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11
 12 UNITED STATES DISTRICT COURT
 13 CENTRAL DISTRICT OF CALIFORNIA

14 ISADORE WEBB, an individual;

15 Plaintiff,

16 vs.

17 CITY OF ONTARIO, and DOES 1
 18 through 10 Inclusive,

19 Defendants.

Case No.: 5:21-cv-00341 JWH (SP)

Judge: *Hon. Judge John W. Holcomb*

STIPULATED PROTECTIVE ORDER

[NOTE CHANGES MADE BY THE COURT TO PARAGRAPHS 8 AND 13 OF THE ORDER]

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1 **STIPULATED PROTECTIVE ORDER**

2 Pursuant to Federal Rule of Civil Procedure 26(c), Defendant CITY OF
3 ONTARIO and Plaintiff ISADORE WEBB (collectively "the Parties"), by their
4 undersigned counsel, agree to be bound to the terms of the following Protective
5 Order. The Parties represent that pre-trial discovery in this case is likely to include
6 the production of information and/or documents that are confidential and/or
7 privileged including the production of peace officer personnel file information
8 and/or documents which the Parties agree includes: (1) Personal data, including
9 marital status, family members, educational and employment history, home
10 addresses, or similar information; (2) Medical history; (3) Election of employee
11 benefits; (4) Employee advancement, appraisal, or discipline; and (5) Complaints,
12 or investigations of complaints, concerning an event or transaction in which a
13 peace officer participated, or which a peace officer perceived, and pertaining to the
14 manner in which the peace officer performed his or her duties including compelled
15 statements by peace officers. Defendants contend that such information is
16 privileged as official information. Sanchez v. City of Santa Ana, 936 F.2d 1027,
17 1033 (9th Cir. Cal. 1990); see also Kerr v. United States Dist. Ct. for N.D. Cal.,
18 511 F.2d 192, 198 (9th Cir.1975), aff'd, 426 U.S. 394, 96 S.Ct. 2119, 48 L.Ed.2d
19 725 (1976). Further, discovery may require the production of certain Ontario
20 Police Department Policies and Procedures not available to the public and the
21 public disclosure of which could comprise officer safety, raise security issues,
22 and/or impede investigations. Peace officer personnel file information and/or
23 documents and security-sensitive policies and procedures are hereinafter referred
24 to as "Confidential Information".

25 Defendants contend that that public disclosure of such material poses a
26 substantial risk of embarrassment, oppression and/or physical harm to peace
27 officers whose Confidential Information is disclosed. The Parties further agree that
28 the risk of harm to peace officers is greater than with other government employees

1 due to the nature of their profession. Finally, the Defendants contend that the
2 benefit of public disclosure of Confidential Information is minimal while the
3 potential disadvantages are great.

4 Accordingly, good cause exists for entry of this Protective Order to facilitate
5 pre-trial disclosure while assuring the safety of these sensitive disclosures. See
6 Fed. R. Civ. Proc. 26(c).

7 **SO STIPULATED**

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9 Dated: January 3, 2022

Respectfully submitted,
JONES & MAYER

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12 By: /s/ Denise L. Rocawich
13 JAMES R. TOUCHSTONE
14 DENISE L. ROCAWICH
Attorneys for Defendant City of
Ontario

15 Dated: January 3, 2022

16 Respectfully submitted,
17 THE LAW FIRM OF JONATHAN D.
18 EVANS

19 By: /s/ Jonathan D. Evans
20 JONATHAN D. EVANS
21 Attorneys for Plaintiff Isadore Webb
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1 **PROTECTIVE ORDER**

2 PER THE STIPULATION OF THE PARTIES AND GOOD CAUSE
3 APPEARING, **IT IS HEREBY ORDERED** that the terms and conditions of this
4 Protective Order shall govern the handling of Discovery Materials containing
5 Confidential Information in matter of *Webb v. City of Ontario USCD Case No.*
6 *CV21-00341 JWH (SP)* ("the Litigation"):

7 **1. Applicability of Order:** This Order does not and will not govern any
8 trial proceedings in this Litigation, but will otherwise be applicable to and govern
9 the handling of documents, depositions, deposition exhibits, interrogatory
10 responses, responses to requests for admissions, responses to requests for
11 production of documents, and all other discovery obtained pursuant to the Federal
12 Rules of Civil Procedure by Plaintiff in connection with the Litigation (this
13 information hereinafter referred to as "Discovery Material").

14 **2. Designation of Material:** Defendants may designate Discovery
15 Material that is in their possession, custody or control to be produced to Plaintiff as
16 "Confidential Information" under the terms of this Order if Defendants in good
17 faith reasonably believe that such Discovery Material contains non-public,
18 confidential material as defined in section 4 below.

19 **3. Exercise of Restraint and Care in Designating Material for**
20 **Protection:** When designating Discovery Material for protection as Confidential
21 Information under this Order, Defendants must take care to limit any such
22 designation to specific material that qualifies under the appropriate standards.
23 Mass, indiscriminate, or routinized designations are prohibited.

24 **4. Confidential Information:** For purposes of this Order, Confidential
25 Information is any information and/or documents that Defendants believe in good
26 faith to be Peace Officer Personnel File Information and/or Documents including:
27 (1) Personal data, including marital status, family members, educational and
28 employment history, home addresses, or similar information; (2) Medical history;

1 (3) Election of employee benefits; (4) Employee advancement, appraisal, or
2 discipline; and (5) Complaints, or investigations of complaints, concerning an
3 event or transaction in which a peace officer participated, or which a peace officer
4 perceived, and pertaining to the manner in which the peace officer performed his
5 or her duties including compelled statements. Confidential Information is also any
6 Ontario Police Department Policies and Procedures not available to the public and
7 the public disclosure of which could comprise officer safety, raise security issues,
8 and/or impede investigations.

9 **5. Designating Confidential Information:** The designation of
10 Discovery Material as Confidential Information for purposes of this Order shall be
11 made in the following manner:

- 12 a. Documents: In the case of documents or other materials (apart from
13 depositions or other pre-trial testimony), designation shall be made by
14 stamping “Confidential” to each page containing any Confidential
15 Information. Any such stamp shall not overwrite or otherwise
16 obscure the text or images of any page.
- 17 b. Deposition and Other Proceedings: In the case of depositions or other
18 pre-trial testimony, designation of the portion of the transcript
19 (including exhibits) which contains Confidential Information shall be
20 made (i) by a statement to such effect on the record during the
21 proceeding in which the testimony is received, or (ii) by written notice
22 served on counsel of record in this Litigation within thirty (30)
23 business days after the receipt of the draft transcript of such
24 deposition or other pre-trial proceeding. However, before such thirty
25 (30) day period expires, all testimony, exhibits and transcripts of
26 depositions or other testimony shall be treated as Confidential
27 Information. Thereafter, only those portions properly designated shall
28 be deemed Confidential Information.

1 c. Non-Written Materials: Any non-written Confidential Information
2 (e.g., videotape, audio tape, computer disk, etc.) may be designated
3 as such by labeling the outside of such non-written material
4 designated as "Confidential". In the event Plaintiff generates any
5 "hard copy" transcription or printout from any such designated non-
6 written materials, the person who generates such "hard copy"
7 transcription shall take reasonable steps to maintain the
8 confidentiality of such materials.

9 **6. Inadvertent Disclosure:** The inadvertent failure to designate
10 Discovery Information as "Confidential" does not constitute a waiver of such claim
11 and may be remedied by prompt supplemental written notice upon discovery of the
12 inadvertent disclosure, with the effect that such Discovery Material will be subject
13 to the protections of this Order. Plaintiff shall exercise good faith efforts to ensure
14 that copies they make of Confidential Information produced to him, and copies
15 made by others who obtained such Confidential Information directly or indirectly
16 from the Plaintiff include the appropriate confidentiality legend, to the same extent
17 that the Confidential Information has been marked with the appropriate
18 confidentiality legend by the Defendants.

19 **7. No Waiver of Privilege:** Inadvertent disclosure of Confidential
20 Information or otherwise privileged information shall not constitute a waiver of, or
21 estoppel as to any claim of privilege. This Order is intended to provide the full
22 protection afforded by Federal Rule of Evidence 502(d).

23 **8. Claw-Back:** Pursuant to Federal Rule of Civil Procedure 26(b)(5),
24 upon learning it may have produced Confidential or otherwise privileged
25 Information, Defendants shall, within ten (10) days of such discovery, request the
26 return of such Information in writing by identifying the Confidential or otherwise
27 privileged Information and stating the basis on which the Information should be
28 withheld from production. After being notified, Plaintiff must promptly return,

1 sequester, or destroy the Confidential or otherwise privileged Information and any
2 copies, must not use or disclose the Information until the claim is resolved and
3 must take reasonable steps to retrieve the Confidential or otherwise privileged
4 Information if he disclosed the Information before being notified. If Plaintiff
5 disputes Defendants' claim of confidentiality or privilege, they shall notify the
6 Defendant claiming confidentiality of the dispute and the basis therefore in writing
7 within thirty (30) days of receipt of the request for the return of the Confidential or
8 otherwise privileged Information. The Plaintiff and the Defendant claiming
9 confidentiality shall meet and confer in good faith regarding the disputed claim
10 within thirty (30) days. In the event that the Plaintiff and the Defendant claiming
11 confidentiality do not resolve their dispute, either party may bring a motion for a
12 determination of whether a privilege applies in compliance with Local Rule 37. If
13 such a motion is made, the Defendant claiming confidentiality shall submit to the
14 Court for in camera review under seal a copy of the disputed Information in
15 connection with its motion papers. The submission to the Court shall not constitute
16 a waiver of any privilege or protection. Defendants must preserve the Information
17 claimed to be privileged or otherwise protected until the claim is resolved.

18 **9. Notes of Confidential Information:** Any notes, lists, memoranda,
19 indices, compilations prepared or based on an examination of Confidential
20 Information that quote from or paraphrase, Confidential Information with such
21 specificity that the Confidential Information can be identified, or by reasonable
22 logical extension can be identified, shall be accorded the same status of
23 confidentiality as the underlying Confidential Information from which they are
24 made and shall be subject to all of the terms of this Order.

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1 **10. Persons Authorized to Receive Confidential Information:**

2 Discovery Material designated “Confidential” may be disclosed, summarized,
3 described, characterized or otherwise communicated or made available in whole or
4 in part only to the following persons:

- 5 a. The Court, persons employed by the Court who are necessary for the
6 handling of the Litigation, and court reporters transcribing the
7 testimony or argument at a hearing, trial or deposition in this
8 Litigation or any appeal there from;
- 9 b. Counsel of record in this Litigation, as well as paralegals, technical,
10 administrative and clerical employees working under the direct
11 supervision of such counsel;
- 12 c. Experts or consultants assisting any counsel of record in this
13 Litigation, provided such experts and consultants agree to be bound
14 by the terms and conditions set forth in the “Agreement Concerning
15 Information Covered by Protective Order” attached hereto as
16 Exhibit "A" prior to the time such information is disclosed; and
- 17 d. Any other person, only upon order of the Court or upon stipulation
18 of the Parties, and who agrees to be bound by the terms and conditions
19 set forth in the “Agreement Concerning Information Covered by
20 Protective Order” attached hereto as Exhibit "A" prior to the time such
21 Information is disclosed. However, under no circumstances shall
22 home addresses or telephone numbers of individual Defendants be
23 provided to Plaintiff.

24 **11. Use of Confidential Discovery Material:** Discovery Material
25 containing Confidential Information shall be used solely for purposes of the
26 Litigation, including any appeal and re-trial. Any person or entity in possession of
27 Discovery Material designated Confidential shall maintain those materials in
28 accordance with Paragraph (storage) below.

1 **12. Storage of Confidential Information:** The recipient of any
2 Confidential Information that is provided under this Protective Order shall
3 maintain such information in a reasonably secure and safe manner that ensures that
4 access is limited to the persons authorized under this Order.

5 **13. Filing of Confidential Information:** Without written permission
6 from Defendants or a Court order, Plaintiff may not file in the public record in this
7 action any Confidential Information. Filing this information in the public record
8 must occur with an application to file under seal in compliance with Local Rule
9 79-5 when seeking to file Confidential Information under seal. Confidential
10 Information may only be filed under seal pursuant to a court order authorizing the
11 sealing of the specific Confidential Information at issue.

12 As for any other information disclosed during discovery and marked
13 “Confidential” that either party wishes to file in the public record in this action in
14 support of or in opposition to any motion, the parties shall specifically identify any
15 such documents and seek a stipulation concerning any sealing requirement
16 therefore during the parties Local Rule 7-3 conference of counsel. If no agreement
17 can be reached, the party advancing the “confidential” designation bears the
18 burden of moving to have those documents sealed by the court.

19 **14. No Prejudice:** Agreeing to be bound by this Protective Order,
20 agreeing to and/or producing or receiving Confidential Information or otherwise
21 complying with the terms of this Order shall not:

- 22 a. Prejudice in any way the rights of Defendants to object to the
23 production of documents it considers not subject to discovery, or
24 operate as an admission by Defendants that the restrictions and
25 procedures set forth herein constitute adequate protection for any
26 particular information deemed by Defendants to be Confidential
27 Information;
- 28 b. Prejudice in any way the rights of Defendants to object to the

1 authenticity or admissibility into evidence of any document,
2 testimony or other evidence subject to this Order;

3 c. Prejudice in any way the rights of Defendants to seek a determination
4 by the Court whether any Confidential Information should be subject
5 to the terms of this Order;

6 **15. Challenging Designation of Information:** Plaintiff may challenge
7 the propriety of a Confidential Information designation by providing to the
8 Defendant claiming confidentiality a writing which briefly: (i) identifies with
9 reasonable particularity the documents and/or information which are the subject of
10 the challenge; and (ii) describes the basic legal or factual grounds for the
11 challenge. Once a challenge is made, the Defendant claiming confidentiality will
12 bear the burden of initiating and conducting a sufficient meet and confer (per Local
13 Rule 37-1); and, if necessary, Defendant claiming confidentiality will bear the
14 burdens of proof and persuasion in moving for a Protective Order (per Local Rule
15 37-2) to uphold the challenged Confidential Information designation(s). Until the
16 Court rules on the timely filed Motion for Protective Order, all parties shall
17 continue to afford the material in question the level of protection to which it is
18 entitled under the claiming Defendants' designation.

19 **16. Additional Parties or Attorneys:** In the event additional parties join
20 or intervene in this action, the newly joined party(ies) shall not have access to
21 Confidential Information until its counsel has executed an agreement to be fully
22 bound by this Order. If any additional attorneys make appearances in this
23 Litigation, those attorneys shall not have access to Confidential Information until
24 they execute the "Agreement Concerning Information Covered by Protective
25 Order" attached hereto as Exhibit "A".

26 **17. Protective Order Remains in Force:** This Protective Order shall
27 remain in force and effect until modified, superseded, or terminated by consent of
28 the Parties or by order of the Court made upon reasonable written notice. Unless

1 otherwise ordered, or agreed upon by the parties, this Protective Order shall
2 survive the termination of this action. The Court retains jurisdiction even after
3 termination of this action to enforce this Protective Order and to make such
4 amendments, modifications, deletions and additions to this Protective Order as the
5 Court may from time to time deem appropriate.

6 **18. Conclusion of Litigation:** Within ninety (90) days after receiving
7 notice of the entry of an order, judgment or decree finally disposing of this
8 Litigation, all persons having received Confidential Information shall either return
9 such material and all copies thereof to the counsel of the Defendant who
10 designated the information as Confidential or destroy all such Confidential
11 Information including the Confidential Information Plaintiff provided to other
12 persons. In either case, counsel for Plaintiff must certify that fact to the counsel of
13 the Defendant who designated the information as Confidential.

14 **19. Redaction Allowed:** Defendants may redact Confidential Information
15 from documents and things produced to the extent that such information consists of
16 personal identifying information of third parties per Federal Rule of Civil
17 Procedure 5.2 and Central District Local Rule 5.2-1 and/or personal identifying
18 information of peace officers or their family members, such as ID numbers, phone
19 numbers, addresses, or medical history which is unrelated to any claim or defense
20 raised in the instant action. Defendants shall mark each thing where matter has
21 been redacted with a legend stating "REDACTED," as appropriate, or a
22 comparable notice.

23 **20. Violations of Protective Order:** In the event that any person or party
24 should violate the terms of this Protective Order, the aggrieved party may apply to
25 the Court obtain relief against any such person or party violating or threatening to
26 violate any of the terms of this Protective Order.

27 In the event that the aggrieved party seeks injunctive relief, it must petition
28 the District Judge for such relief, which may be granted at the sole discretion of the

1 District Judge.

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3 **IT IS SO ORDERED.**

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5 Dated: January 7, 2022

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Hon. Sheri Pym
United States Magistrate Judge

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1 **EXHIBIT "A" TO STIPULATED PROTECTIVE ORDER**

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3 UNITED STATES DISTRICT COURT
4 CENTRAL DISTRICT OF CALIFORNIA

5 ISADORE WEBB, an individual;

Case No: CV21-00341 JWH (SP)

6 Plaintiff,

**AGREEMENT CONCERNING
INFORMATION COVERED BY
STIPULATED PROTECTIVE
ORDER**

7 vs.

8 CITY OF ONTARIO, and DOES 1
9 through 10 Inclusive,

10 Defendants.

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13 1. I, _____, hereby acknowledge
14 that I have received a copy of the Stipulated Protective Order entered in this
15 Litigation [Case No: CV21-00341 JWH (SP)] by the United States District Court
16 for the Central District of California (hereinafter, "the Protective Order").

17 2. I have either read the Protective Order or have had the terms of the
18 Protective Order explained to me by my attorney.

19 3. I understand the terms of the Protective Order and agree to comply
20 with and to be bound by such terms.

21 4. If I receive documents or information designated as Confidential
22 Information (as that term is defined in the Protective Order), I understand that such
23 Information is provided to me pursuant to the terms and restrictions of the
24 Protective Order.

25 5. I agree to hold in confidence and not further disclose or use for any
26 purpose (other than is permitted by the Protective Order) any Confidential
27 Information disclosed to me pursuant to the terms of the Protective Order.

28 6. I hereby submit myself to the jurisdiction of the United States District

1 Court for the Central District of California for resolution of any matters pertaining
2 to the Protective Order.

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4 My address is: _____

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6 My present employer is: _____

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8 Dated: _____

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Signed: _____

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