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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

ANTONIO ORTIZ, LUIZ ORTIZ,
Plaintiffs,
vs.
CITY OF FULLERTON, BRYAN
BYBEE #1398, individually and as a
peace officer, MATTHEW
MARTINEZ #1348, individually and as
a peace officer, EMMANUEL PULIDO
31327, individually and as a peace
officer, BILLY PHU #1332,
individually and as a peace officer,
DOES 1-10, inclusive,
Defendants.

CASE NO. 8:16-cv-01499-DOC-DFM
~~PROPOSED~~ STIPULATED
PROTECTIVE ORDER
Hon. David O. Carter
Trial Date: June 6, 2017

1 information, to facilitate the prompt resolution of disputes over confidentiality of
2 discovery materials, to adequately protect information the parties are entitled to keep
3 confidential, to ensure that the parties are permitted reasonable necessary uses of
4 such material in preparation for and in the conduct of trial, to address their handling
5 at the end of the litigation, and serve the ends of justice, a protective order for such
6 information is justified in this matter. It is the intent of the parties that information
7 will not be designated as confidential for tactical reasons and that nothing be so
8 designated without a good faith belief that it has been maintained in a confidential,
9 non-public manner, and there is good cause why it should not be part of the public
10 record in this case.

11 **3. DEFINITIONS**

12 3.1 Action: this pending lawsuit filed by Luiz Ortiz and Michael
13 Ortiz against the City of Fullerton, Bryan Bybee, Matthew Martinez, Emmanuel
14 Pulido, Billy Phu and Does 1-10, USDC Case no. 8:16-cv-01499-DOC-DFM.

15 3.2 Challenging Party: a Party or Non-Party that challenges the
16 designation of information or items under this Order.

17 3.3 “CONFIDENTIAL” Information or Items: Disclosure or
18 Discovery Material (as defined in sub-paragraph 3.6 below) that qualify for
19 protection under Fed. R. Civ. P. 26(c), and as specified above in the Good Cause
20 Statement.

21 3.4 Counsel: Outside Counsel of Record and House Counsel (as well
22 as their support staff).

23 3.5 Designating Party: a Party or Non-Party that designates
24 information or items that it produces in disclosures or in responses to discovery as
25 “CONFIDENTIAL” or “ATTORNEYS EYES ONLY.”

26 3.6 Disclosure or Discovery Material: all items or information,
27 regardless of the medium or manner in which it is generated, stored, or maintained
28 (including, among other things, testimony, transcripts, and tangible things), that are

1 produced or generated in disclosures or responses to discovery in this Action.

2 3.7 Expert: a person with specialized knowledge or experience in a
3 matter pertinent to the litigation who has been retained by a Party or its counsel to
4 serve as an expert witness or as a consultant in this Action.

5 3.8 “ATTORNEYS EYES ONLY” Information or Items: Disclosure
6 or Discovery Material (as defined in sub-paragraph 3.6 above) that qualify for
7 protection under Fed. R. Civ. P. 26(c), and as specified above in the Good Cause
8 Statement, and that qualify for the highest level of confidentiality.

9 3.9 House Counsel: attorneys who are employees of a Party to this
10 Action. House Counsel does not include Outside Counsel of Record or any other
11 outside counsel.

12 3.10 Non-Party: any natural person, partnership, corporation,
13 association, or other legal entity not named as a Party to this action.

14 3.11 Order: this Stipulated Protective Order.

15 3.12 Outside Counsel of Record: attorneys who are not employees of
16 a Party to this Action but are retained to represent or advise a Party to this Action
17 and have appeared in this Action on behalf of that Party or are affiliated with a law
18 firm which has appeared on behalf of that Party.

19 3.13 Party: any party to this Action, including all of its officers, and
20 directors (and their support staffs).

21 3.14 Personal Information: Personal Information includes, but is not
22 limited to, Social Security numbers, home addresses, telephone numbers, driver’s
23 license numbers, and license plate numbers.

24 3.15 Producing Party: a Party or Non-Party that produces Disclosure
25 or Discovery Material in this Action.

26 3.16 Professional Vendors: persons or entities that provide litigation
27 support services (e.g., photocopying, videotaping, translating, preparing exhibits or
28 demonstrations, and organizing, storing, or retrieving data in any form or medium)

1 and their employees and subcontractors.

2 3.17 Protected Material: any Disclosure or Discovery Material that is
3 designated as “CONFIDENTIAL” or “ATTORNEYS EYES ONLY.”

4 3.18 Receiving Party: a Party that receives Disclosure or Discovery
5 Material from a Producing Party.

6 **4. SCOPE**

7 Any Disclosure or Discovery Material that was previously produced pursuant
8 to any other protective order previously entered in this case, including but not
9 limited to Dkt # 32, are also subject to the provisions of this Order. The protections
10 conferred by this Order cover not only Protected Material (as defined above), but
11 also (1) any information copied or extracted from Protected Material; (2) all copies,
12 excerpts, summaries, or compilations of Protected Material; and (3) any testimony,
13 conversations, or presentations by Parties or their Counsel that might reveal
14 Protected Material. However, the protections conferred by this Order do not cover
15 the following information: (a) any information that is in the public domain at the
16 time of disclosure to a Receiving Party or becomes part of the public domain after
17 its disclosure to a Receiving Party as a result of publication not involving a violation
18 of this Order, including becoming part of the public record through trial or
19 otherwise; and (b) any information known to the Receiving Party prior to the
20 disclosure or obtained by the Receiving Party after the disclosure from a source who
21 obtained the information lawfully and under no obligation of confidentiality to the
22 Designating Party.

23 Any use of Protected Material at trial shall be governed by the orders of the
24 trial judge. This Order does not govern the use of Protected Material at trial.

25 **5. DURATION**

26 Once a case proceeds to trial, all of the court-filed information that is to be
27 introduced that was previously designated as confidential or maintained pursuant to
28 this protective Order becomes public and will be presumptively available to all

1 members of the public, including the press, unless compelling reasons supported by
2 specific factual findings to proceed otherwise are made to the trial judge in advance
3 of the trial. *Kamakana v. City and County of Honolulu*, 447 F.3d 1172, 1180-81 (9th
4 Cir. 2006) [distinguishing “good cause” showing for sealing documents produced in
5 discovery from “compelling reasons” standard when merits-related documents are
6 part of court record]. Accordingly, the terms of this protective order do not extend
7 beyond the commencement of the trial.

8 **6. DESIGNATING PROTECTED MATERIAL**

9 6.1 Exercise of Restraint and Care in Designating Material for
10 Protection. Each Party or Non-Party that designates information or items for
11 protection under this Order must take reasonable care to limit any such designation
12 to specific material that qualifies under the appropriate standards. The Designating
13 Party must designate for protection only those parts of material, documents, items,
14 or oral or written communications that qualify so that other portions of the material,
15 documents, items, or communications for which protection is not warranted are not
16 swept unjustifiably within the ambit of this Order.

17 Mass, indiscriminate, or routinized designations are prohibited. Designations
18 that are shown to be clearly unjustified or that have been made for an improper
19 purpose (e.g., to unnecessarily encumber the case development process or to impose
20 unnecessary expenses and burdens on other Parties) may expose the Designating
21 Party to sanctions.

22 If it comes to a Designating Party’s attention that information or items that it
23 designated for protection do not qualify for protection, that Designating party must
24 promptly notify all other Parties that it is withdrawing the inapplicable designation.

25 6.2 Manner and Timing of Designations. Except as otherwise
26 provided in this Order (see, e.g., second paragraph of section 6.2(a) below), or as
27 otherwise stipulated or ordered, Disclosure or Discovery Material that qualifies for
28 protection under this Order must be clearly so designated before the material is

1 disclosed or produced.

2 Designation in conformity with this Order requires:

3 (a) for information in documentary form (e.g., paper or
4 electronic documents, but excluding transcripts of depositions or other pretrial or
5 trial proceedings), that the Producing Party affix, at a minimum, the legend
6 “CONFIDENTIAL” (hereinafter “CONFIDENTIAL legend”) or the legend
7 “ATTORNEYS EYES ONLY” (hereinafter “ATTORNEYS EYES ONLY legend”)
8 to each page that contains protected material. If only a portion or portions of the
9 material on a page qualifies for protection, the Producing Party also must clearly
10 identify the protected portion(s) (e.g., by making appropriate markings in the
11 margins).

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

25 (b) for testimony given in depositions or in other pretrial
26 proceedings, that the Designating Party identify the Disclosure or Discovery
27 Material on the record, before the close of the deposition, hearing, or other
28 proceeding.

1 (c) for information produced in some form other than
2 documentary and for any other tangible items, that the Producing Party affix in a
3 prominent place on the exterior of the container or containers in which the
4 information or item is stored the “CONFIDENTIAL legend” or the “HIGHLY
5 CONFIDENTIAL legend.” If only a portion or portions of the information warrants
6 protection, the Producing Party, to the extent practicable, shall identify the protected
7 portion(s).

8 6.3 Inadvertent Failures to Designate. If timely corrected, an
9 inadvertent failure to designate qualified information or items does not, standing
10 alone, waive the Designating Party’s right to secure protection under this Order for
11 such material. Upon timely correction of a designation, the Receiving Party must
12 make reasonable efforts to assure that the material is treated in accordance with the
13 provisions of this Order.

14 6.4 Redacting Personal Information in Disclosure or
15 Discovery Material.

16 (a) In addition to and/or in lieu of affixing the
17 “CONFIDENTIAL” legend or the “ATTORNEYS EYES ONLY” legend to
18 Disclosure or Discovery Material subject to this Order, the Parties reserve the right
19 to redact Personal Information contained in Disclosure or Discovery Material.

20 (b) Information that may be redacted pursuant to this Order
21 includes, but is not limited to, any Party’s Personal Information as defined in sub-
22 paragraph 3.13 above, and the Personal Information of any Party’s family members.

23 (c) Any Party may challenge another Party’s redaction of
24 Personal Information in accordance with paragraph 7 below.

25 7. **CHALLENGING CONFIDENTIALITY DESIGNATIONS.**

26 7.1 Timing of Challenges. Any Party or Non-Party may challenge a
27 designation of confidentiality at any time that is consistent with the Court’s
28 Scheduling Order and any amendments thereto.

1 7.2 Meet and Confer. The Challenging Party shall initiate the dispute
2 resolution process under Local Rule 37.1, et seq. Any discovery motion must strictly
3 comply with the procedures set forth in Local Rules 37-1, 37-2, and 37-3.

4 7.3 Burden. The burden of persuasion in any such challenge
5 proceeding shall be on the Designating Party. Frivolous challenges, and those made
6 for an improper purpose (e.g., to harass or impose unnecessary expenses and
7 burdens on other Parties) may expose the Challenging Party to sanctions. Unless the
8 Designating Party has waived or withdrawn the confidentiality designation, all
9 Parties shall continue to afford the material in question the level of protection to
10 which it is entitled under the Producing Party’s designation until the Court rules on
11 the challenge.

12 **8. ACCESS TO AND USE OF PROTECTED MATERIAL**

13 8.1 Basic Principles. A Receiving Party may use Protected Material
14 that is disclosed or produced by another Party or by a Non-Party in connection with
15 this Action only for prosecuting, defending, or attempting to settle this Action. Such
16 Protected Material may be disclosed only to the categories of persons and under the
17 conditions described in this Order. When the Action has been terminated, a
18 Receiving Party must comply with the provisions of section 14 below (FINAL
19 DISPOSITION).

20 Protected Material must be stored and maintained by a Receiving Party at a
21 location and in a secure manner that ensures that access is limited to the persons
22 authorized under this Order.

23 8.2 Disclosure of “CONFIDENTIAL” Disclosure or Discovery
24 Material. Unless otherwise ordered by the Court or permitted in writing by the
25 Designating Party, a Receiving Party may disclose any Disclosure or Discovery
26 Material designated “CONFIDENTIAL” only to:

27 (a) the Receiving Party’s Outside Counsel of Record in this Action, as well
28 as employees of said Outside Counsel of Record to whom it is reasonably necessary

1 to disclose the information for this Action;

2 (b) the officers, directors, and employees (including House Counsel) of the
3 Receiving Party to whom disclosure is reasonably necessary for this Action;

4 (c) Experts (as defined in this Order) of the Receiving Party to whom
5 disclosure is reasonably necessary for this Action and who have signed the
6 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

7 (d) the Court and its personnel;

8 (e) court reporters and their staff;

9 (f) professional jury or trial consultants, mock jurors, and Professional
10 Vendors to whom disclosure is reasonably necessary for this Action and who have
11 signed the “Acknowledgement and Agreement to Be Bound” (Exhibit A);

12 (g) the author or recipient of a document containing the information or a
13 custodian or other person who otherwise possessed or knew the information;

14 (h) during their depositions, witnesses and attorneys for witnesses in the
15 Action to whom disclosure is reasonably necessary provided: (1) the deposing party
16 requests that the witness sign the form attached as Exhibit 1 hereto; and (2) they will
17 not be permitted to keep any confidential information unless they sign the
18 “Acknowledgment and Agreement to Be Bound” (Exhibit A), unless otherwise
19 agreed by the Designating Party or ordered by the Court. Pages of transcribed
20 deposition testimony or exhibits to depositions that reveal Protected Material must
21 be separately bound by the court reporter and may not be disclosed to anyone except
22 as permitted under this Order; and

23 (i) any mediator or settlement officer, and their supporting personnel,
24 mutually agreed upon by any of the Parties engaged in settlement discussions.

25 8.3 Disclosure of “ATTORNEYS EYES ONLY” Disclosure or
26 Discovery Material. Unless otherwise ordered by the Court or permitted in writing
27 by the Designating Party, a Receiving Party may disclose any Disclosure or
28 Discovery Material designated “ATTORNEYS EYES ONLY” only to:

1 (a) Counsel as defined in sub-paragraph 3.4 above, so long as they do not
2 share the content of any ATTORNEYS EYES ONLY material with any Party); and

3 (b) anyone identified in the foregoing sub-paragraphs 8.2(c), (d), (e), (g)
4 and (h). In the event any ATTORNEYS EYES ONLY material is used in a
5 deposition and/or attached to a deposition transcript as an exhibit, the provisions of
6 sub-paragraph 8.2(h) above shall apply.

7 **9. PROTECTED MATERIAL SUBPOENAED OR ORDERED**
8 **PRODUCED IN OTHER LITIGATION**

9 If a Party is served with a subpoena or a court order issued in other litigation
10 that compels disclosure of any information or items designated in this Action as
11 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL,” that Party must:

12 (a) promptly notify in writing the Designating Party. Such notification
13 shall include a copy of the subpoena or court order;

14 (b) promptly notify in writing the party who caused the subpoena or order
15 to issue in the other litigation that some or all of the material covered by the
16 subpoena or order is subject to this Order. Such notification shall include a copy of
17 this Order; and

18 (c) cooperate with respect to all reasonable procedures sought to be
19 pursued by the Designating Party whose Protected Material may be affected.

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

1 **10. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE**
2 **PRODUCED IN THIS LITIGATION**

3 (a) The terms of this Order are applicable to information produced by a
4 Non-Party in this action and designated as “CONFIDENTIAL” or “HIGHLY
5 CONFIDENTIAL.” Such information produced by Non-Parties in connection with
6 this litigation is protected by the remedies and relief provided by this Order. Nothing
7 in these provisions should be construed as prohibiting a Non-Party from seeking
8 additional protections.

9 (b) In the event that a Party is required, by a valid discovery request, to
10 produce a Non-Party’s confidential information in its possession, and the Party is
11 subject to an agreement with the Non-Party not to produce the Non-Party’s
12 confidential information, then the Party shall:

13 (1) promptly notify in writing the Requesting Party and the Non-
14 Party that some or all of the information requested is subject to a confidentiality
15 agreement with a Non-Party;

16 (2) promptly provide the Non-Party with a copy of this Order, the
17 relevant discovery request(s), and a reasonably specific description of the
18 information requested; and

19 (3) make the information requested available for inspection by the
20 Non-Party, if requested.

21 (c) If the Non-Party fails to seek a protective order from this Court within
22 14 days of receiving the notice and accompanying information, the Receiving Party
23 may produce the Non-Party’s confidential information responsive to the discovery
24 request. If the Non-Party timely seeks a protective order, the Receiving Party shall
25 not produce any information in its possession or control that is subject to the
26 confidentiality agreement with the Non-Party before a determination by the Court.
27 Absent a court order to the contrary, the Non-Party shall bear the burden and
28 expense of seeking protection in this Court of its Protected Material.

1 **11. UNAUTHORIZED DISCLOSURE OF PROTECTED**
2 **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 this
5 Order, the Receiving Party must immediately (a) notify in writing the Designating
6 Party of the unauthorized disclosures, (b) use its best efforts to retrieve all
7 unauthorized copies of the Protected Material, (c) inform the person or persons to
8 whom unauthorized disclosures were made of all the terms of this Order, and (d)
9 request such person or persons to execute the “Acknowledgment and Agreement to
10 Be Bound” that is attached hereto as Exhibit A.

11 **12. INADVERTENT PRODUCTION OF PRIVILEGED OR**
12 **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 Fed. R. Civ. P.
16 26(b)(5)(B). This provision is not intended to modify whatever procedure may be
17 established in an e-discovery order that provides for production without prior
18 privilege review. Pursuant to Fed. R. Evid. 502(d) and (e), insofar as the parties
19 reach an agreement on the effect of disclosure of a communication or information
20 covered by the attorney-client privilege or work product protection, the parties may
21 incorporate their agreement in the stipulated protective order submitted to the Court.

22 **13. MISCELLANEOUS.**

23 13.1 Right to Further Relief. Nothing in this Order abridges the right
24 of any person to seek its modification by the Court in the future.

25 13.2 Right to Assert Other Objections. By stipulating to the entry of
26 this Order, no Party waives any right it otherwise would have to object to disclosing
27 or producing any information or item on any ground not addressed in this Order.
28 Similarly, no Party waives any right to object on any ground to use in evidence of

1 any of the material covered by this Order.

2 13.3 Filing Protected Material. A Party that seeks to file under seal
3 any Protected Material must comply with Civil Local Rule 79-5. Protected Material
4 may only be filed under seal pursuant to a court order authorizing the sealing of the
5 specific Protected Material at issue; good cause must be shown in the request to file
6 under seal. If a Party's request to file Protected Material under seal is denied by the
7 Court, then the Receiving Party may file the information in the public record unless
8 otherwise instructed by the Court.

9 **14. FINAL DISPOSITION.**

10 After the final disposition of this action, within 60 days of a written request
11 by the Designating Party, each Receiving Party must return all Protected Material to
12 the Producing Party or destroy such material. As used in this subdivision, "all
13 Protected Material" includes all copies, abstracts, compilations, summaries, and any
14 other format reproducing or capturing any of the Protected Material. Whether the
15 Protected Material is returned or destroyed, the Receiving Party must submit a
16 written certification to the Producing Party (and, if not the same person or entity, to
17 the Designating Party) by the 60 day deadline that (1) identifies (by category, where
18 appropriate) all the Protected Material that was returned or destroyed and (2) affirms
19 that the Receiving Party has not retained any copies, abstracts, compilations,
20 summaries or any other format reproducing or capturing any of the Protected
21 Material. Notwithstanding this provision, Counsel are entitled to retain an archival
22 copy of all pleadings, motion papers, trial, deposition, and hearing transcripts, legal
23 memoranda, correspondence, deposition and trial exhibits, expert reports, attorney
24 work product, and consultant and expert work product, even if such materials
25 contain Protected Material. Any such archival copies that contain or constitute
26 Protected Material remain subject to this Order as set forth in Section 5
27 (DURATION).

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IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

DATED: March 29, 2017

THE BECK LAW FIRM

By: /s/ Thomas E. Beck
Attorneys for Plaintiff
ANTONIO ORTIZ

DATED: March 29, 2017

LAW OFFICES OF DAVID HAAS

By: /s/ David Haas
Attorneys for Plaintiff
LUIS ORTIZ

DATED: March 29, 2017

LEWIS BRISBOIS BISGAARD & SMITH LLP

By: /s/ Barry Hassenberg
Attorneys for Defendants CITY OF
FULLERTON, BRYAN BYBEE,
MATTHEW MARTINEZ, EMMANUEL
PULIDO, and BILLY PHU

FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.

April 10, 2017

DATED: ~~March xxxxxx, 2017~~



Douglas F. McCormick
United States Magistrate Judge

1 **EXHIBIT A**

2 **ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND**

3 I, _____ [print or type full name], of
4 _____ [print or type full address], declare under penalty of perjury
5 that I have read in its entirety and understand the Stipulated Protective Order that
6 was issued by the United States District Court for the Central District of California
7 on [date] in the case of Michael Ortiz v. City of Fullerton, et al., USDC Case no.
8 8:16-cv-01499-DOC-DFM. I agree to comply with and to be bound by all the terms
9 of this Stipulated Protective Order and I understand and acknowledge that failure to
10 so comply could expose me to sanctions and punishment in the nature of contempt.
11 I solemnly promise that I will not disclose in any manner any information or item
12 that is subject to this Stipulated Protective Order to any person or entity except in
13 strict compliance with the provisions of this Order.

14 I further agree to submit to the jurisdiction of the United States District Court
15 for the Central District of California for the purpose of enforcing the terms of this
16 Stipulated Protective Order, even if such enforcement proceedings occur after
17 termination of this action. I hereby appoint _____ [print or
18 type full name] of _____ [print or type
19 full address and telephone number] as my California agent for service of process in
20 connection with this action or any proceedings related to enforcement of this
21 Stipulated Protective Order.

22
23 Date: _____

24 City and State where sworn and signed: _____

25 Printed name: _____

26
27 Signature: _____