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 9 DEYLAN KENNEDY

10  
 11 **UNITED STATES DISTRICT COURT**  
 12 **CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION**  
 13

14 DEMAR SMITH, individually and as  
 Successor in Interest to ANTHONIE  
 15 SMITH, deceased,

16 Plaintiff,

17 v.

18 COUNTY OF RIVERSIDE, a  
 municipal entity, and DOES 1 through  
 19 10, inclusive,

20 Defendant.  
 21

Case No. 5:16-CV-00227-JGB(KKx)  
 [Hon. District Judge, Jesus G. Bernal,  
 Magistrate, Kenly Kiya Kato]

[DISCOVERY MATTER]

**STIPULATED PROTECTIVE  
 ORDER**

22 1. A. PURPOSES AND LIMITATIONS

23 Discovery in this action is likely to involve production of confidential,  
 24 proprietary, or private information for which special protection from public  
 25 disclosure and from use for any purpose other than prosecuting this litigation may  
 26 be warranted. Accordingly, the parties hereby stipulate to and petition the Court to  
 27 enter the following Stipulated Protective Order. The parties acknowledge that this  
 28 Order does not confer blanket protections on all disclosures or responses to

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

8 **B. GOOD CAUSE STATEMENT**

9 Plaintiffs have requested, by way of written discovery, materials pertaining to  
10 the Riverside County Sheriff's Department's and/or District Attorney's investigation  
11 into the shooting death of Anthonie Smith. Defendants have also identified materials  
12 pertaining to the Riverside County Sheriff's Department's and/or District Attorney's  
13 investigation into the shooting death of Anthonie Smith in their initial disclosures.  
14 These documents contain information of a privileged, confidential, private, or  
15 sensitive nature, and the parties believe that public dissemination of this information  
16 would jeopardize compelling interests in preserving the integrity of the Riverside  
17 County Sheriff's Department's investigation. This confidential information is in the  
18 possession of the Defendants. Defendants have agreed to produce this information  
19 pursuant to the terms and conditions found in the instant protective order.

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 2. DEFINITIONS

3 2.1 Action: this pending federal law suit, *Demar Smith v. County of Riverside,*  
4 *et al.*, Case No. 5:16-CV-00227-JGB(KKx).

5 2.2 Challenging Party: a Party or Non-Party that challenges the designation of  
6 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: Outside Counsel of Record and House Counsel (as well as  
12 their support staff).

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

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

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

23 2.8 House Counsel: attorneys who are employees of a party to this Action.  
24 House Counsel does not include Outside Counsel of Record or any other outside  
25 counsel.

26 2.9 Non-Party: any natural person, partnership, corporation, association, or  
27 other legal entity not named as a Party to this action.  
28

Blair/Scott/Reed  
Attorneys at Law

1           2.10 Outside Counsel of Record: attorneys who are not employees of a party  
2 to this Action but are retained to represent or advise a party to this Action and have  
3 appeared in this Action on behalf of that party or are affiliated with a law firm which  
4 has appeared on behalf of that party, and includes support staff.

5           2.11 Party: any party to this Action, including all of its officers, directors,  
6 employees, consultants, retained experts, and Outside Counsel of Record (and their  
7 support staffs).

8           2.12 Producing Party: a Party or Non-Party that produces Disclosure or  
9 Discovery Material in this Action.

10          2.13 Professional Vendors: persons or entities that provide litigation support  
11 services (e.g., photocopying, videotaping, translating, preparing exhibits or  
12 demonstrations, and organizing, storing, or retrieving data in any form or  
13 medium)and their employees and subcontractors.

14          2.14 Protected Material: any Disclosure or Discovery Material that is  
15 designated as “CONFIDENTIAL.”

16          2.15 Receiving Party: Party that receives Disclosure or Discovery Material  
17 from a Producing Party.

18        3.    SCOPE

19           The protections conferred by this Stipulation and Order cover not only  
20 Protected Material (as defined above), but also (1) any information copied or  
21 extracted from Protected Material; (2) all copies, excerpts, summaries, or  
22 compilations of Protected Material; and (3) any testimony, conversations, or  
23 presentations by Parties or their Counsel that might reveal Protected Material. Any  
24 use of Protected Material at trial shall be governed by the orders of the trial judge.  
25 This Order does not govern the use of Protected Material at trial.

26        4.    DURATION

27           Even after final disposition of this litigation, the confidentiality obligations  
28 imposed by this Order shall remain in effect until a Designating Party agrees

1 otherwise in writing or a court order otherwise directs. Final disposition shall be  
2 deemed to be the later of (1) dismissal of all claims and defenses in this Action,  
3 with or without prejudice; and (2) final judgment herein after the completion  
4 and exhaustion of all appeals, re-hearings, remands, trials, or reviews of this  
5 Action, including the time limits for filing any motions or applications for  
6 extension of time pursuant to applicable law.

7 5. DESIGNATING PROTECTED MATERIAL

8 5.1 Exercise of Restraint and Care in Designating Material for Protection.

9 Each Party or Non-Party that designates information or items for protection under  
10 this Order must take care to limit any such designation to specific material that  
11 qualifies under the appropriate standards. The Designating Party must designate for  
12 protection only those parts of material, documents, items, or oral or written  
13 communications that qualify so that other portions of the material, documents,  
14 items, or communications for which protection is not warranted are not swept  
15 unjustifiably within the ambit of this Order. Mass, indiscriminate, or routinized  
16 designations are prohibited. Designations that are shown to be clearly unjustified  
17 or that have been made for an improper purpose (e.g., to unnecessarily encumber  
18 the case development process or to impose unnecessary expenses and burdens on  
19 other parties) may expose the Designating Party to sanctions. If it comes to a  
20 Designating Party's attention that information or items that it designated for  
21 protection do not qualify for protection, that Designating Party must promptly  
22 notify all other Parties that it is withdrawing the inapplicable designation.

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

28 //

Blair/Scott/Kearney LLP

1           Designation in conformity with this Order requires:

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

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

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

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

1           5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent  
2 failure to designate qualified information or items does not, standing alone, waive the  
3 Designating Party's right to secure protection under this Order for such material. Upon  
4 timely correction of a designation, the Receiving Party must make reasonable efforts to  
5 assure that the material is treated in accordance with the provisions of this Order.

6 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

7           6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation  
8 of confidentiality at any time that is consistent with the Court's Scheduling Order.

9           6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution  
10 process under Local Rule 37.1 et seq.

11           6.3 The burden of persuasion in any such challenge proceeding shall be on the  
12 Designating Party. Frivolous challenges, and those made for an improper purpose (e.g.,  
13 to harass or impose unnecessary expenses and burdens on other parties) may expose the  
14 Challenging Party to sanctions. Unless the Designating Party has waived or withdrawn  
15 the confidentiality designation, all parties shall continue to afford the material in  
16 question the level of protection to which it is entitled under the Producing Party's  
17 designation until the Court rules on the challenge.

18 7. ACCESS TO AND USE OF PROTECTED MATERIAL

19           7.1 Basic Principles. A Receiving Party may use Protected Material that is  
20 disclosed or produced by another Party or by a Non-Party in connection with this  
21 Action only for prosecuting, defending, or attempting to settle this Action. Such  
22 Protected Material may be disclosed only to the categories of persons and under the  
23 conditions described in this Order. When the Action has been terminated, a Receiving  
24 Party must comply with the provisions of section 13 below (FINAL DISPOSITION).  
25 Protected Material must be stored and maintained by a Receiving Party at a location  
26 and in a secure manner that ensures that access is limited to the persons authorized  
27 under this Order.



1           7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise  
2 ordered by the court or permitted in writing by the Designating Party, a Receiving Party  
3 may disclose any information or item designated “CONFIDENTIAL” only to:

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

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

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

12           (d) the court and its personnel;

13           (e) court reporters and their staff;

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

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

19           (h) during their depositions, witnesses and attorneys for witnesses, in the  
20 Action to whom disclosure is reasonably necessary provided: (1) the deposing party  
21 requests that the witness sign the form attached as Exhibit 1 hereto; and (2) they will  
22 not be permitted to keep any confidential information unless they sign the  
23 “Acknowledgment and Agreement to Be Bound” (Exhibit A), unless otherwise agreed  
24 by the Designating Party or ordered by the court. Pages of transcribed deposition  
25 testimony or exhibits to depositions that reveal Protected Material may be separately  
26 bound by the court reporter and may not be disclosed to anyone except as permitted  
27 under this Stipulated Protective Order; and  
28



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

3 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN  
4 OTHER LITIGATION

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

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

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

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

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

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

26 (a) The terms of this Order are applicable to information produced by a Non-  
27 Party in this Action and designated as “CONFIDENTIAL.” Such information produced  
28 by Non-Parties in connection with this litigation is protected by the remedies and relief

1 provided by this Order. Nothing in these provisions should be construed as prohibiting  
2 a Non-Party from seeking additional protections.

3 (b) In the event that a Party is required, by a valid discovery request, to produce a  
4 Non-Party's confidential information in its possession, and the Party is subject to an  
5 agreement with the Non-Party not to produce the Non-Party's  
6 confidential information, then the Party shall:

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

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

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

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

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

24 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed  
25 Protected Material to any person or in any circumstance not authorized under this  
26 Stipulated Protective Order, the Receiving Party must immediately (a) notify in writing  
27 the Designating Party of the unauthorized disclosures, (b) use its best efforts to retrieve  
28 all unauthorized copies of the Protected Material, (c) inform the person or persons to

1 whom unauthorized disclosures were made of all the terms of this Order, and (d)  
2 request such person or persons to execute the “Acknowledgment and Agreement to Be  
3 Bound” that is attached hereto as Exhibit A.

4 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE  
5 PROTECTED MATERIAL

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

16 12. MISCELLANEOUS

17 12.1 Right to Further Relief. Nothing in this Order abridges the right of any  
18 person to seek its modification by the Court in the future.

19 12.2 Right to Assert Other Objections. By stipulating to the entry of this  
20 Protective Order no Party waives any right it otherwise would have to object to  
21 disclosing or producing any information or item on any ground not addressed in this  
22 Stipulated Protective Order. Similarly, no Party waives any right to object on any  
23 ground to use in evidence of any of the material covered by this Protective Order.

24 12.3 Filing Protected Material. A Party that seeks to file under seal any Protected  
25 Material must comply with Civil Local Rule 79-5. Protected Material may only be filed  
26 under seal pursuant to a court order authorizing the sealing of the specific Protected  
27 Material at issue. If a Party's request to file Protected Material under seal is denied by  
28 the court, then the Receiving Party may file the information in the public record unless

1 otherwise instructed by the court.

2 13. FINAL DISPOSITION

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

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

3 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

4  
5 DATED: July 29, 2016

/s/ Megan Gyongyos  
Brian Dunn  
Megan Gyongyos  
Attorney for Plaintiff

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8  
9  
10 DATED: July 29, 2016

/s/ Lucas E. Rowe  
Eugene P. Ramirez  
Angela M. Powell  
Lucas E. Rowe  
Attorneys for Defendants

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14 FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.

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17 DATED: August 1, 2016

Kenly Kiva Kato  
United States Magistrate Judge

1 ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

2 I, \_\_\_\_\_ [print or type full name], of  
3 \_\_\_\_\_ [print or type full address],  
4 declare under penalty of perjury that I have read in its entirety and understand the  
5 Stipulated Protective Order that was issued by the United States District Court for  
6 the Central District of California on [date] in the case of *Demar Smith v. County of*  
7 *Riverside, et al.*, Case No. 5:16-CV-00227-JGB(KKx). I agree to comply with and  
8 to be bound by all the terms of this Stipulated Protective Order and I understand and  
9 acknowledge that failure to so comply could expose me to sanctions and punishment  
10 in the nature of contempt. I solemnly promise that I will not disclose in any manner  
11 any information or item that is subject to this Stipulated Protective Order to any  
12 person or entity except in strict compliance with the provisions of this Order. I  
13 further agree to submit to the jurisdiction of the United States District Court for the  
14 Central District of California for the purpose of enforcing the terms of this  
15 Stipulated Protective Order, even if such enforcement proceedings occur after  
16 termination of this action. I hereby appoint \_\_\_\_\_ [print or  
17 type full name] of \_\_\_\_\_  
18 [print or type full address and telephone number] as my California agent for service  
19 of process in connection with this action or any proceedings related to enforcement  
20 of this Stipulated Protective Order.

21  
22 Date: \_\_\_\_\_  
23 City and State where sworn and signed: \_\_\_\_\_  
24 Printed name: \_\_\_\_\_  
25 Signature: \_\_\_\_\_  
26  
27  
28