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

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

12 CURTIS SMITH, JR., individually; and
 C.S., a minor by and through his
 13 guardian ad litem CYNTHIA GREY,

14 Plaintiffs,

15 v.

16 CITY OF MORENO VALLEY, a
 governmental entity; Officer CEDENO,
 17 individually; Officer THURM,
 individually; City of Moreno Valley
 18 Chief of Police DAVID
 KURYLOWICZ, individually and in his
 19 official capacity; and DOES 1 through
 20 10,

21 Defendants.

Case No. 5:18-CV-01177 JGB (SPx)
 Hon. District Judge Jesus G. Bernal
 Magistrate Judge Sheri Pym

**STIPULATED PROTECTIVE
 ORDER**

22 1. A. PURPOSES AND LIMITATIONS

23 Discovery in this action is likely to involve production of confidential,
 24 proprietary, or private information for which special protection from public
 25 disclosure and from use for any purpose other than prosecuting this litigation may
 26 be warranted. Accordingly, the parties hereby stipulate to and petition the Court to
 27 enter the following Stipulated Protective Order. The parties acknowledge that this
 28 Order does not confer blanket protections on all disclosures or responses to

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

8 **B. GOOD CAUSE STATEMENT**

9 This action is likely to involve law enforcement sensitive information, law
10 enforcement personnel information, medical information and other information for
11 which special protection from public disclosure and from use for any purpose other
12 than prosecution of this action is warranted. Such confidential materials and
13 information consist of, among other things, law enforcement reports, law
14 enforcement personnel records and information, medical records and information,
15 information regarding minors (including information implicating privacy rights of
16 third parties), information otherwise generally unavailable to the public, or which
17 may be privileged or otherwise protected from disclosure under state or federal
18 statutes, court rules, case decisions, or common law. Accordingly, to expedite the
19 flow of information, to facilitate the prompt resolution of disputes over
20 confidentiality of discovery materials, to adequately protect information the parties
21 are entitled to keep confidential, to ensure that the parties are permitted reasonable
22 necessary uses of such material in preparation for and in the conduct of trial, to
23 address their handling at the end of the litigation, and serve the ends of justice, a
24 protective order for such information is justified in this matter. It is the intent of the
25 parties that information will not be designated as confidential for tactical reasons
26 and that nothing be so designated without a good faith belief that it has been
27 maintained in a confidential, non-public manner, and there is good cause why it
28 should not be part of the public record of this case.

1 2. DEFINITIONS

2 2.1 Action: *Curtis Smith Jr. et al. v. City of Moreno Valley et al.*, Case No.
3 5:18-CV-01177 JGB (SPx).

4 2.2 Challenging Party: a Party or Non-Party that challenges the designation
5 of information or items under this Order.

6 2.3 “CONFIDENTIAL” Information or Items: information (regardless of
7 how it is generated, stored or maintained) or tangible things that qualify for
8 protection under Federal Rule of Civil Procedure 26(c), and as specified above in
9 the Good Cause Statement.

10 2.4 Counsel: Outside Counsel of Record and House Counsel (as well as
11 their support staff).

12 2.5 Designating Party: a Party or Non-Party that designates information or
13 items that it produces in disclosures or in responses to discovery as
14 “CONFIDENTIAL.”

15 2.6 Disclosure or Discovery Material: all items or information, regardless
16 of the medium or manner in which it is generated, stored, or maintained (including,
17 among other things, testimony, transcripts, and tangible things), that are produced or
18 generated in disclosures or responses to discovery in this matter.

19 2.7 Expert: a person with specialized knowledge or experience in a matter
20 pertinent to the litigation who has been retained by a Party or its counsel to serve as
21 an expert witness or as a consultant in this Action.

22 2.8 House Counsel: attorneys who are employees of a party to this Action.
23 House Counsel does not include Outside Counsel of Record or any other outside
24 counsel.

25 2.9 Non-Party: any natural person, partnership, corporation, association, or
26 other legal entity not named as a Party to this action.

27 2.10 Outside Counsel of Record: attorneys who are not employees of a party
28 to this Action but are retained to represent or advise a party to this Action and have

1 appeared in this Action on behalf of that party or are affiliated with a law firm which
2 has appeared on behalf of that party, and includes support staff.

3 2.11 Party: any party to this Action, including all of its officers, directors,
4 employees, consultants, retained experts, and Outside Counsel of Record (and their
5 support staffs).

6 2.12 Producing Party: a Party or Non-Party that produces Disclosure or
7 Discovery Material in this Action.

8 2.13 Professional Vendors: persons or entities that provide litigation support
9 services (e.g., photocopying, videotaping, translating, preparing exhibits or
10 demonstrations, and organizing, storing, or retrieving data in any form or medium) and
11 their employees and subcontractors.

12 2.14 Protected Material: any Disclosure or Discovery Material that is
13 designated as “CONFIDENTIAL.”

14 2.15 Receiving Party: a Party that receives Disclosure or Discovery Material
15 from a Producing Party.

16 3. SCOPE

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

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

24 4. DURATION

25 Even after final disposition of this litigation, the confidentiality obligations
26 imposed by this Order shall remain in effect until a Designating Party agrees
27 otherwise in writing or a court order otherwise directs. Final disposition shall be
28 deemed to be the later of (1) dismissal of all claims and defenses in this Action, with

1 or without prejudice; and (2) final judgment herein after the completion and
2 exhaustion of all appeals, rehearings, remands, trials, or reviews of this Action,
3 including the time limits for filing any motions or applications for extension of time
4 pursuant to applicable law.

5 5. DESIGNATING PROTECTED MATERIAL

6 5.1 Exercise of Restraint and Care in Designating Material for Protection.

7 Each Party or Non-Party that designates information or items for protection under
8 this Order must take care to limit any such designation to specific material that
9 qualifies under the appropriate standards. The Designating Party must designate for
10 protection only those parts of material, documents, items, or oral or written
11 communications that qualify so that other portions of the material, documents,
12 items, or communications for which protection is not warranted are not swept
13 unjustifiably within the ambit of this Order.

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

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

22 5.2 Manner and Timing of Designations. Except as otherwise provided in
23 this Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise
24 stipulated or ordered, Disclosure or Discovery Material that qualifies for protection
25 under this Order must be clearly so designated before the material is disclosed or
26 produced.

27 Designation in conformity with this Order requires:

28 (a) for information in documentary form (e.g., paper or electronic

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

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

19 (b) for testimony given in depositions, that the Designating Party identify
20 the Disclosure or Discovery Material on the record, before the close of the
21 deposition all protected testimony. When it is impractical to identify separately each
22 portion of testimony that is entitled to protection, and when it appears that
23 substantial portions of the testimony may qualify for protection, the Producing Party
24 may invoke on the record (before the deposition or proceeding is concluded) a right
25 to have up to twenty (20) days to identify the specific portions of the testimony as
26 “CONFIDENTIAL.” Only those portions of the testimony that are appropriately
27 designated as “CONFIDENTIAL” for protection within the 20 days shall be covered
28 by the provisions of this Stipulation and its associated Protective Order. The court

1 reporter must affix to each such transcript page containing Protected Material the
2 legend “CONFIDENTIAL,” as instructed by the Producing Party.

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

9 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
10 failure to designate qualified information or items does not, standing alone, waive the
11 Designating Party’s right to secure protection under this Order for such material. Upon
12 timely correction of a designation, the Receiving Party must make reasonable efforts to
13 assure that the material is treated in accordance with the provisions of this Order.

14 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

15 6.1 Timing of Challenges. Any Party or Non-Party may challenge a
16 designation of confidentiality at any time that is consistent with the Court’s
17 Scheduling Order.

18 6.2 Meet and Confer. The Challenging Party shall initiate the
19 dispute resolution process under Local Rule 37.1 et seq.

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

27 7. ACCESS TO AND USE OF PROTECTED MATERIAL

28 7.1 Basic Principles. A Receiving Party may use Protected Material that is

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

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

9 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless
10 otherwise ordered by the court or permitted in writing by the Designating Party, a
11 Receiving Party may disclose any information or item designated
12 “CONFIDENTIAL” only to:

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

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

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

21 (d) the court and its personnel;

22 (e) court reporters and their staff;

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

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

28 (h) during their depositions, witnesses, and attorneys for witnesses, in the

1 Action to whom disclosure is reasonably necessary provided: (1) the deposing party
2 requests that the witness sign the form attached as Exhibit 1 hereto; and (2) they will
3 not be permitted to keep any confidential information unless they sign the
4 “Acknowledgment and Agreement to Be Bound” (Exhibit A), unless otherwise
5 agreed by the Designating Party or ordered by the court. Pages of transcribed
6 deposition testimony or exhibits to depositions that reveal Protected Material may
7 be separately bound by the court reporter and may not be disclosed to anyone except
8 as permitted under this Stipulated Protective Order; and

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

11 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED
12 IN OTHER LITIGATION

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

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

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

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

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
28 permission. The Designating Party shall bear the burden and expense of seeking

1 protection in that court of its confidential material and nothing in these provisions
2 should be construed as authorizing or encouraging a Receiving Party in this Action
3 to disobey a lawful directive from another court.

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

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

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

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

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

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

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

1 Absent a court order to the contrary, the Non-Party shall bear the burden and
2 expense of seeking protection in this court of its Protected Material.

3 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

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

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

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

24 12. MISCELLANEOUS

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

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

1 disclosing or producing any information or item on any ground not addressed in this
2 Stipulated Protective Order. Similarly, no Party waives any right to object on any
3 ground to use 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
5 Protected Material must comply with Civil Local Rule 79-5. Protected Material may
6 only be filed under seal pursuant to a court order authorizing the sealing of the
7 specific Protected Material at issue. If a Party's request to file Protected Material
8 under seal is denied by the court, then the Receiving Party may file the information
9 in the public record unless otherwise instructed by the court.

10 13. FINAL DISPOSITION

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

1 14. VIOLATIONS

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

5 ///

6 DATED: November 12, 2018

MANNING & KASS
ELLROD, RAMIREZ, TRESTER LLP

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By: /s/ Michael R. Watts
Eugene P. Ramirez
Angela M. Powell
Michael R. Watts
Attorneys for Defendants CITY OF
MORENO VALLEY, OFFICER
CEDENO, OFFICER THURM and CITY
OF MORENO VALLEY CHIEF OF
POLICE DAVID KURYLOWICZ

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17 DATED: November 12, 2018

THE SEHAT LAW FIRM, P.L.C.

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By: /s/ Cameron Sehat
Cameron Sehat
Attorney for Plaintiffs

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22 FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.

23 DATED: November 20, 2018

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Sheri Pym
United States Magistrate Judge

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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 _____ [**insert formal name of the case and the**
8 **number and initials assigned to it by the court**]. I agree to comply with and to be
9 bound by all the terms of this Stipulated Protective Order and I understand and
10 acknowledge that failure to so comply could expose me to sanctions and punishment
11 in the nature of contempt. I solemnly promise that I will not disclose in any manner
12 any information or item that is subject to this Stipulated Protective Order to any
13 person or entity except in strict compliance with the provisions of this Order.

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

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

22 Date: _____

23 City and State where sworn and signed: _____

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25 Printed name: _____

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27 Signature: _____

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E-SIGNATURE AFFIRMATION

Pursuant to the United States District Court, Central District of California
Local Rule 5-4.3.4, 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.

DATED: November 12, 2018

MANNING & KASS
ELLROD, RAMIREZ, TRESTER LLP

By: /s/ Michael R. Watts
Eugene P. Ramirez
Angela M. Powell
Michael R. Watts
Attorneys for Defendants CITY OF
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