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

AMBER WALLISA, individually and
as successor-in-interest to Decedent
STEPHEN SCHENCK,

Plaintiffs,

v.

CITY OF HESPERIA, a municipal
corporation; COUNTY OF SAN
BERNARDINO, a municipal
corporation; TOWN OF APPLE
VALLEY, a municipal corporation;
JONATHAN FLORES, individually
and his official capacity as a deputy
Sheriff for the COUNTY OF SAN
BERNARDINO Sheriff's Department;
DOES 1-10, inclusive; individually and
in their capacities as law enforcement
agents and/or personnel for the
COUNTY OF SAN BERNARDINO
Sheriff's Department; DOES 11-20,
inclusive; individually and in their
capacities as law enforcement agents
and/or personnel for the TOWN OF
APPLE VALLEY Police Department;
DOES 21-30, inclusive; individually
and in their capacities as law
enforcement agents and/or personnel for
the CITY OF HESPERIA Police
Department,

Defendants.

Case No. 5:16-cv-2638 FMO (KKx)
*[Hon. Fernando M. Olguin, Dist.
Judge; Hon. Kenly Kiya Kato, Mag.
Judge]*

**[PROPOSED] PROTECTIVE
ORDER RE CONFIDENTIAL
DOCUMENTS**

Complaint Filed: December 27, 2016
Trial Date: April 10, 2018

1 PURSUANT TO THE STIPULATION OF THE PARTIES (“Stipulation for
2 Entry of Protective Order re Confidential Documents”), and pursuant to the Court’s
3 inherent and statutory authority, including but not limited to the Court’s authority
4 under the applicable Federal Rules of Civil Procedure and the United States District
5 Court, Central District of California Local Rules; after due consideration of all of the
6 relevant pleadings, papers, and records in this action; and upon such other evidence or
7 argument as was presented to the Court; Good Cause appearing therefor, and in
8 furtherance of the interests of justice,

9 IT IS HEREBY ORDERED that:

10 1. **SCOPE OF PROTECTION.**

11 The protections conferred by the parties’ Stipulation and this Order cover not
12 only Protected Material/Confidential Documents (as defined below), but also (1) any
13 information copied or extracted from Protected Material; (2) all copies, excerpts,
14 summaries, or compilations of Protected Material; and (3) any testimony,
15 conversations, or presentations by Parties or their Counsel that might reveal Protected
16 Material. However, the protections conferred by the parties’ Stipulation and this
17 Order do *not* cover the following information: (a) any information that is in the public
18 domain at the time of disclosure to a Receiving Party or becomes part of the public
19 domain after its disclosure to a Receiving Party as a result of publication not
20 involving a violation of this Order, including becoming part of the public record
21 through trial or otherwise; and (b) any information known to the Receiving Party prior
22 to the disclosure or obtained by the Receiving Party after the disclosure from a source
23 who obtained the information lawfully and under no obligation of confidentiality to
24 the Designating Party.

25 **Any use of Protected Material at trial or other court hearings or**
26 **proceedings shall be governed by the orders of the trial judge.**

1 The Definitions section of the parties' associated Stipulation (§ 2) is incorporated by
2 reference herein.

3
4 **A. PURPOSES AND LIMITATIONS.**

5 Disclosure and discovery activity in this action are likely to involve production
6 of confidential, proprietary, or private information for which special protection from
7 public disclosure and from use for any purpose other than prosecuting or defending
8 this litigation would be warranted. Accordingly, the parties have stipulated to and
9 petitioned the court to enter the following Order.

10 The parties have acknowledged that this Order does not confer blanket
11 protections on all disclosures or responses to discovery and that the protection it
12 affords extends only to the specified information or items that are entitled to treatment
13 as confidential.

14 The parties further acknowledge, as set forth below, that this Order creates no
15 entitlement to file confidential information under seal, except to the extent specified
16 herein.

17 **A Party that seeks to file under seal any Protected Material must comply**
18 **with Civil Local Rule 79-5, which set(s) forth the procedures that must be**
19 **followed and reflects the standards that will be applied when a party seeks**
20 **permission from the Court to file material under seal. Protected Material may**
21 **only be filed under seal pursuant to a court order authorizing the sealing of the**
22 **specific Protected Material at issue. If a Party's request to file Protected**
23 **Material under seal is denied by the court, then the Receiving Party may file the**
24 **information in the public record unless otherwise instructed by the court.**

25 Nothing in this Order shall be construed so as to require or mandate that any
26 Party disclose or produce privileged information or records that could be designated
27 as Confidential Documents/Protected Material hereunder.

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2. DURATION OF PROTECTION.

Even after final disposition of this litigation, the confidentiality obligations imposed by this Order shall remain in effect until a Designating Party agrees otherwise in writing or a court order otherwise directs.

Final disposition shall be deemed to be the later of (1) dismissal of all claims and defenses in this action, with or without prejudice; or (2) final judgment herein after the completion and exhaustion of all appeals, rehearings, remands, trials, or reviews of this action, including the time limits for filing any motions or applications for extension of time pursuant to applicable law.

3. DESIGNATION OF PROTECTED MATERIAL/CONFIDENTIAL DOCUMENTS.

3.1. Exercise of Restraint and Care in Designating Material for Protection.

Each Party or non-party that designates information or items for protection under the parties' Stipulation and this Order must take care to limit any such designation to specific material that qualifies under the appropriate standards. A Designating Party must take care to designate for protection only those parts of material, documents, items, or oral or written communications that qualify – so that other portions of the material, documents, items or communications for which protection is not warranted are not swept unjustifiably within the ambit of this Order.

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

If it comes to a Party's or a non-party's attention that information or items that it designated for protection do not qualify for protection at all, or do not qualify for

1 the level of protection initially asserted, that Party or non-party must promptly notify
2 all other parties that it is withdrawing the mistaken designation.

3 3.2. Manner and Timing of Designations. Except as otherwise provided in
4 this Order, or as otherwise stipulated or ordered, material that qualifies for protection
5 under this Order must be clearly so designated before the material is disclosed or
6 produced.

7 Designation in conformity with this Order requires:

8 (a) for information in documentary form (apart from transcripts of
9 depositions or other pretrial or trial proceedings, and regardless of whether produced
10 in hardcopy or electronic form), that the Producing Party affix the legend
11 “CONFIDENTIAL” to each page that contains Protected Material. If only a portion
12 or portions of the material on a page qualifies for protection, the Producing Party also
13 must clearly identify the protected portion(s) (e.g., by making appropriate markings in
14 the margins) and must specify, for each portion that it is “CONFIDENTIAL.” The
15 placement of such “CONFIDENTIAL” stamp on such page(s) shall not obstruct the
16 substance of the page’s (or pages’) text or content.

17 A Party or non-party that makes original documents or materials available for
18 inspection need not designate them for protection until after the Receiving Party has
19 indicated which material it would like copied and produced. During the inspection
20 and before the designation, all of the material made available for inspection shall be
21 deemed “CONFIDENTIAL.” After the Receiving Party has identified the documents
22 it wants copied and produced, the Producing Party must determine which documents,
23 or portions thereof, qualify for protection under this Order. Then, before producing
24 the specified documents, the Producing Party must affix the “CONFIDENTIAL”
25 legend to each page that contains Protected Material. If only a portion or portions of
26 the material on a page qualifies for protection, the Producing Party also must clearly
27 identify the protected portion(s) (e.g., by making appropriate markings in the
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1 material is appropriately designated as “CONFIDENTIAL” *after* the material was
2 initially produced, the Receiving Party, on timely notification of the designation, must
3 make reasonable efforts to assure that the material is treated in accordance with the
4 parties’ Stipulation and this Order.

5 3.4. Alteration of Confidentiality Stamp Prohibited. A Receiving Party shall
6 not alter, edit, or modify any Protected Material so as to conceal, obscure, or remove a
7 “CONFIDENTIAL” stamp or legend thereon; nor shall a Receiving Party take any
8 other action so as to make it appear that Protected Material is not subject to the terms
9 and provisions of the parties’ Stipulation and this Order. However, nothing in this
10 section shall be construed so as to prevent a Receiving Party from challenging a
11 confidentiality designation subject to the provisions of section 4, *infra*.

12
13 **4. CHALLENGING CONFIDENTIALITY DESIGNATIONS.**

14 4.1. Timing of Challenges. Any Party or non-party may challenge a
15 designation of confidentiality at any time that is consistent with the Court's
16 Scheduling Order. Unless a prompt challenge to a Designating Party’s
17 confidentiality designation is necessary to avoid foreseeable substantial unfairness,
18 unnecessary economic burdens, or a later significant disruption or delay of the
19 litigation, a Party does not waive its right to challenge a confidentiality designation by
20 electing not to mount a challenge promptly after the original designation is disclosed.

21 4.2. Meet and Confer. Prior to challenging a confidentiality designation, a
22 Party shall initiate a dispute resolution process by providing written notice of each
23 specific designation it is challenging, and describing the basis (and supporting
24 authority or argument) for each challenge. To avoid ambiguity as to whether a
25 challenge has been made, the written notice must recite that the challenge to
26 confidentiality is being made in accordance with this Protective Order. The parties
27 shall attempt to resolve each challenge in good faith and must begin the process by
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1 **5. ACCESS TO AND USE OF PROTECTED MATERIAL.**

2 5.1. Basic Principles. A Receiving Party may use Protected Material that is
3 disclosed or produced by another Party or by a non-party in connection with this case
4 only for preparing, prosecuting, defending, or attempting to settle this litigation – up
5 to and including final disposition of the above-entitled action – and not for any other
6 purpose, including any other litigation or dispute outside the scope of this action.
7 Such Protected Material may be disclosed only to the categories of persons and under
8 the conditions described in the parties’ Stipulation and this Order. When the above
9 entitled litigation has been terminated, a Receiving Party must comply with the
10 provisions of section 9, below (FINAL DISPOSITION).

11 Protected Material must be stored and maintained by a Receiving Party at a
12 location and in a manner that ensures that access is limited to the persons authorized
13 under the parties’ Stipulation and its Order.

14 5.2. Disclosure of “CONFIDENTIAL” Information or Items. Unless
15 otherwise ordered by the Court or permitted in writing by the Designating Party, a
16 Receiving Party may disclose any information or item designated "CONFIDENTIAL"
17 only to:

18 (a) the Receiving Party’s Outside Counsel of record in this action, as well as
19 employees of such Counsel to whom it is reasonably necessary to disclose the
20 information for this litigation;

21 (b) the officers, directors, and employees (including House Counsel) of the
22 Receiving Party to whom disclosure is reasonably necessary for this litigation – each
23 of whom, by accepting receipt of such Protected Material, thereby agree to be bound
24 by the parties’ Stipulation and this Order;

25 (c) Experts (as defined in the parties’ Stipulation) of the Receiving Party to
26 whom disclosure is reasonably necessary for this litigation – each of whom, by
27 accepting receipt of such Protected Material, thereby agree to be bound by the parties’
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1 Stipulation and this Order;

2 (d) court reporters, their staffs, and Professional Vendors to whom
3 disclosure is reasonably necessary for this litigation – each of whom, by accepting
4 receipt of such Protected Material, thereby agree to be bound by the parties’

5 Stipulation and this Order;

6 (e) during their depositions, witnesses in the action to whom disclosure is
7 reasonably necessary – each of whom, by accepting receipt of such Protected
8 Material, thereby agree to be bound by the parties’ Stipulation and this Order. Pages
9 of transcribed deposition testimony or exhibits to depositions that reveal Protected
10 Material may not be disclosed to anyone except as permitted under the parties’

11 Stipulation and this Protective Order;

12 (f) the author or custodian of a document containing the information that
13 constitutes Protected Material, or other person who otherwise possessed or knew the
14 information.

15 5.3. Notice of Confidentiality. Prior to producing or disclosing Protected
16 Material/Confidential Documents to persons to whom the parties’ Stipulation and this
17 Order permits disclosure or production (see section 5.2, *supra*), a Receiving Party
18 shall provide a copy of this Order to such persons so as to put such persons on notice
19 as to the restrictions imposed upon them herein: except that, for court reporters,
20 Professional Vendors, and for witnesses being provided with Protected Material
21 during a deposition, it shall be sufficient notice for Counsel to give the witness a
22 verbal admonition (on the record, for witnesses) regarding the provisions of the
23 parties’ Stipulation and this Order and such provisions’ applicability to specified
24 Protected Material at issue.

25 5.4. Reservation of Rights. Nothing in the parties’ Stipulation and this Order
26 shall be construed so as to require any Producing Party to designate any records or
27 materials as “CONFIDENTIAL.” Nothing in the parties’ Stipulation or this Order
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1 shall be construed so as to prevent the admission of Protected Material into evidence
2 at the trial of this action, or in any appellate proceedings for this action, solely on the
3 basis that such Disclosure or Discovery Material has been designated as Protected
4 Material/Confidential Documents. Notwithstanding the foregoing, nothing in the
5 parties' Stipulation or this Order shall be construed as a waiver of any privileges or of
6 any rights to object to the use or admission into evidence of any Protected Material in
7 any proceeding; nor shall anything herein be construed as a concession that any
8 privileges asserted or objections made are valid or applicable.

9 Nothing in the parties' Stipulation or this Order shall be construed so as to
10 prevent the Designating Party (or its Counsel or custodian of records) from having
11 access to and using Protected Material designated by that Party in the manner in
12 which such persons or entities would typically use such materials in the normal course
13 of their duties or profession – except that the waiver of confidentiality provisions shall
14 apply (see section 4.4(c), *supra*).

15 **5.5. Requirement to File Confidential Documents Under Seal. If any**
16 **Receiving Party attaches any Confidential Documents to any pleading, motion,**
17 **or other paper to be filed, lodged, or otherwise submitted to the Court, such**
18 **Confidential Document(s) shall be filed/lodged under seal pursuant to Civil**
19 **Local Rule 79-5. Protected Material may only be filed under seal pursuant to a**
20 **court order authorizing the sealing of the specific Protected Material at issue. If**
21 **a Party's request to file Protected Material under seal is denied by the court,**
22 **then the Receiving Party may file the information in the public record unless**
23 **otherwise instructed by the court.**

24 However, this paragraph (¶ 5.5) shall not be construed so as to prevent a
25 Designating Party or counsel from submitting, filing, lodging, or publishing any
26 document it has previously designated as a Confidential Document without
27 compliance with this paragraph's requirement to do so under seal (i.e., a producing-
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1 disclosing party or counsel may submit or publish its own Confidential Documents
2 without being in violation of the terms of the parties’ Stipulation and this Protective
3 Order).

4 Furthermore, a Receiving Party shall be exempted from the requirements of this
5 paragraph as to any specifically identified Confidential Document(s) where – prior to
6 the submission or publication of the Confidential Document(s) at issue – the
7 Designating Party of such specifically identified Confidential Document(s) has
8 waived/withdrawn the protections of the parties’ Stipulation and this Order (pursuant
9 to paragraph 4.4, *supra*).

10 A Receiving Party shall also be exempt from the sealing requirements of this
11 paragraph (§ 5.5) where the Confidential Documents/Protected Material at issue is/are
12 **not** documents, records, or information regarding:

13 (1) private, personal information contained in peace officer personnel files
14 (such as social security numbers, driver’s license numbers or comparable personal
15 government identification numbers, residential addresses, compensation or pension or
16 personal property information, credit card numbers or credit information, dates of
17 birth, tax records and information, information related to the identity of an officer’s
18 family members or co-residents, and comparable personal information about the
19 officer or his family);

20 (2) any internal affairs or comparable investigation by any law enforcement
21 agency into alleged officer misconduct; and/or

22 (3) the medical records or records of psychiatric or psychological treatment
23 of any peace officer or party to this action.

24 Nothing in this paragraph shall be construed to bind the Court or its authorized
25 staff so as to limit or prevent the publication of any Confidential Documents to the
26 jury or factfinder, at the time of trial of this matter, where the Court has deemed such
27 Confidential Documents to be admissible into evidence. **Any use of Protected**

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1 **Material at trial or other court hearing or proceedings shall be governed by the**
2 **orders of the trial judge. Furthermore, the terms of the Protective Order do not**
3 **apply to the Court or court personnel, who are subject only to the Court’s**
4 **internal procedures regarding the handling of material filed or lodged, including**
5 **material filed or lodged under seal.**

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

9 If a Party is served with a subpoena or a court order issued in other litigation
10 that compels disclosure of any information or items in the Party's possession or
11 control which had been designated in this action as “CONFIDENTIAL,” that Party
12 must:

13 (a) promptly notify in writing the Designating Party, preferably (though not
14 necessarily) by facsimile or electronic mail. Such notification shall include a copy of
15 the subpoena or court order at issue, if possible;

16 (b) promptly notify in writing the party who caused the subpoena or order to
17 issue in the other litigation that some or all of the material covered by the subpoena or
18 order is subject to the parties’ Stipulation and this Protective Order. Such notification
19 shall include a specific reference to the parties’ Stipulation and this Protective Order;
20 and

21 (c) cooperate with respect to all reasonable procedures sought to be pursued by
22 all sides in any such situation, while adhering to the terms of the parties’ Stipulation
23 and this Order.

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

5 The purpose of this section is to ensure that the affected Party has a meaningful
6 opportunity to preserve its confidentiality interests in the court from which the
7 subpoena or court order issued.

8
9 **7. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL.**

10 7.1. Unauthorized Disclosure of Protected Material.

11 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed
12 Protected Material to any person or in any circumstance not authorized under the
13 parties' Stipulation and this Order, the Receiving Party must:

- 14 (a) notify in writing the Designating Party of the unauthorized disclosures;
15 (b) use its best efforts to retrieve all copies of the Protected Material;
16 (c) inform the person or persons to whom unauthorized disclosures were made
17 of all the terms of this Order; and
18 (d) request that such person or persons consent to be bound by the Stipulation
19 and this Order.

20 7.2. Inadvertent Production of Privileged or Otherwise Protected Material.

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

4
5 **8. PUBLICATION OF PROTECTED MATERIAL PROHIBITED.**

6 8.1. Filing of Protected Material.

7 Without advance written permission from the Designating Party, or a court
8 order secured after appropriate notice to all interested persons, a Receiving Party may
9 not file in the public record in this action any Protected Material. A Party that seeks
10 to file under seal any Protected Material must comply with the applicable Federal and
11 Local Rules.

12 8.2. Public Dissemination of Protected Material.

13 A Receiving Party shall not publish, release, post, or disseminate Protected
14 Material to any persons except those specifically delineated and authorized by the
15 parties' Stipulation and this Order (see section 5, *supra*); nor shall a Receiving Party
16 publish, release, leak, post, or disseminate Protected Material/Confidential
17 Documents to any news media, member of the press, website, or public forum (except
18 as permitted under this Order regarding filings with the Court in this action and under
19 seal).

20
21 **9. FINAL DISPOSITION.**

22 Unless otherwise ordered or agreed in writing by the Producing Party, within
23 thirty (30) days after the final termination of this action (defined as the dismissal or
24 entry of judgment by the above named Court, or if an appeal is filed, the disposition
25 of the appeal), upon written request by the Producing Party, each Receiving Party
26 must return all Protected Material to the Producing Party – whether retained by the
27 Receiving Party or its Counsel, Experts, Professional Vendors, agents, or any non-
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1 party to whom the Receiving Party produced or shared such records or information.

2 As used in this subdivision, “all Protected Material” includes all copies,
3 abstracts, compilations, summaries or any other form of reproducing or capturing any
4 of the Protected Material, regardless of the medium (hardcopy, electronic, or
5 otherwise) in which such Protected Material is stored or retained.

6 In the alternative, at the discretion of the Receiving Party, the Receiving Party
7 may destroy some or all of the Protected Material instead of returning it – unless such
8 Protected Material is an original, in which case, the Receiving Party must obtain the
9 Producing Party’s written consent before destroying such original Protected Material.

10 Whether the Protected Material is returned or destroyed, the Receiving Party
11 must submit a written certification to the Producing Party (and, if not the same person
12 or entity, to the Designating Party) within thirty (30) days of the aforementioned
13 written request by the Designating Party that specifically identifies (by category,
14 where appropriate) all the Protected Material that was returned or destroyed and that
15 affirms that the Receiving Party has not retained any copies, abstracts, compilations,
16 summaries or other forms of reproducing or capturing any of the Protected material
17 (in any medium, including but not limited to any hardcopy, electronic or digital copy,
18 or otherwise).

19 Notwithstanding this provision, Counsel are entitled to retain an archival copy
20 of all pleadings, motion papers, transcripts, legal memoranda or other documents filed
21 with the Court in this action, as well as any correspondence or attorney work product
22 prepared by Counsel for the Receiving Party, even if such materials contain Protected
23 Material; however, any such archival copies that contain or constitute Protected
24 Material remain subject to this Protective Order as set forth in Section 2, above. This
25 Court shall retain jurisdiction in the event that a Designating Party elects to seek
26 enforcement of this Order, including sanctions for violation of the parties’ Stipulation
27 and this Order.

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2 **10. MISCELLANEOUS.**

3 10.1. Right to Further Relief. Nothing in the parties' Stipulation or this Order
4 abridges the right of any person to seek its modification by the Court in the future.

5 10.2. Right to Assert Other Objections. By stipulating to the entry of this
6 Protective Order pursuant to the parties' Stipulation, no Party waives any right it
7 otherwise would have to object to disclosing or producing any information or item on
8 any ground not addressed in the parties' Stipulation or this Order. Similarly, no Party
9 waives any right to object on any ground to use in evidence any of the material
10 covered by the parties' Stipulation and this Protective Order.

11 The provisions of the parties' Stipulation and this Protective Order shall be in
12 effect until further Order of the Court.

13 **IT IS SO ORDERED.**

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16 Dated: July 5, 2017

17 _____
18 HON. KENLY KIYA KATO
19 UNITED STATES MAGISTRATE JUDGE
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8 Attorneys for Defendants,
9 CITY OF HESPERIA; COUNTY OF SAN
10 BERNARDINO; TOWN OF APPLE
11 VALLEY; and JONATHAN FLORES

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