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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

DESIREE MARTINEZ,

Plaintiff,

vs.

KYLE PENNINGTON; KIM
PENNINGTON; CONNIE
PENNINGTON; KRISTINA
HERHBERGER; JESUS
SANTILLAN; CHANNON HIGH;
THE CITY OF CLOVIS; ANGELA
YAMBUPAH; RALPH SALAZAR;
FRED SANDERS; THE CITY OF
SANGER; and DOES 1 through 20,

No. 1:15-CV-00683 JAM MJS

STIPULATED PROTECTIVE
ORDER

1. A. PURPOSES AND LIMITATIONS

Discovery in this action is likely to involve production of confidential, 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. The parties further acknowledge, as set forth
8 in Section 12.3, below, that this Stipulated Protective Order does not entitle them to
9 file confidential information under seal; Eastern District Local Rule 141 sets forth
10 the procedures that must be followed and the standards that will be applied when a
11 party seeks permission from the court to file material under seal.

12 B. GOOD CAUSE STATEMENT

13 This action is likely to involve confidential information for which special
14 protection from public disclosure and from use for any purpose other than
15 prosecution of this action is warranted. Such confidential and proprietary materials
16 and information consist of, among other things, confidential business or financial
17 information, information regarding police tactics and strategies, police officer
18 personnel files, or other confidential research, development, or commercial
19 information (including information implicating privacy rights of third parties),
20 information otherwise generally unavailable to the public, or which may be
21 privileged or otherwise protected from disclosure under state or federal statutes,
22 court rules, case decisions, or common law. Accordingly, to expedite the flow of
23 information, to facilitate the prompt resolution of disputes over confidentiality of
24 discovery materials, to adequately protect information the parties are entitled to
25 keep confidential, to ensure that the parties are permitted reasonable necessary uses
26 of such material in preparation for and in the conduct of trial, to address their
27 handling at the end of litigation, and serve the ends of justice, a protective order for
28 such information is justified in this matter. It is the intent of the parties that

1 information will not be designated as confidential for tactical reasons and that
2 nothing be so designated without a good faith belief that it has been maintained in a
3 confidential, non-public manner, and there is good cause why it should not be part
4 of the public record of this case.

5 2. DEFINITIONS

6 2.1 Action: This pending federal lawsuit and any consolidated or related
7 actions.

8 2.2 Challenging Party: a Party or Non-Party that challenges the
9 designation of information or items under this Order.

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

14 2.4 Counsel: Outside Counsel of Record and House Counsel (as well as
15 their support staff).

16 2.5 Designating Party: a Party or Non-Party that designates information or
17 items that it produces in disclosures or in responses to discovery as
18 “CONFIDENTIAL.”

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

23 2.7 Expert: a person with specialized knowledge or experience in a matter
24 pertinent to the litigation who has been retained by a Party or its counsel to serve as
25 an expert witness or as a consultant in this Action.

26 2.8 House Counsel: attorneys who are employees of a party to this action.
27 House Counsel does not include Outside Counsel of Record or any other outside
28 counsel.

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2 2.9 Non-Party: any natural person, partnership, corporation, association,
3 or other legal entity not named as a Party to this action.

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

8 2.11 Party: any party to this Action, including all of its officers, directors,
9 employees, consultants, retained experts, and Outside Counsel of Record (and their
10 support staffs).

11 2.12 Producing Party: a Party or Non-Party that produces Disclosure or
12 Discovery Material in this Action.

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

17 2.14 Protected Material: Any Disclosure or Discovery Material that is
18 designated as “CONFIDENTIAL” or “CONFIDENTIAL COUNSEL EYES
19 ONLY.”

20 2.15 Receiving Party: a Party that receives Disclosure or Discovery
21 Material from a Producing Party.

22 3. SCOPE

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

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1 Any use of Protected Material at trial shall be governed by the orders of the
2 trial judge. This order does not govern the use of Protected Material at trial.

3 Defendant City of Clovis and City of Sanger designate as Protected Material
4 (1) any and all police officer personnel files and/or portions thereof.

5 4. DURATION

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

14 5. DESIGNATING PROTECTED MATERIAL

15 5.1 Exercise of Restraint and Care in Designating Material for Protection.

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

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

28 If it comes to a Designating Party's attention that information or items that it

1 designated for protection do not qualify for protection, that Designating Party must
2 promptly notify all other Parties that it is withdrawing the inapplicable designation.

3 5.2 Manner and Timing of Designations. Except as otherwise provided in
4 this Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise
5 stipulated or ordered, Disclosure or Discovery Material that qualifies for protection
6 under this Order must be clearly so designated before the material is disclosed or
7 produced.

8 Designation in conformity with this Order requires:

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

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

1 (b) for testimony given in deposition that the Designating Party identify
2 on the record, before the close of the deposition all protected testimony.

3 (c) for information produced in some form other than documentary and
4 for any other tangible items, that the Producing Party affix in a prominent place on
5 the exterior of the container or containers in which the information or item is stored
6 the legend "CONFIDENTIAL." If only a portion or portions of the information or
7 item warrant protection, the Producing Party, to the extent practicable, shall identify
8 the protected portion(s).

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

15 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

16 6.1 Timing of Challenges. Any Party or Non-Party may challenge a
17 designation of confidentiality at any time that is consistent with the Court's
18 scheduling order.

19 6.2 Meet and Confer. The Challenging Party shall initiate the dispute
20 resolution process under Local Rule 37.1 et seq.

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

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3 7. ACCESS TO AND USE OF PROTECTED MATERIAL

4 7.1 Basic Principles. A Receiving Party may use Protected Material that is
5 disclosed or produced by another Party or by a Non-Party in connection with this
6 Action only for prosecuting, defending, or attempting to settle this Action. Such
7 Protected Material may be disclosed only to the categories of persons and under the
8 conditions described in this Order. When the litigation has been terminated, a
9 Receiving Party must comply with the provisions of section 13 below (FINAL
10 DISPOSITION).

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

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

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

21 (b) the officers, directors, and employees (including House Counsel) of
22 the Receiving Party to whom disclosure is reasonably necessary for this litigation;

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

26 (d) the court and its personnel;

27 (e) court reporters and their staff;

28 (f) professional jury or trial consultants, mock jurors, and Professional

1 Vendors to whom disclosure is reasonably necessary for this litigation and who
2 have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

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

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

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

16 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED
17 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 notification
22 shall include a copy of the subpoena or court order;

23 (b) promptly notify in writing the party who caused the subpoena or order
24 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 include
26 a copy of this Stipulated Protective Order; and

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

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

9 Unless otherwise ordered by the Court or permitted in writing by the Designating
10 Party, a Receiving Party may disclose any information or item designated as
11 “CONFIDENTIAL-ATTORNEY EYES ONLY” only to

12 (a) Counsel for the parties;

13 (b) Paralegal, clerical, and secretarial personnel regularly employed by
14 counsel referred to in subpart (a) directly above, including stenographic
15 deposition reporters or videographers retained in connection with this
16 action;

17 (c) Court personnel including stenographic reporters or videographers
18 engaged in proceedings as are necessarily incidental to the preparation
19 for the trial of the civil action;

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

24 (e) The finder of fact at the time of trial, subject to the court’s rulings on in
25 limine motions and objections of counsel.

26 9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE
27 PRODUCED IN THIS LITIGATION

28 (a) The terms of this Order are applicable to information produced by a

1 Non-Party in this Action and designated as “CONFIDENTIAL.” Such information
2 produced by Non-Parties in connection with this litigation is protected by the
3 remedies and relief provided by this Order. Nothing in these provisions should be
4 construed as prohibiting a Non-Party from seeking additional protections.

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

9 (1) promptly notify in writing the Requesting Party and the Non-Party
10 that some or all of the information requested is subject to a confidentiality
11 agreement with a Non-Party;

12 (2) promptly provide the Non-Party with a copy of the Stipulated
13 Protective Order in this litigation, the relevant discovery request(s), and a
14 reasonably specific description of the information requested; and

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

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

26 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

27 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed
28 Protected Material to any person or in any circumstance not authorized under this

1 Stipulated Protective Order, the Receiving Party must immediately (a) notify in
2 writing the Designating Party of the unauthorized disclosures, (b) use its best
3 efforts to retrieve all unauthorized copies of the Protected Material, (c) inform the
4 person or persons to whom unauthorized disclosures were made of all the terms of
5 this Order, and (d) request such person or persons to execute the “Acknowledgment
6 and Agreement to Be Bound” that is attached hereto as Exhibit A.

7 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
8 PROTECTED MATERIAL

9 When a Producing Party gives notice to Receiving Parties that certain
10 inadvertently produced material is subject to a claim of privilege or other
11 protection, the obligations of the Receiving Parties are those set forth in Federal
12 Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify
13 whatever procedure may be established in an e-discovery order that provides for
14 production without prior privilege review. Pursuant to Federal Rule of Evidence
15 502(d) and (e), insofar as the parties reach an agreement on the effect of disclosure
16 of a communication or information covered by the attorney-client privilege or work
17 product protection, the parties may incorporate their agreement in the stipulated
18 protective order submitted to the court.

19 12. MISCELLANEOUS

20 12.1 Right to Further Relief. Nothing in this Order abridges the right of any
21 person to seek its modification by the court in the future.

22 12.2 Right to Assert Other Objections. By stipulating to the entry of this
23 Protective Order no Party waives any right it otherwise would have to object to
24 disclosing or producing any information or item on any ground not addressed in
25 this Stipulated Protective Order. Similarly, no Party waives any right to object on
26 any ground to use in evidence of any of the material covered by this Protective
27 Order.

28 12.3 Filing Protected Material. A Party that seeks to file under seal any

1 Protected Material must comply with Local Civil Rule 141. Protected Material may
2 only be filed under seal pursuant to a court order authorizing the sealing of the
3 specific Protected Material at issue. If a Party’s request to file Protected Material
4 under seal is denied by the court, then the Receiving Party may file the information
5 in the public record unless otherwise instructed by the court.

6 13. FINAL DISPOSITION

7 After the final disposition of this Action, as defined in paragraph 4, within 60
8 days of a written request by the Designating Party, each Receiving Party must
9 return all Protected Material to the Producing Party or destroy such material. As
10 used in this subdivision, “all Protected Material” includes all copies, abstracts,
11 compilations, summaries, and any other format reproducing or capturing any of the
12 Protected Material. Whether the Protected Material is returned or destroyed, the
13 Receiving Party must submit a written certification to the Producing Party (and, if
14 not the same person or entity, to the Designating Party) by the 60 day deadline that
15 (1) identifies (by category, where appropriate) all the Protected Material that was
16 returned or destroyed and (2) affirms that the Receiving Party has not retained any
17 copies, abstracts, compilations, summaries or any other format reproducing or
18 capturing any of the Protected Material. Notwithstanding this provision, Counsel
19 are entitled to retain an archival copy of all pleadings, motion papers, trial,
20 deposition, and hearing transcripts, legal memoranda, correspondence, deposition
21 and trial exhibits, expert reports, attorney work product, and consultant and expert
22 work product, even if such materials contain Protected Material. Any such archival
23 copies that contain or constitute Protected Material remain subject to this Protective
24 Order as set forth in Section 4 (DURATION).

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3 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

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Date: January 26, 2017

/s/ G. Craig Smith

G. Craig Smith

Ferguson, Praet & Sherman

Attorneys for Defendants

City of Clovis, City of Sanger and

Kristina Hershberger, Jesus

Santillan, Channon High, Angela

Yambupah, Ralph Salazar and Fred

Sanders

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Date: January 26, 2017

/s/ Kevin G. Little

Kevin G. Little

Law Office of Kevin G. Little

Attorneys for Plaintiff

Desiree Martinez

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Date: January 26, 2017

/s/ Yan Shrayberman

Yan Shrayberman

Attorney for Defendant

Kyle Pennington

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Date: January 26, 2017

/s/ John W. Phillips

John W. Phillips

Wild, Carter & Tipton

Attorneys for Defendants

Kim and Connie Pennington

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1 EXHIBIT A

2 ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

3 I, _____ [print or type full name], of
4 _____ [print or type full address], declare under
5 penalty of perjury that I have read in its entirety and understand the Stipulated
6 Protective Order that was issued by the United States District Court for the Eastern
7 District of California on _____ [date] in the case of **Desiree Martinez v.**
8 **City of Clovis, et al.; No. 1:15-CV-00683 JAM MJS.**

9 I agree to comply with and to be bound by all the terms of this Stipulated Protective
10 Order and I understand and acknowledge that failure to so comply could expose me
11 to sanctions and punishment in the nature of contempt. I solemnly promise that I
12 will not disclose in any manner any information or item that is subject to this
13 Stipulated Protective Order to any person or entity except in strict compliance with
14 the provisions of this Order.

15 I further agree to submit to the jurisdiction of the United States District Court for
16 the Eastern District of California for the purpose of enforcing the terms of this
17 Stipulated Protective Order, even if such enforcement proceedings occur after
18 termination of this action.

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

24 Date: _____

25 City and State where sworn and signed: _____

26 Printed name: _____

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28 Signature: _____

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

DESIREE MARTINEZ,

Plaintiff,

No. 1:15-CV-00683 JAM MJS

STIPULATED PROTECTIVE
ORDER

vs.

KYLE PENNINGTON; KIM
PENNINGTON; CONNIE
PENNINGTON; KRISTINA
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SANTILLAN; CHANNON HIGH;
THE CITY OF CLOVIS; ANGELA
YAMBUPAH; RALPH SALAZAR;
FRED SANDERS; THE CITY OF
SANGER; and DOES 1 through 20,

Good cause appearing, the foregoing stipulation for protective order in case No. 1:15-CV-00683 JAM MJS is accepted and its terms adopted as the Order of this Court.

IT IS SO ORDERED.

Dated: January 30, 2017

/s/ Michael J. Seng
UNITED STATES MAGISTRATE JUDGE