

IRW RICHARDS | WATSON | GERSHON  
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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

EDER G. HERRERA,

Plaintiff,

v.

CITY OF BREA, BREA POLICE  
DEPARTMENT, CHIEF OF POLICE  
JACK CONKLIN, BREA POLICE  
OFFICERS R. ALONZO (1312), PHIL  
RODRIGUEZ (1401), J. HOETKER (1500),  
T. BARBOSA (1402), CREWS, C.  
GILBERT (1574), M. VAUGHAN (1298),  
and DOES 1-10,

Defendants.

Case No. SACV12-01650 SS

**DISCOVERY MATTER**  
**PROTECTIVE ORDER REGARDING  
PRODUCTION OF RECORDS BY  
DEFENDANTS AND ORANGE  
COUNTY DISTRICT ATTORNEY  
[PURSUANT TO THIRD-PARTY  
SUBPOENA]**

**PROTECTIVE ORDER**

Having reviewed the Stipulation by and between Plaintiff Eder G. Herrera, by and through John Burton, Esq., and Defendants City of Brea, et al., by and through Jennifer Petrusis, Esq., and third-party, Orange County District Attorney’s Office (“OCDA”), and their attorneys of record, and GOOD CAUSE APPEARING, the Court ORDERS the following:

Defendants the City of Brea, et al. and third party witness, OCDA shall produce the records as ordered by this Court on August 29, 2014 by the Order Granting in Part and

[PROPOSED] PROTECTIVE ORDER REGARDING PRODUCTION OF RECORDS BY DEFENDANTS AND ORANGE COUNTY DISTRICT ATTORNEY

1 Denying in Part Plaintiff’s Motion to Compel Production of Documents, subject to the  
2 following ORDER:

3 **1. GOOD CAUSE: PURPOSE AND SCOPE**

4 Plaintiff served discovery requests on the City of Brea Defendants and he served a  
5 subpoena duces tecum for documents on the OCDA. The Brea Defendants and the OCDA  
6 objected to producing certain information responsive to the discovery requests and to the  
7 subpoena, contending that the information was irrelevant to the civil action and the  
8 information was privileged under both state and federal statutes including, but not limited  
9 to, the federal official information privilege because of a current and active investigation of  
10 Plaintiff and the Trix Circle murders.

11 Plaintiff brought a Motion to Compel the withheld information. After considering  
12 the parties’ and OCDA’s papers on the matter, after hearing oral argument, and after  
13 reviewing the subject materials and questioning the investigating officer, Anaheim Police  
14 Department Detective Daron Wyatt, in camera, on August 29, 2014 the Court issued an  
15 Order Granting in Part and Denying in Part Plaintiff’s Motion to Compel, Docket No. 72.  
16 In the Order, the Court directs that the Brea Defendants and the OCDA produce to Plaintiff  
17 certain documents, some of which must be redacted, and all of which are not to be publicly  
18 disclosed. All Documents produced by the Brea Defendants and OCDA pursuant to the  
19 Court’s August 29, 2014 Order, as well as information extracted therefrom, shall be  
20 referred to as “Confidential Information,” and shall be subject to this Protective Order.

21 **2. DURATION**

22 The confidentiality obligations imposed by this Protective Order shall remain in  
23 effect after the termination of this litigation, and shall not be lifted without further order of  
24 this Court.

25 This Order shall survive the final termination of this action, to the extent that the  
26 information contained in Confidential Information is not or does not become known to the  
27 public, and the Court shall retain jurisdiction to resolve any dispute concerning the use of  
28 the information disclosed hereunder. Within sixty (60) calendar days after the conclusion

1 of this action in its entirety (including the expiration of appeal periods or the execution of a  
2 settlement agreement among the parties finally disposing of this action), all parties and  
3 persons having received Confidential Information shall dispose of all such material either  
4 by (i) returning such material to counsel for the producing individual or entity, or (ii)  
5 destroying such material in a manner that ensures that it will not be disclosed to or  
6 disseminated or received by any person. Upon request, all parties and persons having  
7 received Confidential Information shall separately provide written certification to counsel  
8 for Brea Defendants or to counsel for OCDA that such disposal has been completed.  
9 Counsel for the parties shall be entitled to retain all court papers, deposition and trial  
10 transcripts, exhibits used in affidavits, at depositions, and at trial, and attorney work-  
11 product, including materials which contain, quote, discuss, or analyze Confidential  
12 Information, provided that such counsel and employees of such counsel shall not disclose  
13 such materials to any person unless, after reasonable prior notice to the producing  
14 individual or entity, the disclosing counsel has obtained permission pursuant to court order  
15 or by agreement of the producing individual or entity. The Confidential Information kept  
16 by counsel pursuant to this paragraph shall be maintained in accordance with the terms of  
17 this Order.

18 **3. DESIGNATED CONFIDENTIAL INFORMATION**

19 **3.1** The documents produced to Plaintiff pursuant to the Court's August 29, 2014  
20 Order and the information stated thereon shall be considered Confidential Information.

21 **3.2** Confidential Information protected by this Protective Order must be clearly  
22 designated prior to the disclosure or production of such Confidential Information, and must  
23 bear the notation of "Confidential" on each page that contains Confidential Information,  
24 provided that such notation does not obscure or obliterate any document contents.

25 **3.3** Confidential Information that has been ordered produced to Plaintiff's  
26 counsel only shall bear the notation "Confidential Attorneys' Eyes Only," provided that  
27 such notation does not obscure any document contents.

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1           **3.4** An inadvertent failure to designate Confidential Information does not waive  
2 the producing individual or entity’s right to secure protection under this Protective Order.  
3 If the producing individual or entity discovers after production of the Confidential  
4 Information that the information is lacking the appropriate designation, the producing  
5 individual or entity must timely notify the receiving party, who shall make reasonable effort  
6 to ensure that the Confidential Information is treated in accordance with the provisions of  
7 this Order.

8           **3.5** To the extent that Plaintiff or his counsel can demonstrate that he obtained  
9 information from another source, although that information may be the same as  
10 Confidential Information, the information obtained from the other source shall not be  
11 subject to this Order.

12 **4. TERMS AND CONDITIONS OF USE OF CONFIDENTIAL INFORMATION**

13           **4.1** The Responsive Records produced by the Brea Defendants and OCDA  
14 pursuant to this Stipulated Protective Order shall be used solely in connection with the case  
15 of *Eder G. Herrera v. City of Brea*, et al, Case Number 8:12-cv-01650-SS including any  
16 associated appellate proceedings and collateral review, and not for any other purpose;

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17           **4.2** Confidential Information must be stored and maintained by the receiving  
18 party at a location and in a secure manner that ensures that access is limited to the person  
19 authorized under this Protective Order.

20           **4.3** Confidential information and information derived therefrom may not be  
21 disclosed in any form to anyone not covered under this protective order. If any other party  
22 to this civil litigation requests copies of the Confidential Information produced by the Brea  
23 Defendants or the OCDA, the appropriate counsel shall first provide a copy of the  
24 Stipulated Protective Order to the requesting party. The requesting party shall confirm in  
25 writing that both the party and their attorney(s) of record shall be bound by the terms of the  
26 Stipulated Protective Order prior to disclosure of the requested records. The writing must  
27 also include consent by the party to whom disclosure is going to be made, to be subject to  
28 the jurisdiction of this Court with respect to any proceeding related to the enforcement of

1 this Stipulated Protective Order, including but not limited to a proceeding for contempt;

2       **4.4** Disclosure of Confidential Information designated “Confidential” shall be  
3 limited to the personnel and/or classification of persons listed below:

4               **4.4.1** Any Party to this action and that Party’s counsel;

5               **4.4.2** staff and personnel employed by counsel for any party to this action;

6               **4.4.3** the Court and court personnel, in connection with this litigation;

7               **4.4.4** during their depositions, witnesses who, from the face of the  
8 document, appear to have previously authored or received it; and

9               **4.4.5** experts or consultants retained/consulted to work on this case by  
10 counsel for any party to this action (so long as each such expert or consultant agrees to be  
11 bound by the terms of this Protective Order).

12       **4.5** Disclosure of Confidential Information that has been designated as  
13 Confidential Attorneys’ Eyes Only shall be limited to counsel for Plaintiff.

14       **4.6** Confidential Information that a party intends to use in support of or in  
15 opposition to a pre-trial filing with the Court must be filed in accordance with the Central  
16 District of California Local Rules relating to under seal filings, including Local Rule 79-5.  
17 Counsel intending to use Confidential Information must either (a) submit unredacted  
18 documents containing Confidential Information under seal and (b) file public versions of  
19 the same documents with the Confidential Information redacted, or, alternatively, file the  
20 Confidential Information under seal in a “Confidential Addendum.”

21       **4.7** Counsel for any party to this action shall advise those individuals to whom  
22 disclosure of Confidential Information is to be made of the contents of this Protective  
23 Order, and such counsel shall obtain the consent of such individual that he or she will be  
24 bound by this Protective Order, prior to disclosure of Confidential Information. In the  
25 event such individual does not consent to be bound by this Protective Order, no disclosure  
26 of Confidential Information shall be made to that individual.

27       The foregoing provision shall not apply to the disclosure of Confidential Information  
28 to the Court or the Court’s staff.

1           **4.8** Any counsel, expert, consultant or investigator retained by counsel for any  
2 party to this case shall not refer to Confidential Information in any other court proceeding  
3 without further order of this Court.

4           **4.9** The parties shall make good faith efforts to consent to the use of Confidential  
5 Information, and shall meet and confer to discuss redactions of particularly sensitive  
6 information before making use thereof.

7           **4.10** Nothing in this Order shall be construed as authorizing a party to disobey a  
8 lawful subpoena issued in another action.

9 **5. UNAUTHORIZED DISCLOSURE OF CONFIDENTIAL INFORMATION**

10           **5.1** If a receiving party learns that it has disclosed Confidential Information to  
11 any person or entity not authorized to receive such information pursuant to this Protective  
12 Order, the receiving party shall immediately (a) notify the producing individual or entity of  
13 the unauthorized disclosure, including identification of the person or entity to whom such  
14 unauthorized disclosure was made, (b) retrieve all copies of the Confidential Information  
15 from the unauthorized recipient, (c) inform the unauthorized recipient of the terms of this  
16 Protective Order and request that they agree, in writing, to be bound hereto. Should the  
17 Court determine that the receiving party intentionally disclosed Confidential Information to  
18 an unauthorized party, the Court may consider the imposition of sanctions, including but  
19 not limited to monetary sanctions and/or issue preclusion.

20           **5.2** Under no circumstances shall the receiving party file in the public record any  
21 Confidential Information, without written permission from the producing individual or  
22 entity or an Order of this Court, and only upon timely written notice to all interested parties.  
23 The parties shall made good faith efforts to consent to the use of Confidential Information,  
24 and shall meet and confer to discuss redactions of particularly sensitive information.

25 **6. RIGHT TO ASSERT OBJECTIONS**

26           **6.1** The production of Confidential Information by the Brea Defendants and  
27 OCDA pursuant to this Order shall not be deemed a waiver of the official information  
28 privilege by the Brea Defendants or OCDA for any future purpose.

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This Order may not be modified other than by order of the Court.

**IT IS SO ORDERED.**

DATED: 9/16/14

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*/S/*  
United States Magistrate Judge  
Suzanne H. Segal