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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

MICHAEL TAYLOR, as an individual
and as successor in interest to Trevor
Taylor; MINDI HILBORN, an
individual, JENNIFER TAYLOR, an
individual, KAYLA JACKSON, an
individual, TRAVIS TAYLOR, an
individual, BRANDON JACKSON, an
individual,

Plaintiffs,

vs.

CITY OF COLTON, a municipal entity;
COLTON POLICE DEPARTMENT, a
department of the City of Colton; JOHN
DOE, an individual, DOES 1-100,
inclusive,

Defendants.

Case No. EDCV13-01330PSG(AJWx)
[Hon. Philip S. Gutierrez, District
Judge]

[[DISCOVERY MATTER]]

**PROTECTIVE ORDER RE
CONFIDENTIAL DOCUMENTS**

Complaint Filed: 5-22-13

PURSUANT TO THE STIPULATION OF THE PARTIES (“Stipulation of the Parties for Protective Order re Confidential Documents”), and pursuant to the Court’s inherent and statutory authority, including but not limited to the Court’s authority under the applicable Federal Rules of Civil Procedure and the United States District Court, Central District of California Local Rules; after due consideration of all of the relevant pleadings, papers, and records in this action; and upon such other evidence or

1 argument as was presented to the Court; Good Cause appearing therefor, and in
2 furtherance of the interests of justice,

3 IT IS HEREBY ORDERED that:

4 1. The parties, in the production or disclosure of documents, records,
5 information, or tangible things in this case (hereafter“documents”) may designate
6 certain documents as “Confidential” (collectively herein as “Confidential
7 Documents”). The types of documents which may be designated as Confidential
8 Documents hereunder include: (1) peace officer personnel files and all records which
9 are typically contained within or associated with such peace officer personnel files
10 according to the regular practices of the law enforcement agency which is the
11 custodian of such records – including but not limited to internal affairs investigations
12 and related interviews and reports, peace officer personal financial and asset
13 information, peace officer medical records in the custody of the peace officer’s law
14 enforcement agency employer, records regarding peace officer discipline, associated
15 law enforcement agency employment/internal affairs investigations and related
16 interviews and reports, interviews and reports related to personnel complaints by
17 peace officers and/or citizen complaints against peace officers, and peace officer
18 training records; and (2) comparable records of the parties that may otherwise be
19 privileged from disclosure but which the parties may agree to produce pursuant to the
20 terms of this Stipulation and [Proposed] Protective Order, including a party’s medical
21 records, financial records, or other privileged or confidential records, documents, or
22 information. However, nothing in this Stipulation and [Proposed] Protective Order
23 shall be construed as to *require* or mandate that any party disclose or produce
24 privileged information or records or other Confidential Documents in this action.

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1 2. This Stipulation and [Proposed] Protective Order also requires each
2 party to this action to return the Confidential Documents produced to that party at the
3 conclusion of this lawsuit, subject to certain exceptions specified *infra*: this
4 requirement is intended to ensure that the use of Confidential Documents is limited to
5 the particular case in which the facts or documents are relevant or at issue. The
6 parties further agree that this Stipulation and its terms and provisions, and any Order
7 based thereon, is/are applicable only to the above entitled matter and may not be used
8 in the proceedings of any other matter for the purpose of establishing good cause for
9 a similar stipulation or protective order, nor as a basis for any contention that certain
10 documents or records should or should not be produced in another matter.

11 3. The mechanism by which parties may designate documents as
12 Confidential Documents is either: (a) by marking the individual documents as being
13 “Confidential,” such as on the footer of a specific/individual document, or (b) by
14 enclosing, with the documents such party intends to be treated as Confidential
15 Documents hereunder, written disclosures or discovery responses or correspondence
16 specifically and individually identifying those enclosed documents as “Confidential”
17 such party intends to be treated as Confidential Documents hereunder. The preferred
18 method of designating documents as Confidential Documents is to employ all of the
19 aforementioned means of designation, but such is not required hereunder.

20 4. The parties agree that documents marked as “Confidential” shall be so
21 marked in a manner that does not obstruct the substance of that document’s text or
22 content. The parties further agree that no party shall be permitted to alter or copy a
23 document or record designated as “Confidential” so as to make it appear that such
24 copy of such document or record was not a Confidential Document subject to the
25 terms of this Stipulation and Protective Order; the parties further agree that such
26 alteration or copying shall subject the party or counsel who engages in such action
27 regarding such documents to sanctions, at the discretion of the Court. Nothing in this
28 paragraph shall be construed so as to prohibit transparent “highlighting” of any

1 Confidential Document for emphasis, provided that prior to filing any such
2 “highlighted” document with the Court and/or prior to publishing such “highlighted”
3 document to the finder of fact or jury in this matter, the party adding such
4 “highlighting” emphasis informs the Court or the fact finder, as applicable, that the
5 “highlighting” party has added such “highlighting” emphasis to the document at
6 issue.

7 5. Hereafter, a party who has designated documents as Confidential
8 Documents shall be referred to as the “producing-disclosing party [or counsel]” and
9 the party to whom such documents are produced or disclosed shall be referred to as
10 the “recipient party [or counsel].”

11 6. Confidential Documents shall be used only in preparation for the above
12 entitled action, up to and including the completion of judicial proceedings, as well as
13 any appellate phase of this action, and not for *any* other purpose, including any other
14 litigation or dispute, and may not be disclosed or disseminated to any other persons,
15 including to any other counsel, other than as set forth in this Stipulation and
16 Protective Order.

17 7. In the event that a recipient party or counsel contends that any
18 Confidential Documents were already in the possession of that party, or that party’s
19 counsel, prior to the date of this Stipulation and Protective Order, or prior to such
20 documents’ production in this matter by the producing-disclosing party, the recipient
21 party or counsel shall have the burden of proving that any such documents were in
22 fact already in the possession of the recipient party or that party’s counsel prior to the
23 date of this Stipulation and Protective Order, or prior to such documents’ production
24 in this matter.

25 8. The parties will attempt to resolve any issue regarding such disputed
26 documents or records pursuant to Federal Rule of Civil Procedure 37(a)(1) before
27 submitting any such dispute-issue to the Court.

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1 9. Notwithstanding the foregoing, and despite any dispute as to whether
2 any documents produced should be subject to the terms of the Stipulation and
3 Protective Order as a result of prior possession, the parties will continue to treat the
4 document(s) at issue as confidential and subject to this Stipulation and Protective
5 Order until the Court rules upon the dispute or until the parties reach agreement on
6 the issue, whichever comes first.

7 10. If, upon review of such a dispute, the Court determines that the disputed
8 Confidential Documents were already in the possession of the recipient party or
9 counsel prior to the date of this Stipulation and Protective Order, or prior to such
10 documents' production in this matter, those specific documents shall not be subject to
11 the provisions on destruction of copies (§ 25, *infra*) nor to the provisions on return of
12 documents at the conclusion of litigation (§ 26, *infra*), nor shall the recipient party or
13 counsel be prohibited from using those specific documents in other litigation or at
14 trial of this action: otherwise, the remaining provisions of this Stipulation and
15 Protective Order shall continue to apply to such documents as Confidential
16 Documents hereunder.

17 11. The recipient parties to the above entitled action, and/or their counsel,
18 and/or their agents or the agents or employees of their counsel, shall secure and
19 maintain the confidentiality of any and all Confidential Documents in their
20 possession, and shall ensure that such Confidential Documents are used only for the
21 purposes set forth herein below, and for no other purpose, and subject to the terms
22 and provisions of this Stipulation and Protective Order.

23 12. Nothing in this Stipulation and Protective Order shall be construed as a
24 waiver by any party of any right to object on any ground to the use in any proceeding,
25 or to the admission into evidence, of any Confidential Documents. Nothing in this
26 Stipulation and Protective Order shall be construed so as to prevent the admission of
27 Confidential Documents into evidence at the trial of this matter, or in appellate
28 proceedings on this matter, solely on the basis of the documents' designation as

1 Confidential Documents.

2 13. Nothing in this Stipulation and Protective Order shall be construed as a
3 waiver by any party of any right it would otherwise have to object to disclosing or
4 producing any information or documents on any ground not specifically addressed in
5 this Stipulation and Protective Order, including but not limited to objections pursuant
6 to the California Government Code, California Evidence Code, California Penal
7 Code, the Official Records Privilege, the federal Official Information Privilege, the
8 federal Executive Deliberative Process Privilege, the law enforcement-investigative
9 privilege, the attorney-client privilege, the physician-patient privilege, the therapist-
10 patient privilege, the attorney work product protection, the taxpayer privilege, or the
11 right to Privacy under the United States Constitution, the California Constitution or
12 any other applicable state or federal authority (as underscored and/or augmented by
13 the statutory peace officer personnel records privileges pursuant to California Penal
14 Code sections 832.5 through 832.8, as well as California Evidence Code sections
15 1040 through 1048, and the associated case law), or any other privilege against
16 disclosure or production available under any provision of federal or California law.
17 Nothing in this Stipulation and Protective Order shall be construed as *requiring* the
18 production or disclosure of documents or information that may be or have been
19 designated as Confidential Documents. Nothing in this Stipulation and Protective
20 Order shall be construed as a waiver by any party of any right it would otherwise
21 have to obtain, acquire, or discover documents or records from any party to the extent
22 permitted under federal or California law, as applicable.

23 14. This Stipulation and Protective Order shall not be construed as a
24 stipulation by any party that any privilege asserted by any party regarding
25 Confidential Documents, whether produced or disclosed or not, is applicable or valid
26 as to such documents; however, all parties, by and through their undersigned counsel,
27 agree to abide by the terms of this Stipulation and Protective Order and to maintain
28 such documents' confidentiality pursuant to the terms of this Stipulation and

1 Protective Order. Furthermore, nothing in this paragraph or in this Stipulation shall
2 be construed as any agreement by plaintiffs with the recitals in the aforementioned
3 statement of Good Cause which were not specifically joined by plaintiffs or with
4 defendants' contentions therein.

5 15. Confidential Documents produced in this action shall remain in the sole
6 custody of recipient counsel to whom such documents are produced, who shall be
7 prohibited from releasing or disseminating, to any other persons – including but not
8 limited to legal counsel – any or all such Confidential Documents, except as
9 specifically delineated in this Stipulation and Protective Order.

10 16. All those permitted by a recipient counsel or party to review any
11 Confidential Documents must be informed of the terms of this Stipulation and
12 Protective Order and must agree to abide by such Stipulation and Protective Order
13 before the recipient party or counsel may produce or disclose such documents to such
14 person(s).

15 17. Confidential Documents may be disseminated, released, copied, shared,
16 or otherwise reproduced by a recipient party or counsel only to the following persons:

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- 18 (a) counsel for any party to this action who is also a party to this Stipulation;
 - 19 (b) paralegal, stenographic, clerical and/or secretarial personnel regularly
20 employed by counsel referred to in paragraph (a);
 - 21 (c) court personnel, including stenographic reporters engaged in such
22 proceedings as are necessary incident to preparation for the trial and pre-
23 trial proceedings in the above entitled action;
 - 24 (d) any outside expert or consultant retained in connection with this action,
25 and not otherwise employed by either of the parties – provided that such
26 expert or consultant understands and agrees to abide by the terms of this
27 Stipulation and Protective Order;
 - 28 (e) any “in-house” or outside experts designated by the defendant(s) to

1 testify at trial in this matter; and/or;

2 (f) any party or witnesses to this action, provided that such party or witness
3 understands and agrees to abide by the terms of this Stipulation and
4 Protective Order.

5 18. Confidential Documents may be submitted in all law and motion
6 proceedings before the Court if done so under seal pursuant to Federal Rules of Civil
7 Procedure 5.2 and 26 and/or United States District Court, Central District of
8 California Local Rules 79-5.1 and 79-5.2 as applicable and pursuant to the provisions
9 of this paragraph. If any party attaches any Confidential Documents to any pleading,
10 motion, or other paper to be filed, lodged, or otherwise submitted to the Court, that
11 Confidential Document(s) shall be filed/lodged under seal pursuant to Federal Rules
12 of Civil Procedure 5.2 and 26 and/or United States District Court, Central District of
13 California Local Rules 79-5.1 and 79-5.2 to the extent applicable. However, this
14 paragraph shall not be construed so as to prevent a producing-disclosing party or
15 counsel from submitting, filing, lodging, or publishing any document it has
16 previously designated as a Confidential Document without compliance with this
17 paragraph's requirement to do so under seal (i.e., a producing-disclosing party or
18 counsel may submit or publish its own Confidential Documents without being in
19 violation of the terms of this Stipulation and Protective Order).

20 19. Furthermore, a recipient party or counsel shall be **exempted** from the
21 requirements of the foregoing paragraph (§ 18) as to any specifically identified
22 Confidential Document(s) where the counsel for the producing-disclosing party of
23 such specifically identified Confidential Document(s) serves an express, written
24 waiver as to such specifically identified Confidential Document(s) prior to the
25 submission or publication of the Confidential Document(s) at issue, either upon
26 request by a recipient party or upon the producing-disclosing party's own initiative.
27 A recipient party or counsel shall also be **exempted** from the requirements of such
28 paragraph as to any specifically identified Confidential Document(s) where such

1 Confidential Document(s) is/are **not** documents, records, or information regarding (1)
2 private, personal information contained in peace officer personnel files (such as social
3 security numbers, driver's license numbers or comparable personal government
4 identification numbers, residential addresses, compensation or pension or personal
5 property information, credit card numbers or credit information, dates of birth, tax
6 records and information, information related to the identity of an officer's family
7 members or co-residents, and comparable personal information about the officer or
8 his family); (2) any internal affairs or comparable investigation by any law
9 enforcement agency into alleged officer misconduct; or (3) the medical records or
10 records of psychiatric or psychological treatment of any peace officer or party to this
11 action. The parties shall confer in good faith regarding any request for waiver from
12 this sealing requirement. Prior to submitting in any law and motion proceedings
13 before the Court any Confidential Document(s) exempted from the sealing
14 requirement of this Stipulation and any associated Protective Order, a recipient party
15 or counsel shall confer in good faith with the producing-disclosing party or counsel
16 on the issue of whether the parties can agree on whether such exempted Confidential
17 Document(s) should be filed under seal or whether, if the parties cannot agree, the
18 producing-disclosing party or counsel should move to have such Confidential
19 Document(s) placed under seal by the Court. Defendants further contend that *all*
20 Confidential Documents not subject to an express waiver by the producing-disclosing
21 party should be subject to the requirements of this paragraph; however, plaintiffs
22 disagree with such contention and plaintiffs do *not* stipulate to such a provision;
23 nothing in this paragraph or in this Stipulation shall be construed as an agreement by
24 plaintiffs to file any Confidential Document(s) under seal other than documents,
25 records, or information produced-disclosed by defendants (if any) regarding (1)
26 private, personal information contained in peace officer personnel files (such as social
27 security numbers, driver's license numbers or comparable personal government
28 identification numbers, residential addresses, compensation or pension or personal

1 property information, credit card numbers or credit information, dates of birth, tax
2 records and information, information related to the identity of an officer's family
3 members or co-residents, and comparable personal information about the officer or
4 his family); (2) any internal affairs or comparable investigation by any law
5 enforcement agency into alleged officer misconduct; or (3) the medical records or
6 records of psychiatric or psychological treatment of any peace officer or party to this
7 action. Additionally, nothing in this paragraph shall be construed to bind the Court so
8 as to limit or prevent the publication of any Confidential Documents to the jury or
9 factfinder, at the time of trial of this matter, where the Court has deemed such
10 Confidential Documents to be admissible into evidence.

11 20. Nothing in this Stipulation and Protective Order shall be construed as
12 requiring a producing-disclosing party or counsel to waive the requirements
13 hereunder of filing, lodging, or otherwise submitting Confidential Documents to the
14 Court only pursuant to the terms of this Stipulation and Protective Order and/or to
15 applicable federal or local rules.

16 21. If, in connection with any deposition taken in this action, counsel
17 questions a witness regarding materials subject to this Stipulation and Protective
18 Order, or use(s) Confidential Documents as deposition exhibits, at the request of
19 opposing counsel or party, the portions of the transcripts of such deposition testimony
20 wherein such materials are discussed, and the applicable attached exhibits, shall be
21 designated as Confidential Documents and shall be subject to the provisions of this
22 Stipulation and Protective Order. However, only deposition *exhibits* that are
23 designated as Confidential Documents shall be subject to the end-of-litigation return
24 requirement of this Stipulation and Protective Order, (§§ 25-26 of this Order; §§ 46-
25 47 of the Stipulation); deposition *transcripts* designated as Confidential Documents
26 shall *not* be subject to the aforementioned end-of-litigation return requirement of this
27 Stipulation and Protective Order.

28 22. This Stipulation and Protective Order is not intended, and shall not be

1 construed, to prevent current officials or current employees of the City, or Police
2 Department, or Defendant(s), or other authorized government officials, from having
3 access to any document(s) to which such officials or employees would have had
4 access in the normal course of their job duties.

5 23. Confidential Documents shall not be shown, produced, shared, copied to,
6 published, or otherwise disseminated or produced to any person by any recipient
7 party or counsel, or their agents or persons to whom such recipient party or counsel
8 discloses or produces such Confidential Documents, other than as specified in this
9 Stipulation and Protective Order.

10 24. Confidential Documents shall not be shown, produced, shared, copied to,
11 published, or otherwise disseminated or produced by any recipient party or recipient
12 party's counsel, or their agents or employees, to any member of the press or news or
13 entertainment media under any circumstances or at any time.

14 25. Electronic copies of any Confidential Documents may be made by any
15 recipient party or counsel but such copies, and their dissemination by any means or
16 medium, shall also be subject to the terms of this Stipulation and Protective Order,
17 and all such copies in the possession of any recipient party or counsel, or their agents,
18 shall be destroyed or permanently deleted at the conclusion of the legal proceedings
19 in the above entitled matter.

20 26. At the conclusion-end of the legal proceedings in the above entitled
21 matter, each person or entity – except court personnel – who has received any
22 Confidential Documents, or any copy thereof, and who is not the producing-
23 disclosing party thereof, shall return all such Confidential Documents to the
24 producing-disclosing counsel within thirty (30) calendar days of the conclusion of
25 such proceedings, or be subject to monetary or other sanctions at the Court's
26 discretion. No recipient party or counsel may retain any Confidential Documents, or
27 copies thereof, or permit any person or entity to whom the recipient party or counsel
28 provided such document(s) to retain any Confidential Documents, after legal

1 proceedings in the above entitled matter have concluded.

2 27. All counsel in the above entitled action specifically agree not to cause or
3 knowingly permit any disclosure or production of any Confidential Documents, or the
4 contents thereof, except as permitted by the terms of this Stipulation and Protective
5 Order.

6 28. Any restriction or obligation of this Stipulation and Protective Order that
7 applies to any recipient party likewise applies to any recipient counsel, and vice
8 versa.

9 29. In the event that any party, person, or entity subject to the terms of this
10 Stipulation and Protective Order violates the terms or provisions thereof, in a manner
11 consistent with the requirements of Due Process and the applicable provisions
12 governing motions for sanctions under federal law, including but not limited to the
13 Federal Rules of Civil Procedure and the United States District Court, Central District
14 of California Local Rules, to the extent applicable, at the Court's discretion, the Court
15 may impose sanctions against the party, person, or entity that the Court finds to have
16 violated of the terms of this Stipulation and Protective Order. However, nothing in
17 this paragraph shall be construed so as to subject *counsel* for any party in the above
18 entitled action to sanctions for any violation(s) of this Stipulation and Protective
19 Order that are committed by other persons or entities – including but not limited to
20 any agent or employee of any recipient party or counsel or any consultants or experts
21 retained by any recipient party or counsel – provided that, in the event of the filing of
22 a motion for sanctions for violation of the terms of this Stipulation and Protective
23 Order, or within thirty (30) days of the termination of this action (whichever is
24 sooner), recipient counsel files a sworn declaration with this Court affirming that: (a)
25 the alleged violator was informed of all of the applicable terms and provisions of this
26 Stipulation and Protective Order prior to being provided with any Confidential
27 Documents; (b) the alleged violator agreed to abide by the applicable terms and
28 provisions of this Stipulation and Protective Order prior to being provided with any

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Confidential Documents; and (c) the recipient party and recipient counsel otherwise complied with the end-of-litigation return/destruction provisions of the Stipulation and Protective Order (*e.g.*, ¶¶ 25-26 of this Order; ¶¶ 46-47 of the Stipulation); to the extent applicable. Nothing in this Stipulation and Protective Order shall be construed as providing for sanctions or the enforcement of any Court orders beyond the powers conferred upon the Court under existing law.

30. The provisions of this Stipulation and Protective Order shall be in effect until further Order of the Court or further written Stipulation by the parties by and through their attorneys of record.

IT IS SO ORDERED.

/s/ Andrew J. Wistrich

Dated: _____12/20/2013_____

UNITED STATES MAGISTRATE JUDGE

1 Respectfully Submitted By,
2 Mildred K. O'Linn, Esq. (State Bar No. 159055)
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Attorneys for Defendant,
CITY OF COLTON (erroneously sued
as "COLTON POLICE DEPARTMENT")