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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

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11 AURORA FIGUEROA, on her own behalf, and
as successor in interest to MARTIN
12 FIGUEROA, and LIZETTE FIGUEROA, on
her own behalf,

Case No.1:15-cv-00349-MCE-BAM

Trial Date: March 20, 2017

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Plaintiffs,

STIPULATED PROTECTIVE ORDER

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v.

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16 CITY OF FRESNO, a municipal corporation,
and DOES 1 through 50, inclusive,

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Defendants.

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19 To expedite the flow of discovery materials, to facilitate the prompt resolution of disputes
20 over confidentiality of discovery materials, to adequately protect information the parties are
21 entitled to keep confidential, to ensure that only materials that the parties and third-parties are
22 entitled to keep confidential are subject to such treatment, and to ensure that the parties are
23 permitted reasonably necessary uses of such materials in preparation for and in the conduct of
24 trial, pursuant to Rule 26(c) of the Federal Rules of Civil Procedure, it is **HEREBY ORDERED**
25 **THAT:**

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1 1. Documents designated as “Confidential” or “Confidential – Counsel Only”
2 (hereinafter collectively “Protected Information”), and produced by parties to this action, are
3 subject to this Protective Order.

4 2. “Confidential” documents shall be defined as documents for which the designating
5 party would be entitled to have protected from public disclosure by Court order under Rule 26(c)
6 of the Federal Rules of Civil Procedure and the relevant case law.

7 3. “Confidential – Counsel Only” documents shall be defined as “Confidential”
8 documents, as defined in paragraph 2, that also contain sensitive personal information, including,
9 for example, personnel records and medical records.

10 4. Protected Information shall be used solely in connection with the civil case of
11 *Figueroa, et al. v. City of Fresno, et al.*, Case No. 1:15-cv-00349-MCE-BAM, and in the
12 preparation of trial of this case, or any related proceeding.

13 5. A party producing the documents and materials described above may designate
14 those materials by affixing a mark labeling them as “Confidential” or “Confidential – Counsel
15 Only.” If any Protected Information cannot be labeled with the aforementioned marking, those
16 materials shall be placed in a sealed envelope or other container that is in turn marked with the
17 appropriate designation in a manner agreed upon by the disclosing and requesting parties.

18 6. Protected Information designated under this Protective Order as “Confidential”
19 may only be disclosed to the following persons:

- 20 a) Counsel for the parties;
- 21 b) Paralegal, clerical, and secretarial personnel regularly employed by counsel
22 referred to in subpart (a) directly above, including stenographic deposition reporters or
23 videographers retained in connection with this action;
- 24 c) Court personnel including stenographic reporters or videographers engaged
25 in proceedings as are necessarily incidental to the preparation for the trial of the civil action;
- 26 d) Any expert or consultant retained in connection with this action;
- 27 e) The finder of fact at the time of trial, subject to the court’s rulings on in
28 limine motions and objections of counsel; and

1 f) The parties, to the extent reasonably necessary to assist their counsel in this
2 litigation or for their counsel to advise them with respect to the litigation.

3 7. Protected Information designated under this Protective Order as “Confidential –
4 Counsel Only” may only be disclosed to the following persons:

- 5 a) Outside counsel for the parties;
- 6 b) Paralegal, clerical, and secretarial personnel regularly employed by counsel
7 referred to in subpart (a) directly above, including stenographic deposition reporters or
8 videographers retained in connection with this action;
- 9 c) Court personnel including stenographic reporters or videographers engaged
10 in proceedings as are necessarily incidental to the preparation for the trial of the civil action;
- 11 d) Any expert or consultant retained in connection with this action; and
- 12 e) The finder of fact at the time of trial, subject to the court’s rulings on *in*
13 *limine* motions and objections of counsel.

14 8. All Protected Information filed with the Court for any purpose shall be filed and
15 served under seal in accordance with Local Rule 141.

16 9. The designation of information as Protected Information, and the subsequent
17 production thereof, is without prejudice to the right of any party to oppose the admissibility of the
18 designated information.

19 10. A nonparty producing information or material voluntarily or pursuant to a
20 subpoena or a court order may designate such material or information as Protected Information
21 pursuant to the terms of this Protective Order. The signatories to this Protective Order will treat
22 such information as Protected Information to the same extent as if it had been produced by a
23 party.

24 11. A party may apply to the Court for an order that information designated as
25 Protected Information pursuant to this Protective Order is not, in fact, “Confidential,” or
26 appropriately designated as “Confidential – Counsel Only.” Prior to so applying, the party
27 seeking to reclassify Protected Information shall meet and confer with the producing party. Until
28 the matter is resolved by the parties or the Court, the Protected Information in question shall

1 continue to be treated according to its designation under the terms of this Protective Order. The
2 producing party shall have the burden of establishing the propriety of the “Confidential” or
3 “Confidential – Counsel Only” designation. A party shall not be obligated to challenge the
4 propriety of a confidentiality designation at the time made, and a failure to do so shall not
5 preclude a subsequent challenge thereto.

6 12. Each person to whom disclosure is made, with the exception of counsel, and its
7 paralegal, clerical, and secretarial personnel, who are presumed to know the contents of this
8 Protective Order, shall, prior to the time of disclosure, be provided by the person furnishing him
9 or her such material, a copy of this Protective Order. Each person to whom disclosure is made
10 shall agree on the record or in writing that he/she has read the Protective Order and he/she
11 understands the provisions of the Protective Order. Such person must also consent to be subject
12 to the jurisdiction of the United States District Court, Eastern District of California, with respect
13 to any proceeding related to enforcement of this Protective Order, including without limitation,
14 any proceeding for contempt. Provisions of this Protective Order, insofar as they restrict
15 disclosure and use of the material, shall be in effect until further order of this Court.

16 13. If a receiving party learns that, by inadvertence or otherwise, it has disclosed
17 Protected Material to any person or in any circumstance not authorized under this Stipulated
18 Protective Order, the receiving party must immediately (a) notify in writing the designating party
19 of the unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the
20 Protected Material, and (c) inform the person or persons to whom unauthorized disclosures were
21 made of all the terms of this Order.

22 14. When a producing party gives notice to the receiving party or the receiving party
23 otherwise becomes aware that certain inadvertently produced material is subject to a claim of
24 privilege or other protection, the receiving party must promptly return or destroy the specified
25 information and any copies it has and may not sequester, use or disclose the information until the
26 claim is resolved. This includes a restriction against presenting the information to the Court for a
27 determination of the claim. This provision is not intended to modify whatever procedure may be
28 established in an e-discovery order that provides for production without prior privilege review.

1 Pursuant to Federal Rule of Evidence 502(d) and (e), the production of privileged or work-
2 product protected documents or information, including electronically stored information, whether
3 inadvertent or not, is not a waiver of the privilege or protection in connection with discovery in
4 this case or any other federal proceeding.

5 15. After the conclusion of this litigation, all documents, in whatever form stored or
6 reproduced, containing Protected Information will remain confidential and subject to this
7 Protective Order. The conclusion of this litigation means a termination of the case following
8 applicable post-trial motions, appeal and/or retrial. After the conclusion of this litigation, all
9 Protected Information received under the provisions of this Protective Order, including copies
10 made, shall be destroyed, or tendered back to the attorneys for the party or parties producing the
11 documents. The parties will also take all reasonable and necessary steps to ensure that persons to
12 whom they disclose another party's Protected Information destroy or return the Protected
13 Information to the producing party.

14 Dated: September 28, 2015

MORRISON & FOERSTER LLP

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16 By: /s/ Alexandria A. Amezcua
ALEXANDRIA A. AMEZCUA

17 Attorneys for Plaintiffs

18 Dated: September 28, 2015

FERGUSON, PRAET & SHERMAN

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21 By: /s/ Bruce D. Praet
Bruce D. Praet

22 Attorney for Defendants

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1 The Stipulated Protective order in the above matter is approved.

2 IT IS SO ORDERED.

3 Dated: October 20, 2015

4 /s/ Barbara A. McAuliffe
5 UNITED STATES MAGISTRATE JUDGE

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