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 9

10 **UNITED STATES DISTRICT COURT**
 11 **CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION**

MANNING & KASS
ELLROD, RAMIREZ, TRESTER LLP
ATTORNEYS AT LAW

13 ESTATE OF CHRISTIAN VARGAS;
 ALICIA GUZMAN, as Guardian Ad
 14 Litem for minors A.C.V. and C.A.V.;
 STEPHANY EBARRA, as Guardian
 15 Ad Litem for minor A.F.E.; EDITH
 HERNANDEZ, Individually, and as
 16 Successor in Interest to CHRISTIAN
 VARGAS deceased,

17 Plaintiff,

18 v.

19 THE CITY OF COLTON; OFFICER
 20 BRYAN ACEVEDO; OFFICER
 GREGORY CASTILLO; and DOES 1-
 21 10, Inclusive,

22 Defendant.

Case No. 5:17-CV-01871 JGB (KKx)
*[Hon. District Judge, Jesus G. Bernal,
 Magistrate Judge, Kenly Kiya Kato]*

[DISCOVERY MATTER]

**STIPULATED PROTECTIVE
 ORDER**

23
 24 **1. A. PURPOSES AND LIMITATIONS**

25 Discovery in this action is likely to involve production of confidential,
 26 proprietary, or private information for which special protection from public
 27 disclosure and from use for any purpose other than prosecuting this litigation may
 28

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

11 **B. GOOD CAUSE STATEMENT**

12 Plaintiffs anticipate requesting, by way of written discovery, materials
13 pertaining to the Colton Police Department's and/or District Attorney's
14 investigation into the shooting death of Christian Evan Vargas. Defendants also
15 anticipate identifying materials pertaining to the Colton Police Department's and/or
16 District Attorney's investigation into the shooting death of Christian Evan Vargas in
17 their initial disclosures. These documents contain information of a privileged,
18 confidential, private, or sensitive nature, and the parties believe that public
19 dissemination of this information would jeopardize compelling interests in
20 preserving the integrity of the Colton Police Department's investigation. This
21 confidential information is in the possession of the Defendants. Defendants have
22 agreed to produce this information pursuant to the terms and conditions found in the
23 instant protective order.

24 Accordingly, to expedite the flow of information, to facilitate the prompt
25 resolution of disputes over confidentiality of discovery materials, to adequately
26 protect information the parties are entitled to keep confidential, to ensure that the
27 parties are permitted reasonable necessary uses of such material in preparation for
28 and in the conduct of trial, to address their handling at the end of the litigation, and

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

6 2. DEFINITIONS

7 2.1 Action: this pending federal law suit, *The Estate of Christian Evan*
8 *Vargas, et al. v. City of Colton, et al.*, Case No. 5:17-CV-01871 JGB (KKx).

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
12 how it is generated, stored or maintained) or tangible things that qualify for
13 protection under Federal Rule of Civil Procedure 26(c), and as specified above in
14 the Good Cause Statement.

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

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

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

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

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

1 counsel.

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

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

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

11 2.12 Producing Party: a Party or Non-Party that produces Disclosure or
12 Discovery Material in this Action.

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

17 2.14 Protected Material: any Disclosure or Discovery Material that is
18 designated as “CONFIDENTIAL.”

19 2.15 Receiving Party: Party that receives Disclosure or Discovery Material
20 from a Producing Party.

21 3. SCOPE

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

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
4 otherwise in writing or a court order otherwise directs. Final disposition shall be
5 deemed to be the later of (1) dismissal of all claims and defenses in this Action,
6 with or without prejudice; and (2) final judgment herein after the completion
7 and exhaustion of all appeals, re-hearings, remands, trials, or reviews of this
8 Action, including the time limits for filing any motions or applications for
9 extension of time pursuant to applicable law.

10 5. DESIGNATING PROTECTED MATERIAL

11 5.1 Exercise of Restraint and Care in Designating Material for Protection.

12 Each Party or Non-Party that designates information or items for protection
13 under this Order must take care to limit any such designation to specific
14 material that qualifies under the appropriate standards. The Designating Party must
15 designate for protection only those parts of material, documents, items, or oral or
16 written communications that qualify so that other portions of the material,
17 documents, items, or communications for which protection is not warranted are not
18 swept unjustifiably within the ambit of this Order. Mass, indiscriminate, or
19 routinized designations are prohibited. Designations that are shown to be clearly
20 unjustified or that have been made for an improper purpose (e.g., to
21 unnecessarily encumber the case development process or to impose unnecessary
22 expenses and burdens on other parties) may expose the Designating Party to
23 sanctions. If it comes to a Designating Party's attention that information or items
24 that it designated for protection do not qualify for protection, that Designating
25 Party must promptly notify all other Parties that it is withdrawing the inapplicable
26 designation.

27 5.2 Manner and Timing of Designations. Except as otherwise provided in this
28 Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise

1 stipulated or ordered, Disclosure or Discovery Material that qualifies for protection
2 under this Order must be clearly so designated before the material is disclosed or
3 produced.

4 Designation in conformity with this Order requires:

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

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

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

26 (c) for information produced in some form other than documentary and for
27 any other tangible items, that the Producing Party affix in a prominent place on the
28 exterior of the container or containers in which the information is stored the legend

1 “CONFIDENTIAL.” If only a portion or portions of the information warrants
2 protection, the Producing Party, to the extent practicable, shall identify the protected
3 portion(s).

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

9 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

10 6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation
11 of 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 the
17 Challenging Party to sanctions. Unless the Designating Party has waived or withdrawn
18 the confidentiality designation, all parties shall continue to afford the material in
19 question the level of protection to which it is entitled under the Producing Party’s
20 designation until the Court rules on the challenge.

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

22 7.1 Basic Principles. A Receiving Party may use Protected Material that is
23 disclosed or produced by another Party or by a Non-Party in connection with this
24 Action only for prosecuting, defending, or attempting to settle this Action. Such
25 Protected Material may be disclosed only to the categories of persons and under the
26 conditions described in this Order. When the Action has been terminated, a Receiving
27 Party must comply with the provisions of section 13 below (FINAL DISPOSITION).
28 Protected Material must be stored and maintained by a Receiving Party at a location

1 and in a secure manner that ensures that access is limited to the persons authorized
2 under this Order.

3 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise
4 ordered by the court or permitted in writing by the Designating Party, a Receiving Party
5 may disclose any information or item designated “CONFIDENTIAL” only to:

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

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

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

14 (d) the court and its personnel;

15 (e) court reporters and their staff;

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

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

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

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

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

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

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

10 (a) promptly notify in writing the Designating Party. Such notification shall
11 include a copy of the subpoena or court order;

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

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

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

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

28

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

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

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

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

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

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

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

27 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed
28 Protected Material to any person or in any circumstance not authorized under this

1 Stipulated Protective Order, the Receiving Party must immediately (a) notify in writing
2 the Designating Party of the unauthorized disclosures, (b) use its best efforts to retrieve
3 all unauthorized copies of the Protected Material, (c) inform the person or persons to
4 whom unauthorized disclosures were made of all the terms of this Order, and (d)
5 request such person or persons to execute the “Acknowledgment and Agreement to Be
6 Bound” that is attached hereto as Exhibit A.

7 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
8 PROTECTED MATERIAL

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

19 12. MISCELLANEOUS

20 12.1 Right to Further Relief. Nothing in this Order abridges the right of any
21 person to seek its modification by the Court in the future.

22 12.2 Right to Assert Other Objections. By stipulating to the entry of this
23 Protective Order no Party waives any right it otherwise would have to object to
24 disclosing or producing any information or item on any ground not addressed in this
25 Stipulated Protective Order. Similarly, no Party waives any right to object on any
26 ground to use in evidence of any of the material covered by this Protective Order.

27 12.3 Filing Protected Material. A Party that seeks to file under seal any Protected
28 Material must comply with Civil Local Rule 79-5. Protected Material may only be filed

1 under seal pursuant to a court order authorizing the sealing of the specific Protected
2 Material at issue. If a Party's request to file Protected Material under seal is denied by
3 the court, then the Receiving Party may file the information in the public record unless
4 otherwise instructed by the court.

5 13. FINAL DISPOSITION

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

23 14. VIOLATION

24 Any violation of this Order may be punished by any and all appropriate
25 measures including, without limitation, contempt proceedings and/or monetary
26 sanctions.

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28

1 ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

2 I, _____ [print or type full name], of
3 _____ [print or type full address],

4 declare under penalty of perjury that I have read in its entirety and understand the
5 Stipulated Protective Order that was issued by the United States District Court for
6 the Central District of California on [date] in the case of *The Estate of Christian*
7 *Evan Vargas, et al. v. City of Colton*, Case No. 5:17-CV-01871 JGB (KKx).

8 I agree to comply with and to be bound by all the terms of this Stipulated Protective
9 Order and I understand and acknowledge that failure to so comply could expose me
10 to sanctions and punishment in the nature of contempt. I solemnly promise that I
11 will not disclose in any manner any information or item that is subject to this
12 Stipulated Protective Order to any person or entity except in strict compliance with
13 the provisions of this Order. I further agree to submit to the jurisdiction of the
14 United States District Court for the Central District of California for the purpose of
15 enforcing the terms of this Stipulated Protective Order, even if such enforcement
16 proceedings occur after termination of this action. I hereby appoint

17 _____ [print or type full name] of
18 _____ [print or type full

19 address and telephone number] as my California agent for service of process in
20 connection with this action or any proceedings related to enforcement of this
21 Stipulated Protective Order.

22
23 Date: _____

24 City and State where sworn and signed: _____

25 Printed name: _____

26 Signature: _____

27
28