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

11	GABRIELLE RODRIGUEZ,)	CASE NO. 1:09-CV-01176-AWI-GSA
12	Plaintiff,)	
13	vs.)	STIPULATION AND ORDER RE
14	CITY OF FRESNO, JERRY DYER, ROBERT)	DISCOVERY DISPUTE CONCERNING
15	CHAVEZ and DOES 1 to 20, inclusive,)	CONFIDENTIAL DOCUMENTS
16	Defendants.)	INCLUDING PERSONNEL RECORDS;
17)	AND PROTECTIVE ORDER

18 Pursuant to the Court’s order the parties, through their respective counsel, met and conferred
19 regarding the discovery dispute set forth in the Amended Joint Statement Regarding Discovery
20 Dispute filed July 28, 2010. After meeting and conferring the parties agreed to the disclosure of the
21 following records maintained in and/or considered part of the personnel file of Officer Robert
22 Chavez:

- 23 1. Internal Affairs/Administrative investigation reports, in which Robert Chavez is the
24 subject of a complaint which involve use of force, lack of truth and/or veracity, preparing false or
25 inaccurate reports or actions which violate the civil rights of a citizen. Defendant may withhold
26 compelled statements of other police officers contained in the report(s) however the officers’ names
27 and business contact information will be disclosed. It was further agreed that complaints regarding
28

Stipulation and Order including Protective Order
Regarding Joint Discovery Dispute

1 Officer Chavez, that do not involve the categories above, will be delineated in a privilege log to be
2 submitted under seal to the Court to make a determination if there is some relevance to the issues in
3 the case, and should be disclosed.

4 2. Employment evaluations;

5 3. Reports of discipline and letters of commendation; and

6 4. Training records.

7 5. The Internal Affairs investigation/review of the subject incident, excluding compelled
8 statements from Fresno police officers.

9 6. Any other documents in Officer Chavez's personnel file that relate to or involve the
10 use of force, lack of truth and/or veracity, preparing false or inaccurate reports or actions which
11 violate the civil rights of a citizen.

12 The court ordered that the time frame for which the records are to be disclosed is ten (10)
13 years.

14 In addition, it was agreed that Use of Force reports concerning Officer Chavez for three (3)
15 years prior to the subject incident, will be produced.

16 It was further agreed and ordered that the documents identified in this protective order, with
17 the exception of the Internal Affairs investigation/review of the subject incident, would be produced
18 within 30 days of the hearing on this motion. The Internal Affairs investigation/review of the subject
19 incident, excluding compelled statements from Fresno police officers, will be produced upon
20 completion.

21 The release of these confidential documents will be pursuant to the following Protective
22 Order:

23 PROTECTIVE ORDER

24 1. The "Confidential" documents shall be used solely in connection with this litigation
25 in the preparation and trial of this case, or any related proceeding, and not for any other purpose or
26 in any other litigation. The party producing the documents described above may designate them by
27 affixing a mark labeling the documents as "Confidential - Subject to Protective Order" (with the
28 exception of photographs) provided that such marking does not obscure or obliterate the content of

1 any document. In the event an issue arises regarding a document's designation, the parties will
2 attempt to resolve it informally before seeking the Court's intervention.

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

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

17 The confidential documents are not to be disclosed to Gabrielle Rodriguez or Danny
18 Hernandez outside of trial at which time the issue will be addressed with the court.

19 3. Each person to whom the "confidential" documents or any portion thereof is provided,
20 with the exception of counsel who are presumed to know of the contents of this protective order shall,
21 prior to the time of disclosure, be provided by the person furnishing him/her such information, a copy
22 of this order, and shall agree on the record or in writing that he/she has read the protective order and
23 that he/she understands the provisions of the protective order. Such person must also consent to be
24 subject to the jurisdiction of the United States District Court for the Eastern District of California with
25 respect to any proceeding related to enforcement of this order, including without limitation, any
26 proceeding for contempt. Plaintiff's counsel shall be responsible for internally tracking the identities
27 of those individuals to whom copies of documents marked "Confidential" are given. The defendants
28 may not request the identities of said individuals, however, until the final termination of the litigation

1 or if defendants, in good faith, are able to demonstrate that Plaintiff, or an agent thereof, has breached
2 the Stipulated Protective Order. Provisions of this order insofar as they restrict disclosure and use
3 of the material shall be in effect until further order of this Court. Should the case proceed to trial, the
4 designation and treatment of the confidential information will be revisited. This stipulation and
5 protective order shall not be used as a basis for excluding any evidence at the trial of this matter.

6 4. Any documents or information submitted to the Court that reveals confidential material
7 shall be submitted under seal pursuant to Local Rules 39-140 and 39-141. Any document filed with
8 the Court that includes confidential information shall be submitted under sealed label with a cover
9 sheet as follows: "This document is subject to a protective order issued by the Court and may not be
10 copied or examined except in compliance with that order." Such document shall be kept by the Court
11 under seal and made available only to the Court or counsel.

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

18 6. After the conclusion of this litigation, the documents, in whatever form stored or
19 reproduced, containing "confidential" information will remain confidential, and if filed with the
20 Court, shall remain under seal. All parties also ensure that all persons to whom "confidential"
21 documents were disclosed shall return the documents to counsel for the producing party. The
22 conclusion of this litigation means termination of the case following applicable post-trial motions,
23 appeal and/or retrial. After the conclusion of this litigation, all confidential documents received under
24 the provisions of this Protective Order, including all copies made, shall be tendered back to the
25 attorneys for the defendants in a manner in which the City of Fresno will be able to reasonably
26 identify that all documents were returned.

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IT IS SO STIPULATED:

DATED: August 6, 2010

WEAKLEY, ARENDT & MCGUIRE, LLP

By: /s/ Rosemary T. McGuire
Rosemary T. McGuire
Attorney for Defendants

DATED: August 6, 2010

BRACAMONTES & VLASAK, P.C.

By: /s/ Michael R. Bracamontes
Michael R. Bracamontes
Attorney for Plaintiff

IT IS SO ORDERED.

Dated: August 9, 2010

/s/ Gary S. Austin
UNITED STATES MAGISTRATE JUDGE