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UNITED STATES DISTRICT COURT
 FOR THE CENTRAL DISTRICT OF CALIFORNIA
 WESTERN DIVISION

JONATHAN GARCIA, an individual,
 Plaintiff,
 v.
 UNITED STATES OF AMERICA,
 DRUG ENFORCEMENT
 ADMINISTRATION SPECIAL
 AGENT VALENTINE, and DOES 1
 through 10, inclusive,
 Defendants.

No. 2:16-cv-01664 ODW (AGRx)

DISCOVERY MATTER
STIPULATED PROTECTIVE
ORDER

1 **1. A. PURPOSES AND LIMITATIONS**

2 Discovery in this action is likely to involve requests for the production of
3 confidential, proprietary or private information and documents, records and
4 materials that are protected by the Privacy Act and/or law enforcement privilege.
5 for which special protection from public disclosure and from use for any purpose
6 other than prosecuting and defending this litigation is warranted. Accordingly, the
7 parties hereby stipulate to and petition the Court to enter the following Stipulated
8 Protective Order. The parties acknowledge that this Order does not confer blanket
9 protections on all disclosures or responses to discovery and that the protection it
10 affords from public disclosure and use extends only to the limited information or
11 items that are entitled to confidential treatment under the applicable legal
12 principles.

13 Further, as set forth in Section 12.3, below, this Protective Order does not
14 entitle the parties to file confidential information under seal. Rather, when the
15 parties seek permission from the court to file material under seal, the parties must
16 comply with Civil Local Rule 79-5 and with any pertinent orders of the assigned
17 District Judge and Magistrate Judge.

18 **B. GOOD CAUSE STATEMENT**

19 This action is likely to involve requests for documents relating to past or pending
20 criminal investigations and other law enforcement records, manuals, documents
21 and other information relating to the investigative techniques of federal agencies.
22 In addition, this action may involve requests for agency records that may pose a
23 risk to the privacy interests of individuals who are not parties to the action. Special
24 protection from public disclosure and from use for any purpose other than
25 prosecution of this action is warranted for all such documents. Accordingly, to
26 expedite the flow of information, to facilitate the prompt resolution of disputes
27 over confidentiality of discovery materials, to adequately protect information the
28 parties are entitled to keep confidential, to ensure that the parties are permitted

1 reasonable 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
3 justice, a protective order for such information is justified in this matter. It is the
4 intent of the parties that information will not be designated as confidential for
5 tactical reasons and that nothing be so designated without a good faith belief that it
6 has been maintained in a confidential, non-public manner, and there is good cause
7 why it should not be part of the public record of this case. The parties shall not
8 designate any information/documents as confidential without a good faith belief
9 that such information/documents have been maintained in a confidential, non-
10 public manner, and that there is good cause or a compelling reason why it should
11 not be part of the public record of this case.

12 **2 DEFINITIONS**

13 2.1 Action: The instant action: *Garcia v. United States of America, et al.*,
14 2:16-cv-01664 ODW (AGRx).

15 2.2 Challenging Party: a Party or Non-Party that challenges the
16 designation of information or items under this Order.

17 2.3 “CONFIDENTIAL” Information or Items: information (regardless of
18 how it is generated, stored or maintained) or tangible things that qualify for
19 protection under Federal Rule of Civil Procedure 26(c), and as specified above in
20 the Good Cause Statement.

21 2.4 Counsel: attorneys who represent or advise a party to this Action and
22 have appeared in this Action on behalf of that party or are affiliated with a law firm
23 that has appeared on behalf of that party, and includes support staff.

24 2.5 Designating Party: a Party or Non-Party that designates information or
25 items that it produces in disclosures or in responses to discovery as
26 “CONFIDENTIAL” or “FOR ATTORNEYS’ EYES ONLY.”

27 2.6 Disclosure or Discovery Material: all items or information, regardless
28 of the medium or manner in which it is generated, stored, or maintained (including,

1 among other things, testimony, transcripts, and tangible things), that are produced
2 or generated in disclosures or responses to discovery in this matter.

3 2.7 Expert: a person with specialized knowledge or experience in a matter
4 pertinent to the litigation who has been retained by a Party or its counsel to serve
5 as an expert witness or as a consultant in this Action.

6 2.8 FOR ATTORNEYS' EYES ONLY: Documents and materials to be
7 seen by Receiving Party's Counsel only. Any documents or materials so
8 designated shall also be considered as CONFIDENTIAL under this stipulation.

9 2.9 Non-Party: any natural person, partnership, corporation, association,
10 or other legal entity not named as a Party to this action.

11 2.10 Outside Counsel of Record: attorneys who are not employees of a
12 party to this Action but are retained to represent or advise a party to this Action
13 and have appeared in this Action on behalf of that party or are affiliated with a law
14 firm which has appeared on behalf of that party, and includes support staff.

15 2.11 Party: any party to this Action, including all of its officers, directors,
16 employees, consultants, retained experts, and Outside Counsel of Record (and their
17 support staffs).

18 2.12 Producing Party: a Party or Non-Party that produces Disclosure or
19 Discovery Material in this Action.

20 2.13 Professional Vendors: persons or entities that provide litigation
21 support services (e.g., photocopying, videotaping, translating, preparing exhibits or
22 demonstrations, and organizing, storing, or retrieving data in any form or medium)
23 and their employees and subcontractors.

24 2.14 Protected Material: any Disclosure or Discovery Material that is
25 designated as "CONFIDENTIAL" or "FOR ATTORNEYS' EYES ONLY."

26 2.15 Receiving Party: a Party that receives Disclosure or Discovery
27 Material from a Producing Party.

28

1 **3. SCOPE**

2 The protections conferred by this Order cover not only Protected Material (as
3 defined above), but also (1) any information copied or extracted from Protected
4 Material; (2) all copies, excerpts, summaries, or compilations of Protected
5 Material; and (3) any deposition testimony, conversations, or presentations by
6 Parties or their Counsel that might reveal Protected Material, other than during a
7 court hearing or at trial.

8 Any use of Protected Material during a court hearing or at trial shall be
9 governed by the orders of the presiding judge. This Order does not govern the use
10 of Protected Material during a court hearing or at trial.

11 **4. DURATION**

12 Once a case proceeds to trial, information that was designated as
13 CONFIDENTIAL or maintained pursuant to this protective order used or
14 introduced as an exhibit at trial becomes public and will be presumptively
15 available to all members of the public, including the press, unless compelling
16 reasons supported by specific factual findings to proceed otherwise are made to the
17 trial judge in advance of the trial. *See Kamakana v. City and County of Honolulu*,
18 447 F.3d 1172, 1180-81 (9th Cir. 2006) (distinguishing “good cause” showing for
19 sealing documents produced in discovery from “compelling reasons” standard
20 when merits-related documents are part of court record). Accordingly, the terms of
21 this protective order do not extend beyond the commencement of the trial to the
22 extent that confidential documents are introduced at trial.

23 **5. DESIGNATING PROTECTED MATERIAL**

24 5.1 Exercise of Restraint and Care in Designating Material for Protection.

25 Each Party or Non-Party that designates information or items for protection under
26 this Order must take care to limit any such designation to specific material that
27 qualifies under the appropriate standards. The Designating Party must designate for
28 protection only those parts of material, documents, items, or oral or written

1 communications that qualify so that other portions of the material, documents,
2 items, or communications for which protection is not warranted are not swept
3 unjustifiably within the ambit of this Order.

4 Mass, indiscriminate, or routinized designations are prohibited. If it comes to
5 a Designating Party's attention that information or items that it designated for
6 protection do not qualify for protection, that Designating Party must promptly
7 notify all other Parties that it is withdrawing the inapplicable designation.

8 5.2 Manner and Timing of Designations. Except as otherwise provided in
9 this Order (see, e.g., second paragraph of Section 5.2(a) below), or as otherwise
10 stipulated or ordered, Disclosure or Discovery Material that qualifies for protection
11 under this Order must be clearly so designated before the material is disclosed or
12 produced.

13 Designation in conformity with this Order requires:

14 (a) for information in documentary form (e.g., paper or electronic
15 documents, but excluding transcripts of depositions), that the Producing Party affix
16 at a minimum, the legend "CONFIDENTIAL" or "FOR ATTORNEYS' EYES
17 ONLY" (hereinafter "CONFIDENTIAL legend"), to each page that contains
18 protected material. If only a portion or portions of the material on a page qualifies
19 for protection, the Producing Party also must clearly identify the protected
20 portion(s) (e.g., by making appropriate markings in the margins).

21 A Party or Non-Party that makes original documents available for inspection
22 need not designate them for protection until after the inspecting Party has indicated
23 which documents it would like copied and produced. During the inspection and
24 before the designation, all of the material made available for inspection shall be
25 deemed "CONFIDENTIAL." After the inspecting Party has identified the
26 documents it wants copied and produced, the Producing Party must determine
27 which documents, or portions thereof, qualify for protection under this Order.
28 Then, before producing the specified documents, the Producing Party must affix

1 the “CONFIDENTIAL legend” to each page that contains Protected Material. If
2 only a portion or portions of the material on a page qualifies for protection, the
3 Producing Party also must clearly identify the protected portion(s) (e.g., by making
4 appropriate markings in the margins). To the extent practicable, the Designating
5 Party may redact from the records produced highly sensitive and personal
6 information which the Designating Party believes is protected by the Privacy Act,
7 law enforcement privilege or other applicable privilege.

8 (b) for testimony given in depositions that the Designating Party
9 identifies on the record, before the close of the deposition as protected testimony.

10 (c) for information produced in some form other than documentary
11 and for any other tangible items, that the Producing Party affix in a prominent
12 place on the exterior of the container or containers in which the information is
13 stored the legend “CONFIDENTIAL” or “FOR ATTORNEYS’ EYES ONLY.” If
14 only a portion or portions of the information warrants protection, the Producing
15 Party, to the extent practicable, shall identify the protected portion(s).

16 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
17 failure to designate qualified information or items does not, standing alone, waive
18 the Designating Party’s right to secure protection under this Order for such
19 material. Upon timely correction of a designation, the Receiving Party must make
20 reasonable efforts to assure that the material is treated in accordance with the
21 provisions of this Order.

22 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

23 6.1 Timing of Challenges. Any Party or Non-Party may challenge a
24 designation of confidentiality at any time that is consistent with the Court’s
25 Scheduling Order.

26 6.2 Meet and Confer. The Challenging Party shall initiate the dispute
27 resolution process under Local Rule 37-1 *et seq.*

28

1 6.3 The burden of persuasion in any such challenge proceeding shall be
2 on the Designating Party. Frivolous challenges, and those made for an improper
3 purpose (e.g., to harass or impose unnecessary expenses and burdens on other
4 parties) may expose the Challenging Party to sanctions. Unless the Designating
5 Party has waived or withdrawn the confidentiality designation, all parties shall
6 continue to afford the material in question the level of protection to which it is
7 entitled under the Producing Party’s designation until the Court rules on the
8 challenge.

9 **7. ACCESS TO AND USE OF PROTECTED MATERIAL**

10 7.1 Basic Principles. A Receiving Party may use Protected Material that is
11 disclosed or produced by another Party or by a Non-Party in connection with this
12 Action only for prosecuting, defending, attempting to settle, or otherwise litigating
13 this Action. Such Protected Material may be disclosed only to the categories of
14 persons and under the conditions described in this Order. When the Action has
15 been terminated, a Receiving Party must comply with the provisions below.
16 Protected Material must be stored and maintained by a Receiving Party at a
17 location and in a secure manner that ensures that access is limited to the persons
18 authorized under this Order.

19 7.2 Disclosure of “CONFIDENTIAL” and “FOR ATTORNEYS’ EYES
20 ONLY” Information or Items. Unless otherwise ordered by the court or permitted
21 in writing by the Designating Party, a Receiving Party may not disclose items
22 designated “FOR ATTORNEYS’ EYES ONLY” to anyone under any
23 circumstance except as expressly authorized by this order. A Receiving Party may
24 disclose information or item designated “CONFIDENTIAL” only to:

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

1 (b) the Receiving Party, as well as the officers, directors, and
2 employees of the Receiving Party to whom disclosure is reasonably necessary for
3 this Action;

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

7 (d) the court and its personnel;

8 (e) court reporters and their staff;

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

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

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

24 (i) any mediator or settlement officer, and their supporting personnel,
25 mutually agreed upon by any of the parties, or as ordered by the Court, for the
26 purpose of settlement discussions.

1 **8. PROTECTED MATERIAL SUBPOENAED OR ORDERED**
2 **PRODUCED IN OTHER LITIGATION**

3 If a Party is served with a subpoena or a court order issued in other litigation
4 that compels disclosure of any information or items designated in this Action as
5 “CONFIDENTIAL” or “FOR ATTORNEYS’ EYES ONLY” that Party must:

6 (a) promptly notify in writing the Designating Party. Such notification
7 shall include a copy of the subpoena or court order unless prohibited by law;

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

12 (c) cooperate with respect to all reasonable procedures sought to be
13 pursued by the Designating Party whose Protected Material may be affected.

14 If the Designating Party timely seeks a protective order to prohibit or limit a
15 required disclosure, the Party served with the subpoena or court order shall not
16 produce any information designated in this action as “CONFIDENTIAL” or “FOR
17 ATTORNEYS’ EYES ONLY” before a determination by the court from which the
18 subpoena or order issued, unless the Party has obtained the Designating Party’s
19 permission, or unless otherwise required by the law or court order. The
20 Designating Party shall bear the burden and expense of seeking protection in that
21 court of its confidential material and nothing in these provisions should be
22 construed as authorizing or encouraging a Receiving Party in this Action to
23 disobey a lawful directive from another court.

24 **9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE**
25 **PRODUCED IN THIS LITIGATION**

26 (a) The terms of this Order are applicable to information produced by
27 a Non-Party in this Action and designated as “CONFIDENTIAL” or “FOR
28 ATTORNEYS’ EYES ONLY.” Such information produced by Non-Parties in

1 connection with this litigation is protected by the remedies and relief provided by
2 this Order. Nothing in these provisions should be construed as prohibiting a Non-
3 Party from seeking additional protections.

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

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

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

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

16 (c) If a Non-Party represented by counsel fails to commence the
17 process called for by Local Rules 45-1 and 37-1, et seq. within 14 days of
18 receiving the notice and accompanying information or fails contemporaneously to
19 notify the Receiving Party that it has done so, the Receiving Party may produce the
20 Non-Party's confidential information responsive to the discovery request. If an
21 unrepresented Non-Party fails to seek a protective order from this court within 14
22 days of receiving the notice and accompanying information, the Receiving Party
23 may produce the Non-Party's confidential information responsive to the discovery
24 request. If the Non-Party timely seeks a protective order, the Receiving Party shall
25 not produce any information in its possession or control that is subject to the
26 confidentiality agreement with the Non-Party before a determination by the court
27 unless otherwise required by the law or court order. Absent a court order to the
28

1 contrary, the Non-Party shall bear the burden and expense of seeking protection in
2 this court of its Protected Material.

3 **10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

4 If a Receiving Party learns that, by inadvertence or otherwise, it has
5 disclosed Protected Material to any person or in any circumstance not authorized
6 under this Protective Order, the Receiving Party must immediately (a) notify in
7 writing the Designating Party of the unauthorized disclosures, (b) use its best
8 efforts to retrieve all unauthorized copies of the Protected Material, (c) inform the
9 person or persons to whom unauthorized disclosures were made of all the terms of
10 this Order, and (d) request such person or persons to execute the
11 “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit
12 A.

13 **11. INADVERTENT PRODUCTION OF PRIVILEGED OR**
14 **OTHERWISE PROTECTED MATERIAL**

15 When a Producing Party gives notice to Receiving Parties that certain
16 inadvertently produced material is subject to a claim of privilege or other
17 protection, the obligations of the Receiving Parties are those set forth in Federal
18 Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify
19 whatever procedure may be established in an e-discovery order that provides for
20 production without prior privilege review. Pursuant to Federal Rule of Evidence
21 502(d) and (e), insofar as the parties reach an agreement on the effect of disclosure
22 of a communication or information covered by the attorney-client privilege or
23 work product protection, the parties may incorporate their agreement into this
24 Protective Order.

25 **12. MISCELLANEOUS**

26 12.1 Right to Further Relief. Nothing in this Order abridges the right of any
27 person to seek its modification by the Court in the future.
28

1 12.2 Right to Assert Other Objections. No Party waives any right it
2 otherwise would have to object to disclosing or producing any information or item
3 on any ground not addressed in this Protective Order. Similarly, no Party waives
4 any right to object on any ground to use in evidence of any of the material covered
5 by this Protective Order.

6 12.3 Filing Protected Material. A Party that seeks to file any Protected
7 Material must apply to the Court, in compliance with Civil Local Rule 79-5 and
8 any pertinent orders of the assigned District Judge and Magistrate Judge, to file the
9 documents under seal. If a Party's request to file Protected Material under seal is
10 denied by the court, and the Designating Party has not appealed the decision, then
11 the Receiving Party may file the information in the public record unless otherwise
12 instructed by the court.

13 **13. FINAL DISPOSITION**

14 Within 60 days of the final disposition of this Action, each Receiving Party
15 must return all Protected Material to the Producing Party or destroy such material.
16 As used in this subdivision, "all Protected Material" includes all copies, abstracts,
17 compilations, summaries, and any other format reproducing or capturing any of the
18 Protected Material. Whether the Protected Material is returned or destroyed, upon
19 request by the Designating Party, the Receiving Party must submit a written
20 certification to the Producing Party (and, if not the same person or entity, to the
21 Designating Party) that (1) identifies (by category, where appropriate) all the
22 Protected Material that was returned or destroyed and (2) affirms that the
23 Receiving Party has not retained any copies, abstracts, compilations, summaries or
24 any other format reproducing or capturing any of the Protected Material.
25 Notwithstanding this provision, Counsel are entitled to retain an archival copy of
26 all pleadings, motion papers, trial, deposition, and hearing transcripts, legal
27 memoranda, correspondence, deposition and trial exhibits, expert reports, attorney
28 work product, and consultant and expert work product, even if such materials

1 contain Protected Material. Any such archival copies that contain or constitute
2 Protected Material remain subject to this Protective Order.

3 **14 VIOLATION**

4 Any violation of this Order may be punished by any and all appropriate
5 measures including, without limitation, contempt proceedings and/or monetary
6 sanctions.

7
8 IT IS SO STIPULATED.

9
10 DATED December 19, 2016

11
12
13 /s/ Brian T. Dunn

14 BRIAN T. DUNN
15 Attorney for Plaintiff

16 EILEEN M. DECKER
17 United States Attorney
18 DOROTHY A. SCHOUTEN
19 Assistant United States Attorney
20 Chief, Civil Division
21 ROBYN-MARIE LYON MONTELEONE
22 Assistant United States Attorney
23 Chief, General Civil Section

24 /s/ Justin A. Okun

25 JUSTIN A. OKUN
26 Assistant United States Attorney
27 Attorneys for Defendants
28 United States of America
and Special Agent Valentine

1 FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.

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4 DATED: December 29, 2016

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7 HON. ALICIA G. ROSENBERG
8 United States Magistrate Judge

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1 EXHIBIT A

2 ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

3 I, _____ [print or type full name], of
4 _____ [print or type full address],

5 declare under penalty of perjury that I have read in its entirety and understand the
6 Protective Order that was issued by the United States District Court for the Central
7 District of California on _____ in the case of *Jonathan*
8 *Garcia v. United States of America, et al.*, 2:16-cv-01664 ODW (AGRx). I agree to
9 comply with and to be bound by all the terms of this Protective Order and I
10 understand and acknowledge that failure to so comply could expose me to
11 sanctions and punishment in the nature of contempt. I solemnly promise that I will
12 not disclose in any manner any information or item that is subject to this Protective
13 Order to any person or entity except in strict compliance with the provisions of this
14 Order.

15 I further agree to submit to the jurisdiction of the United States District
16 Court for the Central District of California for the purpose of enforcing the terms
17 of this Protective Order, even if such enforcement proceedings occur after
18 termination of this action. I hereby appoint _____ [print
19 or type full name] of _____ [print or
20 type full address and telephone number] as my California agent for service of
21 process in connection with this action or any proceedings related to enforcement of
22 this Protective Order.

23 Date: _____

24 City and State where sworn and signed: _____

26 Printed name: _____

28 Signature: _____