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9 UNITED STATES DISTRICT COURT
10 CENTRAL DISTRICT OF CALIFORNIA
11 SANTA ANA

12 DOWNEY FIREMEN'S
ASSOCIATION, LOCAL 3473, an
13 organization, STEVEN DAVIS, an
individual, DANIEL RASMUSSEN,
14 an individual, THOMAS DANIERI,
an individual, JAY IBEY, an
15 individual, SCOTT DEVEREUX, an
individual, DAN HURLOCK, an
16 individual, TED MATSUMOTO, an
individual, FRANK CULHNO, an
17 individual, RYAN SCHLEIGER, an
individual, KEVIN KIM, an
18 individual, IVAN ORLOFF, an
individual, DAVID BLADES, an
19 individual, JEFF SIMMONS, an
individual, and JOSE GARCIA, an
20 individual,

21 Plaintiffs,

22 v.

23 CITY OF DOWNEY, a municipal
corporation, LONNIE CROOM, an
24 individual, and DOES 1 through 10,
inclusive,

25 Defendants.
26

Case No. SACV14-cv-1213-CJC (DFMx)

**PROTECTIVE ORDER RE:
PRODUCTION OF RECORDS BY
CHIEF MARK GILLASPIE
PURSUANT TO SUBPOENA**

Judge: Hon. Douglas F. McCormick

Complaint Filed: July 31, 2014
Trial Date: January 17, 2017

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I.

INTRODUCTION

Plaintiffs Steven Davis, Daniel Rasmussen, Thomas Danieri, Jay Ibey, Scott Devereux, Dan Hurlock, Ted Matsumoto, Frank Culhno, Ryan Schleiger, Kevin Kim, Ivan Orloff, David Blades, Jeff Simmons, Jose Garcia, and Downey Firemen’s Association (collectively, “Plaintiffs”) and Defendants City of Downey (“City”) and Lonnie Croom (“Croom”) (collectively, “Defendants”), by and through undersigned counsel, hereby submit this proposed Protective Order regarding documents that will be produced by Chief Mark Gillaspie (“GILLASPIE”) in response to Requests Nos. 20, 32, 33, 49, 57, 58, 59 and 72 of the Subpoenas served on GILLASPIE.

II.

PROTECTIVE ORDER

Plaintiffs served Subpoenas on GILLASPIE on March 31, 2016 and April 7, 8 and 11, 2016. On April 14 and 19, 2016, the City, on behalf of Mr. Gillaspie, served objections to the Subpoenas. On May 3, 2016, the parties participated in a meet and confer session with Magistrate McCormick regarding the Subpoenas served on Chief Mark Gillaspie. During the meet and confer session, Magistrate McCormick suggested, and the parties agreed, that documents produced that were responsive to Requests Nos. 20, 32, 33, 49, 57, 58, 59 and 72 of the Subpoenas served on GILLASPIE, would be produced pursuant to a protective order. This Order relates to the documents produced by GILLASPIE in response to Requests Nos. 20, 32, 33, 49, 57, 58, 59 and 72 of the Subpoenas served on GILLASPIE.

On this basis, the Court enters the following Protective Order pursuant to the stipulation of the Parties:

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1 1. The documents provided by GILLASPIE in response to Requests Nos.
 2 20, 32, 33, 49, 57, 58, 59 and 72 of the Subpoenas served on GILLASPIE shall be
 3 deemed “Confidential” and constitute “Protected Material” under this Protective
 4 Order.

5 2. Within seven (7) days of the execution and entry of this Order by the
 6 Magistrate, GILLASPIE shall produce the documents responsive to Requests Nos.
 7 20, 32, 33, 49, 57, 58, 59 and 72 which shall contain the designation “Confidential –
 8 Produced Pursuant to Protective Order.” The material marked “Confidential –
 9 Produced Pursuant to Protective Order” under the Protective Order is referred to as
 10 the “Protected Material.”

11 3. The inadvertent failure by GILLASPIE or the City to designate
 12 material as Protected Material shall not waive any such designation provided that
 13 the City notifies all receiving parties in a reasonably prompt manner after learning
 14 of the inadvertent failure to designate any material the City believes is protected
 15 under this Order. The City shall reproduce the Protected Material with the correct
 16 confidentiality designation within seven (7) days upon its notification to the
 17 receiving parties. Upon receiving the Protected Material with the correct
 18 confidentiality designation, the receiving parties shall destroy all Protected Material
 19 that was not designated properly.

20 4. A party shall not be in breach of this Protective Order for any use of
 21 Protected Material before the receiving party receives the Protected Material with
 22 the correct confidentiality designation. Once a receiving party has received the
 23 Protected Material with the correct confidentiality designation, the receiving party
 24 shall treat such material as Protected Material pursuant to the terms of this Order.

25 5. Upon receipt of any Protected Material under the Protective Order, the
 26 documents produced pursuant to this Protective Order shall be placed in a file or
 27 files bearing the words “Confidential.”

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1 6. The “Confidential” Protected Material produced pursuant to this
2 Protective Order shall not be shown or disclosed, directly or indirectly, to any
3 person other than (a) Plaintiffs and Defendants, (d) Plaintiffs’ and Defendants’
4 attorney, their associated attorneys, paralegals, clerks, or secretarial employees
5 engaged in this litigation; (c) Plaintiffs’ and Defendants’ expert witnesses for the
6 purpose of preparing his/her testimony in deposition or at trial, provided that any
7 such witnesses acknowledge and agree to be bound by this Protective Order, by
8 signing a copy of the “Agreement to Be Bound by Protective Order,” attached
9 hereto as Exhibit A; (d) The Court and any Court staff and administrative personnel;
10 (e) Court reporters and their staff; (f) Professional jury or trial consultants and mock
11 jurors to whom disclosure is reasonably necessary and who have signed the
12 “Agreement to Be Bound by Protective Order;” and (g) Any mediator or settlement
13 officer, and their supporting personnel, mutually agreed upon by any of the parties
14 engaged in settlement discussions. The parties sharing the Protected Materials must
15 maintain copies of all signed “Agreements to Be Bound by Protective Order.”

16 7. The parties may make photocopies of the Protected Material for
17 internal use and for use as part of filings with the Court and during depositions.

18 8. The protections conferred by this Protective Order cover not only the
19 Protected Material, but also (1) any information copied or extracted from the
20 Protected Material; (2) all copies, excerpts, summaries, or compilations of Protected
21 Material; and (3) any testimony, conversations, or presentations by the parties or
22 their counsel that might reveal Protected Material.

23 9. If Protected Material is discussed in a proceeding such as a deposition,
24 hearing, or trial, a party may identify the Protected Material on the record as
25 designated under this Order. When it is impractical during the proceeding to
26 identify each portion of the material that is entitled to protection, and when it
27 appears that substantial portions qualify for protection, a party may invoke on the
28 record a right to have up to 30 days after receiving the transcript to designate the

1 transcript (or portions of the transcript) as Protected Material. The party must
 2 designate the individual portions of the transcript that are Protected Material. If
 3 only certain pages (or portions of pages) qualify for protection, the party must take
 4 care not to over-designate any material. A transcript (or portions of a transcript)
 5 may be designated as Protected Material by providing written notice to all parties
 6 and to the person who prepared the transcript within 30 days of the date the
 7 transcript was sent to the party by the person who prepared the transcript. The
 8 person who prepared the transcript must affix the legend “Confidential – Subject to
 9 a Protective Order” to all subsequent copies of the transcript (or portions thereof) to
 10 indicate the confidential designation. All parties who received a copy of the
 11 transcript before the confidentiality designation must affix the legend “Confidential
 12 – Subject to a Protective Order” to their copies to indicate the designation.

13 10. Protected Material under the Protective Order shall be offered as
 14 evidence at the trial under an appropriate order protecting its confidentiality, unless
 15 the confidentiality of such information has been removed by the Court or by
 16 agreement of counsel in accordance with the provisions of this Protective Order.

17 11. Nothing in this Order shall prevent counsel for the parties from
 18 referencing Protected Material in support of oral or written legal arguments,
 19 provided that such references do not contain quoted material from such Protected
 20 Material, and if Protected Material is submitted to the Court, such submission is
 21 made in accordance with the provisions of this Protective Order.

22 12. A party receiving Protected Material may use Protected Material only
 23 for prosecuting, defending, or attempting to settle this litigation. Such Protected
 24 Material may be disclosed only to the categories of persons and under the conditions
 25 described in this Order. When this litigation has been terminated, a party receiving
 26 Protected Material must comply with the provisions herein regarding returning
 27 Protected Material.

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1 13. If a party is served with a subpoena or a court order issued in other
2 litigation that compels disclosure of any information or items designated in this
3 litigation as “Confidential – Subject to a Protective Order” that party must: (a)
4 promptly notify the City in writing. Such notification shall include a copy of the
5 subpoena or court order; (b) promptly notify in writing the party who caused the
6 subpoena or order to issue in the other litigation that some or all of the material
7 covered by the subpoena or order is subject to this Protective Order. Such
8 notification shall include a copy of this Protective Order; and (c) cooperate with
9 respect to all reasonable procedures sought to be pursued by the City to safeguard
10 the Protected Material.

11 14. If the City timely seeks a protective order, the party served with the
12 subpoena or court order shall not produce any information designated in this
13 litigation as “Confidential – Produced Pursuant to a Protective Order” before a
14 determination by the court from which the subpoena or order issued, unless the party
15 has obtained the City’s permission. The party objecting to the production of such
16 documents has the obligation to serve this Protective Order on the party served with
17 the subpoena or court order demanding production of the documents.

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

26 16. Nothing within this Order will prejudice the right of any party to object
27 to the production of any discovery material on the grounds that the material is
28 protected as privileged or as attorney work product.

1 17. Nothing in this Order will bar counsel from rendering advice to their
 2 clients with respect to this litigation and, in the course thereof, relying upon any
 3 information designated as Protected Material.

4 18. This Order will be without prejudice to the right of any party to oppose
 5 production of any information for lack of relevance or any other ground other than
 6 the mere presence of confidential information. The existence of this Order must not
 7 be used by either party as a basis for discovery that is otherwise improper under the
 8 Federal Rules of Civil Procedure.

9 19. Nothing in this Order bars the right of any party to seek the exclusion
 10 of any evidence at trial or any other dispositive purpose.

11 20. This Order may be modified by agreement of the parties, subject to
 12 approval by the Court.

13 21. The Court may modify the terms and conditions of this Order for good
 14 cause, or in the interest of justice, or on its own order at any time in these
 15 proceedings.

16 22. By stipulating to the entry of this Protective Order, no party waives any
 17 right it otherwise would have to object to disclosing or producing any information or
 18 item on any ground not addressed in this Protective Order. Similarly, no party
 19 waives any right to object on any ground to use in evidence of any of the material
 20 covered by this Protective Order.

21 23. A party that seeks to file under seal any Protected Material must
 22 comply with Civil Local Rule 79-5. Protected Material may only be filed under seal
 23 pursuant to a court order authorizing the sealing of the specific Protected Material at
 24 issue. If a party's request to file Protected Material under seal is denied by the
 25 Court, then the receiving party may file the information in the public record unless
 26 otherwise instructed by the Court.

27 24. Even after the termination of this litigation, the confidentiality
 28 obligations imposed by this Order shall remain in effect until the parties agree

1 otherwise in writing or a court order otherwise directs. Within 60 days of final
 2 disposition of this litigation, each party must return all Protected Material to the City
 3 or destroy such material. As used in this subdivision, "all Protected Material"
 4 includes all copies, abstracts, compilations, summaries, and any other format
 5 reproducing or capturing any of the Protected Material. Whether the Protected
 6 Material is returned or destroyed, the receiving party must submit a written
 7 certification to the City by the 60-day deadline that (1) identifies (by category,
 8 where appropriate) all the Protected Material that was returned or destroyed and (2)
 9 affirms that the receiving party has not retained any copies, abstracts, compilations,
 10 summaries or any other format reproducing or capturing any of the Protected
 11 Material. Notwithstanding this provision, counsel are entitled to retain an archival
 12 copy of all pleadings, motion papers, trial, deposition, and hearing transcripts, legal
 13 memoranda, correspondence, deposition and trial exhibits, expert reports, attorney
 14 work product, and consultant and expert work product, even if such materials
 15 contain Protected Material. Any such archival copies that contain or constitute
 16 Protected Material remain subject to this Protective Order as set forth herein. Any
 17 violation of this Order may be punished by any and all appropriate measures
 18 including, without limitation, contempt proceedings and/or monetary sanctions.

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21 Dated: September 16, 2016

BROWN WHITE & OSBORN LLP

22 By: */s/Karineh Tarbinian*

23 _____
 24 Thomas M. Brown
 25 Caleb E. Mason
 26 Karineh Tarbinian
 27 Attorneys for Plaintiffs
 28 Downey Firemen's Association, et al.

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September 15, 2016
Dated: ~~August 2, 2016~~

ATKINSON, ANDELSON, LOYA, RUUD & ROMO

By: *Barbara S. Van Ligt*
Irma Rodriguez Moisa
Barbara S. Van Ligten
Jay G. Trinnaman
Attorneys for Defendant City of Downey

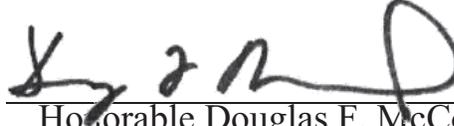
Dated: September 14, 2016

McCUNE & HARBER LLP

By: *Dana J. McCune*
Dana J. McCune
Dominic Quiller
Attorneys for Defendant
Lonnie Croom

1 **FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.**

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3 Dated: September 19, 2016

4 By: 
5 Honorable Douglas F. McCormick
6 Magistrate Judge
7 United States District Court

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EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name],
of _____ [print or type full address],
declare under penalty of perjury under the laws of the United States of America, that
I have read in its entirety and understand the Protective Order that was issued by the
United States District Court for the Central District of California on [date] _____
_____ in the case of *Downey Firemen's Association, et al. v. City of
Downey, et al.*, No. 14-cv-01213-CJC-DFM. I agree to comply with and to be
bound by all the terms of this Protective Order and I understand and acknowledge
that failure to so comply could expose me to sanctions and punishment in the nature
of contempt. I solemnly promise that I will not disclose in any manner any
information or item that is subject to this Protective Order to any person or entity
except in strict compliance with the provisions of this Order. I further agree to
submit to the jurisdiction of the United States District Court for the Central District
of California for the purpose of enforcing the terms of this Protective Order, even if
such enforcement proceedings occur after termination of this action. I hereby
appoint _____ [print or type full name] of _____
_____ [print or type full address and
telephone number] as my California agent for service of process in connection with
this action or any proceedings related to enforcement of this Protective Order.

Dated: _____

City and State where sworn and signed: _____

Printed Name: _____

Signature: _____