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

DANIEL GARZA, an individual;
Plaintiff,

vs.

CITY OF LOS ANGELES; Police Officer
MARIO CARDONA; Police Chief
CHARLIE BECK, in his individual and
official capacity; DOES 1-10, inclusive,
Defendants.

CASE NO. CV 16-03579 SVW (AFMx)

**STIPULATED PROTECTIVE
ORDER**

MARIO CARDONA, an individual,
Cross-Claimant,

vs.

CITY OF LOS ANGELES, et al.,
Cross-Defendants.

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

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

11 **B. GOOD CAUSE STATEMENT**

12 Plaintiff is seeking materials and information that Defendant City of Los Angeles
13 (“City”) maintains as confidential, such as personnel files of the police officers involved
14 in this incident, Force Investigation Division materials and information, Internal
15 Affairs materials and information, video recordings, and other administrative materials
16 and information currently in the possession of the City and which the City believes
17 need special protection from public disclosure and from use for any purpose other than
18 prosecuting this litigation. Plaintiff is also seeking official information contained in the
19 personnel files of the police officers involved in the subject incident, which the City
20 maintains as strictly confidential and which the City believes need special protection
21 from public disclosure and from use for any purpose other than prosecuting this
22 litigation;

23 The City asserts that the confidentiality of the materials and information sought
24 by Plaintiff is recognized by California and federal law, as evidenced *inter alia* by
25 California Penal Code section 832.7 and *Kerr v. United States Dist. Ct. for N.D. Cal.*, 511
26 F.2d 192, 198 (9th Cir. 1975), *aff’d*, 426 U.S. 394 (1976). Furthermore, the City has not
27 publicly released the materials and information referenced above except under
28 protective order or pursuant to court order, if at all. Therefore, the City contends that

1 absent a protective order delineating the responsibilities of nondisclosure on the part of
2 the parties hereto, there is a specific risk of unnecessary and undue disclosure by one or
3 more of the many attorneys, secretaries, law clerks, paralegals and expert witnesses
4 involved in this case. Thus, the City contends that unfettered disclosure of the materials
5 and information, absent a protective order, would impact the rights of the City herein
6 to receive a fair trial.

7 Accordingly, to expedite the flow of information, to facilitate the prompt
8 resolution of disputes over confidentiality of discovery materials, to adequately protect
9 information the parties are entitled to keep confidential, to ensure that the parties are
10 permitted reasonable necessary uses of such material in preparation for and in the
11 conduct of trial, to address their handling at the end of the litigation, and serve the ends
12 of justice, a protective order for such information is justified in this matter. It is the
13 intent of the parties that information will not be designated as confidential for tactical
14 reasons and that nothing be so designated without a good faith belief that it has been
15 maintained in a confidential, non-public manner, and there is good cause why it should
16 not be part of the public record of this case.

17 **C. ACKNOWLEDGMENT OF PROCEDURE FOR FILING**
18 **UNDER SEAL**

19 The parties further acknowledge, as set forth in Section 12.3, below, that this
20 Stipulated Protective Order does not entitle them to file confidential information under
21 seal; Local Civil Rule 79-5 sets forth the procedures that must be followed and the
22 standards that will be applied when a party seeks permission from the court to file
23 material under seal.

24 There is a strong presumption that the public has a right of access to judicial
25 proceedings and records in civil cases. In connection with non-dispositive motions,
26 good cause must be shown to support a filing under seal. *See Kamakana v. City and*
27 *County of Honolulu*, 447 F.3d 1172, 1176 (9th Cir. 2006), *Phillips v. Gen. Motors Corp.*, 307
28 F.3d 1206, 1210-11 (9th Cir. 2002), *Makar-Welbon v. Sony Electronics, Inc.*, 187 F.R.D. 576,

1 577 (E.D. Wis. 1999) (even stipulated protective orders require good cause showing),
2 and a specific showing of good cause or compelling reasons with proper evidentiary
3 support and legal justification, must be made with respect to Protected Material that a
4 party seeks to file under seal. The parties' mere designation of Disclosure or Discovery
5 Material as CONFIDENTIAL does not—without the submission of competent
6 evidence by declaration, establishing that the material sought to be filed under seal
7 qualifies as confidential, privileged, or otherwise protectable—constitute good cause.
8 Further, if a party requests sealing related to a dispositive motion or trial, then
9 compelling reasons, not only good cause, for the sealing must be shown, and the relief
10 sought shall be narrowly tailored to serve the specific interest to be protected. *See Pintos*
11 *v. Pacific Creditors Ass'n.*, 605 F.3d 665, 677-79 (9th Cir. 2010). For each item or type of
12 information, document, or thing sought to be filed or introduced under seal in
13 connection with a dispositive motion or trial, the party seeking protection must
14 articulate compelling reasons, supported by specific facts and legal justification, for the
15 requested sealing order. Again, competent evidence supporting the application to file
16 documents under seal must be provided by declaration.

17 Any document that is not confidential, privileged, or otherwise protectable in its
18 entirety will not be filed under seal if the confidential portions can be redacted. If
19 documents can be redacted, then a redacted version for public viewing, omitting only
20 the confidential, privileged, or otherwise protectable portions of the document, shall be
21 filed. Any application that seeks to file documents under seal in their entirety should
22 include an explanation of why redaction is not feasible.

23

24 **2. DEFINITIONS**

25 2.1 Action: this pending federal lawsuit.

26 2.2 Challenging Party: a Party or Non-Party that challenges the designation of
27 information or items under this Order.

28

1 2.3 “CONFIDENTIAL” Information or Items: information (regardless of how
2 it is generated, stored or maintained) or tangible things that qualify for protection under
3 Federal Rule of Civil Procedure 26(c), and as specified above in the Good Cause
4 Statement.

5 2.4 Counsel: Outside Counsel of Record and House Counsel (as well as their
6 support staff).

7 2.5 Designating Party: a Party or Non-Party that designates information or
8 items that it produces in disclosures or in responses to discovery as
9 “CONFIDENTIAL.”

10 2.6 Disclosure or Discovery Material: all items or information, regardless of
11 the medium or manner in which it is generated, stored, or maintained (including,
12 among other things, testimony, transcripts, and tangible things), that are produced or
13 generated in disclosures or responses to discovery in this matter.

14 2.7 Expert: a person with specialized knowledge or experience in a matter
15 pertinent to the litigation who has been retained by a Party or its counsel to serve as an
16 expert witness or as a consultant in this Action.

17 2.8 House Counsel: attorneys who are employees of a party to this Action.
18 House Counsel does not include Outside Counsel of Record or any other outside
19 counsel.

20 2.9 Non-Party: any natural person, partnership, corporation, association or
21 other legal entity not named as a Party to this action.

22 2.10 Outside Counsel of Record: attorneys who are not employees of a party
23 to this Action but are retained to represent or advise a party to this Action and have
24 appeared in this Action on behalf of that party or are affiliated with a law firm that has
25 appeared on behalf of that party, and includes support staff.

26 2.11 Party: any party to this Action, including all of its officers, directors,
27 employees, consultants, retained experts, and Outside Counsel of Record (and their
28 support staffs).

1 2.12 Producing Party: a Party or Non-Party that produces Disclosure or
2 Discovery Material in this Action.

3 2.13 Professional Vendors: persons or entities that provide litigation support
4 services (e.g., photocopying, videotaping, translating, preparing exhibits or
5 demonstrations, and organizing, storing, or retrieving data in any form or medium) and
6 their employees and subcontractors.

7 2.14 Protected Material: any Disclosure or Discovery Material that is
8 designated as “CONFIDENTIAL.”

9 2.15 Receiving Party: a Party that receives Disclosure or Discovery Material
10 from a Producing Party.

11 12 **3. SCOPE**

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

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

20 21 **4. DURATION**

22 Once a case proceeds to trial, information that was designated as
23 CONFIDENTIAL or maintained pursuant to this protective order used or introduced
24 as an exhibit at trial becomes public and will be presumptively available to all members
25 of the public, including the press, unless compelling reasons supported by specific
26 factual findings to proceed otherwise are made to the trial judge in advance of the trial.
27 *See Kamakana*, 447 F.3d at 1180-81 (distinguishing “good cause” showing for sealing
28 documents produced in discovery from “compelling reasons” standard when merits-

1 related documents are part of court record). Accordingly, the terms of this protective
2 order do not extend beyond the commencement of the trial.

3
4 **5. DESIGNATING PROTECTED MATERIAL**

5 5.1 Exercise of Restraint and Care in Designating Material for Protection.

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

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

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

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

25 Designation in conformity with this Order requires:

26 (a) for information in documentary form (e.g., paper or electronic
27 documents, but excluding transcripts of depositions or other pretrial or trial
28 proceedings), that the Producing Party affix at a minimum, the legend

1 “CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER” (hereinafter
2 “CONFIDENTIAL legend”), to each page that contains protected material. If only a
3 portion of the material on a page qualifies for protection, the Producing Party also
4 must clearly identify the protected portion(s)
5 (e.g., by making appropriate markings in the margins).

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

17 (b) for testimony given in depositions that the Designating Party identifies
18 the Disclosure or Discovery Material on the record, before the close of the deposition
19 all protected testimony.

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

26 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
27 failure to designate qualified information or items does not, standing alone, waive the
28 Designating Party’s right to secure protection under this Order for such material.

1 Upon timely correction of a designation, the Receiving Party must make reasonable
2 efforts to assure that the material is treated in accordance with the provisions of this
3 Order.

4
5 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

6 6.1 Timing of Challenges. Any Party or Non-Party may challenge a
7 designation of confidentiality at any time that is consistent with the Court's Scheduling
8 Order.

9 6.2 Meet and Confer. The Challenging Party shall initiate the dispute
10 resolution process under Local Rule 37-1 et seq.

11 6.3 Joint Stipulation. Any challenge submitted to the Court shall be via a joint
12 stipulation pursuant to Local Rule 37-2.

13 6.4 The burden of persuasion in any such challenge proceeding shall be on
14 the Designating Party. Frivolous challenges, and those made for an improper purpose
15 (e.g., to harass or impose unnecessary expenses and burdens on other parties) may
16 expose the Challenging Party to sanctions. Unless the Designating Party has waived or
17 withdrawn the confidentiality designation, all parties shall continue to afford the
18 material in question the level of protection to which it is entitled under the Producing
19 Party's designation until the Court rules on the challenge.

20
21 **7. ACCESS TO AND USE OF PROTECTED MATERIAL**

22 7.1 Basic Principles. A Receiving Party may use Protected Material that is
23 disclosed or produced by another Party or by a Non-Party in connection with this
24 Action only for prosecuting, defending or attempting to settle this Action. Such
25 Protected Material may be disclosed only to the categories of persons and under the
26 conditions described in this Order. When the Action has been terminated, a Receiving
27 Party must comply with the provisions of section 13 below (FINAL DISPOSITION).

28

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

4 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless
5 otherwise ordered by the court or permitted in writing by the Designating Party, a
6 Receiving Party may disclose any information or item designated “CONFIDENTIAL”
7 only to:

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

11 (b) the officers, directors, and employees (including House Counsel) of
12 the Receiving Party to whom disclosure is reasonably necessary for this Action;

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

16 (d) the court and its personnel;

17 (e) court reporters and their staff;

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

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

23 (h) during their depositions, witnesses, and attorneys for witnesses, in
24 the Action to whom disclosure is reasonably necessary provided: (1) the deposing party
25 requests that the witness sign the form attached as Exhibit 1 hereto; and (2) they will
26 not be permitted to keep any confidential information unless they sign the
27 “Acknowledgment and Agreement to Be Bound” (Exhibit A), unless otherwise agreed
28 by the Designating Party or ordered by the court. Pages of transcribed deposition

1 testimony or exhibits to depositions that reveal Protected Material may be separately
2 bound by the court reporter and may not be disclosed to anyone except as permitted
3 under this Stipulated Protective Order; and

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

6
7 **8. PROTECTED MATERIAL SUBPOENAED OR ORDERED**
8 **PRODUCED IN OTHER LITIGATION**

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

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

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

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

20 If the Designating Party timely seeks a protective order, the Party served with
21 the subpoena or court order shall not produce any information designated in this action
22 as “CONFIDENTIAL” before a determination by the court from which the subpoena
23 or order issued, unless the Party has obtained the Designating Party’s permission. The
24 Designating Party shall bear the burden and expense of seeking protection in that court
25 of its confidential material and nothing in these provisions should be construed as
26 authorizing or encouraging a Receiving Party in this Action to disobey a lawful directive
27 from another court.

28

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

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

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

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

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

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

20 (c) If the Non-Party fails to seek a protective order from this court
21 within 14 days of receiving the notice and accompanying information, the Receiving
22 Party may produce the Non-Party’s confidential information responsive to the
23 discovery request. If the Non-Party timely seeks a protective order, the Receiving Party
24 shall not produce any information in its possession or control that is subject to the
25 confidentiality agreement with the Non-Party before a determination by the court.
26 Absent a court order to the contrary, the Non-Party shall bear the burden and expense
27 of seeking protection in this court of its Protected Material.

28

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

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

10
11 **11. INADVERTENT PRODUCTION OF PRIVILEGED OR**
12 **OTHERWISE PROTECTED MATERIAL**

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

23
24 **12. MISCELLANEOUS**

25 12.1 Right to Further Relief. Nothing in this Order abridges the right of any
26 person to seek its modification by the Court in the future.

27 12.2 Right to Assert Other Objections. By stipulating to the entry of this
28

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

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

11
12 **13. FINAL DISPOSITION**

13 After the final disposition of this Action, as defined in paragraph 4, within 60
14 days of a written request by the Designating Party, each Receiving Party must return all
15 Protected Material to the Producing Party or destroy such material. As used in this
16 subdivision, "all Protected Material" includes all copies, abstracts, compilations,
17 summaries, and any other format reproducing or capturing any of the Protected
18 Material. Whether the Protected Material is returned or destroyed, the Receiving Party
19 must submit a written certification to the Producing Party (and, if not the same person
20 or entity, to the Designating Party) by the 60 day deadline that (1) identifies (by
21 category, where appropriate) all the Protected Material that was returned or destroyed
22 and (2) affirms that the Receiving Party has not retained any copies, abstracts,
23 compilations, summaries or any other format reproducing or capturing any of the
24 Protected Material. Notwithstanding this provision, Counsel are entitled to retain an
25 archival copy of all pleadings, motion papers, trial, deposition, and hearing transcripts,
26 legal memoranda, correspondence, deposition and trial exhibits, expert reports,
27 attorney work product, and consultant and expert work product, even if such materials
28 contain Protected Material. Any such archival copies that contain or constitute

1 Protected Material remain subject to this Protective Order as set forth in Section 4
2 (DURATION).

3 14. VIOLATION

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

6
7 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

8
9 DATED: _____

10
11 _____
12 Attorneys for Plaintiff

13
14 DATED: _____

15
16 _____
17 Attorneys for Defendant

18
19 FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.

20
21 DATED: 4/3/2017

22 
23 _____

24 ALEXANDER F. MacKINNON

25 United States Magistrate Judge
26
27
28

1 EXHIBIT A

2 ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

3
4 I, _____ [print or type full name], of
5 _____ [print or type full address], declare under penalty of perjury that I
6 have read in its entirety and understand the Stipulated Protective Order that was issued
7 by the United States District Court for the Central District of California on [date] in the
8 case of *Garza v. City of Los Angeles, et al.*, CV 16-03579 SVW (AFM). I agree to comply
9 with and to be bound by all the terms of this Stipulated Protective Order and I
10 understand and acknowledge that failure to so comply could expose me to sanctions
11 and punishment in the nature of contempt. I solemnly promise that I will not disclose
12 in any manner any information or item that is subject to this Stipulated Protective
13 Order to any person or entity except in strict compliance with the provisions of this
14 Order. I further agree to submit to the jurisdiction of the United States District Court
15 for the Central District of California for enforcing the terms of this Stipulated
16 Protective Order, even if such enforcement proceedings occur after termination of this
17 action.

18 I hereby appoint _____ [print or type full name] of
19 _____ [print or type full address and
20 telephone number] as my California agent for service of process in connection with this
21 action or any proceedings related to enforcement of this Stipulated Protective Order.

22
23 Date: _____

24 City and State where sworn and signed: _____

25
26 Printed name: _____

27
28 Signature: _____