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7 Attorneys for Defendants, CITY OF FRESNO and ROBERT CHAVEZ

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

11	GABRIELLE RODRIGUEZ,	)	CASE NO. 1:09-CV-01176-AWI-MJS
12	Plaintiff,	)	
13	vs.	)	<b>STIPULATION AND PROTECTIVE</b>
14	CITY OF FRESNO, JERRY DYER, ROBERT	)	<b>ORDER RE DISCLOSURE OF</b>
15	CHAVEZ and DOES 1 to 20, inclusive,	)	<b>CONFIDENTIAL PERSONNEL</b>
16	Defendants.	)	<b>DOCUMENTS</b>
17	_____	)	

18 The parties, through their respective counsel, agree to a protective order concerning disclosure  
19 of the following records maintained in and/or considered part of the personnel file of Officer Derek  
20 Avila:

- 21 1. Use of force reports concerning Officer Avila within the previous three years.
- 22 2. Internal Affairs reports or reports of discipline, in which Derek Avila is the subject of  
23 a complaint which involves use of force, lack of truth and/or veracity, preparing false or inaccurate  
24 reports or actions which violate the civil rights of a citizen within the last ten years. Defendant may  
25 withhold compelled statements of other police officers contained in the report(s) however the officers'  
26 names and business contact information will be disclosed.
- 27 3. Citizen complaints or any other documents in Derek Avila's personnel file that relate  
28 to or involve use of force, lack of truth and/or veracity, preparing false or inaccurate reports or actions

\_\_\_\_\_  
Stipulation and Protective Order

1 which violate the civil rights of a citizen within the last ten years.

2 The release of these confidential documents will be pursuant to the following Protective  
3 Order:

4 PROTECTIVE ORDER

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

28 3. Each person to whom the “confidential” documents or any portion thereof is provided,

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

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

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

27 6. After the conclusion of this litigation, the documents, in whatever form stored or  
28 reproduced, containing "confidential" information will remain confidential, and if filed with the

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

8  
9 **IT IS SO STIPULATED:**

10 DATED: December 20, 2010

WEAKLEY, ARENDT & MCGUIRE, LLP

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

14 DATED: December 20, 2010

BRACAMONTES & VLASAK, P.C.

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

18  
19 **ORDER**

20  
21 IT IS SO ORDERED.

22 Dated: December 22, 2010

/s/ Michael J. Seng  
23 UNITED STATES MAGISTRATE JUDGE