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

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

DAMON ANDERSON,

Plaintiff,

v.

COUNTY OF RIVERSIDE; SHERIFF
CHAD BIANCO, individual and
official capacity; CHIEF DEPUTY
DELGADO, individual and official
capacity; DEPUTY HARTMAN,
individual; DEPUTY CHACON,
individual; DEPUTY CLEMONS,
individual; DEPUTY DOUGLAS,
individual; SGT. VALENTINE,
individual; DEPUTY KLUNDT,
individual; DEPUTY SANCHEZ,
individual; DEPUTY MONTEZ,
individual; DEPUTY PEREZ,
individual; and DOES 1 – 10

Defendants.

Case No. 5:21-CV-00650-DSF-JEM

*[Honorable Dale S. Fischer; Magistrate
Judge John E. McDermott]*

~~PROPOSED~~ PROTECTIVE
ORDER RE CONFIDENTIAL
DOCUMENTS

Complaint Filed: 04/02/2021
Trial Date: Not Yet Set

PURSUANT TO THE STIPULATION OF THE PARTIES (“Stipulation for
Entry of Protective Order re Confidential Documents”), and pursuant to the Court’s
inherent and statutory authority, including but not limited to the Court’s authority under

1 the applicable Federal Rules of Civil Procedure and the United States District Court,
2 Central District of California Local Rules; after due consideration of all of the relevant
3 pleadings, papers, and records in this action; and upon such other evidence or argument
4 as was presented to the Court; Good Cause appearing therefor, and in furtherance of
5 the interests of justice,

6 IT IS HEREBY ORDERED that:

7 **1. SCOPE OF PROTECTION.**

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

21 Except to the extent specified herein (if any), any use of Protected Material at
22 trial shall not be governed by this Order, but may be governed by a separate agreement
23 or order. The Definitions section of the parties' associated Stipulation (§ 2) is
24 incorporated by reference herein.

25 Any use of Protected Material at trial shall be governed by the Orders of the trial
26 judge: this Stipulation and its associated Protective Order do(es) not govern the use of
27 Protected Material at trial.

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1 Nothing in parties' Stipulation or this Order shall be construed as binding upon
2 the Court or its court personnel, who are subject only to the Court's internal procedures
3 regarding the handling of materials filed or lodged, including materials filed or lodged
4 under seal.

5 **A. PURPOSES AND LIMITATIONS.**

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

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

15 The parties further acknowledge, as set forth below, that this Order creates no
16 entitlement to file confidential information under seal, except to the extent specified
17 herein; Central District Local Rules 79-5.1 and 79-5.2 set(s) forth the procedures that
18 must be followed and reflects the standards that will be applied when a party seeks
19 permission from the Court to file material under seal.

20 Nothing in the parties' Stipulation or in this Order shall be construed as any
21 entitlement for the parties to file any documents or materials under seal; nor shall the
22 parties' Stipulation or this Order be construed as any exemption from any of the
23 requirements of Central District Local Rule 79-5. The parties are required to comply
24 with the applicable Local Rules in their entirety. If the Court denies a party's request
25 for filing material under seal, that material may be filed in the public record unless
26 otherwise instructed by the Court.

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

3 **2. DURATION OF PROTECTION.**

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 otherwise
6 in writing or a court order otherwise directs.

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

12 **3. DESIGNATION OF PROTECTED MATERIAL/CONFIDENTIAL**
13 **DOCUMENTS.**

14 3.1. Exercise of Restraint and Care in Designating Material for Protection.

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

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

27 If it comes to a Party's or a non-party's attention that information or items that it
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1 designated for protection do not qualify for protection at all, or do not qualify for the
2 level of protection initially asserted, that Party or non-party must promptly notify all
3 other parties that it is withdrawing the mistaken designation.

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

7 Designation in conformity with this Order requires:

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

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

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1 (b) for testimony given in deposition or in other pretrial or trial proceedings,
2 that the Party or non-party offering or sponsoring the testimony identify on the record,
3 before the close of the deposition, hearing, or other proceeding, all protected testimony,
4 and further specify any portions of the testimony that qualify as “CONFIDENTIAL.”
5 When it is impractical to identify separately each portion of testimony that is entitled
6 to protection, and when it appears that substantial portions of the testimony may qualify
7 for protection, the Producing Party may invoke on the record (before the deposition or
8 proceeding is concluded) a right to have up to twenty (20) days to identify the specific
9 portions of the testimony as “CONFIDENTIAL.” Only those portions of the
10 testimony that are appropriately designated as “CONFIDENTIAL” for protection
11 within the 20 days shall be covered by the provisions of the parties’ Stipulation and this
12 Protective Order.

13 The court reporter must affix to each such page the legend “CONFIDENTIAL,” as
14 instructed by the Producing Party.

15 (c) for information produced in some form other than documentary, and for
16 any other tangible items (including but not limited to information produced on disc or
17 electronic data storage device), that the Producing Party affix in a prominent place on
18 the exterior of the container or containers in which the information or item is stored the
19 legend “CONFIDENTIAL.” If only portions of the information or item warrant
20 protection, the Producing Party, to the extent practicable, shall identify the protected
21 portions, specifying the material as “CONFIDENTIAL.”

22 3.3. Inadvertent Failures to Designate. If timely corrected (preferably, though
23 not necessarily, within 30 days of production or disclosure of such material), an
24 inadvertent failure to designate qualified information or items as “CONFIDENTIAL”
25 does not, standing alone, waive the Designating Party’s right to secure protection under
26 the parties’ Stipulation and this Order for such material. If material is appropriately
27 designated as “CONFIDENTIAL” *after* the material was initially produced, the
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1 Receiving Party, on timely notification of the designation, must make reasonable efforts
2 to assure that the material is treated in accordance with the parties' Stipulation and this
3 Order.

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

11 **4. CHALLENGING CONFIDENTIALITY DESIGNATIONS.**

12 4.1. Timing of Challenges. Any Party or non-party may challenge a
13 designation of confidentiality at any time that is consistent with the Court's Scheduling
14 Order. Unless a prompt challenge to a Designating Party's confidentiality designation
15 is necessary to avoid foreseeable substantial unfairness, unnecessary economic
16 burdens, or a later significant disruption or delay of the litigation, a Party does not waive
17 its right to challenge a confidentiality designation by electing not to mount a challenge
18 promptly after the original designation is disclosed.

19 4.2. Meet and Confer. Prior to challenging a confidentiality designation, a
20 Party shall initiate a dispute resolution process by providing written notice of each
21 specific designation it is challenging, and describing the basis (and supporting authority
22 or argument) for each challenge. To avoid ambiguity as to whether a challenge has been
23 made, the written notice must recite that the challenge to confidentiality is being made
24 in accordance with this Protective Order. The parties shall attempt to resolve each
25 challenge in good faith and must begin the process by conferring directly (in voice to
26 voice dialogue, either in person, telephonically, or by other comparable means, but *not*
27 by correspondence) within 14 days of the date of service of notice.

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1 In conferring, the Party challenging the designation must explain the specific
2 basis for its belief that the confidentiality designation was not proper and must give the
3 Designating Party an opportunity to review the designated material, to reconsider the
4 circumstances, and, if no change in designation is offered, to explain the basis for the
5 chosen designation. A Party may proceed to the next stage of the challenge process only
6 if it has engaged in this meet and confer process first or establishes that the Designating
7 Party is unwilling to participate in the meet and confer process in a timely manner.

8 Frivolous challenges, and those challenges made for an improper purpose (*e.g.*,
9 to harass or impose unnecessary expenses and burdens on other parties), may expose
10 the Party making to challenge to sanctions.

11 4.3. Judicial Intervention. If the Parties cannot resolve a confidentiality
12 challenge without court intervention, the Party challenging the designation shall file
13 and serve a motion to remove confidentiality (under the applicable rules for filing and
14 service of discovery motions) within 14 days of the parties agreeing that the meet and
15 confer process will not resolve their dispute, or by the first day of trial of this matter,
16 whichever date is earlier – unless the parties agree in writing to a longer time.

17 The parties must comply with Central District Local Rules 37-1 and 37-2
18 (including the joint stipulation re discovery dispute requirement) in any motion
19 associated with this Protective Order.

20 The Party wishing to challenge a designation may file a motion challenging a
21 confidentiality designation at any time that is consistent with the Court’s Scheduling
22 Order, if there is good cause for doing so, including a challenge to the designation of a
23 deposition transcript or any portions thereof. Any motion brought pursuant to this
24 provision must be accompanied by a competent declaration affirming that the movant
25 has complied with the meet and confer requirements imposed by the preceding
26 paragraph.

27 The burden of persuasion in any such challenge proceeding shall be on the
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1 Designating Party, regardless of whether the Designating Party is the moving party or
2 whether such Party sought or opposes judicial intervention. Frivolous challenges, and
3 those made for an improper purpose (*e.g.*, to harass or impose unnecessary expenses
4 and burdens on other parties) may expose the Challenging Party to sanctions. Unless
5 the Designating Party has waived the confidentiality designation by failing to oppose a
6 motion to remove confidentiality as described above, all parties shall continue to afford
7 the material in question the level of protection to which it is entitled under the Producing
8 Party’s designation until the court rules on the challenge.

9 4.4. Withdrawal of “CONFIDENTIAL” Designation. At its discretion, a
10 Designating Party may remove Protected Material/Confidential Documents from some
11 or all of the protections and provisions of the parties’ Stipulation and this Order at any
12 time by any of the following methods:

13 (a) Express Written Withdrawal. A Designating Party may withdraw a
14 “CONFIDENTIAL” designation made to any specified Protected Material/Confidential
15 Documents from some or all of the protections of the parties’ Stipulation and this Order
16 by an express withdrawal in a writing signed by such Party (or such Party’s Counsel,
17 but not including staff of such Counsel) that specifies and itemizes the Disclosure or
18 Discovery Material previously designated as Protected Material/Confidential
19 Documents that shall no longer be subject to all or some of the provisions of the parties’
20 Stipulation and Order. Such express withdrawal shall be effective when transmitted or
21 served upon the Receiving Party. If a Designating Party is withdrawing Protected
22 Material from only some of the provisions/protections of the parties’ Stipulation and
23 this Order, such Party must state which specific provisions are no longer to be enforced
24 as to the specified material for which confidentiality protection hereunder is withdrawn.
25 Otherwise, such withdrawal shall be construed as a withdrawal of such material from
26 all of the protections/provisions of the parties’ Stipulation and this Order;

27 (b) Express Withdrawal on the Record. A Designating Party may withdraw a
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1 “CONFIDENTIAL” designation made to any specified Protected Material/
2 Confidential Documents from all of the provisions/protections of the parties’
3 Stipulation and this Order by verbally consenting in court proceedings on the record to
4 such withdrawal – provided that such withdrawal specifies the Disclosure or Discovery
5 Material previously designated as Protected Material/Confidential Documents that
6 shall no longer be subject to any of the provisions of the parties’ Stipulation and this
7 Order. A Designating Party is not permitted to withdraw Protected Material from only
8 some of the protections/ provisions of the parties’ Stipulation and this Order by this
9 method;

10 (c) Implicit Withdrawal by Publication or Failure to Oppose Challenge. A
11 Designating Party shall be construed to have withdrawn a “CONFIDENTIAL”
12 designation made to any specified Protected Material/Confidential Documents from all
13 of the provisions/protections of the parties’ Stipulation and this Order by either
14 (1) making such Protected Material/Confidential Records part of the public record –
15 including but not limited to attaching such as exhibits to any filing with the Court
16 without moving, prior to such filing, for the Court to seal such records; or (2) failing to
17 timely oppose a Challenging Party’s motion to remove a “CONFIDENTIAL”
18 designation to specified Protected Material/Confidential Documents.

19 Nothing in the parties’ Stipulation and this Order shall be construed so as to
20 require any Party to file Protected Material/Confidential Documents under seal, unless
21 expressly specified herein.

22 **5. ACCESS TO AND USE OF PROTECTED MATERIAL.**

23 5.1. Basic Principles. A Receiving Party may use Protected Material that is
24 disclosed or produced by another Party or by a non-party in connection with this case
25 only for preparing, prosecuting, defending, or attempting to settle this litigation – up to
26 and including final disposition of the above-entitled action – and not for any other
27 purpose, including any other litigation or dispute outside the scope of this action. Such
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1 Protected Material may be disclosed only to the categories of persons and under the
2 conditions described in the parties' Stipulation and this Order. When the above entitled
3 litigation has been terminated, a Receiving Party must comply with the provisions of
4 section 9, below (FINAL DISPOSITION).

5 Protected Material must be stored and maintained by a Receiving Party at a
6 location and in a manner that ensures that access is limited to the persons authorized
7 under the parties' Stipulation and its Order.

8 5.2. Disclosure of "CONFIDENTIAL" Information or Items. Unless
9 otherwise ordered by the Court or permitted in writing by the Designating Party, a
10 Receiving Party may disclose any information or item designated "CONFIDENTIAL"
11 only to:

12 (a) the Receiving Party's Outside Counsel of record in this action, as well as
13 employees of such Counsel to whom it is reasonably necessary to disclose the
14 information for this litigation;

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

19 (c) Experts (as defined in the parties' Stipulation) of the Receiving Party to
20 whom disclosure is reasonably necessary for this litigation – each of whom, by
21 accepting receipt of such Protected Material, thereby agree to be bound by the parties'
22 Stipulation and this Order;

23 (d) court reporters, their staffs, and Professional Vendors to whom disclosure
24 is reasonably necessary for this litigation – each of whom, by accepting receipt of such
25 Protected Material, thereby agree to be bound by the parties' Stipulation and this Order;

26 (e) during their depositions, witnesses in the action to whom disclosure is
27 reasonably necessary – each of whom, by accepting receipt of such Protected Material,
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1 thereby agree to be bound by the parties' Stipulation and this Order. Pages of
2 transcribed deposition testimony or exhibits to depositions that reveal Protected
3 Material may not be disclosed to anyone except as permitted under the parties'
4 Stipulation and this Protective Order;

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

8 5.3. Notice of Confidentiality. Prior to producing or disclosing Protected
9 Material/Confidential Documents to persons to whom the parties' Stipulation and this
10 Order permits disclosure or production (see section 5.2, *supra*), a Receiving Party shall
11 provide a copy of this Order to such persons so as to put such persons on notice as to
12 the restrictions imposed upon them herein: except that, for court reporters, Professional
13 Vendors, and for witnesses being provided with Protected Material during a deposition,
14 it shall be sufficient notice for Counsel to give the witness a verbal admonition (on the
15 record, for witnesses) regarding the provisions of the parties' Stipulation and this Order
16 and such provisions' applicability to specified Protected Material at issue.

17 5.4. Reservation of Rights. Nothing in the parties' Stipulation and this Order
18 shall be construed so as to require any Producing Party to designate any records or
19 materials as "CONFIDENTIAL." Nothing in the parties' Stipulation or this Order shall
20 be construed so as to prevent the admission of Protected Material into evidence at the
21 trial of this action, or in any appellate proceedings for this action, solely on the basis
22 that such Disclosure or Discovery Material has been designated as Protected
23 Material/Confidential Documents. Notwithstanding the foregoing, nothing in the
24 parties' Stipulation or this Order shall be construed as a waiver of any privileges or of
25 any rights to object to the use or admission into evidence of any Protected Material in
26 any proceeding; nor shall anything herein be construed as a concession that any
27 privileges asserted or objections made are valid or applicable.

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

7 5.5. Requirement to File Confidential Documents Under Seal. Confidential
8 Documents must be submitted in all law and motion proceedings before the Court if
9 done so under seal pursuant to Federal Rules of Civil Procedure 5.2 and 26 and/or
10 United States District Court, Central District of California Local Rules 79-5.1 and 79-
11 5.2 (as applicable) and pursuant to the provisions of the parties' Stipulation and this
12 Order. If any Receiving Party attaches any Confidential Documents to any pleading,
13 motion, or other paper to be filed, lodged, or otherwise submitted to the Court, such
14 Confidential Document(s) shall be filed/lodged under seal pursuant to Federal Rules of
15 Civil Procedure 5.2 and 26 and/or United States District Court, Central District of
16 California Local Rules 79-5.1 and 79-5.2 to the extent applicable.

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

23 Furthermore, a Receiving Party shall be exempted from the requirements of this
24 paragraph as to any specifically identified Confidential Document(s) where – prior to
25 the submission or publication of the Confidential Document(s) at issue – the
26 Designating Party of such specifically identified Confidential Document(s) has
27 waived/withdrawn the protections of the parties' Stipulation and this Order (pursuant
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1 to paragraph 4.4, *supra*).

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

5 (1) private, personal information contained in peace officer personnel files
6 (such as social security numbers, driver's license numbers or comparable personal
7 government identification numbers, residential addresses, compensation or pension or
8 personal property information, credit card numbers or credit information, dates of birth,
9 tax records and information, information related to the identity of an officer's family
10 members or co-residents, and comparable personal information about the officer or his
11 family);

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

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

16 Nothing in this paragraph shall be construed to bind the Court or its authorized
17 staff so as to limit or prevent the publication of any Confidential Documents to the jury
18 or factfinder, at the time of trial of this matter, where the Court has deemed such
19 Confidential Documents to be admissible into evidence.

20 Nothing in the parties' Stipulation or in this Order shall be construed as any
21 entitlement for the parties to file any documents or materials under seal; nor shall the
22 parties' Stipulation or this Order be construed as any exemption from any of the
23 requirements of Central District Local Rule 79-5. The parties are required to comply
24 with the applicable Local Rules in their entirety. If the Court denies a party's request
25 for filing material under seal, that material may be filed in the public record unless
26 otherwise instructed by the Court.

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1 **6. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED**
2 **IN OTHER LITIGATION.**

3 If a Party is served with a subpoena or a court order issued in other litigation that
4 compels disclosure of any information or items in the Party's possession or control
5 which had been designated in this action as "CONFIDENTIAL," that Party must:

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

9 (b) promptly notify in writing the party who caused the subpoena or order to
10 issue in the other litigation that some or all of the material covered by the subpoena or
11 order is subject to the parties' Stipulation and this Protective Order. Such notification
12 shall include a specific reference to the parties' Stipulation and this Protective Order;
13 and

14 (c) cooperate with respect to all reasonable procedures sought to be pursued by
15 all sides in any such situation, while adhering to the terms of the parties' Stipulation
16 and this Order.

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

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

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1 **7. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL.**

2 7.1. Unauthorized Disclosure of Protected Material.

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

6 (a) notify in writing the Designating Party of the unauthorized disclosures;

7 (b) use its best efforts to retrieve all copies of the Protected Material;

8 (c) inform the person or persons to whom unauthorized disclosures were made
9 of all the terms of this Order; and

10 (d) request that such person or persons consent to be bound by the Stipulation
11 and this Order.

12 7.2. Inadvertent Production of Privileged or Otherwise Protected Material.

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

23 **8. PUBLICATION OF PROTECTED MATERIAL PROHIBITED.**

24 8.1. Filing of Protected Material.

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

3 Nothing in the parties' Stipulation or in this Order shall be construed as any
4 entitlement for the parties to file any documents or materials under seal; nor shall the
5 parties' Stipulation or this Order be construed as any exemption from any of the
6 requirements of Central District Local Rule 79-5. The parties are required to comply
7 with the applicable Local Rules in their entirety. If the Court denies a party's request
8 for filing material under seal, that material may be filed in the public record unless
9 otherwise instructed by the Court.

10 8.2. Public Dissemination of Protected Material.

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

17 9. FINAL DISPOSITION.

18 Unless otherwise ordered or agreed in writing by the Producing Party, within
19 thirty (30) days after the final termination of this action (defined as the dismissal or
20 entry of judgment by the above named Court, or if an appeal is filed, the disposition of
21 the appeal), upon written request by the Producing Party, each Receiving Party must
22 return all Protected Material to the Producing Party – whether retained by the Receiving
23 Party or its Counsel, Experts, Professional Vendors, agents, or any non-party to whom
24 the Receiving Party produced or shared such records or information. As used in this
25 subdivision, "all Protected Material" includes all copies, abstracts, compilations,
26 summaries or any other form of reproducing or capturing any of the Protected Material,
27 regardless of the medium (hardcopy, electronic, or otherwise) in which such Protected
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1 Material is stored or retained.

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

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

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

24 **10. MISCELLANEOUS.**

25 10.1. Right to Further Relief. Nothing in the parties’ Stipulation or this Order
26 abridges the right of any person to seek its modification by the Court in the future.

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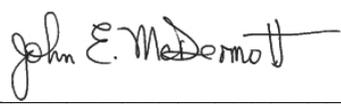
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10.2. Right to Assert Other Objections. By stipulating to the entry of this Protective Order pursuant to the parties' Stipulation, no Party waives any right it otherwise would have to object to disclosing or producing any information or item on any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

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

IT IS SO ORDERED.

Dated: August 1, _____, 2022



JOHN E. MCDERMOTT
United States Magistrate Judge

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