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12 **UNITED STATES DISTRICT COURT**  
 13 **CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION**

14 Jose Pelayo, Jesus Pelayo, Victor  
 15 Pelayo

16 Plaintiff,

17 v.

18 CITY OF POMONA, POMONA  
 19 POLICE DEPARTMENT CHIEF  
 20 PAUL CAPRARO, individually and in  
 21 his official capacity, AUSTIN DOSSEY  
 22 #42108, individually and as a peace  
 23 officer, FRANK SACCA #41873,  
 24 individually and as a peace officer, TIM  
 25 DORN #41974, individually and as a  
 26 peace officer, PRINCE HUTCHINSON  
 27 #42642, individually and as a peace  
 28 officer, and DOES 1-10.

Defendant.

Case No. **2:17- CV-07292-PSG (SKx)**

**STIPULATED PROTECTIVE  
 ORDER**

1           PURPOSES AND LIMITATIONS

2           A. Discovery in this action is likely to involve production of confidential,  
3 proprietary, or private information for which special protection from public  
4 disclosure and from use for any purpose other than prosecuting this litigation may  
5 be warranted. Accordingly, the parties, GERAGOS & GERAGOS , CHRISTIAN  
6 AGUILAR, and MKRTCHYAN LAW, stipulate to and petition the Court to enter  
7 the following Stipulated Protective Order. The parties acknowledge that this Order  
8 does not confer blanket protections on all disclosures or responses to discovery and  
9 that the protection it affords from public disclosure and use extends only to the  
10 limited information or items that are entitled to confidential treatment under the  
11 applicable legal principles. The parties further acknowledge, as set forth in Section  
12 12.3, below, that this Stipulated Protective Order does not entitle them to file  
13 confidential information under seal; Civil Local Rule 79-5 sets forth the procedures  
14 that must be followed and the standards that will be applied when a party seeks  
15 permission from the court to file material under seal.

16           B. GOOD CAUSE STATEMENT

17           Requested records involve materials in possession of non-party Geragos &  
18 Geragos, case files in the civil rights action, Aguilar et al. v. City of Pomona et al.  
19 (Case no. 2:16-cv-05804) and juvenile criminal case In Re Christian Aguilar  
20 KJ39567, including documents under an express Protective Order/non-disclosure  
21 order by Superior Court of California, containing juvenile case transcripts of court  
22 proceedings, Internal Affairs investigation into the Aguilar complaint against the  
23 Defendants in this action, police reports and digital media in the same matter. These  
24 records contain private information, official information, attorney work product,  
25 private government information including deliberative processes of government  
26 employees. Accordingly, to expedite the flow of information, to facilitate the prompt  
27 resolution of disputes over confidentiality of discovery materials, to adequately  
28 protect information the parties are entitled to keep confidential, to ensure that the

1 parties are permitted reasonable necessary uses of such material in preparation for  
2 and in the conduct of trial, to address their handling at the end of the litigation, and  
3 serve the ends of justice, a protective order for such information is justified in this  
4 matter. It is the intent of the parties that information will not be designated as  
5 confidential for tactical reasons and that nothing be so designated without a good  
6 faith belief that it has been maintained in a confidential, non-public manner, and  
7 there is good cause why it should not be part of the public record of this case.

## 8 2. DEFINITIONS

9 2.1 Action: Jose Pelayo et al. v. City of Pomona et al.

10 2.2 Challenging Party: GERAGOS & GERAGOS AND CHRISTIAN  
11 AGUILAR that challenges the designation of information or items under this Order.

12 2.3 “CONFIDENTIAL” Information or Items: information (regardless of how  
13 it is generated, stored or maintained) or tangible things that qualify for protection  
14 under Federal Rule of Civil Procedure 26(c), and as specified above in the Good  
15 Cause Statement.

16 2.4 Counsel: Outside Counsel of Record and House Counsel (as well as their  
17 support staff).

18 2.5 Designating Party: a Party or Non-Party that designates information or  
19 items that it produces in disclosures or in responses to discovery as  
20 “CONFIDENTIAL.”

21 2.6 Disclosure or Discovery Material: all items or information, regardless of  
22 the medium or manner in which it is generated, stored, or maintained (including,  
23 among other things, testimony, transcripts, and tangible things), that are produced or  
24 generated in disclosures or responses to discovery in this matter.

25 2.7 Expert: a person with specialized knowledge or experience in a matter  
26 pertinent to the litigation who has been retained by a Party or its counsel to serve as  
27 an expert witness or as a consultant in this Action.

1           2.8 House Counsel: attorneys who are employees of a party to this Action.  
2 House Counsel does not include Outside Counsel of Record or any other outside  
3 counsel.

4           2.9 Non-Party: any natural person, partnership, corporation, association, or  
5 other legal entity not named as a Party to this action.

6           2.10 Outside Counsel of Record: attorneys who are not employees of a party  
7 to this Action but are retained to represent or advise a party to this Action and have  
8 appeared in this Action on behalf of that party or are affiliated with a law firm which  
9 has appeared on behalf of that party, and includes support staff.

10          2.11 Party: any party to this Action, including all of its officers, directors,  
11 employees, consultants, retained experts, and Outside Counsel of Record (and their  
12 support staffs).

13          2.12 Producing Party: a Party or Non-Party that produces Disclosure or  
14 Discovery Material in this Action.

15          2.13 Professional Vendors: persons or entities that provide litigation support  
16 services (e.g., photocopying, videotaping, translating, preparing exhibits or  
17 demonstrations, and organizing, storing, or retrieving data in any form or medium)  
18 and their employees and subcontractors.

19          2.14 Protected Material: any Disclosure or Discovery Material that is  
20 designated as “CONFIDENTIAL.”

21          2.15 Receiving Party: a Party that receives Disclosure or Discovery Material  
22 from a Producing Party.

### 23           3.     SCOPE

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

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

3 4. DURATION

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

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

21 5. DESIGNATING PROTECTED MATERIAL

22 5.1 Exercise of Restraint and Care in Designating Material for Protection.

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

1 items, or communications for which protection is not warranted are not swept  
2 unjustifiably within the ambit of this Order.

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

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

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

16 Designation in conformity with this Order requires:

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

24 A Party or Non-Party that makes original documents available for inspection  
25 need not designate them for protection until after the inspecting Party has indicated  
26 which documents it would like copied and produced. During the inspection and  
27 before the designation, all of the material made available for inspection shall be  
28 deemed "CONFIDENTIAL." After the inspecting Party has identified the

1 documents it wants copied and produced, the Producing Party must determine which  
2 documents, or portions thereof, qualify for protection under this Order. Then, before  
3 producing the specified documents, the Producing Party must affix the  
4 “CONFIDENTIAL legend” to each page that contains Protected Material. If only a  
5 portion or portions of the material on a page qualifies for protection, the Producing  
6 Party also must clearly identify the protected portion(s) (e.g., by making appropriate  
7 markings in the margins).

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

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

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

## 23 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

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

27 6.2 Meet and Confer. The Challenging Party shall initiate the dispute  
28 resolution process under Local Rule 37.1 et seq.

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

8           7. ACCESS TO AND USE OF PROTECTED MATERIAL

9           7.1 Basic Principles. A Receiving Party may use Protected Material that is  
10 disclosed or produced by another Party or by a Non-Party in connection with this  
11 Action only for prosecuting, defending, or attempting to settle this Action. Such  
12 Protected Material may be disclosed only to the categories of persons and under the  
13 conditions described in this Order. When the Action has been terminated, a  
14 Receiving Party must comply with the provisions of section 13 below (FINAL  
15 DISPOSITION).

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

19           7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise  
20 ordered by the court or permitted in writing by the Designating Party, a Receiving  
21 Party may disclose any information or item designated “CONFIDENTIAL” only to:

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

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



- 1 (c) Experts (as defined in this Order) of the Receiving Party to whom  
2 disclosure is reasonably necessary for this Action and who have signed the  
3 “Acknowledgment and Agreement to Be Bound” (Exhibit A);
- 4 (d) the court and its personnel;
- 5 (e) court reporters and their staff;
- 6 (f) professional jury or trial consultants, mock jurors, and Professional  
7 Vendors to whom disclosure is reasonably necessary for this Action and who have  
8 signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);
- 9 (g) the author or recipient of a document containing the information or a  
10 custodian or other person who otherwise possessed or knew the information;
- 11 (h) during their depositions, witnesses, and attorneys for witnesses, in the  
12 Action to whom disclosure is reasonably necessary provided: (1) the deposing party  
13 requests that the witness sign the form attached as Exhibit 1 hereto; and (2) they will  
14 not be permitted to keep any confidential information unless they sign the  
15 “Acknowledgment and Agreement to Be Bound” (Exhibit A), unless otherwise  
16 agreed by the Designating Party or ordered by the court. Pages of transcribed  
17 deposition testimony or exhibits to depositions that reveal Protected Material may  
18 be separately bound by the court reporter and may not be disclosed to anyone except  
19 as permitted under this Stipulated Protective Order; and
- 20 (i) any mediator or settlement officer, and their supporting personnel,  
21 mutually agreed upon by any of the parties engaged in settlement discussions.

22 **8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED**  
23 **IN OTHER LITIGATION**

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

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

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

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

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

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

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

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

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

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

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

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

#### 14 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

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

#### 23 11. INADVERTENT PRODUCTION OF PRIVILEGED OR 24 OTHERWISE PROTECTED MATERIAL

25 When a Producing Party gives notice to Receiving Parties that certain  
26 inadvertently produced material is subject to a claim of privilege or other protection,  
27 the obligations of the Receiving Parties are those set forth in Federal Rule of Civil  
28 Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure

1 may be established in an e-discovery order that provides for production without  
2 prior privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar  
3 as the parties reach an agreement on the effect of disclosure of a communication or  
4 information covered by the attorney-client privilege or work product protection, the  
5 parties may incorporate their agreement in the stipulated protective order submitted  
6 to the court.

7 12. MISCELLANEOUS

8 12.1 Right to Further Relief. Nothing in this Order abridges the right of any  
9 person to seek its modification by the Court in the future.

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

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

21 13. FINAL DISPOSITION

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

1 person or entity, to the Designating Party) by the 60 day deadline that (1) identifies  
2 (by category, where appropriate) all the Protected Material that was returned or  
3 destroyed and (2)affirms that the Receiving Party has not retained any copies,  
4 abstracts, compilations, summaries or any other format reproducing or capturing any  
5 of the Protected Material. Notwithstanding this provision, Counsel are entitled to  
6 retain an archival copy of all pleadings, motion papers, trial, deposition, and hearing  
7 transcripts, legal memoranda, correspondence, deposition and trial exhibits, expert  
8 reports, attorney work product, and consultant and expert work product, even if such  
9 materials contain Protected Material. Any such archival copies that contain or  
10 constitute Protected Material remain subject to this Protective Order as set forth in  
11 Section 4 (DURATION).

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

15       IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD, NON-  
16 PARTY CHRISTIAN AGUILAR.

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