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11
 12 **UNITED STATES DISTRICT COURT**
 13 **CENTRAL DISTRICT OF CALIFORNIA**

14 JASMIN SALCIDO, and GARY
 SALCIDO, individually and as
 15 surviving heirs and successors in
 interest of JONATHAN SALCIDO
 16 (deceased),

17 Plaintiffs,

18 v.

19 CITY OF WHITTIER, CHIEF OF
 POLICE JEFF A. PIPER (in his
 20 individual and official capacity),
 LAMARR TINNIN (in his individual
 21 and official capacity), JIM
 AZPILICUETA (in his individual and
 22 official capacity), ROY BENJAMIN
 (in his individual and official capacity),
 23 JAKE JUNGE (in his individual and
 official capacity), JOHN KING (in his
 24 individual and official capacity),
 RICHARD JENSEN (in his individual
 25 and official capacity), JOSE
 ESCOBEDO (in his individual and
 26 official capacity) and DOES 8-20,
 inclusive,

27 Defendants.
 28

Case No. 2:17-cv-8819-CBM(ASx)

[Assigned to the Honorable Consuelo B.
 Marshall -Courtroom 8B]

PROTECTIVE ORDER

Complaint Filed: December 7, 2017
 Discovery Cut-Off: None Set
 Motion Cut-Off: None Set
 Trial: July 16, 2019

1 1. A. PURPOSES AND LIMITATIONS

2
3 Discovery in this action is likely to involve production of confidential or
4 private information for which special protection from public disclosure and from
5 use for any purpose other than prosecuting this litigation may be warranted.
6 Accordingly, the parties hereby stipulate to and petition the Court to enter the
7 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
17 B. GOOD CAUSE STATEMENT

18
19 The Whittier Police Department conducts internal administrative
20 investigations of Officer Involved Uses of Force and Complaint Investigations
21 (hereinafter "Administrative Investigations"), and also maintains a personnel file
22 on its officers which includes personnel training information. Once an
23 Administrative Investigation is initiated, a formal investigation number is prepared.
24 Such investigations are reviewed by appropriate command officers in the
25 Department. This review has several purposes: (1) to determine whether the
26 involved officers violated any Department policies or procedures; (2) to determine
27 whether administrative discipline and/or retraining of the involved officers is
28 necessary; and to ascertain if police policies and procedures in such areas as

1 supervision, training, tactics, policies, etc., should be modified. Administrative
2 Investigations are an essential aid to providing critical evaluation of Department
3 officers and policies, and to determine the most effective way to serve the citizens
4 of Whittier.

5 Administrative Investigations are not public records and include personal
6 information regarding accused officers as well as complainants. The personal
7 information usually includes the officer's date of birth, as well as that of the
8 complainant. Often, Administrative Investigations also include a complainant's
9 address, telephone number and sometimes social security number.

10 Defendants contend that the information described above is confidential in
11 nature and properly the subject of a protective order.

12 Plaintiffs contend that this action is also likely to involve sensitive
13 psychiatric and medical information for which special protection from public
14 disclosure and from use for any other purpose other than prosecution of this action
15 is warranted. Such confidential materials and information consist of, among other
16 things, psychiatric or medical records (including information implicating privacy
17 rights of third parties), information otherwise generally unavailable to the public,
18 or which may be privileged or otherwise protected from disclosure under state or
19 federal statutes, court rules, case decisions, or common law.

20 Accordingly, to expedite the flow of information, to facilitate the prompt
21 resolution of disputes over confidentiality of discovery materials, to adequately
22 protect information the parties are entitled to keep confidential, to ensure that the
23 parties are permitted reasonable necessary uses of such material in preparation for
24 and in the conduct of trial, to address their handling at the end of the litigation, and
25 serve the ends of justice, a protective order for such information is justified in this
26 matter. It is the intent of the parties that information will not be designated as
27 confidential for tactical reasons and that nothing be so designated without a good
28 faith belief that it has been maintained in a confidential, non-public manner, and

1 there is good cause why it should not be part of the public record of this case.

2
3 2. DEFINITIONS

4 2.1 Action: The instant federal lawsuit herein.

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 of
8 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: Counsel of record herein for Plaintiffs and Defendants.

12 2.5 Designating Party: A Party or Non-Party that designates information
13 or items that it produces in disclosures or in responses to discovery as
14 “CONFIDENTIAL.”

15 2.6 Disclosure or Discovery Material: All items or information,
16 regardless of the medium or manner in which it is generated, stored, or maintained
17 (including, among other things, testimony, transcripts, and tangible things), that are
18 produced or generated in disclosures or responses to discovery in this matter.

19 2.7 Expert: A person with specialized knowledge or experience in a
20 matter pertinent to the litigation who has been retained by a Party or its counsel to
21 serve as an expert witness or as a consultant in this Action.

22 2.8 Non-Party: Any natural person, partnership, corporation, association,
23 or other legal entity not named as a Party to this action.

24 2.9 Outside Counsel of Record: Attorneys who are not employees of a
25 party to this Action but are retained to represent or advise a party to this Action
26 and have appeared in this Action on behalf of that party or are affiliated with a law
27 firm which has appeared on behalf of that party, and includes support staff.

28 2.10 Party: Any party to this Action, including all of its officers, directors,

1 employees, consultants, retained experts, and Outside Counsel of Record (and their
2 support staffs).

3 2.11 Producing Party: A Party or Non-Party that produces Disclosure or
4 Discovery Material in this Action.

5 2.12 Professional Vendors: persons or entities that provide litigation
6 support services (e.g., photocopying, videotaping, translating, preparing exhibits or
7 demonstrations, and organizing, storing, or retrieving data in any form or medium)
8 and their employees and subcontractors.

9 2.13 Protected Material: Any Disclosure or Discovery Material that is
10 designated as “CONFIDENTIAL.”

11 2.14 Receiving Party: A Party that receives Disclosure or Discovery
12 Material from a Producing Party.

13
14 3. SCOPE

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

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

22
23 4. DURATION

24 Even after final disposition of this litigation, the confidentiality obligations
25 imposed by this Order shall remain in effect until a Designating Party agrees
26 otherwise in writing or a court order otherwise directs. Final disposition shall be
27 deemed to be the later of (1) dismissal of all claims and defenses in this Action,
28 with or without prejudice; and (2) final judgment herein after the completion and

1 exhaustion of all appeals, re-hearings, remands, trials, or reviews of this Action,
2 including the time limits for filing any motions or applications for extension of
3 time pursuant to applicable law.

4
5 **5. DESIGNATING PROTECTED MATERIAL**

6 **5.1 Exercise of Restraint and Care in Designating Material for Protection.**

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

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

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

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

27 Designation in conformity with this Order requires:

28 (a) for information in documentary form (e.g., paper or electronic

1 documents, but excluding transcripts of depositions or other pretrial or trial
2 proceedings), that the Producing Party affix at a minimum, the legend
3 “CONFIDENTIAL” (hereinafter “CONFIDENTIAL legend”), to each page that
4 contains protected material. If only a portion or portions of the material on a page
5 qualifies for protection, the Producing Party also must clearly identify the
6 protected portion(s) (e.g., by making appropriate markings in the margins).

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

19 (b) For testimony given in depositions that the Designating Party
20 identify the Disclosure or Discovery Material on the record, before the close of the
21 deposition all protected testimony;

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

28 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent

1 failure to designate qualified information or items does not, standing alone, waive
2 the Designating Party's right to secure protection under this Order for such
3 material. Upon timely correction of a designation, the Receiving Party must make
4 reasonable efforts to assure that the material is treated in accordance with the
5 provisions of this Order.

6 7 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

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

11 6.2 Meet and Confer. The Challenging Party shall initiate the
12 dispute resolution process under Local Rule 37.1 et seq.

13 6.3 Burden of Proof. The burden of persuasion in any such challenge
14 proceeding shall be on the Designating Party. Frivolous challenges, and those
15 made for an improper purpose (e.g., to harass or impose unnecessary expenses
16 and burdens on other parties) may expose the Challenging Party to sanctions.
17 Unless the Designating Party has waived or withdrawn the confidentiality
18 designation, all parties shall continue to afford the material in question the level
19 of protection to which it is entitled under the Producing Party's designation until
20 the Court rules on the challenge.

21 22 7. ACCESS TO AND USE OF PROTECTED MATERIAL

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

1 below (FINAL DISPOSITION).

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

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

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

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

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

17 (d) the court and its personnel;

18 (e) court reporters and their staff;

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

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

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

1 agreed by the Designating Party or ordered by the court. Pages of transcribed
2 deposition testimony or exhibits to depositions that reveal Protected Material may
3 be separately bound by the court reporter and may not be disclosed to anyone
4 except as permitted under this Stipulated Protective Order; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1
2 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

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

12
13 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
14 PROTECTED MATERIAL

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

25
26 12. MISCELLANEOUS

27 12.1 Right to Further Relief: Nothing in this Order abridges the right of
28 any person to seek its modification by the Court in the future.

1 12.2 Right to Assert Other Objections: By stipulating to the entry of this
2 Protective Order no Party waives any right it otherwise would have to object to
3 disclosing or producing any information or item on any ground not addressed in
4 this Stipulated Protective Order. Similarly, no Party waives any right to object on
5 any ground to use in evidence of any of the material covered by this Protective
6 Order.

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

13
14 13. FINAL DISPOSITION

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

1 and trial exhibits, expert reports, attorney work product, and consultant and expert
2 work product, even if such materials contain Protected Material. Any such archival
3 copies that contain or constitute Protected Material remain subject to this
4 Protective Order as set forth in Section 4 (DURATION).

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

9
10 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

11
12 Dated: August 1, 2018

13
14 /s/ - Cindy Pánuco¹
Attorneys for Plaintiffs

15
16 Dated: August 1, 2018

17
18 /s/ - Harold W. Potter
Attorneys for Defendants

19
20
21 FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.

22
23 DATED: August 2, 2018

24
25 /s/
Honorable Alka Sagar
26 United States Magistrate Judge

27
28 ¹ I hereby attest that all other signatories listed, and on whose behalf the filing is submitted, concur in the filing's content and have authorized the filing.

1 EXHIBIT A

2 ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

3
4 I, _____ [print or type full name], of
5 _____ [print or type full address], declare under
6 penalty of perjury that I have read in its entirety and understand the Stipulated
7 Protective Order that was issued by the United States District Court for the Central
8 District of California on _____ [date] in the case of JASMIN SALCIDO,
9 and GARY SALCIDO, individually and as surviving heirs and successors in
10 interest of JONATHAN SALCIDO (deceased), Plaintiffs, v. CITY OF
11 WHITTIER, CHIEF OF POLICE JEFF A. PIPER (in his individual and official
12 capacity), LAMARR TINNIN (in his individual and official capacity), JIM
13 AZPILICUETA (in his individual and official capacity), ROY BENJAMIN (in his
14 individual and official capacity), JAKE JUNGE (in his individual and official
15 capacity), JOHN KING (in his individual and official capacity), RICHARD
16 JENSEN (in his individual and official capacity), JOSE ESCOBEDO (in his
17 individual and official capacity) and DOES 8-20, inclusive, Case Number: 2:17-
18 cv-8819-CBM(ASx).

19 I agree to comply with and to be bound by all the terms of this Stipulated
20 Protective Order and I understand and acknowledge that failure to so comply could
21 expose me to sanctions and punishment in the nature of contempt. I solemnly
22 promise that I will not disclose in any manner any information or item that is
23 subject to this Stipulated Protective Order to any person or entity except in strict
24 compliance with the provisions of this Order. I further agree to submit to the
25 jurisdiction of the United States District Court for the Central District of California
26 for the purpose of enforcing the terms of this Stipulated Protective Order, even if
27 such enforcement proceedings occur after termination of this action. I hereby
28 appoint _____ [print or type full name] of

1 _____ [print or type full address and telephone
2 number] as my California agent for service of process in connection with this
3 action or any proceedings related to enforcement of this Stipulated Protective
4 Order.

5 Date: _____

6 City and State where sworn and signed: _____

7
8 Printed name: _____

9
10 Signature: _____

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