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Exempt per Gov. Code §6103

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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

12 ETTIENNE GLYNN CARTER,) CASE NO. 5:15-cv-01206 SJO (KKx)
 13 Plaintiff,)

14 vs.

) **[PROPOSED] PROTECTIVE**
) **ORDER**

15)
 16 COUNTY OF SAN) Case assigned to:
 17 BERNARDINO; DEPUTY ALEX)
 18 BARRERO; DEPUTY STACY) District Judge S. James Otero and to
 19 RAY TARVER, and DOES 3-20,) Magistrate Judge Kenly Kiya Kato
 20 Inclusive,)

) **PLEASE NOTE CHANGES MADE BY THE COURT**

Defendants.)

Pursuant to the parties' stipulation, the Court makes the following protective order:

1. A. PURPOSES AND LIMITATIONS

Discovery in this action is likely to involve production of confidential, proprietary, or private information for which special protection from public disclosure and from use for any purpose other than prosecuting this litigation may be warranted. Accordingly, the parties hereby stipulate to and petition the Court to enter the following Stipulated Protective Order. The parties acknowledge that this

1 Order does not confer blanket protections on all disclosures or responses to
2 discovery and that the protection it affords from public disclosure and use extends
3 only to the limited information or items that are entitled to confidential treatment
4 under the applicable legal principles. The parties further acknowledge, as set forth
5 in Section 12.3, below, that this Stipulated Protective Order does not entitle them
6 to file confidential information under seal; Civil Local Rule 79-5 sets forth the
7 procedures that must be followed and the standards that will be applied when a
8 party seeks permission from the court to file material under seal.
9

10 **B. GOOD CAUSE STATEMENT**

11 Defendants COUNTY OF SAN BERNARDINO, DEPUTY ALEX
12 BARRERO, and DEPUTY STACY RAY TARVER and plaintiff ETTIENNE
13 GLYNN CARTER submitted a stipulation and protective order in relation to
14 plaintiff's request for production of documents seeking disclosure of the Internal
15 Affairs investigation (the "information") related to this case. Defendants claim the
16 documents are protected by, *inter alia*, the official information privilege. This
17 action is likely to involve the Defendants' personnel file information for which
18 special protection from public disclosure and from use for any purpose other than
19 prosecution of this action is warranted. Such confidential and proprietary
20 materials and information consist of, among other things, confidential business or
21 financial information, information regarding confidential business practices, or
22 other confidential research, development, or commercial information (including
23 information implicating privacy rights of third parties), information otherwise
24 generally unavailable to the public, or which may be privileged or otherwise
25 protected from disclosure under state or federal statutes, court rules, case
26 decisions, or common law. Accordingly, to expedite the flow of information, to
27 facilitate the prompt resolution of disputes over confidentiality of discovery
28 materials, to adequately protect information the parties are entitled to keep

1 confidential, to ensure that the parties are permitted reasonable necessary uses of
2 such material in preparation for and in the conduct of trial, to address their
3 handling at the end of the litigation, and serve the ends of justice, a protective
4 order for such information is justified in this matter. It is the intent of the parties
5 that information will not be designated as confidential for tactical reasons and that
6 nothing be so designated without a good faith belief that it has been maintained in
7 a confidential, non-public manner, and there is good cause why it should not be
8 part of the public record of this case.
9

10 **2. DEFINITIONS**

11 2.1 Action: This pending federal law suit

12 2.2 Challenging Party: a Party or Non-Party that challenges the designation
13 of information or items under this Order.

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

18 2.4 Counsel: Outside Counsel of Record and House Counsel (as well as
19 their support staff).

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

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

27 2.7 Expert: a person with specialized knowledge or experience in a matter
28 pertinent to the litigation who has been retained by a Party or its counsel to serve

1 as an expert witness or as a consultant in this Action.

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

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

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

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

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

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

20 2.14 Protected Material: any Disclosure or Discovery Material that is
21 designated as "CONFIDENTIAL."

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

24
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
28 extracted from Protected Material; (2) all copies, excerpts, summaries, or

1 compilations of Protected Material; and (3) any testimony, conversations, or
2 presentations by Parties or their Counsel that might reveal Protected Material. Any
3 use of Protected Material at trial shall be governed by the orders of the trial judge.
4 This Order does not govern the use of Protected Material at trial.
5

6 **4. DURATION**

7 Any use of Protected Material at trial or other court hearings or proceedings
8 shall be governed by the orders of the trial judge. Even after final disposition of
9 this litigation, the confidentiality obligations imposed by this Order shall remain
10 in effect until a Designating Party agrees otherwise in writing or a court order
11 otherwise directs. Final disposition shall be deemed to be the later of (1) dismissal
12 of all claims and defenses in this Action, with or without prejudice; and (2) final
13 judgment herein after the completion and exhaustion of all appeals, rehearings,
14 remands, trials, or reviews of this Action, including the time limits for filing any
15 motions or applications for extension of time pursuant to applicable law.
16

17 **5. DESIGNATING PROTECTED MATERIAL**

18 5.1 Exercise of Restraint and Care in Designating Material for Protection.
19 Each Party or Non-Party that designates information or items for protection under
20 this Order must take care to limit any such designation to specific material that
21 qualifies under the appropriate standards. The Designating Party must designate
22 for protection only those parts of material, documents, items, or oral or written
23 communications that qualify so that other portions of the material, documents,
24 items, or communications for which protection is not warranted are not swept
25 unjustifiably within the ambit of this Order. Mass, indiscriminate, or routinized
26 designations are prohibited. Designations that are shown to be clearly unjustified
27 or that have been made for an improper purpose (e.g., to unnecessarily encumber
28 the case development process or to impose unnecessary expenses and burdens on

1 other parties) may expose the Designating Party to sanctions. If it comes to a
2 Designating Party's attention that information or items that it designated for
3 protection do not qualify for protection, that Designating Party must promptly
4 notify all other Parties that it is withdrawing the inapplicable designation.

5 5.2 Manner and Timing of Designations. Except as otherwise provided in
6 this Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise
7 stipulated or ordered, Disclosure or Discovery Material that qualifies for
8 protection under this Order must be clearly so designated before the material is
9 disclosed or produced. 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 or portions of the material on a page
15 qualifies for protection, the Producing Party also must clearly identify the
16 protected portion(s) (e.g., by making appropriate markings in the margins). A
17 Party or Non-Party that makes original documents available for inspection need
18 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
22 documents it wants copied and produced, the Producing Party must determine
23 which documents, or portions thereof, qualify for protection under this Order.
24 Then, before producing the specified documents, the Producing Party must affix
25 the "CONFIDENTIAL legend" to each page that contains Protected Material. If
26 only a portion or portions of the material on a page qualifies for protection, the
27 Producing Party also must clearly identify the protected portion(s) (e.g., by
28 making appropriate markings in the margins).

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

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

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

16 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

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

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

22 6.3 The burden of persuasion in any such challenge proceeding shall be on
23 the Designating Party. Frivolous challenges, and those made for an improper
24 purpose (e.g., to harass or impose unnecessary expenses and burdens on other
25 parties) may expose the Challenging Party to sanctions. Unless the Designating
26 Party has waived or withdrawn the confidentiality designation, all parties shall
27 continue to afford the material in question the level of protection to which it is
28

1 entitled under the Producing Party’s designation until the Court rules on the
2 challenge.

3
4 **7. ACCESS TO AND USE OF PROTECTED MATERIAL**

5 7.1 Basic Principles. A Receiving Party may use Protected Material that is
6 disclosed or produced by another Party or by a Non-Party in connection with this
7 Action only for prosecuting, defending, or attempting to settle this Action. Such
8 Protected Material may be disclosed only to the categories of persons and under
9 the conditions described in this Order. When the Action has been terminated, a
10 Receiving Party must comply with the provisions of section 13 below (FINAL
11 DISPOSITION). Protected Material must be stored and maintained by a
12 Receiving Party at a location and in a secure manner that ensures that access is
13 limited to the persons authorized under this Order.

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

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

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

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

26 (d) the court and its personnel;

27 (e) court reporters and their staff;

28 (f) professional jury or trial consultants, mock jurors, and Professional

1 Vendors to whom disclosure is reasonably necessary for this Action and who have
2 signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

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

5 (h) during their depositions, witnesses ,and attorneys for witnesses, in the
6 Action to whom disclosure is reasonably necessary provided:

7 (1) the deposing party requests that the witness sign the form attached as
8 Exhibit 1 hereto; and

9 (2) they will not be permitted to keep any confidential information unless
10 they sign the “Acknowledgment and Agreement to Be Bound” (Exhibit A), unless
11 otherwise agreed by the Designating Party or ordered by the court. Pages of
12 transcribed deposition testimony or exhibits to depositions that reveal Protected
13 Material may be separately bound by the court reporter and may not be disclosed
14 to anyone except as permitted under this Stipulated Protective Order; and (i) any
15 mediator or settlement officer, and their supporting personnel, mutually agreed
16 upon by any of the parties engaged in settlement discussions.

17
18 **8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED**
19 **IN OTHER LITIGATION**

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

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

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

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

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

12 **9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE**
13 **PRODUCED IN THIS LITIGATION**

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

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

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

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

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

11 **10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

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

22 **11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE 23 PROTECTED MATERIAL**

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

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

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
13 this Stipulated Protective Order. Similarly, no Party waives any right to object on
14 any ground to use in evidence of any of the material covered by this Protective
15 Order.

16 12.3 Filing Protected Material. A Party that seeks to file under seal any
17 Protected Material must comply with Civil Local Rule 79-5. Protected Material
18 may only be filed under seal pursuant to a court order authorizing the sealing of
19 the specific Protected Material at issue. If a Party's request to file Protected
20 Material under seal is denied by the court, then the Receiving Party may file the
21 information in the public record unless otherwise instructed by the court.
22

23 **13. FINAL DISPOSITION**

24 After the final disposition of this Action, as defined in paragraph 4, within
25 60 days of a written request by the Designating Party, each Receiving Party must
26 return all Protected Material to the Producing Party or destroy such material. As
27 used in this subdivision, "all Protected Material" includes all copies, abstracts,
28 compilations, summaries, and any other format reproducing or capturing any of

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

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

18 15. The agreement of the parties embodied in this Protective Order does
19 not constitute an admission or agreement that any documents or information is
20 subject to discovery, or is admissible as evidence, in this case. Designation of any
21 information as subject to this Protective Order shall have no meaning or effect
22 whatsoever with respect to the substantive issues in this proceeding or the claims
23 or defenses of any party hereto.

24 16. Nothing in the protective order shall be construed as authorizing a
25 party to disobey a lawful subpoena or court order issued in another action.
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IT IS SO ORDERED.



DATED: June 7, 2016

HON. KENLY KIYA KATO
UNITED STATES MAGISTRATE JUDGE