

United States District Court
Central District of California - Central

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RANDY DE ANDA

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA - CENTRAL

GLEN ANDERSON,

Plaintiff,

v.

CITY OF RIALTO, a municipal
corporation, CITY OF RIALTO POLICE
DEPARTMENT, RANDY DE ANDA,
individually and in his capacity as the Chief
of Police for the RIALTO Police
Department,

Defendants.

Case No. 5:16-cv-01915-JGB-SPx
STIPULATED PROTECTIVE ORDER
**[NOTE CHANGE MADE BY THE
COURT IN ¶ 6.3]**

1. PURPOSES AND LIMITATIONS

The parties hereby stipulate to and petition the court to enter the following Stipulated Protective Order as it pertains to the Protected Material specifically identified in Section 5.1 below. The parties acknowledge that this Order does not confer blanket protections on all disclosures or responses to discovery and that the protection it affords from public disclosure and use extends only to the limited information or item(s) identified at Section 5.1, below, which is entitled to confidential treatment under the applicable legal principles. The parties further acknowledge, as set forth in Section 10.3, below, that this Stipulated Protective Order does not entitle them to file confidential information under seal; Civil Local Rule 79-5 sets forth the procedures that must be followed and the

1 standards that will be applied when a party seeks permission from the court to file material under
2 seal.

3 2. DEFINITIONS

4 2.1 Challenging Party: a Party or Non-Party that challenges the designation of
5 information or items under this Order.

6 2.2 “CONFIDENTIAL” Information or Items: information or tangible things identified
7 in Section 5.1 below.

8 2.3 Counsel (without qualifier): Outside Counsel of Record and In-House Counsel (as
9 well as their support staff).

10 2.4 Designating Party: a Party or Non-Party that designates information or items that it
11 produces in disclosures or in responses to discovery as “CONFIDENTIAL.”

12 2.5 Disclosure or Discovery Material: all items or information, regardless of the medium
13 or manner in which it is generated, stored, or maintained (including, among other things, testimony,
14 transcripts, and tangible things), that are produced or generated in disclosures or responses to
15 discovery in this matter.

16 2.6 Expert: a person with specialized knowledge or experience in a matter pertinent to
17 the litigation who has been retained by a Party or its counsel to serve as an expert witness or as a
18 consultant in this action.

19 2.7 House Counsel: attorneys who are employees of a party to this action. In-House
20 Counsel does not include Outside Counsel of Record or any other outside counsel.

21 2.8 Non-Party: any natural person, partnership, corporation, association, or other legal
22 entity not named as a Party to this action.

23 2.9 Outside Counsel of Record: attorneys who are not employees of a party to this action
24 but are retained to represent or advise a party to this action and have appeared in this action on
25 behalf of that party or are affiliated with a law firm which has appeared on behalf of that party.

26 2.10 Party: any party to this action and their Outside Counsel of Record.

27 2.11 Producing Party: a Party or Non-Party that produces Disclosure or Discovery
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1 Material in this action.

2 2.12 Professional Vendors: persons or entities that provide litigation support services
3 (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations, and organizing,
4 storing, or retrieving data in any form or medium) and their employees and subcontractors.

5 2.13 Protected Material: the document, which will be marked “CONFIDENTIAL” as
6 provided herein, is a copy of an email received by the City of Rialto Police Department that was a
7 subject of the command staff meeting on August 24, 2016 and is responsive to Plaintiff’s Request
8 for Production of Documents, Request No. 36, to the City of Rialto Police Department.

9 2.14 Receiving Party: a Party that receives Disclosure or Discovery Material from a
10 Producing Party.

11 3. SCOPE

12 The protections conferred by this Stipulation and Order shall cover only the Protected
13 Material identified in Section 5.1 below. Any use of the Protected Material at trial shall be governed
14 by a separate agreement or order.

15 4. DURATION

16 Even after final disposition of this litigation, the confidentiality obligations imposed by this
17 Order shall remain in effect until a Designating Party agrees otherwise in writing or a court order
18 otherwise directs. Final disposition shall be deemed to be the later of (1) dismissal of all claims and
19 defenses in this action, with or without prejudice; and (2) final judgment herein after the completion
20 and exhaustion of all appeals, rehearings, remands, trials, or reviews of this action, including the
21 time limits for filing any motions or applications for extension of time pursuant to applicable law.

22 5. DESIGNATING PROTECTED MATERIAL

23 5.1 Protected Material. This Stipulation and Order relates only to a specific document
24 responsive to Plaintiff’s Request for Production of Documents, Request No. 36, to the City of Rialto
25 Police Department. Specifically, the document, which will be marked “CONFIDENTIAL” as
26 provided herein, is a copy of an email received by the City of Rialto Police Department that was a
27 subject of the command staff meeting on August 24, 2016. This Stipulation and Order shall not
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1 apply to any discovery, disclosure or document production beyond the Protected Material just
2 described.

3 5.2 Exercise of Restraint and Care in Designating Material for Protection. The
4 Designating Party must designate for protection only those parts of the Protected Material that
5 qualify – so that other portions of the Protected Material are not swept unjustifiably within the ambit
6 of this Order. If it comes to the Designating Party’s attention that information or items that it
7 designated for protection do not qualify for protection, that Designating Party must promptly notify
8 all other Parties that it is withdrawing the mistaken designation.

9 5.3 Manner and Timing of Designations. Except as otherwise provided in this Order
10 (see, e.g., second paragraph of section 5.3(a) below), or as otherwise stipulated or ordered,
11 Disclosure or Discovery Material that qualifies for protection under this Order must be clearly so
12 designated before the material is disclosed or produced.

13 Designation in conformity with this Order requires:

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

19 (b) for testimony given in deposition or in other pretrial or trial proceedings, that the
20 Designating Party identify on the record, before the close of the deposition, hearing, or other
21 proceeding, all protected testimony.

22 5.4 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
23 designate qualified information or items does not, standing alone, waive the Designating Party’s
24 right to secure protection under this Order for such material. Upon timely correction of a
25 designation, the Receiving Party must make reasonable efforts to assure that the material is treated in
26 accordance with the provisions of this Order.

27 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

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1 6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation of
2 confidentiality at any time. Unless a prompt challenge to a Designating Party’s confidentiality
3 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic burdens,
4 or a significant disruption or delay of the litigation, a Party does not waive its right to challenge a
5 confidentiality designation by electing not to mount a challenge promptly after the original
6 designation is disclosed.

7 6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution process
8 by providing written notice of each designation it is challenging and describing the basis for each
9 challenge. To avoid ambiguity as to whether a challenge has been made, the written notice must
10 recite that the challenge to confidentiality is being made in accordance with this specific paragraph
11 of the Protective Order. The parties shall attempt to resolve each challenge in good faith and must
12 begin the process by conferring directly (in voice to voice dialogue; other forms of communication
13 are not sufficient) within 14 days of the date of service of notice. In conferring, the Challenging
14 Party must explain the basis for its belief that the confidentiality designation was not proper and
15 must give the Designating Party an opportunity to review the designated material, to reconsider the
16 circumstances, and, if no change in designation is offered, to explain the basis for the chosen
17 designation. A Challenging Party may proceed to the next stage of the challenge process only if it
18 has engaged in this meet and confer process first or establishes that the Designating Party is
19 unwilling to participate in the meet and confer process in a timely manner.

20 6.3 Judicial Intervention. If the Parties cannot resolve a challenge without court
21 intervention, the Designating Party shall file and serve a motion to retain confidentiality under Civil
22 Local Rule 37 (and in compliance with Civil Local Rule 79-5, if applicable) within 21 days of the
23 initial notice of challenge or within 14 days of the parties agreeing that the meet and confer process
24 will not resolve their dispute, whichever is earlier. Each such motion must be accompanied by a
25 competent declaration affirming that the movant has complied with the meet and confer
26 requirements imposed in the preceding paragraph. Failure by the Designating Party to make such a
27 motion including the required declaration within 21 days (or 14 days, if applicable) shall
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1 automatically waive the confidentiality designation for each challenged designation. In addition, the
2 Challenging Party may file a motion challenging a confidentiality designation at any time if there is
3 good cause for doing so, including a challenge to the designation of a deposition transcript or any
4 portions thereof. Any motion brought pursuant to this provision must be accompanied by a
5 competent declaration affirming that the movant has complied with the meet and confer
6 requirements imposed by the preceding paragraph.

7 The burden of persuasion in any such challenge proceeding shall be on the Designating
8 Party. Frivolous challenges, and those made for an improper purpose (e.g., to harass or impose
9 unnecessary expenses and burdens on other parties) may expose the Challenging Party to sanctions.
10 Unless the Designating Party has waived the confidentiality designation by failing to file a motion to
11 retain confidentiality as described above, all parties shall continue to afford the material in question
12 the level of protection to which it is entitled under the Producing Party's designation until the court
13 rules on the challenge.

14 7. ACCESS TO AND USE OF PROTECTED MATERIAL

15 7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed or
16 produced by another Party or by a Non-Party in connection with this case only for prosecuting,
17 defending, or attempting to settle this litigation. Such Protected Material may be disclosed only to
18 the categories of persons and under the conditions described in this Order. When the litigation has
19 been terminated, a Receiving Party must comply with the provisions of section 13 below (FINAL
20 DISPOSITION).

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

23 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise ordered by
24 the court or permitted in writing by the Designating Party, a Receiving Party may disclose any
25 information or item designated "CONFIDENTIAL" only to:

26 (a) the Receiving Party's Outside Counsel of Record in this action, as well as employees
27 of said Outside Counsel of Record to whom it is reasonably necessary to disclose the information for
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1 this litigation and who have signed the “Acknowledgment and Agreement to Be Bound” that is
2 attached hereto as Exhibit A;

3 (b) the officers, directors, and employees (including House Counsel) of the Receiving
4 Party to whom disclosure is reasonably necessary for this litigation and who have signed the
5 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

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

9 (d) the court and its personnel;

10 (e) court reporters and their staff, professional jury or trial consultants, mock jurors, and
11 Professional Vendors to whom disclosure is reasonably necessary for this litigation and who have
12 signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

13 (f) during their depositions, witnesses in the action to whom disclosure is reasonably
14 necessary and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A),
15 unless otherwise agreed by the Designating Party or ordered by the court. Pages of transcribed
16 deposition testimony or exhibits to depositions that reveal Protected Material must be separately
17 bound by the court reporter and may not be disclosed to anyone except as permitted under this
18 Stipulated Protective Order.

19 (g) the author or recipient of a document containing the information or a custodian or
20 other person who otherwise possessed or knew the information.

21 8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

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

2 9. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED
3 MATERIAL

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

12 10. MISCELLANEOUS

13 10.1 Right to Further Relief. Nothing in this Order abridges the right of any person to seek
14 its modification by the court in the future.

15 10.2 Right to Assert Other Objections. By stipulating to the entry of this Protective Order
16 no Party waives any right it otherwise would have to object to disclosing or producing any
17 information or item on any ground not addressed in this Stipulated Protective Order. Similarly, no
18 Party waives any right to object on any ground to use in evidence of any of the material covered by
19 this Protective Order.

20 10.3 Filing Protected Material. Without written permission from the Designating Party or a
21 court order secured after appropriate notice to all interested persons, a Party may not file in the
22 public record in this action any Protected Material. A Party that seeks to file under seal any Protected
23 Material must comply with Civil Local Rule 79-5. Protected Material may only be filed under seal
24 pursuant to a court order authorizing the sealing of the specific Protected Material at issue. Pursuant
25 to Civil Local Rule 79-5, a sealing order will issue only upon a request establishing that the
26 Protected Material at issue is privileged, protectable as a trade secret, or otherwise entitled to
27 protection under the law. If a Receiving Party's request to file Protected Material under seal pursuant
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1 to Civil Local Rule 79-5(d) is denied by the court, then the Receiving Party may file the information
2 in the public record pursuant to Civil Local Rule 79-5(e) unless otherwise instructed by the court.

3 11. FINAL DISPOSITION

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

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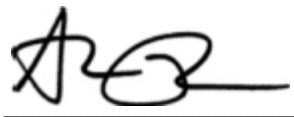
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IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

DATED: May 12, 2017 /s/ Zahra Khoury
Zahra Khoury
Attorneys for Plaintiff Glen Anderson

DATED: May 12, 2017 /s/ James Oldendorph
Mark Meyerhoff
James Oldendorph
Attorneys for Defendants City of Rialto,
and Chief Randy De Anda

PURSUANT TO STIPULATION, IT IS SO ORDERED.

DATED: May 22, 2017 
United States Magistrate Judge

1 EXHIBIT A

2 ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

3 I, _____ [print or type full name], of _____ [print or
4 type full address], 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 the Central
6 District of California on [date] in the case of **Glen Anderson v. City of Rialto; et al. [5:16-cv-**
7 **01915-JGB-SPx]**. I agree to comply with and to be bound by all the terms of this Stipulated
8 Protective Order and I understand and acknowledge that failure to so comply could expose me to
9 sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in
10 any manner any information or item that is subject to this Stipulated Protective Order to any person
11 or entity except in strict compliance with the provisions of this Order.

12 I further agree to submit to the jurisdiction of the United States District Court for the Central District
13 of California for the purpose of enforcing the terms of this Stipulated Protective Order, even if such
14 enforcement proceedings occur after termination of this action.

15 I hereby appoint _____ [print or type full name] of
16 _____ [print or type full address and telephone number] as
17 my California agent for service of process in connection with this action or any proceedings related
18 to enforcement of this Stipulated Protective Order.

19
20 Date: _____

21 City and State where sworn and signed: _____

22
23 Printed name: _____

24
25 Signature: _____