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

Nicholas Johnson,

Plaintiff,

v.

THE CITY OF LOS ANGELES,
THOMAS MALLOY, FIDEL
GONZALES and DOES 3 through 10.

Defendants.

) **CASE NO. CV-17-04104-KS**
) [Assigned: Magistrate Judge
) Hon. Karen L. Stevenson]

) **STIPULATED**
) **PROTECTIVE ORDER**

1. **A. PURPOSES AND LIMITATIONS**

Discovery in this action is likely to involve production of confidential, proprietary, or private information for which special protection from public disclosure and from use for any purpose other than prosecuting this litigation may be warranted. Accordingly, the parties hereby stipulate to and petition the Court to enter the following Stipulated Protective Order. The parties acknowledge that this Order does not confer blanket protections on all disclosures or responses to discovery and that the protection it

1 affords from public disclosure and use extends only to the limited information or items
2 that are entitled to confidential treatment under the applicable legal principles. The
3 parties further acknowledge, as set forth in Section 12.3, below, that this Stipulated
4 Protective Order does not entitle them to file confidential information under seal; Civil
5 Local Rule 79-5 sets forth the procedures that must be followed and the standards that
6 will be applied when a party seeks permission from the court to file material under seal.
7

8 B. GOOD CAUSE STATEMENT

9 The Los Angeles Police Department conducted a non-categorical use of force
10 investigation and internal affairs investigation, both internal investigations, into this
11 matter. As part of the investigation police officers digital in-car video (“DICV”) were
12 collected depicting the underlying incident. Further, compelled statements by way of
13 written questions were taken from police officers. Such information is obtained through
14 the administrative investigation of this matter by the LAPD and maintained as
15 confidential peace officer personnel records and utilized for administrative issues. A
16 protective order is appropriate for this information and related documents as such
17 internal investigations can be used to ascertain if police policies and procedures in such
18 areas as supervision, training, tactics, policies, etc., should be modified. These internal
19 investigations are an essential aid to providing a critical, self-evaluation of LAPD
20 officers and policies and accordingly serve the City of Los Angeles.

21 Police reports, a 911 call, police radio communication and documents describing
22 said information, were also generated as part of the incident. These documents and
23 audio contain confidential, personal information for unrelated third-parties. A protective
24 order is appropriate for this information and all third-party information, to protect their
25 privacy and prevent embarrassment or humiliation for persons not involved in this
26 litigation.

27 Unrelated LAPD use of force investigations and internal affairs complaint
28 investigations may, at some point, also be produced as a part of discovery in this

1 litigation. For identical reasons as those listed in the first paragraph of this section, a
2 protective order is appropriate for any such information which may be produced as a part
3 of this litigation.

4 Finally, medical records for Plaintiff may be produced as discovery in this
5 litigation. Any medical records would inherently contain confidential, private
6 information. A protective order is appropriate for any medical records produced in this
7 litigation to prevent humiliation, embarrassment and a breach of confidential medical
8 information.

9
10 **2. DEFINITIONS**

11 2.1 Action: This pending federal lawsuit, *Johnson v. City of Los Angeles*,
12 2:17-cv-04104-KS.

13 2.2 Challenging Party: a Party or Non-Party that challenges the designation of
14 information or items under this Order.

15 2.3 “CONFIDENTIAL” Information or Items: information (regardless of how
16 it is generated, stored or maintained) or tangible things that qualify for protection under
17 Federal Rule of Civil Procedure 26(c), and as specified above in the Good Cause
18 Statement.

19 2.4 Counsel: Outside Counsel of Record and House Counsel (as well as their
20 support staff).

21 2.5 Designating Party: a Party or Non-Party that designates information or
22 items that it produces in disclosures or in responses to discovery as “CONFIDENTIAL.”

23 2.6 Disclosure or Discovery Material: all items or information, regardless of
24 the medium or manner in which it is generated, stored, or maintained (including, among
25 other things, testimony, transcripts, and tangible things), that are produced or generated
26 in disclosures or responses to discovery in this matter.

1 2.7 Expert: a person with specialized knowledge or experience in a matter
2 pertinent to the litigation who has been retained by a Party or its counsel to serve as an
3 expert witness or as a consultant in this Action.

4 2.8 House Counsel: attorneys who are employees of a party to this Action.
5 House Counsel does not include Outside Counsel of Record or any other outside
6 counsel.

7 2.9 Non-Party: any natural person, partnership, corporation, association, or
8 other legal entity not named as a Party to this action.

9 2.10 Outside Counsel of Record: attorneys who are not employees of a party to
10 this Action but are retained to represent or advise a party to this Action and have
11 appeared in this Action on behalf of that party or are affiliated with a law firm which has
12 appeared on behalf of that party, and includes support staff.

13 2.11 Party: any party to this Action, including all of its officers, directors,
14 employees, consultants, retained experts, and Outside Counsel of Record (and their
15 support staffs).

16 2.12 Producing Party: a Party or Non-Party that produces Disclosure or
17 Discovery Material in this Action.

18 2.13 Professional Vendors: persons or entities that provide litigation support
19 services (e.g., photocopying, videotaping, translating, preparing exhibits or
20 demonstrations, and organizing, storing, or retrieving data in any form or medium) and
21 their employees and subcontractors.

22 2.14 Protected Material: any Disclosure or Discovery Material that is designated
23 as “CONFIDENTIAL.”

24 2.15 Receiving Party: a Party that receives Disclosure or Discovery Material
25 from a Producing Party.

26 3. SCOPE

27 The protections conferred by this Stipulation and Order cover not only Protected
28 Material (as defined above), but also (1) any information copied or extracted from

1 Protected Material; (2) all copies, excerpts, summaries, or compilations of Protected
2 Material; and (3) any testimony, conversations, or presentations by Parties or their
3 Counsel that might reveal Protected Material.

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

6 4. DURATION

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

16 5. DESIGNATING PROTECTED MATERIAL

17 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each
18 Party or Non-Party that designates information or items for protection under this Order
19 must take care to limit any such designation to specific material that qualifies under the
20 appropriate standards. The Designating Party must designate for protection only those
21 parts of material, documents, items, or oral or written communications that qualify so
22 that other portions of the material, documents, items, or communications for which
23 protection is not warranted are not swept unjustifiably within the ambit of this Order.

24 Mass, indiscriminate, or routinized designations are prohibited. Designations that
25 are shown to be clearly unjustified or that have been made for an improper purpose (e.g.,
26 to unnecessarily encumber the case development process or to impose unnecessary
27 expenses and burdens on other parties) may expose the Designating Party to sanctions.
28

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

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

8 Designation in conformity with this Order requires:

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

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

1 (b) for testimony given in depositions that the Designating Party identify the
2 Disclosure or Discovery Material on the record, before the close of the deposition all
3 protected testimony.

4 (c) for information produced in some form other than documentary and
5 for any other tangible items, that the Producing Party affix in a prominent place on the
6 exterior of the container or containers in which the information is stored the legend
7 “CONFIDENTIAL.” If only a portion or portions of the information warrants protection,
8 the Producing Party, to the extent practicable, 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 the
11 Designating Party’s right to secure protection under this Order for such material. Upon
12 timely correction of a designation, the Receiving Party must make reasonable efforts to
13 assure that the material is treated in accordance with the provisions of this Order.

14
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 Scheduling
18 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 on the
22 Designating Party. Frivolous challenges, and those made for an improper purpose (e.g.,
23 to harass or impose unnecessary expenses and burdens on other parties) may expose the
24 Challenging Party to sanctions. Unless the Designating Party has waived or withdrawn
25 the confidentiality designation, all parties shall continue to afford the material in
26 question the level of protection to which it is entitled under the Producing Party’s
27 designation until the Court rules on the challenge.

1
2 7. ACCESS TO AND USE OF PROTECTED MATERIAL

3 7.1 Basic Principles. A Receiving Party may use Protected Material that is
4 disclosed or produced by another Party or by a Non-Party in connection with this Action
5 only for prosecuting, defending, or attempting to settle this Action. Such Protected
6 Material may be disclosed only to the categories of persons and under the conditions
7 described in this Order. When the Action has been terminated, a Receiving Party must
8 comply with the provisions of section 13 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 otherwise
13 ordered by the court or permitted in writing by the Designating Party, a Receiving Party
14 may disclose any information or item designated “CONFIDENTIAL” only to:

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

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

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

23 (d) the court and its personnel;

24 (e) court reporters and their staff;

25 (f) professional jury or trial consultants, mock jurors, and Professional Vendors
26 to whom disclosure is reasonably necessary for this Action and who have signed the
27 “Acknowledgment and Agreement to Be Bound” (Exhibit A);
28

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

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

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

14
15 **8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN**
16 **OTHER LITIGATION**

17 If a Party is served with a subpoena or a court order issued in other litigation that
18 compels disclosure of any information or items designated in this Action as
19 “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 order to
23 issue in the other litigation that some or all of the material covered by the subpoena or
24 order is subject to this Protective Order. Such notification shall include a copy of this
25 Stipulated Protective Order; and

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

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

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

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

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

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

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

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

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

9
10 **10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

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

19
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 protection, the
24 obligations of the Receiving Parties are those set forth in Federal Rule of Civil
25 Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure
26 may be established in an e-discovery order that provides for production without prior
27 privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar as the
28 parties reach an agreement on the effect of disclosure of a communication or information

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

4 12. MISCELLANEOUS

5 12.1 Right to Further Relief. Nothing in this Order abridges the right of any
6 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 this
10 Stipulated Protective Order. Similarly, no Party waives any right to object on any ground
11 to use in evidence of any of the material covered by this Protective Order.

12 12.3 Filing Protected Material. A Party that seeks to file under seal any Protected
13 Material must comply with Civil Local Rule 79-5. Protected Material may only be filed
14 under seal pursuant to a court order authorizing the sealing of the specific Protected
15 Material at issue. If a Party's request to file Protected Material under seal is denied by
16 the court, then the Receiving Party may file the information in the public record unless
17 otherwise instructed by the court.
18

19 13. FINAL DISPOSITION

20 After the final disposition of this Action, as defined in paragraph 4, within 60 days
21 of a written request by the Designating Party, each Receiving Party must return all
22 Protected Material to the Producing Party or destroy such material. As used in this
23 subdivision, "all Protected Material" includes all copies, abstracts, compilations,
24 summaries, and any other format reproducing or capturing any of the Protected Material.
25 Notwithstanding this provision, Counsel are entitled to retain an archival copy of all
26 pleadings, motion papers, trial, deposition, and hearing transcripts, legal memoranda,
27 correspondence, deposition and trial exhibits, expert reports, attorney work product, and
28 consultant and expert work product, even if such materials contain Protected Material.

1 Any such archival copies that contain or constitute Protected Material remain subject to
2 this Protective Order as set forth in Section 4 (DURATION).

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

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

8
9 DATED: March 2, 2018 Respectfully submitted

10
11 PEREIRA LAW

12 By: /s/ _____
13 CHRISTIAN F. PEREIRA
14 Attorney for Plaintiffs

15
16 DATED: March 2, 2018 Respectfully submitted

17 **MICHAEL N. FEUER**, City Attorney
18 **THOMAS H. PETERS**, Chief Assistant City Attorney
19 **CORY M. BRENT**, Supv. Assistant City Attorney

20 By: /S/ _____

21 **MATTHEW P. MATTIS**, Deputy City Attorney

22 *Attorneys for Defendants* **CITY OF LOS ANGELES,**
23 **THOMAS MALLOY AND FIDEL GONZALES**

24 **FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.**

25 

26 DATED: March 6, 2018

27 _____
28 **KAREN STEVENSON**
UNITED STATES MAGISTRATE JUDGE

1 EXHIBIT A

2 ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

3
4 I, _____ [print or type full name], of _____ [print or
5 type full address], declare under penalty of perjury that I have read in its entirety and
6 understand the Stipulated Protective Order that was issued by the United States District
7 Court for the Central District of California on [date] in the case of _____ [insert
8 formal name of the case and the number and initials assigned to it by the court]. I agree
9 to comply 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 and
11 punishment in the nature of contempt. I solemnly promise that I will not disclose in any
12 manner any information or item that is subject to this Stipulated Protective Order to any
13 person or entity except in strict compliance with the provisions of this Order. I further
14 agree to submit to the jurisdiction of the United States District Court for the Central
15 District of California for the purpose of enforcing the terms of this Stipulated Protective
16 Order, even if such enforcement proceedings occur after termination of this action. I
17 hereby appoint _____ [print or type full name] of
18 _____ [print or type full address and
19 telephone number] as my California agent for service of process in connection with this
20 action or any proceedings related to enforcement of this Stipulated Protective Order.

21 Date: _____

22 City and State where sworn and signed: _____

23 Printed name: _____

24 Signature: _____
25
26
27
28