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

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

CASE NO. ED-CV 16-01472 JGB
 (KKx)

~~**[PROPOSED]**~~

**STIPULATED PROTECTIVE
 ORDER REGARDING
 DISCLOSURES FROM
 PERSONNEL FILES OF LAW
 ENFORCEMENT OFFICERS**

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 20 1. A. PURPOSES AND LIMITATIONS

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

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

6 B. GOOD CAUSE STATEMENT

7 Plaintiffs have requested, by way of informal request for disclosure and
8 written discovery, documents and information pertaining to the personnel files of
9 Defendants JUAN ZEPEDA and ANDREW BUESA. Defendants assert that state
10 and federal law grants privacy rights over these documents and are protected from
11 public disclosure. This confidential information is in the possession of the
12 Defendants. Defendants have agreed to produce this information pursuant to the
13 terms and conditions found in this Protective Order. The information designated as
14 confidential and to be disclosed by Defendants shall be limited to:

15 #1 INFORMATION REGARDING CITIZEN COMPLAINTS

16 The names and contact information for citizen complainants, witnesses, and
17 involved officers regarding citizen complaints for 1) excessive or unreasonable
18 force, made against Officer Andrew Buesa and/or Officer Juan Zepeda from
19 September 14, 2010 through and including September 14, 2015 and 2) dishonesty,
20 made against Officer Andrew Buesa and/or Officer Juan Zepeda from September
21 14, 2010 through and including September 14, 2015.

22 #2 DOCUMENTS RE BUESA'S WORK HISTORY

23 Documents from Officer Buesa's personnel file containing his work history
24 and the reason for his separation from the Los Angeles Police Department.

25 Both categories of records are confidential under California Evidence Code §
26 1043-1047 and Penal Code section 832.7, and are discoverable only subject to a
27 tightly drawn protective order. Doe v. City of San Diego, 2013 U.S. Dist. Lexis
28 35048 (S.D.Cal. 2013).

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

11 2. DEFINITIONS

12 2.1 Action: this pending federal law suit, *David Powell, Sr., et al. v. City*
13 *of Barstow, et al.*, case number 16-CV-01472-JGB (KKx).

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

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

20 2.4 Counsel: Outside Counsel of Record and House Counsel (as well as
21 their support staff).

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

24 2.6 Disclosure or Discovery Material: all items or information, regardless
25 of the medium or manner in which it is generated, stored, or maintained (including,
26 among other things, testimony, transcripts, and tangible things), that are produced or
27 generated in disclosures or responses to discovery in this matter.
28

1 2.7 Expert: a person with specialized knowledge or experience in a matter
2 pertinent to the litigation who has been retained by a Party or its counsel to serve as
3 an expert witness or as a consultant in this Action.

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

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

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

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

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

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

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

24 2.15 Receiving Party: a Party that receives Disclosure or Discovery
25 Material from a Producing Party, except as to the Court and its personnel as they are
26 not bound by this Protective Order.

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

8 4. DURATION

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

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 for
22 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 protection
8 under this Order must be clearly so designated before the material is disclosed or
9 produced.

10 Designation in conformity with this Order requires:

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

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

1 appropriate markings in the margins).

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

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

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

17 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

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

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

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

3 7. ACCESS TO AND USE OF PROTECTED MATERIAL

4 7.1 Basic Principles. A Receiving Party may use Protected Material that is
5 disclosed or produced by another Party or by a Non-Party in connection with this
6 Action only for prosecuting, defending, or attempting to settle this Action. Such
7 Protected Material may be disclosed only to the categories of persons and under the
8 conditions described in this Order. When the Action has been terminated, a
9 Receiving Party must comply with the provisions of section 13 below (FINAL
10 DISPOSITION). Protected Material must be stored and maintained by a Receiving
11 Party at a location and in a secure manner that ensures that access is limited to the
12 persons authorized under this Order.

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

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

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

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

24 (d) the court and its personnel;

25 (e) court reporters and their staff;

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

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 who’s Protected Material may be affected.

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 After the final disposition of this Action, as defined in
18 paragraph 4, within 60 days of a written request by the Designating Party, each
19 Receiving Party must return all Protected Material to the Producing Party or destroy
20 such material. As used in this subdivision, "all Protected Material" includes all
21 copies, abstracts, compilations, summaries, and any other format reproducing or
22 capturing any of the Protected Material. Whether the Protected Material is returned
23 or destroyed, the Receiving Party must submit a written certification to the
24 Producing Party (and, if not the same person or entity, to the Designating Party) by
25 the 60 day deadline that (1) identifies (by category, where appropriate) all the
26 Protected Material that was returned or destroyed and (2) affirms that the Receiving
27 Party has not retained any copies, abstracts, compilations, summaries or any other
28 format reproducing or capturing any of the Protected Material. Notwithstanding this

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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