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6
 7 **UNITED STATES DISTRICT COURT**
 8 **CENTRAL DISTRICT OF CALIFORNIA**
 9

10 SHAWN JOSEPH ANDERSON, an)	CASE NO.
11 individual,)	5:16-cv-02353-CAS-SP
)	
12 Plaintiff,)	NOTICE OF LODGING PARTIES'
)	JOINT PROTECTIVE ORDER
13 v.)	
14)	
15 COUNTY OF SAN BERNARDINO,)	
16 SHERIFF JOHN MCMAHON, DOES)	
3 through 10,)	
17)	
Defendants.)	
18)	

1 PLEASE TAKE NOTICE that the parties hereby lodge with the Court the
2 attached Parties' Joint Protective Order concerning the protection of confidential ,
3 proprietary, or private information, including confidential personnel records of
4 peace officers in the above-captioned action.

5
6 Dated: March 5, 2018

PEREIRA LAW

7 By: /s/Christian F. Pereira
8 CHRISTIAN F. PEREIRA
9 Attorney for Plaintiffs

10
11 Pursuant to Local Rule 5-4.3.4(a)(2)(i), the filers of the attached Stipulation attest
12 that all other signatories listed, and on whose behalf the filing is submitted, concur
13 in the filing's content and have authorized the filing.

14
15 By: /s/Christian F. Pereira
16 CHRISTIAN F. PEREIRA
17 Attorney for Plaintiffs

Dated: March 5, 2018

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7 **UNITED STATES DISTRICT COURT**
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10 SHAWN JOSEPH ANDERSON, an) **CASE NO.**
11 individual,) 5:16-cv-02353-CAS-SP
12)
13 Plaintiff,) **PARTIES' JOINT PROTECTIVE**
14) **ORDER**
15 v.)
16)
17 COUNTY OF SAN BERNARDINO,)
18 SHERIFF JOHN MCMAHON, DOES)
3 through 10,)
19)
20 Defendants.)
21)

22 **TO THE HONORABLE COURT:**

23 The parties have stipulated to the following protective order that is based on
24 Magistrate Pym's model protective order with some changes made to fit this case. The
25 parties hereby request the court order this stipulated protective order as the protective
26 order to issue in this case.
27
28

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

15 B. GOOD CAUSE STATEMENT

16 This action is likely to involve the production of peace officer personnel
17 materials, including but not limited to citizen complaints and internal affairs
18 investigation matters, for which special protection from public disclosure and from use
19 for any purpose other than prosecution of this action is warranted. Such confidential
20 and proprietary materials and information consist of, among other things, information
21 otherwise generally unavailable to the public, or which may be privileged or otherwise
22 protected from disclosure under state or federal statutes, court rules, case decisions, or
23 common law. Accordingly, to expedite the flow of information, to facilitate the prompt
24 resolution of disputes over confidentiality of discovery materials, to adequately protect
25 information the parties are entitled to keep confidential, to ensure that the parties are
26 permitted reasonable necessary uses of such material in preparation for and in the
27 conduct of trial, to address their handling at the end of the litigation, and serve the ends
28 of justice, a protective order for such information is justified in this matter. It is the

1 intent of the parties that information will not be designated as confidential for tactical
2 reasons and that nothing be so designated without a good faith belief that it has been
3 maintained in a confidential, non-public manner, and there is good cause why it should
4 not be part of the public record of this case.

5
6 2. DEFINITIONS

7 2.1 Action: This pending federal lawsuit, *Anderson v. County of San Bernardino*, 5:16-
8 cv-02353-CAS-SP.

9 2.2 Challenging Party: a Party or Non-Party that challenges the designation of
10 information or items under this Order.

11 2.3 “CONFIDENTIAL” Information or Items: information (regardless of how it is
12 generated, stored or maintained) or tangible things that qualify for protection under
13 Federal Rule of Civil Procedure 26(c), and as specified above in the Good Cause
14 Statement.

15 2.4 Counsel: Outside Counsel of Record and House Counsel (as well as their support
16 staff).

17 2.5 Designating Party: a Party or Non-Party that designates information or items that
18 it produces in disclosures or in responses to discovery as “CONFIDENTIAL.”

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

23 2.7 Expert: a person with specialized knowledge or experience in a matter pertinent to
24 the litigation who has been retained by a Party or its counsel to serve as an expert
25 witness or as a consultant in this Action.

26 2.8 House Counsel: attorneys who are employees of a party to this Action. House
27 Counsel does not include Outside Counsel of Record or any other outside counsel.

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1 2.9 Non-Party: any natural person, partnership, corporation, association, or other legal
2 entity not named as a Party to this action.

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

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

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

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

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

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

19
20 3. SCOPE

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

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

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1 4. DURATION

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

10 5. DESIGNATING PROTECTED MATERIAL

11 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each Party
12 or Non-Party that designates information or items for protection under this Order must
13 take care to limit any such designation to specific material that qualifies under the
14 appropriate standards. The Designating Party must designate for protection only those
15 parts of material, documents, items, or oral or written communications that qualify so
16 that other portions of the material, documents, items, or communications for which
17 protection is not warranted are not swept unjustifiably within the ambit of this Order.

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

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

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

3 Designation in conformity with this Order requires:

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

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

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

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

1 protection, the Producing Party, to the extent practicable, shall identify the protected
2 portion(s).

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

8 9 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

10 6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation of
11 confidentiality at any time that is consistent with the Court's Scheduling Order.

12 6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution
13 process under Local Rule 37.1 et seq.

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

21 22 7. ACCESS TO AND USE OF PROTECTED MATERIAL

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

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

4 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise ordered
5 by the court or permitted in writing by the Designating Party, a Receiving Party may
6 disclose any information or item designated “CONFIDENTIAL” only to:

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

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

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

15 (d) the court and its personnel;

16 (e) court reporters and their staff;

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

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

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

1 reporter and may not be disclosed to anyone except as permitted under this Stipulated
2 Protective Order; and

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

5
6 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN
7 OTHER LITIGATION

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

11 (a) notify in writing the Designating Party within three calendar days of receipt
12 of the subpoena or court order. Such notification shall include a copy of the subpoena
13 or court order;

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

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

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

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

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

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

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

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

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

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

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1 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

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

10
11 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
12 PROTECTED MATERIAL

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

23
24 12. MISCELLANEOUS

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

27 12.2 Right to Assert Other Objections. By stipulating to the entry of this Protective
28 Order no Party waives any right it otherwise would have to object to disclosing or

1 producing any information or item on any ground not addressed in this Stipulated
2 Protective Order. Similarly, no Party waives any right to object on any ground to use
3 in evidence of any of the material covered by this Protective Order.

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

10
11 13. FINAL DISPOSITION

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

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1 Protected Material remain subject to this Protective Order as set forth in Section 4
2 (DURATION).


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

6 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

7
8 DATED: March 5, 2018 PEREIRA LAW
9 By: /s/Christian F. Pereira
10 CHRISTIAN F. PEREIRA
11 Attorney for Plaintiffs

12 DATED: March 5, 2018 County Counsel
13 By: /s/Laura L. Crane
14 LAURA L. CRANE
15 Deputy County Counsel
16 Attorneys for Defendants County of
San Bernardino and Sheriff McMahon

17 FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.

18
19 DATED: March 8, 2018
20 
21 _____
22 United States Magistrate Judge

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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 number and initials assigned to it by the court]. 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 and telephone number] 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: _____