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 CITY OF BARSTOW

8  
 9 **UNITED STATES DISTRICT COURT**  
 10 **CENTRAL DISTRICT OF CALIFORNIA**

12 DAVID POWELL, SR., et al.,  
 13 Plaintiffs,  
 14 vs.  
 15 CITY OF BARSTOW, et al.,  
 16 Defendants.

CASE NO: 16-CV-01472-JGB (KKx)  
**STIPULATED PROTECTIVE  
 ORDER**

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1           1. A. PURPOSES AND LIMITATIONS

2           Discovery in this action is likely to involve production of confidential,  
3 proprietary, or private information for which special protection from public  
4 disclosure and from use for any purpose other than prosecuting this litigation may  
5 be warranted. Accordingly, the parties hereby stipulate to and petition the Court to  
6 enter the following Stipulated Protective Order. The parties acknowledge that this  
7 Order does not confer blanket protections on all disclosures or responses to  
8 discovery and that the protection it affords from public disclosure and use extends  
9 only to the limited information or items that are entitled to confidential treatment  
10 under the applicable legal principles. The parties further acknowledge, as set forth in  
11 Section 12.3, below, that this Stipulated Protective Order does not entitle them to  
12 file confidential information under seal; Civil Local Rule 79-5 sets forth the  
13 procedures that must be followed and the standards that will be applied when a party  
14 seeks permission from the court to file material under seal.

15           B. GOOD CAUSE STATEMENT

16           Plaintiffs have requested, by way of written discovery, materials pertaining to  
17 the City of Barstow Police Department's and/or District Attorney's investigation  
18 into the shooting death of David Powell, Jr. Defendants assert that these documents  
19 contain information of a privileged, confidential, private, or sensitive nature, and the  
20 public dissemination of which Defendants believe jeopardize compelling interests in  
21 preserving the integrity of the investigation. This confidential information is in the  
22 possession of the Defendants. Defendants have agreed to produce this information  
23 pursuant to the terms and conditions found in the instant protective order.

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

7 2. DEFINITIONS

8       2.1 Action: this pending federal law suit, *David Powell, Sr., et al. v. City*  
9 *of Barstow, et al.*, case number 16-CV-01472-JGB (KKx).

10       2.2 Challenging Party: a Party or Non-Party that challenges the  
11 designation of information or items under this Order.

12       2.3 “CONFIDENTIAL” Information or Items: information (regardless of  
13 how it is generated, stored or maintained) or tangible things that qualify for  
14 protection under Federal Rule of Civil Procedure 26(c), and as specified above in  
15 the Good Cause Statement.

16       2.4 Counsel: Outside Counsel of Record and House Counsel (as well as  
17 their support staff).

18       2.5 Designating Party: a Party or Non-Party that designates information or  
19 items that it produces in disclosures or responses to discovery as “CONFIDENTIAL.”

20       2.6 Disclosure or Discovery Material: all items or information, regardless  
21 of the medium or manner in which it is generated, stored, or maintained (including,  
22 among other things, testimony, transcripts, and tangible things), that are produced or  
23 generated in disclosures or responses to discovery in this matter.

24       2.7 Expert: a person with specialized knowledge or experience in a matter  
25 pertinent to the litigation who has been retained by a Party or its counsel to serve as  
26 an expert witness or as a consultant in this Action.

27       2.8 House Counsel: attorneys who are employees of a party to this Action.  
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1 House Counsel does not include Outside Counsel of Record or any other outside  
2 counsel.

3       2.9 Non-Party: any natural person, partnership, corporation, association, or  
4 other legal entity not named as a Party to this action.

5       2.10 Outside Counsel of Record: attorneys who are not employees of a party  
6 to this Action but are retained to represent or advise a party to this Action and have  
7 appeared in this Action on behalf of that party or are affiliated with a law firm which  
8 has appeared on behalf of that party, and includes support staff.

9       2.11 Party: any party to this Action, including all of its officers, directors,  
10 employees, consultants, retained experts, and Outside Counsel of Record (and their  
11 support staffs).

12       2.12 Producing Party: a Party or Non-Party that produces Disclosure or  
13 Discovery Material in this Action.

14       2.13 Professional Vendors: persons or entities that provide litigation  
15 support services (e.g., photocopying, videotaping, translating, preparing exhibits or  
16 demonstrations, and organizing, storing, or retrieving data in any form or  
17 medium)and their employees and subcontractors.

18       2.14 Protected Material: any Disclosure or Discovery Material that is  
19 designated as “CONFIDENTIAL.”

20       2.15 Receiving Party: a Party that receives Disclosure or Discovery  
21 Material from a Producing Party, except as to the Court and its personnel as they are  
22 not bound by this Protective Order.

### 23    3.    SCOPE

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

4 4. DURATION

5 Even after final disposition of this litigation, the confidentiality obligations  
6 imposed by this Order shall remain In effect until a Designating Party agrees  
7 otherwise in writing or a court order otherwise directs. Final disposition shall  
8 be deemed to be the later of (1) dismissal of all claims and defenses in this  
9 Action, with or without prejudice; and (2) final judgment herein after the  
10 completion and exhaustion of all appeals, re-hearings, remands, trials, or reviews  
11 of this Action, including the time limits for filing any motions or applications for  
12 extension of time pursuant to applicable law.

13 5. DESIGNATING PROTECTED MATERIAL

14 5.1 Exercise of Restraint and Care in Designating Material for Protection.

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

2       5.2 Manner and Timing of Designations. Except as otherwise provided in  
3 this Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise  
4 stipulated or ordered, Disclosure or Discovery Material that qualifies for protection  
5 under this Order must be clearly so designated before the material is disclosed or  
6 produced.

7       Designation in conformity with this Order requires:

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

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

27       (b) for testimony given in depositions that the Designating Party identify  
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1 the Disclosure or Discovery Material on the record, before the close of the  
2 deposition 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  
6 legend “CONFIDENTIAL.” If only a portion or portions of the information  
7 warrants protection, the Producing Party, to the extent practicable, shall identify the  
8 protected 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  
11 the 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 the  
22 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  
27 Producing Party’s designation until the Court rules on the challenge.  
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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  
7 Receiving Party must comply with the provisions of section 13 below (FINAL  
8 DISPOSITION). Protected Material must be stored and maintained by a Receiving  
9 Party at a location and in a secure manner that ensures that access is limited to the  
10 persons authorized under this Order.

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

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

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

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

22 (d) the court and its personnel;

23 (e) court reporters and their staff;

24 (f) professional jury or trial consultants, mock jurors, and Professional  
25 Vendors to whom disclosure is reasonably necessary for this Action and who have  
26 signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);  
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1 (g) the author or recipient of a document containing the information or a  
2 custodian or other person who otherwise possessed or knew the information;

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

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

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

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

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

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

25 (c) cooperate with respect to all reasonable procedures sought to be pursued  
26 by the Designating Party whose Protected Material may be affected.  
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1 If the Designating Party timely seeks a protective order, the Party served with the  
2 subpoena or court order shall not produce any information designated in this action  
3 as “CONFIDENTIAL” before a determination by the court from which the  
4 subpoena or order issued, unless the Party has obtained the Designating Party’s  
5 permission. The Designating Party shall bear the burden and expense of seeking  
6 protection in that court of its confidential material and nothing in these provisions  
7 should be construed as authorizing or encouraging a Receiving Party in this Action  
8 to disobey a lawful directive from another court.

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

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

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

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

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

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

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

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

18 **11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE**  
19 **PROTECTED MATERIAL**

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

3 12. MISCELLANEOUS

4 12.1 Right to Further Relief. Nothing in this Order abridges the right of any  
5 person to seek its modification by the Court in the future.

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

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

17 13. FINAL DISPOSITION

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

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

4 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

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6 DATED February 10, 2017 /s/ Renee V. Masongsong

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Dale K. Galipo  
Renee V. Masongsong  
Donald C. Randolph  
Paal H. Bakstad  
Attorneys for Plaintiffs

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11 DATED: February 10, 2017 /s/ John M. Porter

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Arthur K. Cunningham  
John M. Porter  
Attorneys for Defendants

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15 FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.

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17 DATED: February 13, 2017



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Hon. Kenly Kiya Kato  
United States Magistrate Judge

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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 *David Powell, Sr., et al. v.*  
7 *City of Barstow*, et al., case number 16-CV-01472-JGB (KKx). I agree to comply  
8 with and to be bound by all the terms of this Stipulated Protective Order and I  
9 understand and acknowledge that failure to so comply could expose me to sanctions  
10 and punishment in the nature of contempt. I solemnly promise that I will not  
11 disclose in any manner any information or item that is subject to this Stipulated  
12 Protective Order to any person or entity except in strict compliance with the  
13 provisions of this Order. I further agree to submit to the jurisdiction of the United  
14 States District Court for the Central District of California for the purpose of  
15 enforcing the terms of this Stipulated Protective Order, even if such enforcement  
16 proceedings occur after termination of this action. I hereby appoint  
17 \_\_\_\_\_ [print or type full name] of  
18 \_\_\_\_\_ [print or type full  
19 address and telephone number] as my California agent for service of process in  
20 connection with this action or any proceedings related to enforcement of this  
21 Stipulated Protective Order.

22 Date: \_\_\_\_\_

23 City and State where sworn and signed: \_\_\_\_\_

24 Printed name: \_\_\_\_\_

25 Signature: \_\_\_\_\_

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