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6
7 **UNITED STATES DISTRICT COURT**
8 **CENTRAL DISTRICT OF CALIFORNIA**

9
10 MICHAEL FOLEY,

11 Plaintiff,

12 v.

13 CITY OF ANAHEIM; OFFICER
14 CROMER; and DOES 1 through 25,
15 inclusive,

16 Defendants.

Case No.: 8:17 cv-00388 AG (SKx)

Assigned to: Hon. Andrew J. Guilford

**STIPULATED PROTECTIVE
ORDER**

Action Filed: 3/3/2017

Trial Date: None set

17
18 1. A. PURPOSES AND LIMITATIONS

19 Discovery in this action is likely to involve production of confidential,
20 proprietary, or private information for which special protection from public
21 disclosure and from use for any purpose other than prosecuting this litigation may
22 be warranted. Accordingly, the parties hereby stipulate to and petition the Court to
23 enter the following Stipulated Protective Order. The parties acknowledge that this
24 Order does not confer blanket protections on all disclosures or responses to
25 discovery and that the protection it affords from public disclosure and use extends
26 only to the limited information or items that are entitled to confidential treatment
27 under the applicable legal principles. The parties further acknowledge, as set forth
28 in Section 12.3, below, that this Stipulated Protective Order does not entitle them

1 to file confidential information under seal; Civil Local Rule 79-5 sets forth the
2 procedures that must be followed and the standards that will be applied when a
3 party seeks permission from the court to file material under seal.

4
5 **B. GOOD CAUSE STATEMENT**

6 This action is likely to involve materials and information that were
7 acquired in confidence by public employees in the course of their duties and have
8 not been officially disclosed or made open or available to the public. Such
9 confidential materials and information consist of, among other things: (1) law
10 enforcement investigative reports and records concerning the subject incident or
11 the plaintiff's prior interactions with law enforcement, which may contain personal
12 contact information of third party witnesses and alleged crime victims, including
13 but not limited to reports or memoranda prepared by the Anaheim Police
14 Department; and (2) confidential police officer personnel and disciplinary
15 materials maintained by the APD for the defendant police officers. Such
16 confidential materials and information are generally unavailable to the public, and
17 may be privileged or otherwise protected from disclosure under state or federal
18 statutes, court rules, case decisions, or common law. Accordingly, to expedite the
19 flow of information, to facilitate the prompt resolution of disputes over
20 confidentiality of discovery materials, to adequately protect information the
21 parties are entitled to keep confidential, to ensure that the parties are permitted
22 reasonable necessary uses of such material in preparation for and in the conduct of
23 trial, to address their handling at the end of the litigation, and serve the ends of
24 justice, a protective order for such information is justified in this matter. It is the
25 intent of the parties that information will not be designated as confidential for
26 tactical reasons and that nothing be so designated without a good faith belief that
27 it has been maintained in a confidential, non-public manner, and there is good
28 cause why it should not be part of the public record of this case.

1 2. DEFINITIONS

2 2.1 Action: this pending federal law suit.

3 2.2 Challenging Party: a Party or Non-Party that challenges the
4 designation of information or items under this Order.

5 2.3 “CONFIDENTIAL” Information or Items: information (regardless of
6 how it is generated, stored or maintained) or tangible things that qualify for
7 protection under Federal Rule of Civil Procedure 26(c), and as specified above in
8 the Good Cause Statement.

9 2.4 Counsel: Outside Counsel of Record and House Counsel (as well as
10 their support staff).

11 2.5 Designating Party: a Party or Non-Party that designates information or
12 items that it produces in disclosures or in responses to discovery as
13 “CONFIDENTIAL.”

14 2.6 Disclosure or Discovery Material: all items or information, regardless
15 of the medium or manner in which it is generated, stored, or maintained
16 (including, among other things, testimony, transcripts, and tangible things), that
17 are produced or generated in disclosures or responses to discovery in this matter.

18 2.7 Expert: a person with specialized knowledge or experience in a matter
19 pertinent to the litigation who has been retained by a Party or its counsel to serve
20 as an expert witness or as a consultant in this Action.

21 2.8 House Counsel: attorneys who are employees of a party to this Action.
22 House Counsel does not include Outside Counsel of Record or any other outside
23 counsel.

24 2.9 Non-Party: any natural person, partnership, corporation, association,
25 or other legal entity not named as a Party to this action.

26 2.10 Outside Counsel of Record: attorneys who are not employees of a
27 party to this Action but are retained to represent or advise a party to this Action
28 and have appeared in this Action on behalf of that party or are affiliated with a law

1 firm which has appeared on behalf of that party, and includes support staff.

2 2.11 Party: any party to this Action, including all of its officers, directors,
3 employees, consultants, retained experts, and Outside Counsel of Record (and
4 their support staffs).

5 2.12 Producing Party: a Party or Non-Party that produces Disclosure or
6 Discovery Material in this Action.

7 2.13 Professional Vendors: persons or entities that provide litigation
8 support services (e.g., photocopying, videotaping, translating, preparing exhibits
9 or demonstrations, and organizing, storing, or retrieving data in any form or
10 medium) and their employees and subcontractors.

11 2.14 Protected Material: any Disclosure or Discovery Material that is
12 designated as “CONFIDENTIAL.”

13 2.15 Receiving Party: a Party that receives Disclosure or Discovery
14 Material from a Producing Party.

15
16 3. SCOPE

17 The protections conferred by this Stipulation and Order cover not only
18 Protected Material (as defined above), but also (1) any information copied or
19 extracted from Protected Material; (2) all copies, excerpts, summaries, or
20 compilations of Protected Material; and (3) any testimony, conversations, or
21 presentations by Parties or their Counsel that might reveal Protected Material. Any
22 use of Protected Material at trial shall be governed by the orders of the trial judge.
23 This Order does not govern the use of Protected Material at trial.

24
25 4. DURATION

26 Even after final disposition of this litigation, the confidentiality obligations
27 imposed by this Order shall remain in effect until a Designating Party agrees
28 otherwise in writing or a court order otherwise directs. Final disposition shall be

1 deemed to be the later of (1) dismissal of all claims and defenses in this Action,
2 with or without prejudice; and (2) final judgment herein after the completion and
3 exhaustion of all appeals, rehearings, remands, trials, or reviews of this Action,
4 including the time limits for filing any motions or applications for extension of
5 time pursuant to applicable law.

6
7 5. DESIGNATING PROTECTED MATERIAL

8 5.1 Exercise of Restraint and Care in Designating Material for Protection.

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

16 Mass, indiscriminate, or routinized designations are prohibited.

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

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

25 5.2 Manner and Timing of Designations. Except as otherwise provided in
26 this Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise
27 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 electronic
4 documents, but excluding transcripts of depositions or other pretrial or trial
5 proceedings), that the Producing Party affix at a minimum, the legend
6 “CONFIDENTIAL” (hereinafter “CONFIDENTIAL legend”), to each page that
7 contains protected material. If only a portion or portions of the material on a page
8 qualifies for protection, the Producing Party also must clearly identify the
9 protected portion(s) (e.g., by making appropriate markings in the margins).

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

22 (b) for testimony given in depositions that the Designating Party
23 identify the Disclosure or Discovery Material on the record, before the close of the
24 deposition all protected testimony.

25 (c) for information produced in some form other than documentary
26 and for any other tangible items, that the Producing Party affix in a prominent
27 place on the exterior of the container or containers in which the information is
28 stored the legend “CONFIDENTIAL.” If only a portion or portions of the

1 information warrants protection, the Producing Party, to the extent practicable,
2 shall identify the protected portion(s).

3 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
4 failure to designate qualified information or items does not, standing alone, waive
5 the Designating Party's right to secure protection under this Order for such
6 material. Upon timely correction of a designation, the Receiving Party must make
7 reasonable efforts to assure that the material is treated in accordance with the
8 provisions of this Order.

9
10 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

11 6.1 Timing of Challenges. Any Party or Non-Party may challenge a
12 designation of confidentiality at any time that is consistent with the Court's
13 Scheduling Order.

14 6.2 Meet and Confer. The Challenging Party shall initiate the dispute
15 resolution process under Local Rule 37.1 et seq.

16 6.3 The burden of persuasion in any such challenge proceeding shall be
17 on the Designating Party. Frivolous challenges, and those made for an improper
18 purpose (e.g., to harass or impose unnecessary expenses and burdens on other
19 parties) may expose the Challenging Party to sanctions. Unless the Designating
20 Party has waived or withdrawn the confidentiality designation, all parties shall
21 continue to afford the material in question the level of protection to which it is
22 entitled under the Producing Party's designation until the Court rules on the
23 challenge.

24
25 7. ACCESS TO AND USE OF PROTECTED MATERIAL

26 7.1 Basic Principles. A Receiving Party may use Protected Material that is
27 disclosed or produced by another Party or by a Non-Party in connection with this
28 Action only for prosecuting, defending, or attempting to settle this Action. Such

1 Protected Material may be disclosed only to the categories of persons and under
2 the conditions described in this Order. When the Action has been terminated, a
3 Receiving Party must comply with the provisions of section 13 below (FINAL
4 DISPOSITION).

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

8 7.2 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
11 “CONFIDENTIAL” only to:

12 (a) the Receiving Party’s Outside Counsel of Record in this Action, as well
13 as employees of said Outside Counsel of Record to whom it is reasonably
14 necessary to disclose the information for this Action;

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

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

20 (d) the court and its personnel;

21 (e) court reporters and their staff;

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

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

27 (h) during their depositions, witnesses, and attorneys for witnesses, in the
28 Action to whom disclosure is reasonably necessary provided: (1) the deposing

1 party requests that the witness sign the form attached as Exhibit 1 hereto; and (2)
2 they will not be permitted to keep any confidential information unless they sign
3 the “Acknowledgment and Agreement to Be Bound” (Exhibit A), unless
4 otherwise agreed by the Designating Party or ordered by the court. Pages of
5 transcribed deposition testimony or exhibits to depositions that reveal Protected
6 Material may be separately bound by the court reporter and may not be disclosed
7 to anyone except as permitted under this Stipulated Protective Order; and

8 (i) any mediator or settlement officer, and their supporting personnel,
9 mutually agreed upon by any of the parties engaged in settlement discussions.

10
11 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED
12 PRODUCED IN OTHER LITIGATION

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

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

18 (b) promptly notify in writing the party who caused the subpoena or
19 order to issue in the other litigation that some or all of the material covered by the
20 subpoena or order is subject to this Protective Order. Such notification shall
21 include a copy of this Stipulated Protective Order; and

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

24 If the Designating Party timely seeks a protective order, the Party served
25 with the subpoena or court order shall not produce any information designated in
26 this action as “CONFIDENTIAL” before a determination by the court from which
27 the subpoena or order issued, unless the Party has obtained the Designating
28 Party’s permission. The Designating Party shall bear the burden and expense of

1 seeking protection in that court of its confidential material and nothing in these
2 provisions should be construed as authorizing or encouraging a Receiving Party in
3 this Action to disobey a lawful directive from another court.

4
5 9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE
6 PRODUCED IN THIS LITIGATION

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

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

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

19 (2) promptly provide the Non-Party with a copy of the Stipulated
20 Protective Order in this Action, the relevant discovery request(s), and a reasonably
21 specific description of the information requested; and

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

24 (c) If the Non-Party fails to seek a protective order from this court within
25 14 days of receiving the notice and accompanying information, the Receiving
26 Party may produce the Non-Party’s confidential information responsive to the
27 discovery request. If the Non-Party timely seeks a protective order, the Receiving
28 Party shall not produce any information in its possession or control that is subject

1 to the confidentiality agreement with the Non-Party before a determination by the
2 court. Absent a court order to the contrary, the Non-Party shall bear the burden
3 and expense of seeking protection in this court of its Protected Material.
4

5 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

6 If a Receiving Party learns that, by inadvertence or otherwise, it has
7 disclosed Protected Material to any person or in any circumstance not authorized
8 under this Stipulated Protective Order, the Receiving Party must immediately (a)
9 notify in writing the Designating Party of the unauthorized disclosures, (b) use its
10 best efforts to retrieve all unauthorized copies of the Protected Material, (c)
11 inform the person or persons to whom unauthorized disclosures were made of all
12 the terms of this Order, and (d) request such person or persons to execute the
13 “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit
14 A.
15

16 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
17 PROTECTED MATERIAL

18 When a Producing Party gives notice to Receiving Parties that certain
19 inadvertently produced material is subject to a claim of privilege or other
20 protection, the obligations of the Receiving Parties are those set forth in Federal
21 Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify
22 whatever procedure may be established in an e-discovery order that provides for
23 production without prior privilege review. Pursuant to Federal Rule of Evidence
24 502(d) and (e), insofar as the parties reach an agreement on the effect of
25 disclosure of a communication or information covered by the attorney-client
26 privilege or work product protection, the parties may incorporate their agreement
27 in the stipulated protective order submitted to the court.
28

1 12. MISCELLANEOUS

2 12.1 Right to Further Relief. Nothing in this Order abridges the right of
3 any person to seek its modification by the Court in the future.

4 12.2 Right to Assert Other Objections. By stipulating to the entry of this
5 Protective Order no Party waives any right it otherwise would have to object to
6 disclosing or producing any information or item on any ground not addressed in
7 this Stipulated Protective Order. Similarly, no Party waives any right to object on
8 any ground to use in evidence of any of the material covered by this Protective
9 Order.

10 12.3 Filing Protected Material. A Party that seeks to file under seal any
11 Protected Material must comply with Civil Local Rule 79-5. Protected Material
12 may only be filed under seal pursuant to a court order authorizing the sealing of
13 the specific Protected Material at issue. If a Party's request to file Protected
14 Material under seal is denied by the court, then the Receiving Party may file the
15 information in the public record unless otherwise instructed by the court.

16

17 13. FINAL DISPOSITION

18 Within 60 days after the final disposition of this Action, as defined in
19 paragraph 4, each Receiving Party must return all Protected Material to the
20 Producing Party or destroy such material. As used in this subdivision, “all
21 Protected Material” includes all copies, abstracts, compilations, summaries, and
22 any other format reproducing or capturing any of the Protected Material. Whether
23 the Protected Material is returned or destroyed, the Receiving Party must submit a
24 written certification to the Producing Party (and, if not the same person or entity,
25 to the Designating Party) by the 60 day deadline that (1) identifies (by category,
26 where appropriate) all the Protected Material that was returned or destroyed and
27 (2)affirms that the Receiving Party has not retained any copies, abstracts,
28 compilations, summaries or any other format reproducing or capturing any of the

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 that I have read in its entirety and understand the Stipulated Protective Order that was issued by the United States District Court for the Central District of California on _____ [date] in the case of *Michael Foley v. City of Anaheim, et al.*, USDC case no. 8:17 cv-00388 AG (SKx). I agree to comply with and to be bound by all the terms of this Stipulated 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 Stipulated 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 Stipulated Protective Order, even if such enforcement proceedings occur after termination of this action.

Date: _____

City and State where sworn and signed: _____

Printed name: _____

Signature: _____

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