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

BRYAN E. KAYE,

Plaintiff,

v.

JERRY BROWN, WILLIAM H.  
SEGLETES; KERRY P. CONDON;  
ANAHEIM POLICE DEPARTMENT;  
CITY OF ANAHEIM; JOHN  
MOORLACH; and DOES 1-5,

Defendants.

Case No.: 2:17-cv-04225-SVW (JCx)

Assigned to Hon. Stephen V. Wilson  
Ctrm 10A

**PROTECTIVE ORDER RE  
CONFIDENTIAL INFORMATION**

[Discovery Document: Referred to  
Magistrate Judge Jacqueline Chooljian]

1. A. PURPOSES AND LIMITATIONS

As Defendant City of Anaheim has represented that 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, this Court enters the following Protective Order. This Order does not confer blanket protections on all disclosures or responses to discovery. The protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles.

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

6 **B. GOOD CAUSE STATEMENT**

7 This action is likely to involve materials and information that were  
8 acquired in confidence by public employees in the course of their duties and has  
9 not been officially disclosed or made open or available to the public. Such  
10 confidential materials and information consist of, among other things: (1) law  
11 enforcement investigative reports, records and other digital materials concerning  
12 the subject incident or plaintiff's prior interactions with law enforcement, which  
13 may contain personal contact information of third party witnesses and alleged  
14 crime victims, including but not limited to reports, memoranda or other  
15 documents prepared by the Anaheim Police Department and/or other law  
16 enforcement agencies. Such confidential materials and information are generally  
17 unavailable to the public, and may be privileged or otherwise protected from  
18 disclosure under state or federal statutes, court rules, case decisions, or common  
19 law. Accordingly, in order to expedite the flow of information, to facilitate the  
20 prompt resolution of disputes over confidentiality of discovery materials, to  
21 adequately protect information the parties are entitled to keep confidential, to  
22 ensure that the parties are permitted reasonable necessary uses of such material in  
23 connection with this action, to address their handling of such material at the end  
24 of the litigation, and to serve the ends of justice, a protective order for such  
25 information is justified in this matter. The parties shall not designate any  
26 information/documents as confidential without a good faith belief that such  
27 information/documents have been maintained in a confidential, non-public

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1 manner, and that there is good cause or a compelling reason why it should not be  
2 part of the public record of this case.

3 2. DEFINITIONS

4 2.1 Action: this pending federal lawsuit.

5 2.2 Challenging Party: a Party or Non-Party that challenges the  
6 designation of information or items under this Order.

7 2.3 “CONFIDENTIAL” Information or Items: information (regardless  
8 of how it is generated, stored or maintained) or tangible things that qualify for  
9 protection under Federal Rule of Civil Procedure 26(c), and as specified above in  
10 the Good Cause Statement.

11 2.4 Counsel: Outside Counsel of Record and House Counsel (as well as  
12 their support staff).

13 2.5 Designating Party: a Party or Non-Party that designates information  
14 or items that it produces in disclosures or in responses to discovery as  
15 “CONFIDENTIAL.”

16 2.6 Disclosure or Discovery Material: all items or information,  
17 regardless of the medium or manner in which it is generated, stored, or  
18 maintained (including, among other things, testimony, transcripts, and tangible  
19 things), that are produced or generated in disclosures or responses to discovery in  
20 this matter.

21 2.7 Expert: a person with specialized knowledge or experience in a  
22 matter pertinent to the litigation who has been retained by a Party or its counsel  
23 to serve as an expert witness or as a consultant in this Action.

24 2.8 House Counsel: attorneys who are employees of a party to this  
25 Action. House Counsel does not include Outside Counsel of Record or any other  
26 outside counsel.

27 2.9 Non-Party: any natural person, partnership, corporation,  
28 association, or other legal entity not named as a Party to this action.

1           2.10 Outside Counsel of Record: attorneys who are not employees of a  
2 party to this Action but are retained to represent or advise a party to this Action  
3 and have appeared in this Action on behalf of that party or are affiliated with a  
4 law firm which has appeared on behalf of that party, and includes support staff.

5           2.11 Party: any party to this Action, including all of its officers,  
6 directors, employees, consultants, retained experts, and Outside Counsel of  
7 Record (and their support staffs).

8           2.12 Producing Party: a Party or Non-Party that produces Disclosure or  
9 Discovery Material in this Action.

10          2.13 Professional Vendors: persons or entities that provide litigation  
11 support services (e.g., photocopying, videotaping, translating, preparing exhibits  
12 or demonstrations, and organizing, storing, or retrieving data in any form or  
13 medium) and their employees and subcontractors.

14          2.14 Protected Material: any Disclosure or Discovery Material that is  
15 designated as “CONFIDENTIAL.”

16          2.15 Receiving Party: a Party that receives Disclosure or Discovery  
17 Material from a Producing Party.

18           3.     SCOPE

19           The protections conferred by this Protective Order cover not only  
20 Protected Material (as defined above), but also (1) any information copied or  
21 extracted from Protected Material; (2) all copies, excerpts, summaries, or  
22 compilations of Protected Material; and (3) any testimony, conversations, or  
23 presentations by Parties or their Counsel that might reveal Protected Material,  
24 other than during a court hearing or at trial. Any use of Protected Material  
25 during a court hearing or at trial shall be governed by the orders of the presiding  
26 judge. This Order does not govern the use of Protected Material during a court  
27 hearing or at trial.

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1           4.     DURATION

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

10           5.     DESIGNATING PROTECTED MATERIAL

11           5.1    Exercise of Restraint and Care in Designating Material for  
12 Protection. Each Party or Non-Party that designates information or items for  
13 protection under this Order must take care to limit any such designation to  
14 specific material that qualifies under the appropriate standards. The Designating  
15 Party must designate for protection only those parts of material, documents,  
16 items, or oral or written communications that qualify so that other portions of the  
17 material, documents, items, or communications for which protection is not  
18 warranted are not swept unjustifiably within the ambit of this Order.

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

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

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1           5.2    Manner and Timing of Designations. Except as otherwise provided  
2 in this Order (see, e.g., second paragraph of Section 5.2(a) below), or as  
3 otherwise stipulated or ordered, Disclosure or Discovery Material that qualifies  
4 for protection under this Order must be clearly so designated before the material  
5 is disclosed or produced.

6           Designation in conformity with this Order requires:

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

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

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

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

7 5.3 Inadvertent Failures to Designate. If timely corrected, an  
8 inadvertent failure to designate qualified information or items does not, standing  
9 alone, waive the Designating Party’s right to secure protection under this Order  
10 for such material. Upon timely correction of a designation, the Receiving Party  
11 must make reasonable efforts to assure that the material is treated in accordance  
12 with the provisions of this Order.

13 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

14 6.1 Timing of Challenges. Any Party or Non-Party may challenge a  
15 designation of confidentiality at any time that is consistent with the Court’s  
16 Scheduling Order.

17 6.2 Meet and Confer. The Challenging Party shall initiate the dispute  
18 resolution process under Local Rule 37-1 et seq.

19 6.3 The burden of persuasion in any such challenge proceeding shall be  
20 on the Designating Party. Frivolous challenges, and those made for an improper  
21 purpose (e.g., to harass or impose unnecessary expenses and burdens on other  
22 parties) may expose the Challenging Party to sanctions. Unless the Designating  
23 Party has waived or withdrawn the confidentiality designation, all parties shall  
24 continue to afford the material in question the level of protection to which it is  
25 entitled under the Producing Party’s designation until the Court rules on the  
26 challenge.

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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  
10 a location and in a secure manner that ensures that access is limited to the  
11 persons 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,  
14 a 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 have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);



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  
5 party requests that the witness sign the “Acknowledgment and Agreement to Be  
6 Bound” form attached as Exhibit A hereto; and (2) they will not be permitted to  
7 keep any confidential information unless they sign the “Acknowledgment and  
8 Agreement to Be Bound” attached as Exhibit A, unless otherwise agreed by the  
9 Designating Party or ordered by the court. Pages of transcribed deposition  
10 testimony or exhibits to depositions that reveal Protected Material may be  
11 separately bound by the court reporter and may not be disclosed to anyone except  
12 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  
16 PRODUCED 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 unless prohibited by law;

22 (b) promptly notify in writing the party who caused the subpoena or order  
23 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 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.

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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  
4 which the subpoena or order issued, unless the Party has obtained the  
5 Designating Party’s permission, or unless otherwise required by the law or court  
6 order. The Designating Party shall bear the burden and expense of seeking  
7 protection in that court of its confidential material and nothing in these  
8 provisions should be construed as authorizing or encouraging a Receiving Party  
9 in this Action to disobey a lawful directive from another court.

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

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

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

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

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

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

3 (c) If a Non-Party represented by counsel fails to commence the process  
4 called for by Local Rules 45-1 and 37-1, et seq. within 14 days of receiving the  
5 notice and accompanying information or fails contemporaneously to notify the  
6 Receiving Party that it has done so, the Receiving Party may produce the Non-  
7 Party's confidential information responsive to the discovery request. If an  
8 unrepresented Non-Party fails to seek a protective order from this court within  
9 14 days of receiving the notice and accompanying information, the Receiving  
10 Party may produce the Non-Party's confidential information responsive to the  
11 discovery request. If the Non-Party timely seeks a protective order, the  
12 Receiving Party shall not produce any information in its possession or control  
13 that is subject to the confidentiality agreement with the Non-Party before a  
14 determination by the court unless otherwise required by the law or court order.  
15 Absent a court order to the contrary, the Non-Party shall bear the burden and  
16 expense of seeking protection in this court of its Protected Material.

17 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

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

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1           11.    INADVERTENT PRODUCTION OF PRIVILEGED OR  
2                            OTHERWISE PROTECTED MATERIAL

3           When a Producing Party gives notice to Receiving Parties that certain  
4 inadvertently produced material is subject to a claim of privilege or other  
5 protection, the obligations of the Receiving Parties are those set forth in Federal  
6 Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify  
7 whatever procedure may be established in an e-discovery order that provides for  
8 production without prior privilege review. Pursuant to Federal Rule of Evidence  
9 502(d) and (e), insofar as the parties reach an agreement on the effect of  
10 disclosure of a communication or information covered by the attorney-client  
11 privilege or work product protection, the parties may incorporate their agreement  
12 into this Stipulated Protective Order.

13           12.    MISCELLANEOUS

14           12.1   Right to Further Relief. Nothing in this Order abridges the right of  
15 any person to seek its modification by the Court in the future.

16           12.2   Right to Assert Other Objections. No Party waives any right it  
17 otherwise would have to object to disclosing or producing any information or  
18 item on any ground not addressed in this Protective Order. Similarly, no Party  
19 waives any right to object on any ground to use in evidence of any of the material  
20 covered by this Protective Order.

21           12.3   Filing Protected Material. A Party that seeks to file under seal any  
22 Protected Material must comply with Civil Local Rule 79-5 and with any  
23 pertinent orders of the assigned District Judge and Magistrate Judge. If a Party's  
24 request to file Protected Material under seal is denied by the court, then the  
25 Receiving Party may file the information in the public record unless otherwise  
26 instructed by the court.

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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 Protective Order that was  
issued by the United States District Court for the Central District of California on  
August 22, 2017, in the case of Brian E. Kaye v. Jerry Brown, et al., No. 2:17-  
cv-04225-SVW-JC. I agree to comply with and to be bound by all the terms of  
this 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 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 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 Protective Order.

Date: \_\_\_\_\_

City and State where sworn and signed: \_\_\_\_\_

Printed name: \_\_\_\_\_

Signature: \_\_\_\_\_