

1 information or items that are entitled to confidential treatment under the applicable
2 legal principles.

3 B. GOOD CAUSE STATEMENT

4 Though Plaintiff may be entitled, in certain limited circumstances, to examine
5 and receive information in police officers' personnel files, internal affairs files and
6 force reports, to the extent that they are relevant to their claims in the above-captioned
7 action, the Long Beach Police Department (the "Department") contends that a
8 protective order is necessary to prevent random distribution of such information.
9 Furthermore, this proposed protective order was created for the purpose of protecting
10 certain information that may be subject to the official information privilege, law
11 enforcement privilege and the right to privacy, as protected by the California and
12 United States Constitution, balanced with plaintiff's right to discovery in this
13 litigation.

14 The Department and Defendants herein contend that they have an interest in
15 protecting their privacy rights relating to information in his personnel files and other
16 related information.

17 It is the policy of the Department not to disclose information contained in
18 background investigations about its employees, or other information contained in
19 confidential police personnel files unless ordered to do so by a court of competent
20 jurisdiction. Further, it is the policy of the Department not to disclose information
21 contained in police reports to those other than the parties involved in the incident,
22 their representatives, prosecutors, etc. unless ordered to do so by a court of competent
23 jurisdiction.

24 Within the Department, access to personnel files is restricted to those on a
25 "need to know" basis. Controlled access to the files is regarded by the Department as
26 essential in order to assure the integrity and security of such files. The Department
27 contends that uncontrolled disclosure of such information can disrupt the
28 Department's vital, day-to-day operations, erode the integrity and security of the

1 confidential personnel and related files, affect the morale of Department's personnel,
2 and frustrate the legitimate purposes of gathering the information in these files,
3 including adversely impacting disciplinary procedures within the Department.

4 With respect to police reports, unfettered access is not granted to the public.
5 Instead, access is restricted to those investigating the incident, involved in the incident
6 or their representatives, those who are prosecuting and/or defending those involved,
7 and those who maintain the records. The Department contends that controlled access
8 is necessary to not only assure the integrity and security of said files, but also to ensure
9 the privacy rights of those involved especially third-party witnesses and minors are
10 protected. Permitting uncontrolled disclosure can disrupt the Department's day-to-
11 day operations, including but not limited to adversely impacting the Department's
12 ability to thoroughly investigate incidents.

13 Further, the Department contends that information contained in the requested
14 material case files is gathered and maintained in confidence by the Department. The
15 information gathered in these case files generally includes the statements of third-
16 party witnesses collected in confidence. Witnesses are told that the confidentiality of
17 their statement will be protected and that they are for the confidential use of the
18 Department. The Department believes that uncontrolled release of this information
19 would cause needless intrusion into and violation of privacy rights.

20 In light of the nature of the claims and allegations in this case and the parties'
21 representations that discovery in this case will involve the production of confidential
22 records, and in order to expedite the flow of information, to facilitate the prompt
23 resolution of disputes over confidentiality of discovery materials, to adequately
24 protect information the parties are entitled to keep confidential, to ensure that the
25 parties are permitted reasonable necessary uses of such material in connection with
26 this action, to address their handling of such material at the end of the litigation, and
27 to serve the ends of justice, a protective order for such information is justified in this
28 matter. The parties shall not designate any information/documents as confidential

1 without a good faith belief that such information/documents have been maintained in
2 a confidential, non-public manner, and that there is good cause or a compelling reason
3 why it should not be part of the public record of this case.

4 C. ACKNOWLEDGMENT OF PROCEDURE FOR FILING UNDER SEAL

5 The parties further acknowledge, as set forth in Section 12.3, below, that this
6 Stipulated Protective Order does not entitle them to file confidential information
7 under seal; Local Civil Rule 79-5 sets forth the procedures that must be followed and
8 the standards that will be applied when a party seeks permission from the court to file
9 material under seal.

10 There is a strong presumption that the public has a right of access to judicial
11 proceedings and records in civil cases. In connection with non-dispositive motions,
12 good cause must be shown to support a filing under seal. *See Kamakana v. City and*
13 *County of Honolulu*, 447 F.3d 1172, 1176 (9th Cir. 2006); *Phillips v. Gen. Motors*
14 *Corp.*, 307 F.3d 1206, 1210-11 (9th Cir. 2002); *Makar-Welbon v. Sony Electronics, Inc.*,
15 187 F.R.D. 576, 577 (E.D. Wis. 1999) (even stipulated protective orders require good
16 cause showing), and a specific showing of good cause or compelling reasons with
17 proper evidentiary support and legal justification, must be made with respect to
18 Protected Material that a party seeks to file under seal. The parties' mere designation
19 of Disclosure or Discovery Material as CONFIDENTIAL does not—without the
20 submission of competent evidence by declaration, establishing that the material
21 sought to be filed under seal qualifies as confidential, privileged, or otherwise
22 protectable—constitute good cause.

23 Further, if a party requests sealing related to a dispositive motion or trial, then
24 compelling reasons, not only good cause, for the sealing must be shown, and the relief
25 sought shall be narrowly tailored to serve the specific interest to be protected. *See*
26 *Pintos v. Pacific Creditors Ass'n*, 605 F.3d 665, 677-79 (9th Cir. 2010). For each
27 item or type of information, document, or thing sought to be filed or introduced under
28 seal in connection with a dispositive motion or trial, the party seeking protection must

1 articulate compelling reasons, supported by specific facts and legal justification, for
2 the requested sealing order. Again, competent evidence supporting the application to
3 file documents under seal must be provided by declaration.

4 Any document that is not confidential, privileged, or otherwise protectable in
5 its entirety will not be filed under seal if the confidential portions can be redacted.
6 If documents can be redacted, then a redacted version for public viewing, omitting
7 only the confidential, privileged, or otherwise protectable portions of the document
8 shall be filed. Any application that seeks to file documents under seal in their
9 entirety should include an explanation of why redaction is not feasible.

10 2. DEFINITIONS

11 2.1 Action: 2:21-cv-04625-PA-RAO, *Bobby Aceves v. City of Long Beach*,
12 *et al.*

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

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

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

28 2.7 Expert: a person with specialized knowledge or experience in a matter

1 pertinent to the litigation who has been retained by a Party or its counsel to serve as
2 an expert witness or as a consultant in this Action.

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

6 2.9 Non-Party: any natural person, partnership, corporation, association or
7 other legal entity not named as a Party to this action.

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

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

15 2.12 Producing Party: a Party or Non-Party that produces Disclosure or
16 Discovery Material in this Action.

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

21 2.14 Protected Material: any Disclosure or Discovery Material that is
22 designated as “CONFIDENTIAL.”

23 2.15 Receiving Party: a Party that receives Disclosure or Discovery Material
24 from a Producing Party.

25 3. SCOPE

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

1 Protected Material; and (3) any testimony, conversations, or presentations by Parties
2 or their Counsel that might reveal Protected Material.

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

5 4. DURATION

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

15 5. DESIGNATING PROTECTED MATERIAL

16 5.1 Exercise of Restraint and Care in Designating Material for Protection.

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

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

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

9 Designation in conformity with this Order requires:

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

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

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

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

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

15 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

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

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

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

28

1 7. ACCESS TO AND USE OF PROTECTED MATERIAL

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

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

11 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless
12 otherwise ordered by the court or permitted in writing by the Designating Party, a
13 Receiving Party may disclose any information or item designated
14 “CONFIDENTIAL” only to:

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

18 (b) the officers, directors, and employees (including House Counsel) of the
19 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
26 Vendors to whom disclosure is reasonably necessary for this Action and who have
27 signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

28 (g) the author or recipient of a document containing the information or a

1 custodian or other person who otherwise possessed or knew the information;

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

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

13 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED
14 IN OTHER LITIGATION

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

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

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

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

26 If the Designating Party timely seeks a protective order, the Party served with
27 the subpoena or court order shall not produce any information designated in this action
28 as “CONFIDENTIAL” before a determination by the court from which the subpoena

1 or order issued, unless the Party has obtained the Designating Party’s permission. The
2 Designating Party shall bear the burden and expense of seeking protection in that court
3 of its confidential material and nothing in these provisions should be construed as
4 authorizing or encouraging a Receiving Party in this Action to disobey a lawful
5 directive from another court.

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

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

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

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

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

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

25 (c) If the Non-Party fails to seek a protective order from this court within
26 14 days of receiving the notice and accompanying information, the Receiving Party
27 may produce the Non-Party’s confidential information responsive to the discovery
28 request. If the Non-Party timely seeks a protective order, the Receiving Party shall

1 not produce any information in its possession or control that is subject to the
2 confidentiality agreement with the Non-Party before a determination by the court.
3 Absent a court order to the contrary, the Non-Party shall bear the burden and expense
4 of seeking protection in this court of its Protected Material.

5 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

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

14 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
15 PROTECTED MATERIAL

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

26 12. MISCELLANEOUS

27 12.1 Right to Further Relief. Nothing in this Order abridges the right of any
28 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 this
4 Stipulated Protective Order. Similarly, no Party waives any right to object on any
5 ground to use in evidence of any of the material covered by this Protective Order.

6 12.3 Filing Protected Material. A Party that seeks to file under seal any
7 Protected Material must comply with Local Civil Rule 79-5. Protected Material may
8 only be filed under seal pursuant to a court order authorizing the sealing of the specific
9 Protected Material at issue. If a Party’s request to file Protected Material under seal
10 is denied by the court, then the Receiving Party may file the information in the public
11 record unless otherwise instructed by the court.

12 13. FINAL DISPOSITION

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

1 constitute Protected Material remain subject to this Protective Order as set forth in
2 Section 4 (DURATION).

3 14. VIOLATION

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

7 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.
8

9 DATED: September 3, 2021

10 /s/ Peter Carr, Esq.

11 _____
Attorneys for Plaintiff

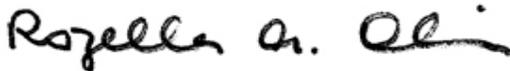
12
13 DATED: September 3, 2021

14
15 /s/ Matthew M. Peters¹

16 _____
Attorneys for Defendant

17
18 FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.
19

20 DATED: September 8, 2021

21
22 

23 _____
HON. ROZELLA A. OLIVER
United States Magistrate Judge

24
25
26
27 _____
28 ¹ I, Matthew Peters, Attorney for Defendants, attest that all other signatories listed,
and on whose behalf the filing is submitted, concur in the filing's content and have
authorized this filing.

1 EXHIBIT A

2 ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

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

14 I further agree to submit to the jurisdiction of the United States District Court
15 for the Central District of California for enforcing the terms of this Stipulated
16 Protective Order, even if such enforcement proceedings occur after termination of this
17 action. I 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
20 this action or any proceedings related to enforcement of this Stipulated Protective
21 Order.

22 Date: _____

23 City and State where sworn and signed: _____

24
25 Printed name: _____

26
27 Signature: _____

28