

1 Susan E. Coleman (SBN 171832)
E-mail: scoleman@bwslaw.com
2 Nathan A. Oyster (SBN 225307)
E-mail: noyster@bwslaw.com
3 BURKE, WILLIAMS & SORENSEN, LLP
444 South Flower Street, Suite 2400
4 Los Angeles, CA 90071-2953
Tel: 213.236.0600; Fax: 213.236.2700

5 Attorneys for Defendants
6 CITY OF MODESTO, OFFICER DAVID
7 WATSON and OFFICER RANDALL W.
BOLINGER

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

10
11 JACK SMITH,

12 Plaintiff,

13 v.

14 CITY OF MODESTO, a municipal
15 corporation; Modesto Police
Department Officers DAVID
16 WATSON (#11078) and RANDALL
W. BOLINGER (#10069),
17 individually; and DOES 1 through
50, Jointly and Severally,

18 Defendants.

Case No. 1:14-cv-01285-LJO-MJS

**STIPULATED PROTECTIVE
ORDER**

Hon. Lawrence J. O'Neill

19
20 TO THE COURT, ALL PARTIES, AND THEIR ATTORNEYS OF RECORD:

21 Plaintiff JACK SMITH (“Plaintiff”) and Defendants CITY OF MODESTO,
22 OFFICER DAVID WATSON, and OFFICER RANDALL W. BOLINGER
23 (“Defendants”) (collectively also referred to as “the Parties) hereby stipulate,
24 through their respective counsel of record, to the following:

25 **1. INTRODUCTION**

26 **A. PURPOSES AND LIMITATIONS**

27 Discovery in this action is likely to involve production of confidential,
28 proprietary, or private information for which special protection from public

1 disclosure and from use for any purpose other than prosecuting this litigation may
2 be warranted. Accordingly, the parties hereby stipulate to and petition the Court to
3 enter the following Stipulated Protective Order. The parties acknowledge that this
4 Order does not confer blanket protections on all disclosures or responses to
5 discovery and that the protection it affords from public disclosure and use extends
6 only to the limited information or items that are entitled to confidential treatment
7 under the applicable legal principles.

8 **B. GOOD CAUSE STATEMENT**

9 This action is likely to involve the production of peace officer personnel
10 materials, including but not limited to citizen complaints and internal affairs
11 investigation materials for which special protection from public disclosure and from
12 use for any purpose other than prosecution of this action is warranted. Such
13 confidential and proprietary materials and information consist of, among other
14 things, information otherwise generally unavailable to the public, or which may be
15 privileged or otherwise protected from disclosure under state or federal statutes,
16 court rules, case decisions, or common law. Accordingly, to expedite the flow of
17 information, to facilitate the prompt resolution of disputes over confidentiality of
18 discovery materials, to adequately protect information the parties are entitled to
19 keep confidential, to ensure that the parties are permitted reasonable necessary uses
20 of such material in preparation for and in the conduct of trial, to address their
21 handling at the end of the litigation, and serve the ends of justice, a protective order
22 for such information is justified in this matter. It is the intent of the parties that
23 information will not be designated as confidential for tactical reasons and that
24 nothing be so designated without a good faith belief that it has been maintained in a
25 confidential, non-public manner, and there is good cause why it should not be part
26 of the public record of this case.

27 ///

1 ///

2 **2. DEFINITIONS**

3 **2.1 Action**: the above-captioned lawsuit of *Jack Smith v. City of Modesto*,
4 *et. al.*, USDC Case No. 1:14-cv-01285-LJO-MJS.

5 **2.2 Challenging Party**: a Party or Non-Party that challenges the
6 designation of information or items under this Order.

7 **2.3 “CONFIDENTIAL” Information or Items**: information (regardless of
8 how it is generated, stored or maintained) or tangible things that qualify for
9 protection under Federal Rule of Civil Procedure 26(c), and as specified above in
10 the Good Cause Statement.

11 **2.4 Counsel**: Outside Counsel of Record and House Counsel (as well as
12 their support staff).

13 **2.5 Designating Party**: a Party or Non-Party that designates information or
14 items that it produces in disclosures or in responses to discovery as
15 “CONFIDENTIAL.”

16 **2.6 Disclosure or Discovery Material**: all items or information, regardless
17 of the medium or manner in which it is generated, stored, or maintained (including,
18 among other things, testimony, transcripts, and tangible things), that are produced
19 or generated in disclosures or responses to discovery in this matter.

20 **2.7 Expert**: a person with specialized knowledge or experience in a matter
21 pertinent to the litigation who has been retained by a Party or its counsel to serve as
22 an expert witness or as a consultant in this Action.

23 **2.8 House Counsel**: attorneys who are employees of a party to this Action.
24 House Counsel does not include Outside Counsel of Record or any other outside
25 counsel.

26 **2.9 Non-Party**: any natural person, partnership, corporation, association, or
27 other legal entity not named as a Party to this action.
28

1 **2.10** Outside Counsel of Record: attorneys who are not employees of a
2 party to this Action but are retained to represent or advise a party to this Action and
3 have appeared in this Action on behalf of that party or are affiliated with a law firm
4 which has appeared on behalf of that party, and includes support staff.

5 **2.11** Party: any party to this Action, including all of its officers, directors,
6 employees, consultants, retained experts, and Outside Counsel of Record (and their
7 support staffs).

8 **2.12** Producing Party: a Party or Non-Party that produces Disclosure or
9 Discovery Material in this Action.

10 **2.13** Professional Vendors: persons or entities that provide litigation
11 support services (e.g., photocopying, videotaping, translating, preparing exhibits or
12 demonstrations, and organizing, storing, or retrieving data in any form or medium)
13 and their employees and subcontractors.

14 **2.14** Protected Material: any Disclosure or Discovery Material that is
15 designated as “CONFIDENTIAL.”

16 **2.15** Receiving Party: a Party that receives Disclosure or Discovery
17 Material from a Producing Party.

18 **3. SCOPE**

19 The protections conferred by this Stipulation and Order cover not only
20 Protected Material (as defined above), but also (1) any information copied or
21 extracted from Protected Material; (2) all copies, excerpts, summaries, or
22 compilations of Protected Material; and (3) any testimony, conversations, or
23 presentations by Parties or their Counsel that reveal Protected Material.

24 Any use of Protected Material at trial shall be governed by the orders of the
25 trial judge. This Order does not govern the use of Protected Material at trial.

26 **4. DURATION**

27 Even after final disposition of this litigation, the confidentiality obligations
28

1 imposed by this Order shall remain in effect until a Designating Party agrees
2 otherwise in writing or a court order otherwise directs. Final disposition shall be
3 deemed to be the later of (1) dismissal of all claims and defenses in this Action,
4 with or without prejudice; and (2) final judgment herein after the completion and
5 exhaustion of all appeals, rehearings, remands, trials, or reviews of this Action,
6 including the time limits for filing any motions or applications for extension of time
7 pursuant to applicable law.

8 **5. DESIGNATING PROTECTED MATERIAL**

9 **5.1 Exercise of Restraint and Care in Designating Material for Protection.**

10 Each Party or Non-Party that designates information or items for protection under
11 this Order must take care to limit any such designation to specific material that
12 qualifies under the appropriate standards. The Designating Party must designate for
13 protection only those parts of material, documents, items, or oral or written
14 communications that qualify so that other portions of the material, documents,
15 items, or communications for which protection is not warranted are not swept
16 unjustifiably within the ambit of this Order.

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

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

25 **5.2 Manner and Timing of Designations.** Except as otherwise provided in
26 this Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise
27 stipulated or ordered, Disclosure or Discovery Material that qualifies for protection
28

1 under this Order must be clearly so designated before the material is disclosed or
2 produced.

3 Designation in conformity with this Order requires:

4 ///

5 (a) for information in documentary form (e.g., paper or electronic
6 documents, but excluding transcripts of depositions or other pretrial or trial
7 proceedings), that the Producing Party affix at a minimum, the legend
8 “CONFIDENTIAL” (hereinafter “CONFIDENTIAL legend”), to each page that
9 contains protected material. If only a portion or portions of the material on a page
10 qualifies for protection, the Producing Party also must clearly identify the protected
11 portion(s) (e.g., by making appropriate markings in the margins).

12 A Party or Non-Party that makes original documents available for inspection
13 need not designate them for protection until after the inspecting Party has indicated
14 which documents it would like copied and produced. During the inspection and
15 before the designation, all of the material made available for inspection shall be
16 deemed “CONFIDENTIAL.” After the inspecting Party has identified the
17 documents it wants copied and produced, the Producing Party must determine
18 which documents, or portions thereof, qualify for protection under this Order.
19 Then, before producing the specified documents, the Producing Party must affix the
20 “CONFIDENTIAL legend” to each page that contains Protected Material. If only a
21 portion or portions of the material on a page qualifies for protection, the Producing
22 Party also must clearly identify the protected portion(s) (e.g., by making
23 appropriate markings in the margins).

24 (b) for testimony given in depositions that the Designating Party
25 identify the Disclosure or Discovery Material of all protected testimony on the
26 record, before the close of the deposition.

27 (c) for information produced in some form other than documentary
28

1 and for any other tangible items, that the Producing Party affix in a prominent place
2 on the exterior of the container or containers in which the information is stored the
3 legend “CONFIDENTIAL.” If only a portion or portions of the information
4 warrants protection, the Producing Party, to the extent practicable, shall identify the
5 protected portion(s).

6 **5.3 Inadvertent Failures to Designate.** If timely corrected, an inadvertent
7 failure to designate qualified information or items does not, standing alone, waive
8 the Designating Party’s right to secure protection under this Order for such
9 material. Upon timely correction of a designation, the Receiving Party must make
10 reasonable efforts to assure that the material is treated in accordance with the
11 provisions of this Order.

12 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

13 **6.1 Timing of Challenges.** Any Party or Non-Party may challenge a
14 designation of confidentiality at any time that is consistent with the Court’s
15 Scheduling Order.

16 **6.2 Meet and Confer.** The Challenging Party shall initiate the dispute
17 resolution process by attempting to resolve the dispute with the Designating Party.

18 **6.3** The burden of persuasion in any such challenge proceeding shall be on
19 the Designating Party. Frivolous challenges, and those made for an improper
20 purpose (e.g., to harass or impose unnecessary expenses and burdens on other
21 parties) may expose the Challenging Party to sanctions. Unless the Designating
22 Party has waived or withdrawn the confidentiality designation, all parties shall
23 continue to afford the material in question the level of protection to which it is
24 entitled under the Producing Party’s designation until the Court rules on the
25 challenge.

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

27 **7.1 Basic Principles.** A Receiving Party may use Protected Material that is
28

1 disclosed or produced by another Party or by a Non-Party in connection with this
2 Action only for prosecuting, defending, or attempting to settle this Action. Such
3 Protected Material may be disclosed only to the categories of persons and under the
4 conditions described in this Order. When the Action has been terminated, a
5 Receiving Party must comply with the provisions of section 13 below (FINAL
6 DISPOSITION).

7
8 Protected Material must be stored and maintained by a Receiving Party at a
9 location and in a secure manner that ensures that access is limited to the persons
10 authorized under this Order.

11 **7.2** Disclosure of “CONFIDENTIAL” Information or Items. Unless
12 otherwise ordered by the court or permitted in writing by the Designating Party, a
13 Receiving Party may disclose any information or item designated
14 “CONFIDENTIAL” only to:

15 (a) the Receiving Party’s Outside Counsel of Record in this Action,
16 as well as employees of said Outside Counsel of Record to whom it is reasonably
17 necessary to disclose the information for this Action;

18 (b) the officers, directors, and employees (including House
19 Counsel) of the Receiving Party to whom disclosure is reasonably necessary for this
20 Action;

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

24 (d) the court and its personnel;

25 (e) court reporters and their staff;

26 (f) professional jury or trial consultants, mock jurors, and
27 Professional Vendors to whom disclosure is reasonably necessary for this Action
28 and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit

1 A);

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

4 (h) during their depositions, witnesses, and attorneys for witnesses,
5 in the Action to whom disclosure is reasonably necessary provided: (1) the
6 deposing party requests that the witness sign the form attached as Exhibit 1 hereto;
7 and (2) they will not be permitted to keep any confidential information unless they
8 sign the “Acknowledgment and Agreement to Be Bound” (Exhibit A), unless
9 otherwise agreed by the Designating Party or ordered by the court. Pages of
10 transcribed deposition testimony or exhibits to depositions that reveal Protected
11 Material may be separately bound by the court reporter and may not be disclosed to
12 anyone except as permitted under this Stipulated Protective Order; and

13 (i) any mediator or settlement officer, and their supporting
14 personnel, mutually agreed upon by any of the parties engaged in settlement
15 discussions.

16 **8. PROTECTED MATERIAL SUBPOENAED OR ORDERED**
17 **PRODUCED IN OTHER LITIGATION**

18 If a Party is served with a subpoena or a court order issued in other litigation
19 that compels disclosure of any information or items designated in this Action as
20 “CONFIDENTIAL,” that Party must:

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

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

27 (c) cooperate with respect to all reasonable procedures sought to be
28

1 pursued by the Designating Party whose Protected Material may be affected.

2 If the Designating Party timely seeks a protective order, the Party served with
3 the subpoena or court order shall not produce any information designated in this
4 action as “CONFIDENTIAL” before a determination by the court from which the
5 subpoena or order issued, unless the Party has obtained the Designating Party’s
6 permission. The Designating Party shall bear the burden and expense of seeking
7 protection in that court of its confidential material and nothing in these provisions
8 should be construed as authorizing or encouraging a Receiving Party in this Action
9 to disobey a lawful directive from another court.

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

12 (a) The terms of this Order are applicable to information produced
13 by a Non-Party in this Action and designated as “CONFIDENTIAL.” Such
14 information produced by Non-Parties in connection with this litigation is protected
15 by the remedies and relief provided by this Order. Nothing in these provisions
16 should be construed as prohibiting a Non-Party from seeking additional protections.

17 (b) In the event that a Party is required, by a valid discovery
18 request, to produce a Non-Party’s confidential information in its possession, and the
19 Party is subject to an agreement with the Non-Party not to produce the Non-Party’s
20 confidential information, then the Party shall:

- 21 (1) promptly notify in writing the Requesting Party and the
22 Non-Party that some or all of the information requested is
23 subject to a confidentiality agreement with a Non-Party;
24 (2) promptly provide the Non-Party with a copy of the
25 Stipulated Protective Order in this Action, the relevant
26 discovery request(s), and a reasonably specific description
27 of the information requested; and
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

(3) make the information requested available for inspection by the Non-Party, if requested.

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

10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

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

11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED MATERIAL

When a Producing Party gives notice to Receiving Parties that certain inadvertently produced material is subject to a claim of privilege or other protection, the obligations of the Receiving Parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure may be established in an e-discovery order that provides for

1 production without prior privilege review. Pursuant to Federal Rule of Evidence
2 502(d) and (e), insofar as the parties reach an agreement on the effect of disclosure
3 of a communication or information covered by the attorney-client privilege or work
4 product protection, the parties may incorporate their agreement in the stipulated
5 protective order submitted to the court.

6 **12. MISCELLANEOUS**

7 **12.1 Right to Further Relief.** Nothing in this Order abridges the right of any
8 person to seek its modification by the Court in the future.

9 **12.2 Right to Assert Other Objections.** By stipulating to the entry of this
10 Protective Order no Party waives any right it otherwise would have to object to
11 disclosing or producing any information or item on any ground not addressed in
12 this Stipulated Protective Order. Similarly, no Party waives any right to object on
13 any ground to use in evidence of any of the material covered by this Protective
14 Order.

15 **12.3 Filing Protected Material.** A Party that seeks to file under seal any
16 Protected Material must comply with the applicable local rules. Protected Material
17 may only be filed under seal pursuant to a court order authorizing the sealing of the
18 specific Protected Material at issue. However, only the portions of documents,
19 including briefs, exhibits, or any other moving or opposing papers that contain
20 Protected Material need to be filed under seal. If a Party's request to file Protected
21 Material under seal is denied by the court, then the Receiving Party may file the
22 information in the public record unless otherwise instructed by the court.

23 **13. FINAL DISPOSITION**

24 After the final disposition of this Action, as defined in paragraph 4, within 60
25 days of a written request by the Designating Party, each Receiving Party must
26 return all Protected Material to the Producing Party or destroy such material. As
27 used in this subdivision, "all Protected Material" includes all copies, abstracts,
28

1 compilations, summaries, and any other format reproducing or capturing any of the
2 Protected Material. Whether the Protected Material is returned or destroyed, the
3 Receiving Party must submit a written certification to the Producing Party (and, if
4 not the same person or entity, to the Designating Party) by the 60 day deadline that
5 (1) identifies (by category, where appropriate) all the Protected Material that was
6 returned or destroyed and (2) affirms that the Receiving Party has not retained any
7 copies, abstracts, compilations, summaries or any other format reproducing or
8 capturing any of the Protected Material. Notwithstanding this provision, Counsel
9 are entitled to retain an archival copy of all pleadings, motion papers, trial,
10 deposition, and hearing transcripts, legal memoranda, correspondence, deposition
11 and trial exhibits, expert reports, attorney work product, and consultant and expert
12 work product, even if such materials contain Protected Material. Any such archival
13 copies that contain or constitute Protected Material remain subject to this Protective
14 Order as set forth in Section 4.

15 **14.** Any violation of this Order may be punished by any and all appropriate
16 measures including, without limitation, contempt proceedings and/or monetary
17 sanctions.

18 **IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.**

19
20 Dated: December 30, 2014

LAW OFFICE OF SANJAY S. SCHMIDT

21
22 By: */s/ Sanjay S. Schmidt*
23 *[as authorized on December 30, 2014]*
Sanjay S. Schmidt

24 Attorneys for Plaintiff
25 JACK SMITH

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Dated: December 31, 2014

BURKE, WILLIAMS & SORENSEN, LLP

By: /s/ Nathan A. Oyster

Susan E. Coleman
Nathan A. Oyster

Attorneys for Defendants
CITY OF MODESTO, OFFICER DAVID
WATSON and OFFICER RANDALL W.
BOLINGER

ORDER

**Good cause appearing the above Stipulated Protective Order is accepted
and adopted and made the Order of this Court.**

IT IS SO ORDERED.

Dated: January 5, 2015

/s/ Michael J. Seng
UNITED STATES MAGISTRATE JUDGE