraph as to any specifically identified Confidential Document(s) where –
21 prior to the submission or publication of the Confidential Document(s) at issue – the
22 Designating Party of such specifically identified Confidential Document(s) has
23 waived/withdrawn the protections of the parties' Stipulation and this Order
24 (pursuant to paragraph 4.4, *supra*).

25 A Receiving Party shall also be exempt from the sealing requirements of this
26 paragraph (§ 5.5) where the Confidential Documents/Protected Material at issue
27 is/are **not** documents, records, or information regarding:

28 ///

1 (1) private, personal information contained in peace officer personnel files
2 (such as social security numbers, driver's license numbers or comparable personal
3 government identification numbers, residential addresses, compensation or pension
4 or personal property information, credit card numbers or credit information, dates of
5 birth, tax records and information, information related to the identity of an officer's
6 family members or co-residents, and comparable personal information about the
7 officer or his family);

8 (2) any internal affairs or comparable investigation by any law
9 enforcement agency into alleged officer misconduct; and/or

10 (3) the medical records or records of psychiatric or psychological treatment
11 of any peace officer or party to this action.

12 ~~Nothing in this paragraph shall be construed to bind the Court so as to limit or~~
13 ~~prevent the publication of any Confidential Documents to the jury or factfinder, at~~
14 ~~the time of trial of this matter, where the Court has deemed such Confidential~~
15 ~~Documents to be admissible into evidence.~~

MANNING & KASS
ELLROD, RAMIREZ, TRESTER LLP
ATTORNEYS AT LAW

16 **6. PROTECTED MATERIAL SUBPOENAED OR ORDERED**
17 **PRODUCED IN OTHER LITIGATION.**

18 If a Party is served with a subpoena or a court order issued in other litigation
19 that compels disclosure of any information or items designated in this action as
20 "CONFIDENTIAL," that Party must:

21 (a) promptly notify in writing the Designating Party, preferably (though not
22 necessarily) by facsimile or electronic mail. Such notification shall include a copy
23 of the subpoena or court order at issue;

24 (b) promptly notify in writing the party who caused the subpoena or order to
25 issue in the other litigation that some or all of the material covered by the subpoena
26 or order is subject to the parties' Stipulation and this Protective Order. Such
27 notification shall include a copy of the parties' Stipulation and this Protective Order;
28 and

MANNING & KASS
ELLROD, RAMIREZ, TRESTER LLP
ATTORNEYS AT LAW

1 (c) cooperate with respect to all reasonable procedures sought to be pursued
2 by all sides in any such situation, while adhering to the terms of the parties'
3 Stipulation and this Order.

4 If the Designating Party timely seeks a protective order, the Party served with
5 the subpoena or court order shall not produce any information designated in this
6 action as "CONFIDENTIAL" before a determination by the court from which the
7 subpoena or order issued, unless the Party has obtained the Designating Party's
8 permission. The Designating Party shall bear the burden and expense of seeking
9 protection in that court of its confidential material – and nothing in these provisions
10 should be construed as authorizing or encouraging a Receiving Party in this action
11 to disobey a lawful directive from another court.

12 The purpose of this section is to ensure that the affected Party has a
13 meaningful opportunity to preserve its confidentiality interests in the court from
14 which the subpoena or court order issued.

15 **7. A NON-PARTY'S PROTECTED MATERIAL SOUGHT TO BE**
16 **PRODUCED IN THIS LITIGATION.**

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

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

27 ///

28 ///

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

4 (2) promptly provide the Requesting Party a copy of the
5 confidentiality agreement between the Party and Non-Party;

6 (3) promptly provide the Non-Party with a copy of the Stipulation
7 and this Order in this litigation, the relevant discovery request(s), and a reasonably
8 specific description of the information requested; and

9 (4) make the information requested available for inspection by the
10 Non-Party.

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

19 **8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL.**

20 8.1. Unauthorized Disclosure of Protected Material.

21 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed
22 Protected Material to any person or in any circumstance not authorized under the
23 parties' Stipulation and this Order, the Receiving Party must immediately:

- 24 (a) notify in writing the Designating Party of the unauthorized disclosures;
25 (b) use its best efforts to retrieve all copies of the Protected Material;
26 (c) inform the person or persons to whom unauthorized disclosures were
27 made of all the terms of this Order; and

28 ///

MANNING & KASS
ELLROD, RAMIREZ, TRESTER LLP
ATTORNEYS AT LAW

1 (d) request such person or persons consent to be bound by the Stipulation
2 and this Order.

3 8.2. Inadvertent Production of Privileged or Otherwise Protected Material.

4 When a Producing Party gives notice to Receiving Parties that certain
5 inadvertently produced material is subject to a claim of privilege or other protection,
6 the obligations of the Receiving Parties are those set forth in Federal Rule of Civil
7 Procedure 26(b)(5)(B). [See also Cal. Code Civ. Proc. § 2031.240(c); Federal Rule
8 of Civil Procedure 26(b)(5)(B).] This provision is not intended to modify whatever
9 procedure may be established in an e-discovery order that provides for production
10 without prior privilege review. Pursuant to all applicable laws [e.g., Federal Rule of
11 Evidence 502(d) and (e)], insofar as the parties reach an agreement on the effect of
12 disclosure of a communication or information covered by the attorney-client
13 privilege or work product protection, the parties may incorporate their agreement in
14 the stipulated protective order submitted to the court.

15 9. PUBLICATION OF PROTECTED MATERIAL PROHIBITED.

16 9.1. Filing of Protected Material.

17 Without advance written permission from the Designating Party, or a court
18 order secured after appropriate notice to all interested persons, a Receiving Party
19 may not file in the public record in this action any Protected Material. A Party that
20 seeks to file under seal any Protected Material must comply with the applicable
21 Federal and Local Rules including Local Rule 79-5.2.2

22 9.2. Public Dissemination of Protected Material.

23 A Receiving Party shall not publish, release, post, or disseminate Protected
24 Material to any persons except those specifically delineated and authorized by the
25 parties' Stipulation and this Order (see section 5, *supra*); nor shall a Receiving Party
26 publish, release, leak, post, or disseminate Protected Material/Confidential
27 Documents to any news media, member of the press, website, or public forum
28

MANNING & KASS
ELLROD, RAMIREZ, FRESTER LLP
ATTORNEYS AT LAW

1 (except as permitted under section 12.1, *infra*, regarding filings with the court in this
2 action and under seal).

3 **10. FINAL DISPOSITION.**

4 10.1. Unless otherwise ordered or agreed in writing by the Producing Party,
5 within sixty (60) days after the final termination of this action (defined as the
6 dismissal or entry of judgment by the above named court, or if an appeal is filed, the
7 disposition of the appeal), upon written request by the Producing Party, each
8 Receiving Party must return all Protected Material to the Producing Party – whether
9 retained by the Receiving Party or its Counsel, Experts, Professional Vendors,
10 agents, or any non-party to whom the Receiving Party produced or shared such
11 records or information. As used in this subdivision, “all Protected Material”
12 includes all copies, abstracts, compilations, summaries or any other form of
13 reproducing or capturing any of the Protected Material, regardless of the medium
14 (hardcopy, electronic, or otherwise) in which such Protected Material is stored or
15 retained.

16 In the alternative, at the discretion of the Receiving Party, the Receiving Party
17 may destroy some or all of the Protected Material instead of returning it – unless
18 such Protected Material is an original, in which case, the Receiving Party must
19 obtain the Producing Party’s written consent before destroying such original
20 Protected Material.

21 10.2. Whether the Protected Material is returned or destroyed, the Receiving
22 Party must submit a written certification to the Producing Party (and, if not the same
23 person or entity, to the Designating Party) within sixty (60) days of the
24 aforementioned written request by the Designating Party that specifically identifies
25 (by category, where appropriate) all the Protected Material that was returned or
26 destroyed and that affirms that the Receiving Party has not retained any copies,
27 abstracts, compilations, summaries or other forms of reproducing or capturing any
28

MANNING & KASS
ELLOD, RAMIREZ, TRESTER LLP
ATTORNEYS AT LAW

1 of the Protected material (in any medium, including but not limited to any hardcopy,
2 electronic or digital copy, or otherwise).

3 Notwithstanding this provision, Counsel are entitled to retain an archival copy
4 of all pleadings, motion papers, transcripts, legal memoranda filed with the court in
5 this action, as well as any correspondence or attorney work product prepared by
6 Counsel for the Receiving Party, even if such materials contain Protected Material;
7 however, any such archival copies that contain or constitute Protected Material
8 remain subject to this Protective Order as set forth in Section 2, above. This court
9 shall retain jurisdiction in the event that a Designating Party elects to seek court
10 sanctions for violation of the parties' Stipulation and this Order.

11 **11. MISCELLANEOUS.**

12 11.1. Right to Further Relief. Nothing in the parties' Stipulation or this
13 Order abridges the right of any person to seek its modification by the Court in the
14 future.

15 11.2. Right to Assert Other Objections. By stipulating to the entry of this
16 Protective Order pursuant to the parties' Stipulation, no Party waives any right it
17 otherwise would have to object to disclosing or producing any information or item
18 on any ground not addressed in the parties' Stipulation or this Order. Similarly, no
19 Party waives any right to object on any ground to use in evidence any of the material
20 covered by the parties' Stipulation and this Protective Order.

21 11.3. The provisions of the parties' Stipulation and this Protective Order
22 shall be in effect until further Order of the Court.

23 **IT IS SO ORDERED.**

24
25 Dated: 2/16, 2016 Alicia G. Rosenberg
26 UNITED STATES MAGISTRATE JUDGE

MANNING & KASS
ELLROD, RAMIREZ, FRESTER LLP
ATTORNEYS AT LAW

28

1 Respectfully Submitted By:

2 Mildred K.O'Linn, Esq. (State Bar No. 159055)
3 Courtney R. Arbucci, Esq. (State Bar No. 266036)

4 **MANNING & KASS**
5 **ELLROD, RAMIREZ, TRESTER LLP**

6 801 South Figueroa Street
7 15th Floor at 801 Tower

8 Los Angeles, CA 90017
9 Telephone: (213) 624-6900

10 Facsimile: (213) 624-6999

11 mko@manningllp.com and cya@manningllp.com

12 Attorneys for Defendant, CITY OF AZUSA

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

MANNING & KASS
ELLROD, RAMIREZ, TRESTER LLP
ATTORNEYS AT LAW