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9
 10 IN THE UNITED STATES DISTRICT COURT
 11 FOR THE CENTRAL DISTRICT OF CALIFORNIA

12
 13 **TONI ANTONELLIS,**
 14 Plaintiff,
 15 v.
 16 **CHP OFFICER AARON**
ROTHBERG, DOES 1-15,
 17 Defendant.
 18

Case No. 8:15-cv-00024-JVS-JCG
STIPULATED PROTECTIVE ORDER

19
 20 **IT IS HEREBY STIPULATED** by and between the Parties to the above-
 21 entitled action captioned *Toni Antonellis v. CHP Officer Aaron Rothberg, et al.*, by
 22 and through their respective attorneys of record, that in order to facilitate the
 23 exchange of information and documents which may be subject to confidentiality
 24 limitations on disclosure due to federal laws, state laws, and privacy rights, the
 25 Parties stipulate as follows:

26 1. Plaintiffs and Defendants, by and through their attorneys of record, have
 27 stipulated to the following and jointly move this Court for entry of a Protective
 28 Order governing use and disclosure of CERTAIN CALIFORNIA HIGHWAY

1 PATROL RECORDS previously requested by Plaintiffs in document demands in
2 this action. Plaintiffs served Requests for Production of Documents and Things on
3 Defendant CHP Officer Aaron Rothberg and a substantively identical Subpoena
4 Duces Tecum to CHP at the Capistrano Area Office; in response thereto, Defendant
5 CHP Officer Rothberg and CHP are jointly producing documents deemed
6 privileged and/or confidential, specifically, documents control-numbered D0001 –
7 D0465, excluding any such documents identified via privilege log. Documents
8 produced include, but are not limited to, the following:

- 9 1. Excerpted and redacted portions of California Highway Patrol Manual
10 70.6 Chapters 1, 3, 8, 9, and 21;
- 11 2. Excerpted and redacted portions of California Highway Patrol Manual
12 100.68 Chapter 1;
- 13 3. Non-privileged documents contained in CHP Officer Aaron Rothberg's
14 personnel and training files;
- 15 4. Incident Detail Report;
- 16 5. Capistrano Car Wash receipt;
- 17 6. Non-privileged documents related to criminal case involving Plaintiff;
- 18 7. Non-privileged documents related to citizen's complaint by Plaintiff;
- 19 8. MVARs related documents;
- 20 9. Arrest – Investigation Report.

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22 2. Plaintiffs and their attorneys in this action are expressly prohibited from
23 using or disclosing the CERTAIN CALIFORNIA HIGHWAY PATROL
24 RECORDS obtained pursuant to this Order for any purpose other than the
25 evaluation of the claims and defenses in this action, and for the development,
26 preparation, and presentation of Plaintiffs' claims in the present action. Defendants
27 may also use and disclose the identified records for evaluation of the claims and
28 defenses in this action, and for the development, preparation, and presentation of

1 Defendants' defenses in the present action. However, Defendants may also
2 continue to use and disclose the identified records as Defendants and/or the
3 California Highway Patrol would need to use and disclose them in the ordinary
4 course of business and/or for any other present or future litigation (criminal, civil,
5 and/or administrative) and/or personnel matters in which the records may need to
6 be used or disclosed.

7 3. Such permitted use includes disclosure of the CERTAIN CALIFORNIA
8 HIGHWAY PATROL RECORDS to the following described persons or entities in
9 the course of this action, all of whom shall be advised of the Protective Order and
10 the obligation for them to comply with the Protective Order:

11 a. The parties' attorneys of record in this action, and members of the
12 paralegal, secretarial, and clerical staff employed or retained by the parties'
13 attorneys of record and assisting in connection with this action.

14 b. Members of the data entry and data processing staff employed or
15 retained by the parties' attorneys of record and assisting in the development or use
16 of data retrieval systems in connection with this action.

17 c. Court reporters employed by a party holding depositions to
18 transcribe the testimony produced in any depositions necessitated by this action.
19 Every court reporter shall separately bind transcript exhibits consisting of any of the
20 CERTAIN CALIFORNIA HIGHWAY PATROL RECORDS and shall place on
21 the first page of each such bound portion the following legend:

22 "This transcript contains documents designated confidential
23 pursuant to the Protective Order in the case of *Toni Antonellis v CHP*
24 *Officer Aaron Rothberg, et al.*, USDC, Central District, Case 8:15-cv-
25 0024-JVS-JCG. These documents are not to be disclosed to anyone to
26 whom their disclosure is not expressly permitted by said protective order.
27 I further agree that any information designated confidential pursuant
28 thereto which is delivered to me will be segregated and kept by me in a
safe place, and will not be made known to others except in accordance
with the terms of said Protective Order. I further understand and agree
that any summaries or other documents containing knowledge or
information obtained from confidential documents or information
furnished to me shall also be treated by me as confidential. I further
agree to notify any stenographic or clerical personnel who are required to
assist me of the terms of said Protective Order. I also agree to dispose of

1 all such confidential documents and all summaries or other documents
2 containing knowledge or information obtained therefrom in such manner
3 as I may be instructed after completing my services.”

4 d. Expert witnesses retained by the parties either for consultation in the
5 course of preparation of their claims or defenses for trial and/or for use by such
6 expert witnesses in the preparation of their testimony for deposition or trial and for
7 giving actual testimony.

8 e. Those members of the California Highway Patrol (including said
9 agency’s Staff Attorneys assigned to handle this litigation) and/or other State
10 agencies, entities, or officials who must be consulted on settlement offers or
11 negotiations.

12 f. Those personnel employed by copy services and exhibit production
13 service companies that may be hired by the parties’ counsel to duplicate documents
14 and/or to prepare trial exhibits in this action.

15 g. Jury consultants hired by the parties to assist in the trial of this
16 matter.

17 h. A mutually-agreed-upon mediator retained by the parties’ attorneys
18 of record.

19 4. All documents subject to this stipulation and Protective Order shall be
20 conspicuously marked “CONFIDENTIAL.”

21 5. CHALLENGING CONFIDENTIALITY DESIGNATIONS

22 a. Timing of Challenges. Any Party or Non-Party may challenge a
23 designation of confidentiality at any time. Unless a prompt challenge to a
24 Designating Party’s confidentiality designation is necessary to avoid foreseeable,
25 substantial unfairness, unnecessary economic burdens, or a significant disruption or
26 delay of the litigation, a Party does not waive its right to challenge a confidentiality
27 designation by electing not to mount a challenge promptly after the original
28 designation is disclosed.

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1 b. Meet and Confer. The Challenging Party shall initiate the dispute
2 resolution process by providing written notice of each designation it is challenging
3 and describing the basis for each challenge. To avoid ambiguity as to whether a
4 challenge has been made, the written notice must recite that the challenge to
5 confidentiality is being made in accordance with this specific paragraph of the
6 Protective Order. The parties shall attempt to resolve each challenge in good faith
7 and must begin the process by conferring directly (in voice to voice dialogue; other
8 forms of communication are not sufficient) within 14 days of the date of service of
9 notice. In conferring, the Challenging Party must explain the basis for its belief that
10 the confidentiality designation was not proper and must give the Designating Party
11 an opportunity to review the designated material, to reconsider the circumstances,
12 and, if no change in designation is offered, to explain the basis for the chosen
13 designation. A Challenging Party may proceed to the next stage of the challenge
14 process only if it has engaged in this meet and confer process first or establishes
15 that the Designating Party is unwilling to participate in the meet and confer process
16 in a timely manner.

17 c. Judicial Intervention. If the Parties cannot resolve a challenge
18 without court intervention, the Designating Party shall file and serve a motion to
19 retain confidentiality under Civil Local Rule 7 (and in compliance with Civil Local
20 Rule 79-5, if applicable) within 21 days of the initial notice of challenge or within
21 14 days of the parties agreeing that the meet and confer process will not resolve
22 their dispute, whichever is earlier. Each such motion must be accompanied by a
23 competent declaration affirming that the movant has complied with the meet and
24 confer requirements imposed in the preceding paragraph. Failure by the
25 Designating Party to make such a motion including the required declaration within
26 21 days (or 14 days, if applicable) shall automatically waive the confidentiality
27 designation for each challenged designation. In addition, the Challenging Party
28 may file a motion challenging a confidentiality designation at any time if there is

1 good cause for doing so, including a challenge to the designation of a deposition
2 transcript or any portions thereof. Any motion brought pursuant to this provision
3 must be accompanied by a competent declaration affirming that the movant has
4 complied with the meet and confer requirements imposed by the preceding
5 paragraph. The burden of persuasion in any such challenge proceeding shall be on
6 the Designating Party. Frivolous challenges, and those made for an improper
7 purpose (e.g., to harass or impose unnecessary expenses and burdens on other
8 parties) may expose the Challenging Party to sanctions. Unless the Designating
9 Party has waived the confidentiality designation by failing to file a motion to retain
10 confidentiality as described above, all parties shall continue to afford the material in
11 question the level of protection to which it is entitled under the Producing Party's
12 designation until the court rules on the challenge.

13 6. Highly Confidential Information—Attorney's Eyes Only. Any document
14 or thing that a party in good faith believes to contain highly confidential
15 information that is not publicly available (such as a trade secret, or highly
16 confidential research and development, commercial, or other sensitive information)
17 may be produced by that party with the clear and obvious designation "HIGHLY
18 CONFIDENTIAL – ATTORNEY'S EYES ONLY."

19 7. If the parties seek to file or submit any of the CERTAIN CALIFORNIA
20 HIGHWAY PATROL RECORDS in support of any future pleadings or motions,
21 those records shall be filed with a motion requesting that they be held by the Court
22 under seal. Subject to any other evidentiary objections that may pertain to the
23 records, the parties shall also not attempt to admit at trial any of the CERTAIN
24 CALIFORNIA HIGHWAY PATROL RECORDS into evidence without first
25 requesting that the Court keep the records under seal. For purposes of litigating the
26 claims and defenses involved in this action, the parties are not prohibited by this
27 stipulation and protective order from seeking to introduce into the record (as part of
28 motions, as trial evidence, or on appeal) any of those documents which the Court

1 declines to seal. Those documents which the Court rules must be kept under seal
2 can also be used by the parties in motions, as trial evidence, and on appeal subject
3 to compliance with the Court's determination of the procedures under which the
4 documents are to be maintained under seal.

5 8. Interrogatories, documents requests, requests for admissions, and
6 responses thereto, as well as any other court paper, briefs, motions or letters, which
7 contain or reflect Confidential Materials within the terms of this Order shall be
8 segregated and prominently so marked in accordance with paragraph 1 hereof.

9 9. No reproduction of information contemplated by this Protective Order
10 is authorized, except to the extent that copies are required to prepare the case for
11 trial. All copies, excerpts, or summaries made, shown, or given to those authorized
12 hereby and according to the provisions hereof shall be stamped CONFIDENTIAL.”

13 10. The inadvertent, unintentional or in camera disclosure of Confidential
14 Materials shall not, under any circumstances, be deemed a waiver, in whole or in
15 part, of any claims of confidentiality. By making information and documents
16 designated as Confidential Materials available for use in this action, Defendants and
17 Plaintiff have not waived or compromised the confidentiality or protectability of the
18 same.

19 11. Counsel and the parties are required to advise, instruct and supervise
20 all associates, staff and employees of counsel to keep designated Confidential
21 Material confidential in the strictest possible fashion. Counsel and the parties also
22 agree to such treatment of the information by themselves, and counsel will
23 appropriately instruct their clients as to the protected nature of the information
24 produced pursuant to this order and the limitations on its use and disclosure.

25 12. Documents marked “CONFIDENTIAL” shall not be filed with the
26 Clerk except when required in connection with motions, motions to determine
27 confidentiality under the terms of this Protective Order, and motions related to
28 discovery disputes if the Confidential Material is relevant to the motion. Further, if

1 a party wishes to file Confidential Material with the court under seal, the party must
2 seek leave of court to file the documents (s) under seal from the judge presiding
3 over the particular hearing for which they wish to file the documents(s).

4 13. A party contemplating the filing with the court of any Confidential
5 Material governed by this Protective Order must include a notice to the court that
6 Confidential Material is being filed in a sealed envelope or other suitable sealed
7 container with the case caption on the outside, and with the following or a similar
8 statement: "Confidential - This envelope contains documents that are subject to a
9 Protective Order entered by the court in this action governing the use of
10 Confidential Material designated by the parties." All Confidential Materials so
11 filed with the Court shall be maintained by the Clerk of the Court under seal and
12 shall be released only upon further order of the court.

13 14. At the conclusion of this action (which will be the point at which a final
14 judgment has been rendered and all appellate avenues of relief by any parties have
15 been exhausted), Plaintiffs and their attorneys of record are ordered to either: (1)
16 return all copies of the CERTAIN CALIFORNIA HIGHWAY PATROL
17 RECORDS to counsel for Defendants, or (2) destroy all copies of the records. This
18 Order does not require destruction of the originals of such records as they are kept
19 and used in the ordinary course of business by Defendants and the California
20 Highway Patrol.

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1 15. The Court may modify the Protective Order in the interests of justice or
2 for public policy reasons.

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4 Dated: October 5, 2016

LAW OFFICES OF KEITH H. RUTMAN

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6 By: /s/ Keith H. Rutman
7 KEITH H. RUTMAN
8 Attorney for Plaintiff

9
10 Dated: October 5, 2016

KAMALA D. HARRIS
Attorney General of California

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12 By: /s/ Terry R. Price
13 TERRY R. PRICE
14 Deputy Attorney General
15 Attorneys for Defendant

16 **IT IS SO ORDERED.**

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18 Dated: November 8, 2016

19 
20 Jay C. Gandhi
21 United State Magistrate Judge
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CERTIFICATE OF SERVICE

Case Name: **Antonellis, Toni v. State of
California, et al.**

No. **8:15-cv-00024-JVS-JCG**

I hereby certify that on October 5, 2016, I electronically filed the following documents with the Clerk of the Court by using the CM/ECF system:

STIPULATED PROTECTIVE ORDER

I certify that **all** participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on October 5, 2016, at San Diego, California.

A. Breault
Declarant



Signature
