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

ALEXANDER HERD; A.G., by and through her guardian ad litem Amanda Addington, individually and as successor in interest to James Gleason, deceased,

Plaintiff,

v.

COUNTY OF SAN BERNARDINO; CITY OF FONTANA; STATE OF CALIFORNIA; BRIAN LEYVA; JASON PERNICIARO; and DOES 1-10,

Defendants.

Case No. 5:17-cv-02545-AB-SP (x)

STIPULATED PROTECTIVE ORDER

Courtroom: 7B
Judge: Hon. André Birotte Jr.

Action Filed: December 27, 2017

1. A. PURPOSES AND LIMITATIONS

Discovery in this action is likely to involve production of confidential, proprietary, or private information for which special protection from public disclosure and from use for any purpose other than prosecuting this litigation may be warranted. Accordingly, the parties hereby stipulate to and petition the Court to

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

10 B. GOOD CAUSE STATEMENT

11 Defendants State of California, acting by and through the California
12 Highway Patrol (State), Officer Brian Leyva, County of San Bernardino (County),
13 City of Fontana (City), and Officer Jason Perniciaro may be producing documents
14 concerning its confidential internal policies, which documents are generally
15 unavailable to the public. The disclosure of this information may jeopardize the
16 security of the State's, County's and City's operations, and jeopardize the safety of
17 peace officers. Defendants may also be producing documents that contain personal
18 and confidential information regarding individuals which information is generally
19 unavailable to the public, including peace officer personnel records. The disclosure
20 of this information to the public may violate those individuals' privacy rights.
21 Defendants may also be producing video, audio and still photo images related to the
22 traffic stop at issue in this case which is generally unavailable to the public. In
23 addition, defendants may be producing investigation reports which are generally
24 unavailable to the public, the disclosure of which could violate individuals' privacy
25 rights and jeopardize the safety of officers. Accordingly, to expedite the flow of
26 information, to facilitate the prompt resolution of disputes over confidentiality of
27 discovery materials, to adequately protect information the parties are entitled to
28 keep confidential, to ensure that the parties are permitted reasonable necessary uses

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

8 2. DEFINITIONS

9 2.1 Action: *Herd, et al. v. County of San Bernardino, et al.*, Central
10 District of California Case No. 5:17-cv-02545-AB-SP.

11 2.2 Challenging Party: a Party or Non-Party that challenges the
12 designation of information or items under this Order.

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

17 2.4 Counsel: Outside Counsel of Record and House Counsel (as well as
18 their support staff).

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

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

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

1 2.8 House Counsel: attorneys who are employees of a party to this Action.
2 House Counsel does not include Outside Counsel of Record or any other outside
3 counsel.

4 2.9 Non-Party: any natural person, partnership, corporation, association, or
5 other legal entity not named as a Party to this action.

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

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

13 2.12 Producing Party: a Party or Non-Party that produces Disclosure or
14 Discovery Material in this Action.

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

19 2.14 Protected Material: any Disclosure or Discovery Material that is
20 designated as “CONFIDENTIAL.”

21 2.15 Receiving Party: a Party that receives Disclosure or Discovery
22 Material from a Producing Party.

23 3. SCOPE

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

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

3 4. DURATION

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

12 5. DESIGNATING PROTECTED MATERIAL

13 5.1 Exercise of Restraint and Care in Designating Material for Protection.

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

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

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

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

6 Designation in conformity with this Order requires:

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

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

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

4 (c) for information produced in some form other than documentary and
5 for any other tangible items, that the Producing Party affix in a prominent
6 place on the exterior of the container or containers in which the information
7 is stored the legend "CONFIDENTIAL." If only a portion or portions of the
8 information warrants protection, the Producing Party, to the extent
9 practicable, shall identify the protected portion(s).

10 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
11 failure to designate qualified information or items does not, standing alone, waive
12 the Designating Party's right to secure protection under this Order for such
13 material. Upon timely correction of a designation, the Receiving Party must make
14 reasonable efforts to assure that the material is treated in accordance with the
15 provisions of this Order.

16 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

17 6.1 Timing of Challenges. Any Party or Non-Party may challenge a
18 designation of confidentiality at any time that is consistent with the Court's
19 Scheduling Order.

20 6.2 Meet and Confer. The Challenging Party shall initiate the dispute
21 resolution process under Local Rule 37.1 et seq.

22 6.3 The burden of persuasion in any such challenge proceeding shall be on
23 the Designating Party. Frivolous challenges, and those made for an improper
24 purpose (e.g., to harass or impose unnecessary expenses and burdens on other
25 parties) may expose the Challenging Party to sanctions. Unless the Designating
26 Party has waived or withdrawn the confidentiality designation, all parties shall
27 continue to afford the material in question the level of protection to which it is
28 entitled under the Producing Party's designation until the Court rules on the

1 challenge.

2 7. ACCESS TO AND USE OF PROTECTED MATERIAL

3 7.1 Basic Principles. A Receiving Party may use Protected Material that is
4 disclosed or produced by another Party or by a Non-Party in connection with this
5 Action only for prosecuting, defending, or attempting to settle this Action. Such
6 Protected Material may be disclosed only to the categories of persons and under the
7 conditions described in this Order. When the Action has been terminated, a
8 Receiving Party must comply with the provisions of section 13 below (FINAL
9 DISPOSITION).

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

13 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless
14 otherwise ordered by the court or permitted in writing by the Designating Party, a
15 Receiving Party may disclose any information or item designated
16 “CONFIDENTIAL” only to:

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

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

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

26 (d) the court and its personnel;

27 (e) court reporters and their staff;

28

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

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

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

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

21 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED
22 IN OTHER LITIGATION

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

26 (a) promptly notify in writing the Designating Party. Such notification
27 shall include a copy of the subpoena or court order;
28

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

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

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

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

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

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

27 (1) promptly notify in writing the Requesting Party and the Non-
28 Party that some or all of the information requested is subject to a

1 confidentiality agreement with a Non-Party;

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

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

8 (c) If the Non-Party fails to seek a protective order from this court
9 within 14 days of receiving the notice and accompanying information, the
10 Receiving Party may produce the Non-Party's confidential information
11 responsive to the discovery request. If the Non-Party timely seeks a
12 protective order, the Receiving Party shall not produce any information in its
13 possession or control that is subject to the confidentiality agreement with the
14 Non-Party before a determination by the court. Absent a court order to the
15 contrary, the Non-Party shall bear the burden and expense of seeking
16 protection in this court of its Protected Material.

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

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

26 **11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE**
27 **PROTECTED MATERIAL**

28 When a Producing Party gives notice to Receiving Parties that certain

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

10 12. MISCELLANEOUS

11 12.1 Right to Further Relief. Nothing in this Order abridges the right of any
12 person to seek its modification by the Court in the future.

13 12.2 Right to Assert Other Objections. By stipulating to the entry of this
14 Protective Order no Party waives any right it otherwise would have to object to
15 disclosing or producing any information or item on any ground not addressed in
16 this Stipulated Protective Order. Similarly, no Party waives any right to object on
17 any ground to use in evidence of any of the material covered by this Protective
18 Order.

19 12.3 Filing Protected Material. A Party that seeks to file under seal any
20 Protected Material must comply with Civil Local Rule 79-5. Protected Material
21 may 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 Material
23 under seal is denied by the court, then the Receiving Party may file the information
24 in the public record unless otherwise instructed by the court.

25 13. FINAL DISPOSITION

26 After the final disposition of this Action, as defined in paragraph 4, within 60
27 days of a written request by the Designating Party, each Receiving Party must
28 return all Protected Material to the Producing Party or destroy such material. As

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

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

19 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

20 Dated: April 12, 2018

THE LAW OFFICES OF DALE K. GALIPO

21 By: /s/ Renee V. Masongsong
22 DALE K. GALIPO
23 RENEE V. MASONGSONG
Attorneys for Plaintiff

24 Dated: April 12, 2018

LAW OFFICE OF SHARON J. BRUNNER

25 By: /s/ Sharon J. Brunner
26 SHARON J. BRUNNER
Attorneys for Plaintiff

1 Dated: April 12, 2018

LAW OFFICE OF JAMES S. TERRELL

2

By: /s/ James S. Terrel
JAMES S. TERRELL
Attorneys for Plaintiff

3

4 Dated: April 12, 2018

XAVIER BECERRA
Attorney General of California
JOEL A. DAVIS
Supervising Deputy Attorney General

5

6

As the filer of this stipulation, I attest that all other signatories listed, and on whose behalf the filing is submitted, concur in the filing's content and have authorized the filing.

7

8

9

By: /s/ Donna M. Dean
DONNA M. DEAN
Deputy Attorney General
Attorneys for Defendants
State of California and Brian Leyva

10

11

12

13 Dated: April 12, 2018

LYNBERG & WATKINS

14

By: /s/ Jesse K. Cox
S. Frank Harrell
Jesse K. Cox
Camille Sespene
Attorneys for Defendants City Of
Fontana And Officer Jason Perniciaro

15

16

17

18 Dated: April 12, 2018

MICHELLE D. BLAKEMORE
County Counsel

19

BY: /s/ James H. Thebeau
JAMES H. THEBEAU
Deputy County Counsel
Attorneys for Defendant
County of San Bernardino

20

21

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FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.

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Dated: April 17, 2018



Sheri Pym
United States Magistrate Judge

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27

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1 EXHIBIT A

2 ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

3 I, _____ [print or type full name], of
4 _____ [print or type full address], declare under penalty of perjury
5 that I have read in its entirety and understand the Stipulated Protective Order that
6 was issued by the United States District Court for the Central District of California
7 on [date] in the case of *Herd, et al. v. County of San Bernardino, et al.*, Central
8 District of California Case No. 5:17-cv-02545-AB-SP. I agree to comply with and
9 to be bound by all the terms of this Stipulated Protective Order and I understand
10 and acknowledge that failure to so comply could expose me to sanctions and
11 punishment in the nature of contempt. I solemnly promise that I will not disclose in
12 any manner any information or item that is subject to this Stipulated Protective
13 Order to any person or entity except in strict compliance with the provisions of this
14 Order.

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

23 Date: _____

24 City and State where sworn and signed: _____

25 Printed name: _____

26 Signature: _____