

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

**UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA**

SHIRLEY GARCIA and ANTHONY GARCIA, as surviving heirs and successor in interest to decedent Joseph Anthony Garcia,

Plaintiffs,

v.

COUNTY OF RIVERSIDE, AARON MARTIN, an individual, KRISTINE ZANETEL, an individual, SCOTT OVERTON, an individual, ADRIAN COTOLA, and individual, and DOES 1-50, Inclusive,

Defendants.

CASE NO.: 16-cv-01820-TJH-(KKx)

Hon. Terry J. Hatter, Jr.

**AMENDED [~~PROPOSED~~]
PROTECTIVE ORDER RE: PEACE
OFFICER PERSONNEL FILES**

NOTE CHANGES MADE BY THE COURT

Pursuant to the Parties Stipulation filed on February 8, 2017, IT IS HEREBY ORDERD AS FOLLOWS:

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

7 **B. GOOD CAUSE STATEMENT**

8 This action is likely to involve information for which special protection from public
9 disclosure and from use for any purpose other than prosecution of this action is warranted. Such
10 confidential and materials and information consist of, among other things, information contained
11 within a peace officer's personnel file, which information may not be disclosed without court order
12 under state law, information otherwise generally unavailable to the public, or which may be
13 privileged or otherwise protected from disclosure under state or federal statutes, court rules, case
14 decisions, or common law. Accordingly, to expedite the flow of information, to facilitate the
15 prompt resolution of disputes over confidentiality of discovery materials, to adequately protect
16 information the parties are entitled to keep confidential, to ensure that the parties are permitted
17 reasonable necessary uses of such material in preparation for and in the conduct of trial, to address
18 their handling at the end of the litigation, and serve the ends of justice, a protective order for such
19 information is justified in this matter. It is the intent of the parties that information will not be
20 designated as confidential for tactical reasons and that nothing be so designated without a good
21 faith belief that it has been maintained in a confidential, non-public manner, and there is good
22 cause why it should not be part of the public record of this case.

23 **2. DEFINITIONS**

24 2.1 Action: SHIRLEY GARCIA v. COUNTY OF RIVERSIDE, Case No.: 16-
25 CV-01820-TJH-(KKx).

26 2.2 Challenging Party: A Party or Non-Party that challenges the designation of
27 information or items under this Order.

1 2.3 “CONFIDENTIAL” Information or Items: information (regardless of how it is
2 generated, stored or maintained) or tangible things that qualify for protection under Federal Rule of
3 Civil Procedure 26(c), and as specified above in the Good Cause Statement.

4 2.4 Counsel: Outside Counsel of Record and House Counsel (as well as their support
5 staff).

6 2.5 Designating Party: A Party or Non-Party that designates information or items that it
7 produces in disclosures or in responses to discovery as “CONFIDENTIAL.”

8 2.6 Disclosure or Discovery Material: all items or information, regardless of the
9 medium or manner in which it is generated, stored, or maintained (including, among other things,
10 testimony, transcripts, and tangible things), that are produced or generated in disclosures or
11 responses to discovery in this matter.

12 2.7 Expert: A person with specialized knowledge or experience in a manner pertinent
13 to the litigation who has been retained by a Part or its counsel to serve as an expert witness or as a
14 consultant in this Action.

15 2.8 House Counsel: Attorneys who are employees of a party to this Action. House
16 Counsel does not include Outside Counsel of Record or any other outside counsel.

17 2.9 Non-Party: Any natural person, partnership, corporation, association or other legal
18 entity not named as a Party to this action.

19 2.10 Outside Counsel of Record: Attorneys who are not employees of a party to this
20 Action but are retained to represent or advise a party to this Action and have appeared in this
21 Action on behalf of that party or are affiliated with a law firm which has appeared on behalf of that
22 party, and includes support staff.

23 2.11 Party: Any part to this Action, including all of its officers, directors, employees,
24 consultants, retained experts, and Outside Counsel of Record (and their support staffs).

25 2.12 Producing Party: A Party or Non-Party that produces Disclosure or Discovery
26 Material in this Action.

27
28

1 2.13 Professional Vendors: Persons or entities that provide litigation support services
2 (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations, and organizing,
3 storing, or retrieving data in any form or medium) and their employees and subcontractors.

4 2.14 Protected Material: Any Disclosure or Discovery Material that is designated as
5 “CONFIDENTIAL.”

6 2.15 Receiving Party: A Party that receives Disclosure or Discovery Material from a
7 Producing Party.

8 **3. SCOPE**

9 The protections conferred by this Stipulation and Order cover not only Protected Material
10 (as defined above), but also (1) any information copied or extracted from Protected Materials; (2)
11 all copies, excerpts, summaries, or compilations of Protected Material; and (3) any testimony,
12 conversations, or presentations by Parties or their Counsel that might reveal Protected Material.

13 Any use of Protected Material at trial shall be governed by the orders of the trial judge.
14 This Order does not govern the use of Protected Material at trial.

15 **4. DURATION**

16 Once a case proceeds to trial, all of the information that was designated as confidential or
17 maintained pursuant to this protective order becomes public and will be presumptively available to
18 all members of the public, including the press, unless compelling reasons supported by specific
19 factual findings to proceed otherwise are made to the trial judge in advance of the trial. See
20 *Kamakana v. City and County of Honolulu*, 447 F.3d 1172, 1180-81 (9th Cir. 2006) (distinguishing
21 “good cause” showing for sealing documents produced in discovery from “compelling reasons”
22 standard when merits-related documents are part of court record). Accordingly, the terms of this
23 protective order do not extend beyond the commencement of trial.

24 ~~Even after final disposition of this litigation, the confidentiality obligations imposed by this~~
25 ~~Order shall remain in effect until a Designating Party agrees otherwise in writing or a court order~~
26 ~~otherwise directs. Final disposition shall be deemed to be the later of (1) dismissal of all claims~~
27 ~~and defenses in this Action, with or without prejudice, and (2) final judgment herein after the~~
28 ~~completion and exhaustion of all appeals, rehearings, remands, trials or reviews of this Action,~~

1 ~~including the time limits for filing any motions or applications for extension of time pursuant to~~
2 ~~applicable law.~~

3 5. DESIGNATING PROTECTED MATERIAL

4 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each Party
5 or Non-Party that designates information or items for protection under this Order must take care to
6 limit any such designation to specific material that qualified under the appropriate standards. The
7 Designating Party must designate for protection only those parts of material, documents, items or
8 oral or written communications that qualify so that other portions of the material, documents, items
9 or communications for which protection is not warranted are not swept unjustifiably within the
10 ambit of this Order.

11 Mass, indiscriminate, or routinized designations are prohibited. Designations that are
12 shown to be clearly unjustified or that have been made for an improper purpose (e.g., to
13 unnecessarily encumber the case development process or to impose unnecessary expenses and
14 burdens on other parties) may expose the Designating Party to sanctions.

15 If it comes to a Designating Party's attention that information or items that it designated for
16 protection do not qualify for protection, that Designating Party must promptly notify all other
17 Parties that it is withdrawing the inapplicable designation.

18 5.2 Manner and Timing of Designation. Except as otherwise provided in this Order (see,
19 e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered, Disclosure or
20 Discovery Material that qualifies for protection under this Order must be clearly so designated
21 before the material is disclosed or produced.

22 Designation in conformity with this Order requires:

23 (a) for information in documentary form (e.g., paper or electronic documents, but
24 excluding transcripts of depositions or other pretrial or trial proceedings), that the Producing Party
25 affix at a minimum, the legend "CONFIDENTIAL" (hereinafter "CONFIDENTIAL legend"), to
26 each page that contains protected material. If only a portion or portions of the material on a page
27 qualified for protection, the Producing Party also must clearly identify the protected portion(s)(e.g.,
28 by making appropriate markings in the margins).

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

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

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

18 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
19 designate qualified information or items does not, standing alone, waive the Designating Party’s
20 right to secure protection under this Order for such materials. Upon timely correction of a
21 designation, the Receiving Party must make reasonable efforts to assure that the material is treated
22 in accordance with the provisions of this Order.

23 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

24 6.1 Timing of Challenge. Any Party or Non-Party may challenge a designation of
25 confidentiality at any time that is consistent with the Court’s Scheduling Order.

26 6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution process
27 under Local Rule 37.1 et seq.

28

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

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

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

14 Protected Material must be stored and maintained by a Receiving Party at a location and in
15 a secure manner that ensures that access is limited to the persons authorized under this Order.

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

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

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

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

27 (d) The court and its personnel;

28 (e) Court reporters and their staff;

1 (f) Professional jury or trial consultants, mock jurors and Professional Vendors
2 to whom disclosure is reasonably necessary for this Action and who have signed the
3 “Acknowledgement and Agreement to be Bound” (Exhibit A);

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

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

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

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

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

21 (a) Promptly notify in writing the Designating Party. Such notification shall include a
22 copy of the subpoena or court order.

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

27 (c) Cooperate with respect to all reasonable procedures sought to be pursued by the
28 Designating Party whose Protected Material may be affected.

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

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

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

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

18 (1) Promptly notify in writing the Requesting Party and the Non-Party that some
19 or all of the information requested is subject to a confidentiality agreement with a Non-Party.

20 (2) Promptly provide the Non-Party with a copy of the Stipulated Protective
21 Order in this Action, the relevant discovery request(s), and a reasonably specific description of the
22 information requested; and

23 (3) Make the information requested available for inspection by the Non-Party, if
24 requested.

25 (c) If the Non-Party fails to seek a protective order from this court within 14 days of
26 receiving the notice and accompanying information, the Receiving Party may produce the Non-
27 Party’s confidential information responsive to the discovery request. If the Non-Party timely seeks
28 a protective order, the Receiving Party shall not produce³ any information in its possession or

1 control that is subject to the confidentiality agreement with the Non-Party before a determination
2 by the court. Absent a court order to the contrary, the Non-Party shall bear the burden and expense
3 of seeking protection in this court of its Protected Material.

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

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

12 **11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE**
13 **PROTECTED MATERIAL**

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

23 **12. MISCELLANEOUS**

24 **12.1 Right to Further Relief.** Nothing in this Order abridges the right of any person to
25 seek its modification by the Court in the future.

26 **12.2 Right to Assert Other Objections.** By stipulating to the entry of this Protective
27 Order no Party waives any right it otherwise would have to object to disclosing or producing any
28 information or item on any ground not addressed in this Stipulated Protective Order. Similarly, no

1 Party waives any right to object on any ground to use in evidence of any of the material covered by
2 this Protective Order.

3 12.3 Filing Protect Material. A Party that seeks to file under seal any Protected Material
4 must comply with Civil Local Rule 79-5. Protected Material may only be filed under seal pursuant
5 to a court order authorizing the sealing of the specific Protected Material at issue. If a Party's
6 request to file Protected Material under seal is denied by the court, then the Receiving Party may
7 file the information in the public record unless otherwise instructed by the court.

8 **13. FINAL DISPOSITION**

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

24 ///
25 ///
26 ///
27 ///
28 ///

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
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

ORDER

The Protective Order is **GRANTED**.

IT IS SO ORDERED

Dated: February 13, 2017



HON. KENLY KIYA KATO
UNITED STATES MAGISTRATE JUDGE

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of _____, [print or type full address], declare under penalty of perjury that I have read in its entirety and understand the Stipulated Protective Order that was issued by the United States District Court for the Central District of California on [date] in the case of [insert formal name of the case and the case number]. I agree to comply with and to be bound by all the terms of this Stipulated Protective Order and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any information or item that is subject to this Stipulated Protective Order to any person or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the Central District of California for the purpose of enforcing the terms of this Stipulated Protective Order, even if such enforcement proceedings occur after termination of this action. I hereby appoint _____ [print or type full name] of _____, [print or type full address] as my California agent for service of process in connection with this action or any proceedings related to enforcement of this Stipulated Protective Order.

Date:

City and State where sworn and signed: _____

Printed name: _____

Signature: _____