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11 **UNITED STATES DISTRICT COURT**
 12 **CENTRAL DISTRICT OF CALIFORNIA**

14 William L. McGrann)	Case No.: SA CV17-941-VBF-RAOx
15 Plaintiff,)	
16 vs.)	STIPULATED PROTECTIVE
17 CITY OF SEAL BEACH, JOE)	ORDER¹
18 STILINOVICH CHIEF, individually,)	
19 as a peace officer, and a final)	
20 policymaker, BRIAN GRAY#365,)	
21 individually and as a peace officer,)	
22 TODD DEVOE#333, individually and)	
23 as a police employee, DOES 1-10,)	
24 inclusive,)	
25 Defendants.)	Hon. Rozella A. Oliver
)	U.S. Magistrate Judge

24 IT IS HEREBY STIPULATED by and among the parties hereto, through
 25 their respective counsel of record as follows:

26 ///

27 _____
 28 ¹ This Stipulated Protective Order is substantially based on the model protective order provided under Magistrate Judge Rozella A. Oliver’s Procedures.

1 **A. Purpose**

2 This civil litigation is based, in part, on allegations that Plaintiff William
3 McGrann was falsely arrested by the Seal Beach Police Department on July 9,
4 2012, and thereafter maliciously prosecuted for violating various provisions of the
5 California Penal Code, in People v. William McGrann, Orange County Superior
6 Court Case No. 13WM04856. Throughout the course of the criminal case in
7 People v. William McGrann, Mr. McGrann’s criminal defense attorney sought
8 discovery of confidential personnel records of Seal Beach Police Department
9 Officer Brian Gray and Emergency Services Coordinator Todd DeVoe, through the
10 procedures established under California Penal Code § 1054, et seq., or what is
11 commonly referred to as Pitchess motions. After in camera reviews were
12 conducted, the criminal court judge ordered the Seal Beach Police Department to
13 make three separate productions of the following confidential records and
14 information:

- 15 1. Seal Beach Police Department Internal Affairs Investigation No. 12-4
16 (Bates Stamp Nos. SBPD 001 – SBPD 093);
- 17 2. City of Seal Beach Notice of Intent to Terminate dated November 13,
18 2013 (Bates Stamp Nos. PLTF 000255 – PLTF 000266), which was
19 redacted by the criminal court; and
- 20 3. The information contained within a letter addressed to Jared
21 Stephenson dated September 18, 2014 (Bates Stamp No. PLTF
22 000267).

23 These confidential documents were produced pursuant to protective orders
24 issued by the criminal court, which provided that the documents could only be
25 used for the defense in People v. William McGrann. Because these confidential
26 documents have relevance to the instant civil litigation, the parties now seek and
27 hereby stipulate to have these documents (hereinafter collectively referred to as
28 “Protected Documents”) protected by the instant Stipulated Protective Order.

1 **B. Good Cause Statement**

2 The Protected Documents warrant special protection from public disclosure
3 and from use for any purpose other than prosecution of this action. Specifically,
4 the Protected Documents are confidential personnel records protected by the right
5 to privacy under the California and U.S. Constitutions, the official information
6 privilege, the deliberative process privilege, the law enforcement privilege, as well
7 as California Evidence Code §§ 1043 through 1045 and California Penal Code §
8 832.5, et seq. Accordingly, to expedite the flow of information, to facilitate the
9 prompt resolution of disputes over confidentiality of discovery materials, to
10 adequately protect information the parties are entitled to keep confidential, to
11 ensure that the parties are permitted reasonable necessary uses of such material in
12 preparation for and in the conduct of trial, to address their handling at the end of
13 the litigation, and serve the ends of justice, a protective order for such information
14 is justified in this matter.

15 **C. Scope**

16 The protections conferred by this Stipulated Protective Order cover not only
17 the Protected Documents, but also: (1) any information copied or extracted from
18 the Protected Documents; (2) all copies, excerpts, summaries, or compilations of
19 the Protected Documents; and (3) any testimony, conversations, or presentations
20 by parties or their counsel that might reveal the information contained in the
21 Protected Documents. Any use of the Protected Documents at trial shall be
22 governed by the orders of the trial judge. This Stipulated Protective Order does
23 not govern the use of the Protected Documents at trial.

24 **D. Designating Protected Documents**

25 The Protected Documents covered by this Stipulated Protective Order have
26 been clearly designated and bear the notation of “CONFIDENTIAL – SUBJECT
27 TO PROTECTIVE ORDER” on the bottom of each page.

28 ///

1 **E. Access To And Use Of Protected Documents**

2 The Protected Documents may only be used for purposes of prosecuting,
3 defending, or attempting to settle this civil action. The Protected Documents and
4 all information contained therein, may only be disclosed to the following persons:

- 5 1. Counsel of record for the parties to this civil litigation;
- 6 2. Paralegal, clerical, and secretarial personnel regularly employed by
7 counsel of record for the parties to this civil litigation;
- 8 3. Investigators, expert witnesses, and other persons legitimately
9 involved in litigation-related activities for the counsel of record for the parties to
10 this civil litigation, who have signed the “Acknowledgment and Agreement to Be
11 Bound” (Exhibit A);
- 12 4. Plaintiff William McGrann and Defendant City of Seal Beach and its
13 employees, including, but not limited to Officer Brian Gray and Todd DeVoe;
- 14 5. The court and its personnel;
- 15 6. Court reporters and their staff;
- 16 7. During their depositions, witnesses, and attorneys for witnesses to
17 whom disclosure is reasonably necessary provided: (a) the deposing party requests
18 that the witness sign the “Acknowledgment and Agreement to Be Bound” form
19 (Exhibit A); and (b) they will not be permitted to keep any confidential
20 information unless they sign the “Acknowledgment and Agreement to Be Bound”
21 form (Exhibit A), unless otherwise agreed by the parties or ordered by the Court.
22 Pages of transcribed deposition testimony or exhibits to depositions that reveal the
23 Protected Documents, or any information contained therein, may be separately
24 bound by the court reporter and may not be disclosed to anyone except as
25 permitted under this Stipulated Protective Order; and
- 26 8. Any mediator or settlement officer, and their supporting personnel,
27 mutually agreed upon by the parties.

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1 **F. Protected Documents Subpoenaed Or Ordered Produced In Other**
2 **Litigation**

3 If a party is served with a subpoena or a court order issued in other litigation
4 that compels disclosure of the Protected Documents, that party must: (1) promptly
5 notify in writing the City of Seal Beach and include a copy of the subpoena or
6 court order; (2) promptly notify in writing the party who caused the subpoena or
7 order to issue in the other litigation that some or all of the material covered by the
8 subpoena or order is subject to this Stipulated Protective Order and include a copy
9 of this Stipulated Protective Order; and (3) cooperate with respect to all reasonable
10 procedures sought to be pursued by the City of Seal Beach whose Protected
11 Documents may be affected.

12 If the City of Seal Beach timely seeks a protective order, the party served
13 with the subpoena or court order shall not produce the Protected Documents, or
14 any information contained therein, before a determination by the court from which
15 the subpoena or order issued, unless the party has obtained the City of Seal
16 Beach's permission. The City of Seal Beach shall bear the burden and expense of
17 seeking protection in that court of its Protected Documents and nothing in this
18 Stipulated Protective Order should be construed as authorizing or encouraging a
19 party to disobey a lawful directive from another court.

20 **G. Unauthorized Disclosure Of Protected Documents**

21 If plaintiff learns that, by inadvertence or otherwise, he has disclosed the
22 Protected Documents to any person or in any circumstance not authorized under
23 this Stipulated Protective Order, plaintiff must immediately: (1) notify in writing
24 the City of Seal Beach of the unauthorized disclosures; (2) use his best efforts to
25 retrieve all unauthorized copies of the Protected Documents; (3) inform the person
26 or persons to whom unauthorized disclosures were made of all the terms of this
27 Stipulated Protective Order; and (4) request such person or persons to execute the
28 "Acknowledgment and Agreement to Be Bound" that is attached hereto as Exhibit

1 A.

2 **H. Acknowledgment of Procedure For Filing Under Seal**

3 The parties acknowledge that this Stipulated Protective Order does not
4 entitle them to file the Protected Documents under seal. Local Civil Rule 79-5 sets
5 forth the procedures that must be followed and the standards that will be applied
6 when a party seeks permission from the court to file material under seal.

7 There is a strong presumption that the public has a right of access to judicial
8 proceedings and records in civil cases. In connection with non-dispositive
9 motions, good cause must be shown to support a filing under seal. See Kamakana
10 v. City and County of Honolulu, 447 F.3d 1172, 1176 (9th Cir. 2006); Phillips v.
11 Gen. Motors Corp., 307 F.3d 1206, 1210-11 (9th Cir. 2002); Makar-Welbon v.
12 Sony Electrics, Inc., 187 F.R.D. 576, 577 (E.D. Wis. 1999) (even stipulated
13 protective orders require good cause showing). A specific showing of good cause
14 or compelling reasons with proper evidentiary support and legal justification, must
15 be made with respect to the Protected Documents a party seeks to file under seal.

16 The parties' mere designation of the Protected Documents as
17 "CONFIDENTIAL" does not—without the submission of competent evidence by
18 declaration, establishing that the material sought to be filed under seal qualifies as
19 confidential, privileged, or otherwise protectable—constitute good cause. Further,
20 if a party requests sealing related to a dispositive motion or trial, then compelling
21 reasons, not only good cause, for the sealing must be shown, and the relief sought
22 shall be narrowly tailored to serve the specific interest to be protected. See Pintos
23 v. Pacific Creditors Ass'n, 605 F.3d 665, 677-79 (9th Cir. 2010). For each item or
24 type of information, document, or thing sought to be filed or introduced under seal
25 in connection with a dispositive motion or trial, the party seeking protection must
26 articulate compelling reasons, supported by specific facts and legal justification,
27 for the requested sealing order. Again, competent evidence supporting the
28 application to file documents under seal must be provided by declaration.

1 Any document that is not confidential, privileged, or otherwise protectable
2 in its entirety will not be filed under seal if the confidential portions can be
3 redacted. If documents can be redacted, then a redacted version for public
4 viewing, omitting only the confidential, privileged, or otherwise protectable
5 portions of the document, shall be filed. Any application that seeks to file
6 documents under seal in their entirety should include an explanation of why
7 redaction is not feasible.

8 **I. Duration And Trial**

9 Once this case proceeds to trial, if the Protected Documents are used or
10 introduced as exhibits at trial, they will become public and will be presumptively
11 available to all members of the public, including the press, unless compelling
12 reasons supported by specific factual findings to proceed otherwise are made to the
13 trial judge in advance of the trial. See Kamakana, 447 F.3d at 1180-81
14 (distinguishing “good cause” showing for sealing documents produced in
15 discovery from “compelling reasons” standard when merits-related documents are
16 part of court record). Accordingly, the terms of this Stipulated Protective Order do
17 not extend beyond the commencement of the trial.

18 **J. Miscellaneous**

19 1. Right to Further Relief. Nothing in this Stipulated Protective Order
20 abridges the right of any person to seek its modification by the Court in the future.

21 2. Right to Assert Other Objections. By stipulating to the entry of this
22 Protective Order, no party waives any right it otherwise would have to object to
23 disclosing or producing any information or item on any ground not addressed in
24 this Stipulated Protective Order. Similarly, no party waives any right to object on
25 any ground to use in evidence of any of the material covered by this Protective
26 Order.

27 3. The parties stipulate to the authenticity of the Protected Documents,
28 but do not stipulate to their admissibility.

1 **K. Final Disposition**

2 After the final disposition of this action, within 60 days of a written request
3 by the City of Seal Beach, the plaintiff must return all Protected Documents to the
4 City of Seal Beach or destroy such material. As used in this subdivision, “all
5 Protected Documents” includes all copies, abstracts, compilations, summaries, and
6 any other format reproducing or capturing any of the Protected Documents.

7 Whether the Protected Documents are returned or destroyed, the plaintiff must
8 submit a written certification to the City of Seal Beach by the 60 day deadline that:
9 (1) identifies (by category, where appropriate) all the Protected Documents that
10 were returned or destroyed; and (2) affirms that the plaintiff has not retained any
11 copies, abstracts, compilations, summaries, or any other format reproducing or
12 capturing any of the Protected Documents.

13 **L. Violation**

14 Any violation of this Stipulated Protective Order may be punished by
15 appropriate measures including, without limitation, contempt proceedings and/or
16 monetary sanctions.

17 IT IS SO STIPULATED.

18
19 DATED: November 9, 2018

CARPENTER, ROTHANS & DUMONT

/s/ Danielle Foster

20
21 By: _____

MARK D. RUTTER
DANIELLE C. FOSTER
Attorneys for Defendants

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23
24
25 DATED: November 9, 2018

LAW OFFICES OF GABRIEL H. AVINA

/s/ Gabriel Avina

26
27 By: _____

GABRIEL H. AVINA
Attorney for Plaintiff

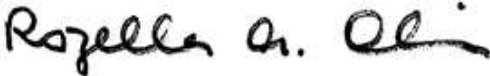
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Local Rule 5-4.3.4

All signatories listed above, and on whose behalf this filing is submitted, concur in the filing's content and have authorized the filing.

ON GOOD CAUSE SHOWN, IT IS SO ORDERED.

DATED: November 13, 2018



HONORABLE ROZELLA A. OLIVER
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
5 penalty of perjury that I have read in its entirety and understand the Stipulated
6 Protective Order that was issued by the United States District Court for the Central
7 District of California on _____ [date] in the case of William McGrann v. City
8 of Seal Beach, et al., case no.: SA CV17-941-VBF-RAOx.

9 I agree to comply with and to be bound by all the terms of this Stipulated
10 Protective Order and I understand and acknowledge that failure to so comply could
11 expose me to sanctions and punishment in the nature of contempt. I solemnly
12 promise that I will not disclose in any manner any information or item that is
13 subject to this Stipulated Protective Order to any person or entity except in strict
14 compliance with the provisions of this Order.

15 I further agree to submit to the jurisdiction of the United States District
16 Court for the Central District of California for enforcing the terms of this
17 Stipulated Protective Order, even if such enforcement proceedings occur after
18 termination of this action.

19 I hereby appoint _____ [print or type full name] of
20 _____ [print or type full address and
21 telephone number] as my California agent for service of process in connection with
22 this action or any proceedings related to enforcement of this Stipulated Protective
23 Order.

24
25 Date: _____

26 City and State where sworn and signed: _____

27 Printed name: _____

28 Signature: _____