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8 **IN THE UNITED STATES DISTRICT COURT**
9 **FOR THE EASTERN DISTRICT OF CALIFORNIA**

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|----|-------------------------------------|---|-----------------------------------|
| 11 | GABRIELLE RODRIGUEZ, |) | CASE NO. 1:09-CV-01176-AWI-GSA |
| 12 | Plaintiff, |) | STIPULATION AND PROTECTIVE |
| 13 | vs. |) | ORDER AUTHORIZING LIMITED |
| 14 | CITY OF FRESNO, JERRY DYER, ROBERT |) | DISCLOSURE OF CONFIDENTIAL |
| 15 | CHAVEZ and DOES 1 to 20, inclusive, |) | FRESNO POLICE DEPARTMENT |
| 16 | Defendants. |) | RECORDS |
| 17 | |) | Complaint Filed: 07/16/09 |
| | |) | Trial Date: March 29, 2011 |

18 IT IS HEREBY STIPULATED between the parties, through their respective counsel, and
19 ordered by this Court, that the following documents will be disclosed pursuant to this stipulation and
20 protective order:

- 21 **1. Fresno Police Department Standing Orders regarding relevant policies and**
- 22 **procedures;**
- 23 **2. Relevant Fresno Police Department Training Materials;**
- 24 **3. Recordings of Dispatch Communication and 911 calls; and**
- 25 **4. Photographs of and toxicology reports related to Danny Hernandez.**

26 The above-named documents which are maintained by the Fresno City Police Department and
27 requested by plaintiff through discovery, may be disclosed to counsel for the parties pursuant to the
28 protective order detailed below. The documents requested by plaintiff contain information which is

Stipulated Protective Order

1 deemed confidential. The release of these documents pursuant to this Stipulation and Protective
2 Order does not waive the confidentiality privilege protecting the above-named document from general
3 disclosure.

4 Based on the foregoing, IT IS HEREBY STIPULATED:

5 1. The “Confidential” documents shall be used solely in connection with this litigation
6 in the preparation and trial of this case, or any related proceeding, and not for any other purpose or
7 in any other litigation. The party producing the documents described above may designate them by
8 affixing a mark labeling the documents as “Confidential - Subject to Protective Order” (with the
9 exception of photographs) provided that such marking does not obscure or obliterate the content of
10 any document. In the event an issue arises regarding a document’s designation, the parties will
11 attempt to resolve it informally before seeking the Court’s intervention.

12 2. The documents identified in this protective order may be disclosed only to the
13 following persons:

- 14 a) the counsel for any party to this action;
- 15 b) paralegal, stenographic, clerical, and secretarial personnel regularly employed by
16 counsel referred to in (a);
- 17 c) court personnel including stenographic reporters engaged in proceedings as are
18 necessarily incidental to preparation for the trial of this action;
- 19 d) any outside expert or consultant retained in connection with this action and not
20 otherwise employed by either party;
- 21 e) any in-house expert designated by defendants to testify at trial in this matter;
- 22 f) witnesses may have the information disclosed to them during deposition
23 proceedings; the witnesses shall be bound by the provisions of paragraph 3;
- 24 g) the finder of fact at the time of trial subject to the court’s rulings on in limine
25 motions and objections of counsel;

26 3. Each person to whom the “confidential” documents or any portion thereof is provided,
27 with the exception of counsel who are presumed to know of the contents of this protective order shall,
28 prior to the time of disclosure, be provided by the person furnishing him/her such information, a copy

1 of this order, and shall agree on the record or in writing that he/she has read the protective order and
2 that he/she understands the provisions of the protective order. Such person must also consent to be
3 subject to the jurisdiction of the United States District Court for the Eastern District of California with
4 respect to any proceeding related to enforcement of this order, including without limitation, any
5 proceeding for contempt. Plaintiff's counsel shall be responsible for internally tracking the identities
6 of those individuals to whom copies of documents marked "Confidential" are given. The defendants
7 may not request the identities of said individuals, however, until the final termination of the litigation
8 or if defendants, in good faith, are able to demonstrate that Plaintiff, or an agent thereof, has breached
9 the Stipulated Protective Order. Provisions of this order insofar as they restrict disclosure and use
10 of the material shall be in effect until further order of this Court. Should the case proceed to trial, the
11 designation and treatment of the confidential information will be revisited. This stipulation and
12 protective order shall not be used as a basis for excluding any evidence at the trial of this matter.

13 4. Confidential information and/or documents that a party intends to use in support of
14 or in opposition to a pre-trial filing with the Court must be filed in accordance with the Eastern
15 District of California Local Rules relating to under seal filings. Any document filed with the Court
16 that includes confidential information shall be submitted under sealed label with a cover sheet as
17 follows: "This document is subject to a protective order issued by the Court and may not be copied
18 or examined except in compliance with that order." Such document shall be kept by the Court under
19 seal and made available only to the Court or counsel.

20 5. Should any document designated confidential be disclosed, through inadvertence or
21 otherwise, to any person not authorized to receive it under this Protective Order, the disclosing
22 person(s) shall promptly (a) inform the City of Fresno of the recipient(s) and the circumstances of the
23 unauthorized disclosure to the relevant producing person(s) and (b) use best efforts to bind the
24 recipient(s) to the terms of this Protective Order. No information shall lose its confidential status
25 because it was disclosed to a person not authorized to receive it under this Protective Order.

26 6. After the conclusion of this litigation, the documents, in whatever form stored or
27 reproduced, containing "confidential" information will remain confidential, and if filed with the
28 Court, shall remain under seal. All parties also ensure that all persons to whom "confidential"

1 documents were disclosed shall return the documents to counsel for the producing party. The
2 conclusion of this litigation means termination of the case following applicable post-trial motions,
3 appeal and/or retrial. After the conclusion of this litigation, all confidential documents received under
4 the provisions of this Protective Order, including all copies made, shall be tendered back to the
5 attorneys for the defendants in a manner in which the City of Fresno will be able to reasonably
6 identify that all documents were returned.

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8 **IT IS SO STIPULATED:**

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10 DATED: May 19, 2010

WEAKLEY, ARENDT & McGUIRE, LLP

11
12 By: /s/ Rosemary T. McGuire
Rosemary T. McGuire
13 Attorney for Defendants

14 DATED: May 19, 2010

BRACAMONTES & VLASAK, P.C.

15
16 By: /s/ Michael R. Bracamontes
17 Michael R. Bracamontes
Attorney for Plaintiff

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19 IT IS SO ORDERED.

20 Dated: May 20, 2010

/s/ Gary S. Austin
UNITED STATES MAGISTRATE JUDGE