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COUNTY OF LOS ANGELES

13
14 **UNITED STATES DISTRICT COURT**
15 **CENTRAL DISTRICT OF CALIFORNIA**

17 SHAWN BERRY,) Case No. 2:16-CV-04112 MWF-SK
18 Plaintiff,) Honorable Steve Kim
19 vs.)
20 COUNTY OF LOS ANGELES, an) **STIPULATED PROTECTIVE**
21 entity of the State of California; and) **ORDER**
22 DOES 1-10, Inclusive,)
23 Defendants.)
24 _____) Action Filed: June 9, 2016

25 1. A. PURPOSES AND LIMITATIONS

26 Discovery in this action is likely to involve production of confidential,
27 proprietary, or private information for which special protection from public
28 disclosure and from use for any purpose other than prosecuting this litigation may

1 be warranted. Accordingly, the parties hereby stipulate to and petition the Court
2 to enter the following Stipulated Protective Order. The parties acknowledge that
3 this Order does not confer blanket protections on all disclosures or responses to
4 discovery and that the protection it affords from public disclosure and use extends
5 only to the limited information or items that are entitled to confidential treatment
6 under the applicable legal principles. The parties further acknowledge, as set
7 forth in Section 2.3, below, that this Stipulated Protective Order does not entitle
8 them to file confidential information under seal; Civil Local Rule 79-5 sets forth
9 the procedures that must be followed and the standards that will be applied when
10 a party seeks permission from the court to file material under seal.

11 **B. GOOD CAUSE STATEMENT**

12 Defendants anticipate that during discovery in this action they will
13 exchange documents, items, or materials and other information that contain
14 sensitive and confidential information that derives actual or potential value from
15 not being generally known to the public and are the subject of reasonable efforts
16 to maintain their confidentiality. Defendants believe, in good faith, that these
17 documents and/or writing are protected by the Official Information Privilege, the
18 right to privacy guaranteed in Federal Constitution, First Amendment and
19 California Constitution, Article I, Section I, and various California Government,
20 Penal, and Evidence Code sections, and thus protected from disclosure. This will
21 be accomplished by affixing to such document or writing a legend, such as
22 “CONFIDENTIAL” or “CONFIDENTIAL – SUBJECT TO PROTECTIVE
23 ORDER” or words of similar effect. Documents and writings so designated,
24 hereinafter, collectively, (“Confidential Information”), shall be treated in
25 accordance with the terms of this stipulation/protective order. Documents,
26 writings and things to be designated as such, include the following:

27 a) Any material relating to or regarding the personnel files and/or
28 records of deputies of the Los Angeles County Sheriff’s Department (“LASD”);

1 b) Any material relating to incidents involving Plaintiff
2 containing sensitive and private information regarding third parties.

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

13 2. DEFINITIONS

14 2.1 Action: this pending federal law suit.

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
18 of 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: Outside Counsel of Record (as well as their support staff).

22 2.5 Designating Party: a Party or Non-Party that designates information
23 or items that it produces in disclosures or in responses to discovery as
24 “CONFIDENTIAL.”

25 2.6 Disclosure or Discovery Material: all items or information,
26 regardless of the medium or manner in which it is generated, stored, or
27 maintained (including, among other things, testimony, transcripts, and tangible
28 things), that are produced or generated in disclosures or responses to discovery in

1 this matter.

2 2.7 Expert: a person with specialized knowledge or experience in a matter
3 pertinent to the litigation who has been retained by a Party or its counsel to serve
4 as an expert witness or as a consultant in this Action.

5 2.8 Non-Party: any natural person, partnership, corporation, association,
6 or other legal entity not named as a Party to this action.

7 2.9 Outside Counsel of Record: attorneys who are not employees of a
8 party to this Action but are retained to represent or advise a party to this Action and
9 have appeared in this Action on behalf of that party or are affiliated with a law firm
10 which has appeared on behalf of that party, and includes support staff.

11 2.10 Party: any party to this Action, including all of its employees,
12 consultants, retained experts, and Outside Counsel of Record (and their support
13 staffs).

14 2.11 Producing Party: a Party or Non-Party that produces Disclosure or
15 Discovery Material in this Action.

16 2.12 Professional Vendors: persons or entities that provide litigation
17 support services (e.g., photocopying, videotaping, translating, preparing exhibits or
18 demonstrations, and organizing, storing, or retrieving data in any form or medium)
19 and their employees and subcontractors.

20 2.13 Protected Material: any Disclosure or Discovery Material that is
21 designated as “CONFIDENTIAL.”

22 2.14 Receiving Party: a Party that receives Disclosure or Discovery
23 Material from a Producing Party.

24 3. SCOPE

25 The protections conferred by this Stipulation and Order cover not only
26 Protected Material (as defined above), but also (1) any information copied or
27 extracted from Protected Material; (2) all copies, excerpts, summaries, or
28 compilations of Protected Material; and (3) any testimony, conversations, or

1 presentations by Parties or their Counsel that might reveal Protected Material.

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

4 4. DURATION

5 Even after final disposition of this litigation, the confidentiality obligations
6 imposed by this Order shall remain in effect until a Designating Party agrees
7 otherwise in writing or a court order otherwise directs. Final disposition shall be
8 deemed to be the later of (1) dismissal of all claims and defenses in this Action,
9 with or without prejudice; and (2) final judgment herein after the completion and
10 exhaustion of all appeals, rehearings, remands, trials, or reviews of this Action,
11 including the time limits for filing any motions or applications for extension of
12 time pursuant to applicable law.

13 5. DESIGNATING PROTECTED MATERIAL

14 5.1 Exercise of Restraint and Care in Designating Material for Protection.

15 Each Party or Non-Party that designates information or items for protection under
16 this Order must take care to limit any such designation to specific material that
17 qualifies under the appropriate standards. The Designating Party must designate for
18 protection only those parts of material, documents, items, or oral or written
19 communications that qualify so that other portions of the material, documents,
20 items, or communications for which protection is not warranted are not swept
21 unjustifiably within the ambit of this Order.

22 Mass, indiscriminate, or routinized designations are prohibited.

23 Designations that are shown to be clearly unjustified or that have been made for
24 an improper purpose (e.g., to unnecessarily encumber the case development
25 process or to impose unnecessary expenses and burdens on other parties) may
26 expose the Designating Party to sanctions.

27 If it comes to a Designating Party's attention that information or items that
28 it designated for protection do not qualify for protection, that Designating Party

1 must promptly notify all other Parties that it is withdrawing the inapplicable
2 designation.

3 5.2 Manner and Timing of Designations. Except as otherwise provided
4 in this Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise
5 stipulated or ordered, Disclosure or Discovery Material that qualifies for
6 protection under this Order must be clearly so designated before the material is
7 disclosed or produced.

8 Designation in conformity with this Order requires:

9 (a) for information in documentary form (e.g., paper or electronic
10 documents, but excluding transcripts of depositions or other pretrial or trial
11 proceedings), that the Producing Party affix at a minimum, the legend
12 “CONFIDENTIAL” (hereinafter “CONFIDENTIAL legend”), to each page that
13 contains protected material. If only a portion or portions of the material on a page
14 qualifies for protection, the Producing Party also must clearly identify the
15 protected portion(s) (e.g., by making appropriate markings in the margins).

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

28 (b) for testimony given in depositions that the Designating Party

1 identify the Disclosure or Discovery Material on the record, before the close of
2 the deposition all protected testimony.

3 (c) for information produced in some form other than documentary
4 and for any other tangible items, that the Producing Party affix in a prominent
5 place on the exterior of the container or containers in which the information is
6 stored the legend "CONFIDENTIAL." If only a portion or portions of the
7 information warrants protection, the Producing Party, to the extent practicable,
8 shall identify the protected portion(s).

9 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
10 failure to designate qualified information or items does not, standing alone, waive
11 the Designating Party's right to secure protection under this Order for such
12 material. Upon timely correction of a designation, the Receiving Party must make
13 reasonable efforts to assure that the material is treated in accordance with the
14 provisions of this Order.

15 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

16 6.1 Timing of Challenges. Any Party or Non-Party may challenge a
17 designation of confidentiality at any time that is consistent with the Court's
18 Scheduling Order.

19 6.2 Meet and Confer. The Challenging Party shall initiate the dispute
20 resolution process under Local Rule 37.1 et seq.

21 6.3 The burden of persuasion in any such challenge proceeding shall be
22 on the Designating Party. Frivolous challenges, and those made for an improper
23 purpose (e.g., to harass or impose unnecessary expenses and burdens on other
24 parties) may expose the Challenging Party to sanctions. Unless the Designating
25 Party has waived or withdrawn the confidentiality designation, all parties shall
26 continue to afford the material in question the level of protection to which it is
27 entitled under the Producing Party's designation until the Court rules on the
28 challenge.

1 7. ACCESS TO AND USE OF PROTECTED MATERIAL

2 7.1 Basic Principles. A Receiving Party may use Protected Material that
3 is disclosed or produced by another Party or by a Non-Party in connection with
4 this Action only for prosecuting, defending, or attempting to settle this Action.
5 Such Protected Material may be disclosed only to the categories of persons and
6 under the conditions described in this Order. When the Action has been
7 terminated, a Receiving Party must comply with the provisions of section 13
8 below (FINAL DISPOSITION).

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

12 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless
13 otherwise ordered by the court or permitted in writing by the Designating Party, a
14 Receiving Party may disclose any information or item designated
15 “CONFIDENTIAL” only to:

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

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

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

24 (d) the court and its personnel;

25 (e) court reporters and their staff;

26 (f) professional jury or trial consultants, mock jurors, and Professional
27 Vendors to whom disclosure is reasonably necessary for this Action and who
28

1 have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

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

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

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

15 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED
16 IN OTHER LITIGATION

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

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

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

26 (c) cooperate with respect to all reasonable procedures sought to be
27 pursued by the Designating Party whose Protected Material may be affected.
28

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

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

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

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

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

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

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

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

10 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

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

20 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
21 PROTECTED MATERIAL

22 When a Producing Party gives notice to Receiving Parties that certain
23 inadvertently produced material is subject to a claim of privilege or other
24 protection, the obligations of the Receiving Parties are those set forth in Federal
25 Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify
26 whatever procedure may be established in an e-discovery order that provides for
27 production without prior privilege review. Pursuant to Federal Rule of Evidence
28 502(d) and (e), insofar as the parties reach an agreement on the effect of disclosure

1 of a communication or information covered by the attorney-client privilege or work
2 product protection, the parties may incorporate their agreement in the stipulated
3 protective order submitted to the court.

4 12. MISCELLANEOUS

5 12.1 Right to Further Relief. Nothing in this Order abridges the right of
6 any person to seek its modification by the Court in the future.

7 12.2 Right to Assert Other Objections. By stipulating to the entry of this
8 Protective Order no Party waives any right it otherwise would have to object to
9 disclosing or producing any information or item on any ground not addressed in
10 this Stipulated Protective Order. Similarly, no Party waives any right to object on
11 any ground to use in evidence of any of the material covered by this Protective
12 Order.

13 12.3 Filing Protected Material. A Party that seeks to file under seal any
14 Protected Material must comply with Civil Local Rule 79-5. Protected Material
15 may only be filed under seal pursuant to a court order authorizing the sealing of
16 the specific Protected Material at issue. If a Party's request to file Protected
17 Material under seal is denied by the court, then the Receiving Party may file the
18 information in the public record unless otherwise instructed by the court.

19 13. FINAL DISPOSITION

20 After the final disposition of this Action, as defined in paragraph 4, within
21 60 days of a written request by the Designating Party, each Receiving Party must
22 return all Protected Material to the Producing Party or destroy such material. As
23 used in this subdivision, "all Protected Material" includes all copies, abstracts,
24 compilations, summaries, and any other format reproducing or capturing any of
25 the Protected Material. Whether the Protected Material is returned or destroyed,
26 the Receiving Party must submit a written certification to the Producing Party
27 (and, if not the same person or entity, to the Designating Party) by the 60 day
28 deadline that (1) identifies (by category, where appropriate) all the Protected

1 Material that was returned or destroyed and (2)affirms that the Receiving Party
2 has not retained any copies, abstracts, compilations, summaries or any other
3 format reproducing or capturing any of the Protected Material. Notwithstanding
4 this provision, Counsel are entitled to retain an archival copy of all pleadings,
5 motion papers, trial, deposition, and hearing transcripts, legal memoranda,
6 correspondence, deposition and trial exhibits, expert reports, attorney work
7 product, and consultant and expert work product, even if such materials contain
8 Protected Material. Any such archival copies that contain or constitute Protected
9 Material remain subject to this Protective Order as set forth in Section 4
10 (DURATION).

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

4 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

5
6 Dated: February 13, 2017

LAYFIELD & BARRETT, APC

7
8 By /s/ Jonathan Teller
9 Jonathan Teller
10 Attorney for Plaintiff
Shawn Berry

11
12 Dated: February 13, 2017

LAWRENCE BEACH ALLEN & CHOI, PC

13
14 By /s/ Arnold F. Lee
15 Arnold F. Lee¹
16 Attorneys for Defendants Los
Angeles County

17
18 FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.

19 DATED: February 15, 2017

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21 _____
22 Honorable Steve Kim
23 United States Magistrate Judge

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28 ¹ As the filer of this Stipulation, I, Arnold F. Lee, attest that Jonathan Teller concurs in the content of the Stipulation and has authorized its filing.

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EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of _____
[print or type full address], declare under penalty of perjury that I have read in its
entirety and understand the Stipulated Protective Order that was issued by the
United States District Court for the Central District of California on _____
[date] in the case of _____ **[insert formal name of the case
and the number and initials assigned to it by the court]**. I agree to comply
with and to be bound by all the terms of this Stipulated Protective Order and I
understand and acknowledge that failure to so comply could expose me to
sanctions and punishment in the nature of contempt. I solemnly promise that I
will not disclose in any manner any information or item that is subject to this
Stipulated Protective Order to any person or entity except in strict compliance
with the provisions of this Order.

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

Date: _____

City and State where sworn and signed: _____

Printed name: _____

Signature: _____