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**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA**

E.S., a minor, by and through her  
Guardian ad Litem, VALINE  
GONZALEZ, J.F., a minor, by and  
through his Guardian ad Litem,  
BRIDGET FLORES; in each case  
individually and as successor in interest  
to ARMANDO SANTIBANEZ, deceased;  
and MARIA MORENO, individually,

Plaintiffs,

v.

CITY OF VISALIA, TIM HAENER and  
DOES 2-10, inclusive.

Defendants.

CASE NO.: 1:13-cv-01697-LJO-BAM

**STIPULATED CONFIDENTIALITY  
AGREEMENT AND PROTECTIVE  
ORDER RE RELEASE OF PEACE  
OFFICER PERSONNEL RECORDS**

**I.**

**RECITALS**

WHEREAS, the parties stipulated to submit the personnel file of Defendant  
Police Officer TIM HAENER to the Court for an *in camera* review;

WHEREAS, following the *in camera* review, the Court has ordered  
Defendant CITY OF VISALIA to produce certain documents, which Defendants  
assert contain official information and information of a privileged, confidential,  
private, or sensitive nature;

1 WHEREAS, in order to protect the privacy rights of Defendant TIM HAENER  
2 and the integrity of the official information to be produced, the parties do hereby  
3 stipulate to the terms and conditions of a Protective Order, as follows:

4 **II.**

5 **STIPULATION**

6 **IT IS HEREBY STIPULATED, BY AND BETWEEN THE PARTIES**  
7 **HERETO, THROUGH THEIR RESPECTIVE ATTORNEYS OF RECORD, AS**  
8 **FOLLOWS:**

9 Defendant CITY OF VISALIA will produce the information ordered to be  
10 produced from the personnel files of Defendant TIM HAENER, pursuant to the  
11 following terms, conditions and limitations:

12 1. As used herein, "Confidential Information" means all of the following  
13 information:

- 14 (a) Performance Evaluation for July 2010-July 2011
- 15 (b) Performance Evaluation for July 2011-July 2012
- 16 (c) Performance Evaluation for July 2012-June 2013
- 17 (d) Performance Evaluation for July 2013-June 2014
- 18 (e) Letter dated February 27, 2014 from the Office of the Tulare  
19 County District Attorney
- 20 (f) Findings and Conclusions of the Deadly Force Review Board
- 21 (g) Confidential Interoffice Memorandum dated September 3, 2013
- 22 (h) Citizen complaint dated January 3, 2007 [sic]
- 23 (i) Witness statement dated December 26, 2007
- 24 (j) Two (2) letters dated September 16, 2008 to the complainants
- 25 (k) Copies of returned envelopes addressed to the complainants
- 26 (l) Letter dated February 1, 2008 from the Office of the Tulare  
27 County District Attorney
- 28 (m) Amended Misdemeanor Complaint

1 (n) File Memorandum dated January 31, 2008 from the Office of the  
2 Tulare County District Attorney

3 2. In order for the items listed in Paragraph 1 to be treated by the  
4 parties and the Court as Confidential Information, such information must be  
5 designated as Confidential Information as follows:

6 (a) In connection with the production of these materials and  
7 documents by the CITY OF VISALIA, a party or non-party witness shall designate  
8 such materials as Confidential Information by conspicuously marking each page  
9 that contains, reflects, or discloses such information as Confidential.

10 (b) Information disclosed during depositions may be designated  
11 as Confidential Information by the deponent or a party at the time of the  
12 deposition. Within (30) days after receipt of the deposition transcript, the  
13 deponent or a party may designate any additional portion of the deposition as  
14 Confidential Information by informing the other parties in writing of the specific  
15 pages of the transcript that contain Confidential Information.

16 (c) Any depositions referring to or using the disclosed documents  
17 as exhibits will be sealed and marked "Confidential – Subject to Protective Order".

18 3. Except as provided in Paragraphs 4 and 5, Confidential  
19 Information shall be disclosed, used, reviewed and/or discussed only by "qualified  
20 persons" as defined herein. For purposes of this Agreement "qualified persons"  
21 means:

22 (a) Legal counsel for each of the parties to this action, including  
23 secretarial, clerical or support personnel of such legal counsel.

24 (b) The Plaintiffs and each of the Defendants to the extent  
25 necessary for preparation of their respective cases for trial.

26 (c) Experts, advisors or consultants retained by counsel of record  
27 as necessary for trial preparation.

28 (d) Stenographic reporters and videographers.

1           4.       Prior to the disclosure of any Confidential Information to any  
2 qualified person described in paragraph 3(a), (b), (c) or (d), attorneys who seek to  
3 use or disclose such Confidential Information shall first provide a copy of this  
4 Stipulated Confidentiality Agreement and Protective Order and have the individual  
5 to whom counsel intends to disclose said Confidential Information sign the  
6 Certification Re Confidential Discovery Information set forth in Exhibit "A"  
7 acknowledging his/her agreement to be bound by its terms.

8           If Plaintiffs' counsel wishes to disclose Confidential Information to a person  
9 other than one designated in Paragraph 3, Plaintiffs' counsel shall serve a written  
10 request to Defendant CITY OF VISALIA's counsel stating the name of the proposed  
11 person, the reasons for disclosure, the information to be disclosed, and that the  
12 proposed person has read this Protective Order and has signed a copy of the  
13 Certification Re Confidential Discovery Information attached hereto as Exhibit "A"  
14 acknowledging his/her agreement to be bound by its terms. If Defendant CITY OF  
15 VISALIA'S counsel does not agree in writing to the disclosure within ten (10) days  
16 of being served with the request, then Plaintiffs' counsel may apply to this Court  
17 for relief from the provisions of this Protective Order.

18           5.       The court reporter and videographer, if any, who record all or part of  
19 the depositions in this matter of any CITY OF VISALIA defendant, or any other  
20 current or former employee of the Visalia Police Department, shall be subject to  
21 this Protective Order. In preparing the original deposition, videotape, audiotape,  
22 or portions thereof, any copies thereof, or portions of copies thereof, the  
23 Confidential Information and all testimony involving information derived from the  
24 Confidential Information, shall be segregated from the rest of the deposition. No  
25 copies of such segregated Confidential Information portions of the materials  
26 described above shall be provided to any persons other than those identified in  
27 paragraph 3.

28           6.       If any Confidential Information or testimony derived therefore, occurs

1 at a deposition, those attending the deposition shall be bound by this Protective  
2 Order and, therefore, shall not disclose to any person or entity, in any manner,  
3 including orally, any statements made by CITY OF VISALIA defendants, or any  
4 other current or former employee of the Visalia Police Department during the  
5 confidential sections of said deposition.

6 7. Confidential Information shall be disclosed only to persons  
7 permitted access to it pursuant to Paragraphs 3 and 4 above. Confidential  
8 Information shall be used only for purposes directly related to this litigation and  
9 shall not be used for any other purposes, including personal, business or  
10 commercial purposes. All copies of materials designated as "Confidential  
11 Information" given to a receiving party or its experts in discovery will be retained  
12 exclusively in the files of counsel or experts for the receiving party, with no  
13 copies of such materials being distributed to the receiving party or its employees  
14 for retention in such party's own business records or files.

15 8. There will be no public disclosure of any of the disclosed documents  
16 or the information contained therein absent a court order or written consent by  
17 counsel for Defendant CITY OF VISALIA. Any qualified person who has received  
18 Confidential Information and has been served with a lawful subpoena or other  
19 compulsory process, shall immediately give notice thereof to counsel for Defendant  
20 CITY OF VISALIA by telephone, electronic transmission or facsimile transmission,  
21 and shall furnish said counsel with a copy of the subpoena or other compulsory  
22 process so as to afford counsel for the CITY OF VISALIA a reasonable opportunity  
23 to seek a protective order. After application for a protective order is made, no  
24 qualified person shall produce any information prior to receiving a court order or  
25 the written consent from counsel for the CITY OF VISALIA.

26 9. If any party wishes to file, lodge and/or make use of any Confidential  
27 Information in connection with any court proceeding herein, that party shall  
28 comply with United States District Court, Eastern District of California. Local Rule

1 141 and make the proper motion or application for an order sealing the  
2 Confidential Information. Confidential documents lodged for a hearing shall be  
3 returned to the party offering the same immediately following the hearing. If  
4 Confidential Information is filed with the Court, it shall be filed with the Clerk of  
5 the Court in a sealed envelope marked with the caption and case number of the  
6 case, a schedule of contents, and the following notation:

7                               Contains Confidential Information:  
8                               “To Be Opened Only By Or As Directed By The Court”

9 No sealed or confidential record maintained by the Court Clerk shall be disclosed  
10 except upon written order of the Court.

11           10. Prior to use of the disclosed documents or sealed deposition  
12 transcripts in court, the party intending to introduce such documents must give  
13 24-hours’ notice to opposing counsel. Opposing counsel will have an opportunity  
14 to raise objections to their use *in camera*, to obtain a ruling on their admissibility  
15 prior to their introduction in open court.

16           11. Disclosure to each other of any documents, business records or  
17 other confidential information of any kind by any qualified person or party to this  
18 litigation, at any time hereafter and through conclusion of this litigation, shall not  
19 constitute public disclosure of any such information so as to negate, waive or  
20 abandon any party’s claim that such documents, business records or information  
21 constitute confidential information.

22           12. This Protective Order does not constitute any ruling on any potential  
23 objection to the admissibility of any document.

24           13. This Protective Order only applies to the documents identified by the  
25 Court’s Order dated March 11, 2015 [Doc. 60] and is without prejudice to the  
26 Plaintiffs’ to request the Court’s reconsideration as to their confidentiality.

27           14. This Protective Order shall survive the termination of this action.

28           15. After the conclusion of this litigation, Plaintiffs’ counsel and all

1 other persons to whom Confidential Information was disclosed, shall not disclose  
2 or communicate to, or discuss with, any other person any portion of such  
3 Confidential Information. Within sixty (60) days after the resolution or  
4 conclusion of this litigation, all Confidential Information under the control or  
5 possession of all qualified persons shall be returned to counsel for the CITY OF  
6 VISALIA, or destroyed, with confirmation of destruction provided to counsel for  
7 the CITY OF VISALIA, in lieu of return.

8 16. Any violation of this Protective Order may be punished by any and  
9 all appropriate measures including, without limitation, contempt proceedings  
10 and/or monetary sanctions.

11 17. Any procedures specified above in this Protective Order are in  
12 addition to, and not in lieu of, compliance with this Court's local rules regarding  
13 discovery motions.

14 DATED: March 20, 2015

LAW OFFICES OF DALE K. GALIPO  
LAW OFFICES OF NIKOLAUS W. REED  
QUIRK LAW GROUP

15 By: /s/ Dale K. Galipo  
16 DALE K. GALIPO  
17 NIKOLAUS W. REED  
18 LOGAN QUIRK  
19 Attorneys for Plaintiffs

20 DATED: March 20, 2015

HERR PEDERSEN & BERGLUND LLP

21 By: /s/ Leonard C. Herr  
22 LEONARD C. HERR  
23 Attorney for Defendants

24 **ORDER**

25 IT IS SO ORDERED.

26 Dated: March 23, 2015

/s/ Barbara A. McAuliffe  
27 UNITED STATES MAGISTRATE JUDGE  
28

1 **EXHIBIT A**

2 **CERTIFICATION RE CONFIDENTIAL DISCOVERY INFORMATION**

3  
4 I hereby acknowledge that I, \_\_\_\_\_ am  
5 about to receive Confidential Information supplied in connection with the matter  
6 of E.S., et al., v. City of Visalia, et al., United States District Court Case No: 1:13-  
7 cv-01697-LJO-BAM.

8 I certify that I understand that the Confidential Information provided to me  
9 is subject to the terms and restrictions of the Stipulated Confidentiality Agreement  
10 and Protective Order Re Release of Peace Officer Personnel Records filed in this  
11 action. I have been given a copy of the Stipulated Confidentiality Agreement and  
12 Protective Order Re Release of Peace Officer Personnel Records, I have read it, and  
13 I agree to be bound by its terms.

14 I understand that Confidential Information, as defined in the Stipulated  
15 Confidentiality Agreement and Protective Order Re Release Of Peace Officer  
16 Personnel Records, including any notes or other records that may be made  
17 regarding any such materials, shall not be disclosed to anyone except as expressly  
18 permitted by the Stipulated Confidentiality Agreement and Protective Order Re  
19 Release of Peace Officer Personnel Records. I will not copy or use, except solely for  
20 the purposes of this action, any Confidential Information obtained pursuant to  
21 this Protective Order, except as provided therein or otherwise ordered by the Court  
22 in this proceeding.

23 I further understand that I am to retain all copies of all Confidential  
24 Information provided to me in this action in a secure manner, and that all copies  
25 of such materials are to remain in my personal custody until termination of my  
26 participation in this action, whereupon the copies of such materials will be  
27 returned to counsel who provided me with such materials.



1 I declare under penalty of perjury, under the laws of the State of California,  
2 that the foregoing is true and correct.

3 Executed this \_\_\_\_ day of \_\_\_\_\_, 2015, at \_\_\_\_\_.

4  
5 BY: \_\_\_\_\_  
6 Signature

7 \_\_\_\_\_  
8 Title

9 \_\_\_\_\_  
10 Address

11 \_\_\_\_\_  
12 City, State, Zip

13 \_\_\_\_\_  
14 Telephone Number