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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

HARVEY HOLCOMB,

Plaintiff,

v.

JERRY RAMAR, a Modesto police officer;
OFFICER KROUTIL, a Modesto police officer;
OFFICER COX, a Modesto police officer;
OFFICER BOTTOMS, a Modesto police
officer; OFFICER CICCARELLI, a Modesto
police officer; J. CHANDLER, a Modesto
police officer; JOHN DOE and RICHARD
ROE, Modesto police officers, the true names
and exact numbers of whom are unknown at this
time; CITY OF MODESTO, a municipal
corporation,

Defendants.

Case No: 13-cv-01102-AWI-SKO

**AMENDED STIPULATION AND
PROTECTIVE ORDER**

1 **1. PURPOSES AND LIMITATIONS**

2 Disclosure and discovery activity in this action are likely to involve production of
3 confidential, proprietary, or private information for which special protection from public
4 disclosure and from use for any purpose other than prosecuting this litigation may be warranted.
5 Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated
6 Protective Order. The parties acknowledge that this Order does not confer blanket protections on
7 all disclosures or responses to discovery and that the protection it affords from public disclosure
8 and use extends only to the limited information or items that are entitled to confidential treatment
9 under the applicable legal principles. The parties further acknowledge, as set forth in Section 12.3,
10 below, that this Stipulated Protective Order does not entitle them to file confidential information
11 under seal; the Civil Local Rules set forth the procedures that must be followed and the standards
12 that will be applied when a party seeks permission from the court to file material under seal.

13 Pursuant to Local Rule 141.1, the parties believe that the confidential, proprietary, or
14 private information likely to be produced in this action consists of records in police officer
15 personnel files relating to the individual Defendants. Federal courts recognize police officers’
16 strong privacy interest in their personnel records, but nonetheless sometimes order records in
17 police officer personnel files produced subject to a protective order in litigation alleging excessive
18 force under 42 U.S.C. Section 1983, which is alleged in this case. *See, e.g., Soto v. City of*
19 *Concord*, 162 F.R.D. 603, 617 (N.D. Cal. 1995) (discussing cases and ordering production of
20 personnel records pursuant to a “tightly drawn” protective order). Defendants are unwilling to
21 produce highly sensitive materials in their personnel files without a protective order entered by
22 this Court.

23 The parties seek a court-entered protective order governing the production of this
24 confidential information. The production and handling of information produced pursuant to the
25 Court’s order will be governed by the following terms of this protective order.

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1 **2. DEFINITIONS**

2 2.1 Challenging Party: a Party or Non-Party that challenges the designation of
3 information or items under this Order.

4 2.2 “CONFIDENTIAL” Information or Items: information (regardless of how it is
5 generated, stored or maintained) or tangible things that qualify for protection under Federal Rule
6 of Civil Procedure 26(c).

7 2.3 Counsel (without qualifier): Outside Counsel of Record and House Counsel (as
8 well as their support staff).

9 2.4 Designating Party: a Party or Non-Party that designates information or items that it
10 produces in disclosures or in responses to discovery as “CONFIDENTIAL.”

11 2.5 Disclosure or Discovery Material: all items or information, regardless of the
12 medium or manner in which it is generated, stored, or maintained (including, among other things,
13 testimony, transcripts, and tangible things), that are produced or generated in disclosures or
14 responses to discovery in this matter.

15 2.6 Expert: a person with specialized knowledge or experience in a matter pertinent to
16 the litigation who has been retained by a Party or its counsel to serve as an expert witness or as a
17 consultant in this action.

18 2.7 House Counsel: attorneys who are employees of a party to this action. House
19 Counsel does not include Outside Counsel of Record or any other outside counsel.

20 2.8 Non-Party: any natural person, partnership, corporation, association, or other legal
21 entity not named as a Party to this action.

22 2.9 Outside Counsel of Record: attorneys who are not employees of a party to this
23 action but are retained to represent or advise a party to this action and have appeared in this action
24 on behalf of that party or are affiliated with a law firm which has appeared on behalf of that party.

25 2.10 Party: any party to this action, including all of its officers, directors, employees,
26 consultants, retained experts, and Outside Counsel of Record (and their support staffs).

27 2.11 Producing Party: a Party or Non-Party that produces Disclosure or Discovery
28 Material in this action.

1 2.12 Professional Vendors: persons or entities that provide litigation support services
2 (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations, and
3 organizing, storing, or retrieving data in any form or medium) and their employees and
4 subcontractors.

5 2.13 Protected Material: any Disclosure or Discovery Material that is designated as
6 “CONFIDENTIAL.”

7 2.14 Receiving Party: a Party that receives Disclosure or Discovery Material from a
8 Producing Party.

9 **3. SCOPE**

10 The protections conferred by this Stipulation and Order cover not only Protected Material
11 (as defined above), but also (1) any information copied or extracted from Protected Material; (2)
12 all copies, excerpts, summaries, or compilations of Protected Material; and (3) any testimony,
13 conversations, or presentations by Parties or their Counsel that might reveal Protected Material.
14 However, the protections conferred by this Stipulation and Order do not cover the following
15 information: (a) any information that is in the public domain at the time of disclosure to a
16 Receiving Party or becomes part of the public domain after its disclosure to a Receiving Party as a
17 result of publication not involving a violation of this Order, including becoming part of the public
18 record through trial or otherwise; and (b) any information known to the Receiving Party prior to
19 the disclosure or obtained by the Receiving Party after the disclosure from a source who obtained
20 the information lawfully and under no obligation of confidentiality to the Designating Party. Any
21 use of Protected Material at trial shall be governed by a separate agreement or order.

22 **4. DURATION**

23 Even after final disposition of this litigation, the confidentiality obligations imposed by this
24 Order shall remain in effect until a Designating Party agrees otherwise in writing or a court order
25 otherwise directs. Final disposition shall be deemed to be the later of (1) dismissal of all claims
26 and defenses in this action, with or without prejudice; and (2) final judgment herein after the
27 completion and exhaustion of all appeals, rehearings, remands, trials, or reviews of this action,
28 including the time limits for filing any motions or applications for extension of time pursuant to

1 applicable law.

2 **5. DESIGNATING PROTECTED MATERIAL**

3 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each Party
4 or Non-Party that designates information or items for protection under this Order must take care to
5 limit any such designation to specific material that qualifies under the appropriate standards. The
6 Designating Party must designate for protection only those parts of material, documents, items, or
7 oral or written communications that qualify – so that other portions of the material, documents,
8 items, or communications for which protection is not warranted are not swept unjustifiably within
9 the ambit of this Order.

10 Mass, indiscriminate, or routinized designations are prohibited. Designations that are
11 shown to be clearly unjustified or that have been made for an improper purpose (e.g., to
12 unnecessarily encumber or retard the case development process or to impose unnecessary
13 expenses and burdens on other parties) expose the Designating Party to sanctions.

14 If it comes to a Designating Party's attention that information or items that it designated
15 for protection do not qualify for protection, that Designating Party must promptly notify all other
16 Parties that it is withdrawing the mistaken designation.

17 5.2 Manner and Timing of Designations. Except as otherwise provided in this Order
18 (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered,
19 Disclosure or Discovery Material that qualifies for protection under this Order must be clearly so
20 designated before the material is disclosed or produced.

21 Designation in conformity with this Order requires:

22 (a) for information in documentary form (e.g., paper or electronic documents, but
23 excluding transcripts of depositions or other pretrial or trial proceedings), that the Producing Party
24 affix the legend "CONFIDENTIAL" to each page that contains protected material. If only a
25 portion or portions of the material on a page qualifies for protection, the Producing Party also must
26 clearly identify the protected portion(s) (e.g., by making appropriate markings in the margins).

27 A Party or Non-Party that makes original documents or materials available for inspection
28 need not designate them for protection until after the inspecting Party has indicated which material

1 it would like copied and produced. During the inspection and before the designation, all of the
2 material made available for inspection shall be deemed “CONFIDENTIAL.” After the inspecting
3 Party has identified the documents it wants copied and produced, the Producing Party must
4 determine which documents, or portions thereof, qualify for protection under this Order. Then,
5 before producing the specified documents, the Producing Party must affix the “CONFIDENTIAL”
6 legend to each page that contains Protected Material. If only a portion or portions of the material
7 on a page qualifies for protection, the Producing Party also must clearly identify the protected
8 portion(s) (e.g., by making appropriate markings in the margins).

9 (b) for testimony given in deposition or in other pretrial or trial proceedings, that the
10 Designating Party identify on the record, before the close of the deposition, hearing, or other
11 proceeding, all protected testimony.

12 (c) for information produced in some form other than documentary and for any other
13 tangible items, that the Producing Party affix in a prominent place on the exterior of the container
14 or containers in which the information or item is stored the legend “CONFIDENTIAL.” If only a
15 portion or portions of the information or item warrant protection, the Producing Party, to the
16 extent practicable, shall identify the protected portion(s).

17 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
18 designate qualified information or items does not, standing alone, waive the Designating Party’s
19 right to secure protection under this Order for such material. Upon timely correction of a
20 designation, the Receiving Party must make reasonable efforts to assure that the material is treated
21 in accordance with the provisions of this Order.

22 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

23 6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation of
24 confidentiality at any time. Unless a prompt challenge to a Designating Party’s confidentiality
25 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic
26 burdens, or a significant disruption or delay of the litigation, a Party does not waive its right to
27 challenge a confidentiality designation by electing not to mount a challenge promptly after the
28 original designation is disclosed.

1 6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution
2 process by providing written notice of each designation it is challenging and describing the basis
3 for each challenge. To avoid ambiguity as to whether a challenge has been made, the written
4 notice must recite that the challenge to confidentiality is being made in accordance with this
5 specific paragraph of the Protective Order. The parties shall attempt to resolve each challenge in
6 good faith and must begin the process by conferring directly (in voice to voice dialogue; other
7 forms of communication are not sufficient) within 14 days of the date of service of notice. In
8 conferring, the Challenging Party must explain the basis for its belief that the confidentiality
9 designation was not proper and must give the Designating Party an opportunity to review the
10 designated material, to reconsider the circumstances, and, if no change in designation is offered, to
11 explain the basis for the chosen designation. A Challenging Party may proceed to the next stage of
12 the challenge process only if it has engaged in this meet and confer process first or establishes that
13 the Designating Party is unwilling to participate in the meet and confer process in a timely
14 manner.

15 6.3 Judicial Intervention. If the Parties cannot resolve a challenge without court
16 intervention, the Challenging Party may file a motion challenging a confidentiality designation at
17 any time if there is good cause for doing so, including a challenge to the designation of a
18 deposition transcript or any portions thereof. Any motion brought pursuant to this provision must
19 be accompanied by a competent declaration affirming that the movant has complied with the meet
20 and confer requirements imposed by the preceding paragraph.

21 Unless the Designating Party has waived the confidentiality designation by failing to file a
22 motion to retain confidentiality as described above, all parties shall continue to afford the material
23 in question the level of protection to which it is entitled under the Producing Party's designation
24 until the court rules on the challenge.

25 **7. ACCESS TO AND USE OF PROTECTED MATERIAL**

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

1 the categories of persons and under the conditions described in this Order. When the litigation has
2 been terminated, a Receiving Party must comply with the provisions of section 13 below (FINAL
3 DISPOSITION).

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

6 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise ordered
7 by the court or permitted in writing by the Designating Party, a Receiving Party may disclose any
8 information or item designated “CONFIDENTIAL” only to:

9 (a) the Receiving Party’s Outside Counsel of Record in this action, as well as employees
10 of said Outside Counsel of Record to whom it is reasonably necessary to disclose the information
11 for this litigation and who have signed the “Acknowledgment and Agreement to Be Bound” that is
12 attached hereto as Exhibit A;

13 (b) the officers, directors, and employees (including House Counsel) of the Receiving
14 Party to whom disclosure is reasonably necessary for this litigation and who have signed the
15 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

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

19 (d) the court and its personnel;

20 (e) court reporters and their staff, professional jury or trial consultants, mock jurors, and
21 Professional Vendors to whom disclosure is reasonably necessary for this litigation and who have
22 signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

23 (f) during their depositions, witnesses in the action to whom disclosure is reasonably
24 necessary and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A),

25 **unless otherwise agreed by the Designating Party or ordered by the court.** Pages of
26 transcribed deposition testimony or exhibits to depositions that reveal Protected Material must be
27 separately bound by the court reporter and may not be disclosed to anyone except as permitted
28 under this Stipulated Protective Order; and

1 (g) the author or recipient of a document containing the information or a custodian or
2 other person who otherwise possessed or knew the information.

3 **8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN**
4 **OTHER LITIGATION**

5 If a Party is served with a subpoena or a court order issued in other litigation that compels
6 disclosure of any information or items designated in this action as “CONFIDENTIAL,” that Party
7 must:

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

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

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

15 If the Designating Party timely seeks a protective order, the Party served with the subpoena
16 or court order shall not produce any information designated in this action as “CONFIDENTIAL”
17 before a determination by the court from which the subpoena or order issued, unless the Party has
18 obtained the Designating Party’s permission. The Designating Party shall bear the burden and
19 expense of seeking protection in that court of its confidential material – and nothing in these
20 provisions should be construed as authorizing or encouraging a Receiving Party in this action to
21 disobey a lawful directive from another court.

22 **9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN**
23 **THIS LITIGATION**

24 (a) The terms of this Order are applicable to information produced by a Non-Party in
25 this action and designated as “CONFIDENTIAL.” Such information produced by Non-Parties in
26 connection with this litigation is protected by the remedies and relief provided by this Order.
27 Nothing in these provisions should be construed as prohibiting a Non-Party from seeking
28 additional protections.

1 (b) In the event that a Party is required, by a valid discovery request, to produce a Non-
2 Party's confidential information in its possession, and the Party is subject to an agreement with the
3 Non-Party not to produce the Non-Party's confidential information, then the Party shall:
4 promptly notify in writing the Requesting Party and the Non-Party that some or all of the
5 information requested is subject to a confidentiality agreement with a Non-Party;
6 promptly provide the Non-Party with a copy of the Stipulated Protective Order in this litigation,
7 the relevant discovery request(s), and a reasonably specific description of the information
8 requested; and
9 make the information requested available for inspection by the Non-Party.

10 (c) If the Non-Party fails to object or seek a protective order from this court within 14
11 days of receiving the notice and accompanying information, the Receiving Party may produce the
12 Non-Party's confidential information responsive to the discovery request. If the Non-Party timely
13 seeks a protective order, the Receiving Party shall not produce any information in its possession or
14 control that is subject to the confidentiality agreement with the Non-Party before a determination
15 by the court.¹ Absent a court order to the contrary, the Non-Party shall bear the burden and
16 expense of seeking protection in this court of its Protected Material.

17 **10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

18 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected
19 Material to any person or in any circumstance not authorized under this Stipulated Protective
20 Order, the Receiving Party must immediately (a) notify in writing the Designating Party of the
21 unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the Protected
22 Material, (c) inform the person or persons to whom unauthorized disclosures were made of all the
23 terms of this Order, and (d) request such person or persons to execute the "Acknowledgment and
24 Agreement to Be Bound" that is attached hereto as Exhibit A.

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27 ¹ The purpose of this provision is to alert the interested parties to the existence of confidentiality
28 interests in this court.

1 **11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE**
2 **PROTECTED MATERIAL**

3 When a Producing Party gives notice to Receiving Parties that certain inadvertently
4 produced material is subject to a claim of privilege or other protection, the obligations of the
5 Receiving Parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This
6 provision is not intended to modify whatever procedure may be established in an e-discovery order
7 that provides for production without prior privilege review. Pursuant to Federal Rule of Evidence
8 502(d) and (e), insofar as the parties reach an agreement on the effect of disclosure of a
9 communication or information covered by the attorney-client privilege or work product protection,
10 the parties may incorporate their agreement in the stipulated protective order submitted to the
11 court.

12 **12. MISCELLANEOUS**

13 12.1 Right to Further Relief. Nothing in this Order abridges the right of any person to
14 seek its modification by the court in the future.

15 12.2 Right to Assert Other Objections. By stipulating to the entry of this Protective
16 Order no Party waives any right it otherwise would have to object to disclosing or producing any
17 information or item on any ground not addressed in this Stipulated Protective Order. Similarly, no
18 Party waives any right to object on any ground to use in evidence of any of the material covered
19 by this Protective Order.

20 12.3 Filing Protected Material. Without written permission from the Designating Party
21 or a court order secured after appropriate notice to all interested persons, a Party may not file in
22 the public record in this action any Protected Material. A Party that seeks to file under seal any
23 Protected Material must comply with the applicable Civil Local Rules and General Orders.
24 Protected Material may only be filed under seal pursuant to a court order authorizing the sealing of
25 the specific Protected Material at issue. A sealing order will issue only upon a request establishing
26 that the Protected Material at issue is privileged, protectable as a trade secret, or otherwise entitled
27 to protection under the law. If a Receiving Party's request to file Protected Material under seal is
28 denied by the court, then the Receiving Party may file the information in the public record unless

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ORDER

Good cause appearing, the Court hereby adopts the Stipulation of the parties as an Order of the Court.

IT IS SO ORDERED.

Dated: March 3, 2015

/s/ Sheila K. Oberto
UNITED STATES MAGISTRATE JUDGE

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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 Eastern District of California in the case of *Holcomb v. Ramar, et al.*, Case No: 13-cv-01102-AWI-SKO. 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 Eastern 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.

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

Date: _____

City and State where sworn and signed: _____

Printed name: _____

[printed name]

Signature: _____

[signature]

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