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

P.Y.M.T., a minor, by and through her guardian ad litem DEIBI ONTIVEROS, an individual and as Successor in Interest to decedent, Miguel Moreno Torrez; MARIA CARRILLO, an individual and Successor in Interest to decedent, Miguel Moreno Torrez,,

Plaintiffs,

v.

CITY OF FRESNO, THE FRESNO POLICE DEPARTMENT; and DEFENDANT OFFICERS DOES 1-10;,,

Defendants.

Case No. 1:15-CV-00710-JAM-BAM  
[Hon. John A. Mendez, District J.; Hon. Barbara A. McAuliffe, Magistrate J.]

**PROTECTIVE ORDER RE  
CONFIDENTIAL DOCUMENTS**

Complaint Filed: 05/07/15  
Trial Date: N/A

PURSUANT TO THE STIPULATION OF THE PARTIES (“Stipulation for Entry of Protective Order re Confidential Documents”), and pursuant to the Court’s inherent and statutory authority, including but not limited to the Court’s authority under the applicable Federal Rules of Civil Procedure and the United States District Court, Eastern District of California Local Rules; after due consideration of all of the relevant pleadings, papers, and records in this action; and upon such other evidence or argument as was presented to the Court; Good Cause appearing therefor, and in furtherance of the

1 interests of justice,

2 IT IS HEREBY ORDERED that:

3 **1. SCOPE OF PROTECTION.**

4 The protections conferred by the parties' Stipulation and this Order cover not  
5 only Protected Material/Confidential Documents (as defined above), but also (1) any  
6 information copied or extracted from Protected Material; (2) all copies, excerpts,  
7 summaries, or compilations of Protected Material; and (3) any testimony,  
8 conversations, or presentations by Parties or their Counsel that might reveal Protected  
9 Material. However, the protections conferred by the parties' Stipulation and this Order  
10 do *not* cover the following information: (a) any information that is in the public domain  
11 at the time of disclosure to a Receiving Party or becomes part of the public domain after  
12 its disclosure to a Receiving Party as a result of publication not involving a violation of  
13 this Order, including becoming part of the public record through trial or otherwise; and  
14 (b) any information known to the Receiving Party prior to the disclosure or obtained by  
15 the Receiving Party after the disclosure from a source who obtained the information  
16 lawfully and under no obligation of confidentiality to the Designating Party.

17 Except to the extent specified herein (if any), any use of Protected Material at  
18 trial shall not be governed by this Order, but may be governed by a separate agreement  
19 or order. The Definitions section of the parties' associated Stipulation (§ 2) is  
20 incorporated by reference herein.

21 Any use of Protected Material at trial shall be governed by the Orders of the trial  
22 judge: this Stipulation and its associated Protective Order do(es) not govern the use of  
23 Protected Material at trial.

24 **A. PURPOSES AND LIMITATIONS.**

25 Disclosure and discovery activity in this action are likely to involve production  
26 of confidential, proprietary, or private information for which special protection from  
27 public disclosure and from use for any purpose other than prosecuting or defending this  
28 litigation would be warranted. Accordingly, the parties have stipulated to and

1 petitioned the court to enter the following Order.

2 The parties have acknowledged that this Order does not confer blanket  
3 protections on all disclosures or responses to discovery and that the protection it affords  
4 extends only to the specified information or items that are entitled, under the applicable  
5 legal principles, to treatment as confidential.

6 The parties further acknowledge, as set forth below, that this Order creates no  
7 entitlement to file confidential information under seal, except to the extent specified  
8 herein; Eastern District Local Rules 141, 141.1, 143, 230 and/or 251 forth the  
9 procedures that must be followed and reflects the standards that will be applied when a  
10 party seeks permission from the court to file material under seal.

11 Nothing in this Order shall be construed so as to require or mandate that any  
12 Party disclose or produce privileged information or records that could be designated as  
13 Confidential Documents/Protected Material hereunder.

14 **2. DURATION OF PROTECTION.**

15 Even after final disposition of this litigation, the confidentiality obligations  
16 imposed by this Order shall remain in effect until a Designating Party agrees otherwise  
17 in writing or a court order otherwise directs.

18 Final disposition shall be deemed to be the later of (1) dismissal of all claims and  
19 defenses in this action, with or without prejudice; and (2) final judgment herein after  
20 the completion and exhaustion of all appeals, rehearings, remands, trials, or reviews of  
21 this action, including the time limits for filing any motions or applications for extension  
22 of time pursuant to applicable law.

23 **3. DESIGNATION OF PROTECTED MATERIAL/CONFIDENTIAL**  
24 **DOCUMENTS.**

25 3.1. Exercise of Restraint and Care in Designating Material for Protection.

26 Each Party or non-party that designates information or items for protection under  
27 the parties' Stipulation and this Order must take care to limit any such designation to  
28 specific material that qualifies under the appropriate standards. A Designating Party

1 must take care to designate for protection only those parts of material, documents,  
2 items, or oral or written communications that qualify – so that other portions of the  
3 material, documents, items or communications for which protection is not warranted  
4 are not swept unjustifiably within the ambit of this Order.

5 Mass, indiscriminate, or routine designations are prohibited. Designations that  
6 are shown to be clearly unjustified, or that have been made for an improper purpose  
7 (e.g., to unnecessarily encumber or inhibit the case development process, or to impose  
8 unnecessary expenses and burdens on other parties), expose the Designating Party to  
9 sanctions.

10 If it comes to a Party’s or a non-party’s attention that information or items that it  
11 designated for protection do not qualify for protection at all, or do not qualify for the  
12 level of protection initially asserted, that Party or non-party must promptly notify all  
13 other parties that it is withdrawing the mistaken designation.

14 3.2. Manner and Timing of Designations. Except as otherwise provided in this  
15 Order, or as otherwise stipulated or ordered, material that qualifies for protection under  
16 this Order must be clearly so designated before the material is disclosed or produced.

17 Designation in conformity with this Order requires:

18 (a) for information in documentary form (apart from transcripts of depositions  
19 or other pretrial or trial proceedings, and regardless of whether produced in hardcopy or  
20 electronic form), that the Producing Party affix the legend “CONFIDENTIAL” to each  
21 page that contains Protected Material. If only a portion or portions of the material on a  
22 page qualifies for protection, the Producing Party also must clearly identify the  
23 protected portion(s) (e.g., by making appropriate markings in the margins) and must  
24 specify, for each portion that it is “CONFIDENTIAL.” The placement of such  
25 “CONFIDENTIAL” stamp on such page(s) shall not obstruct the substance of the  
26 page’s (or pages’) text or content.

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

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

10 (b) for testimony given in deposition or in other pretrial or trial proceedings,  
11 that the Party or non-party offering or sponsoring the testimony identify on the record,  
12 before the close of the deposition, hearing, or other proceeding, all protected testimony,  
13 and further specify any portions of the testimony that qualify as “CONFIDENTIAL.”  
14 When it is impractical to identify separately each portion of testimony that is entitled to  
15 protection, and when it appears that substantial portions of the testimony may qualify  
16 for protection, the Producing Party may invoke on the record (before the deposition or  
17 proceeding is concluded) a right to have up to twenty (20) days to identify the specific  
18 portions of the testimony as “CONFIDENTIAL.” Only those portions of the testimony  
19 that are appropriately designated as “CONFIDENTIAL” for protection within the 20  
20 days shall be covered by the provisions of the parties’ Stipulation and this Protective  
21 Order.

22 Transcript pages containing Protected Material must be separately bound by the  
23 court reporter, who must affix to each such page the legend “CONFIDENTIAL,” as  
24 instructed by the Producing Party.

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1 (c) for information produced in some form other than documentary, and for  
2 any other tangible items (including but not limited to information produced on disc or  
3 electronic data storage device), that the Producing Party affix in a prominent place on  
4 the exterior of the container or containers in which the information or item is stored the  
5 legend “CONFIDENTIAL.” If only portions of the information or item warrant  
6 protection, the Producing Party, to the extent practicable, shall identify the protected  
7 portions, specifying the material as “CONFIDENTIAL.”

8 3.3. Inadvertent Failures to Designate. If timely corrected (preferably, though  
9 not necessarily, within 30 days of production or disclosure of such material), an  
10 inadvertent failure to designate qualified information or items as “CONFIDENTIAL”  
11 does not, standing alone, waive the Designating Party’s right to secure protection under  
12 the parties’ Stipulation and this Order for such material. If material is appropriately  
13 designated as “CONFIDENTIAL” *after* the material was initially produced, the  
14 Receiving Party, on timely notification of the designation, must make reasonable efforts  
15 to assure that the material is treated in accordance with the parties’ Stipulation and this  
16 Order.

17 3.4. Alteration of Confidentiality Stamp Prohibited. A Receiving Party shall  
18 not alter, edit, or modify any Protected Material so as to conceal, obscure, or remove a  
19 “CONFIDENTIAL” stamp or legend thereon; nor shall a Receiving Party take any  
20 other action so as to make it appear that Protected Material is not subject to the terms  
21 and provisions of the parties’ Stipulation and this Order. However, nothing in this  
22 section shall be construed so as to prevent a Receiving Party from challenging a  
23 confidentiality designation subject to the provisions of section 4, *infra*.

24 **4. CHALLENGING CONFIDENTIALITY DESIGNATIONS.**

25 4.1. Timing of Challenges. Any Party or Non-Party may challenge a  
26 designation of confidentiality at any time that is consistent with the Court's Scheduling  
27 Order. Unless a prompt challenge to a Designating Party’s confidentiality designation  
28 is necessary to avoid foreseeable substantial unfairness, unnecessary economic burdens,

1 or a later significant disruption or delay of the litigation, a Party does not waive its right  
2 to challenge a confidentiality designation by electing not to mount a challenge promptly  
3 after the original designation is disclosed.

4 4.2. Meet and Confer. Prior to challenging a confidentiality designation, a  
5 Challenging Party shall initiate a dispute resolution process by providing written notice  
6 of each specific designation it is challenging, and describing the basis (and supporting  
7 authority or argument) for each challenge. To avoid ambiguity as to whether a  
8 challenge has been made, the written notice must recite that the challenge to  
9 confidentiality is being made in accordance with this specific paragraph of this  
10 Protective Order. The parties shall attempt to resolve each challenge in good faith and  
11 must begin the process by conferring directly (in voice to voice dialogue, either in  
12 person, telephonically, or by other comparable means, but *not* by correspondence)  
13 within 14 days of the date of service of notice.

14 In conferring, the Challenging Party must explain the specific basis for its belief  
15 that the confidentiality designation was not proper and must give the Designating Party  
16 an opportunity to review the designated material, to reconsider the circumstances, and,  
17 if no change in designation is offered, to explain the basis for the chosen designation. A  
18 Challenging Party may proceed to the next stage of the challenge process only if it has  
19 engaged in this meet and confer process first or establishes that the Designating Party is  
20 unwilling to participate in the meet and confer process in a timely manner.

21 Frivolous challenges, and those challenges made for an improper purpose (*e.g.*,  
22 to harass or impose unnecessary expenses and burdens on other parties), may expose  
23 the Challenging Party to sanctions.

24 4.3. Judicial Intervention. If the Parties cannot resolve a confidentiality  
25 challenge without court intervention, the Challenging Party shall file and serve a  
26 motion to remove confidentiality (under the applicable rules for filing and service of  
27 discovery motions) within 14 days of the parties agreeing that the meet and confer  
28 process will not resolve their dispute, or by the first day of trial of this matter,

1 whichever date is earlier – unless the parties agree in writing to a longer time.

2 The parties must strictly comply with Eastern District Local Rules 141, 141.1,  
3 143, 230 and/or 251 (including the joint statement re discovery dispute requirement) in  
4 any motion associated with this Protective Order.

5 Each such motion must be accompanied by a competent declaration affirming  
6 that the movant has complied with the meet and confer requirements imposed in the  
7 preceding paragraph. In addition, the Challenging Party may file a motion challenging  
8 a confidentiality designation at any time if there is good cause for doing so, including a  
9 challenge to the designation of a deposition transcript or any portions thereof. Any  
10 motion brought pursuant to this provision must be accompanied by a competent  
11 declaration affirming that the movant has complied with the meet and confer  
12 requirements imposed by the preceding paragraph.

13 The burden of persuasion in any such challenge proceeding shall be on the  
14 Designating Party, regardless of whether the Designating Party is the moving party or  
15 whether such Party sought or opposes judicial intervention. Frivolous challenges, and  
16 those made for an improper purpose (*e.g.*, to harass or impose unnecessary expenses  
17 and burdens on other parties) may expose the Challenging Party to sanctions. Unless  
18 the Designating Party has waived the confidentiality designation by failing to oppose a  
19 motion to remove confidentiality as described above, all parties shall continue to afford  
20 the material in question the level of protection to which it is entitled under the  
21 Producing Party’s designation until the court rules on the challenge.

22 4.4. Withdrawal of “CONFIDENTIAL” Designation. At its discretion, a  
23 Designating Party may remove Protected Material/Confidential Documents from some  
24 or all of the protections and provisions of the parties’ Stipulation and this Order at any  
25 time by any of the following methods:

26 (a) Express Written Withdrawal. A Designating Party may withdraw a  
27 “CONFIDENTIAL” designation made to any specified Protected Material/Confidential  
28 Documents from some or all of the protections of the parties’ Stipulation and this Order



1 by an express withdrawal in a writing signed by such Party (or such Party’s Counsel,  
2 but not including staff of such Counsel) that specifies and itemizes the Disclosure or  
3 Discovery Material previously designated as Protected Material/Confidential  
4 Documents that shall no longer be subject to all or some of the provisions of the  
5 parties’ Stipulation and Order. Such express withdrawal shall be effective when  
6 transmitted or served upon the Receiving Party. If a Designating Party is withdrawing  
7 Protected Material from only some of the provisions/protectations of the parties’  
8 Stipulation and this Order, such Party must state which specific provisions are no  
9 longer to be enforced as to the specified material for which confidentiality protection  
10 hereunder is withdrawn: otherwise, such withdrawal shall be construed as a withdrawal  
11 of such material from all of the protections/provisions of the parties’ Stipulation and  
12 this Order;

13 (b) Express Withdrawal on the Record. A Designating Party may withdraw a  
14 “CONFIDENTIAL” designation made to any specified Protected Material/ Confidential  
15 Documents from all of the provisions/protectations of the parties’ Stipulation and this  
16 Order by verbally consenting in court proceedings on the record to such withdrawal –  
17 provided that such withdrawal specifies the Disclosure or Discovery Material  
18 previously designated as Protected Material/Confidential Documents that shall no  
19 longer be subject to any of the provisions of the parties’ Stipulation and this Order. A  
20 Designating Party is not permitted to withdraw Protected Material from only some of  
21 the protections/ provisions of the parties’ Stipulation and this Order by this method;

22 (c) Implicit Withdrawal by Publication or Failure to Oppose Challenge. A  
23 Designating Party shall be construed to have withdrawn a “CONFIDENTIAL”  
24 designation made to any specified Protected Material/Confidential Documents from all  
25 of the provisions/protectations of the parties’ Stipulation and this Order by either  
26 (1) making such Protected Material/Confidential Records part of the public record –  
27 including but not limited to attaching such as exhibits to any filing with the court  
28 without moving, prior to such filing, for the court to seal such records; or (2) failing to

1 timely oppose a Challenging Party’s motion to remove a “CONFIDENTIAL”  
2 designation to specified Protected Material/Confidential Documents.

3 Nothing in the parties’ Stipulation and this Order shall be construed so as to  
4 require any Party to file Protected Material/Confidential Documents under seal, unless  
5 expressly specified herein.

6 **5. ACCESS TO AND USE OF PROTECTED MATERIAL.**

7 5.1. Basic Principles. A Receiving Party may use Protected Material that is  
8 disclosed or produced by another Party or by a non-party in connection with this case  
9 only for preparing, prosecuting, defending, or attempting to settle this litigation – up to  
10 and including final disposition of the above-entitled action – and not for any other  
11 purpose, including any other litigation or dispute outside the scope of this action. Such  
12 Protected Material may be disclosed only to the categories of persons and under the  
13 conditions described in the parties’ Stipulation and this Order. When the above entitled  
14 litigation has been terminated, a Receiving Party must comply with the provisions of  
15 section 9, below (FINAL DISPOSITION).

16 Protected Material must be stored and maintained by a Receiving Party at a  
17 location and in a secure manner that ensures that access is limited to the persons  
18 authorized under the parties’ Stipulation and its Order.

19 5.2. Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise  
20 ordered by the Court or permitted in writing by the Designating Party, a Receiving  
21 Party may disclose any information or item designated CONFIDENTIAL only to:

22 (a) the Receiving Party’s Outside Counsel of record in this action, as well as  
23 employees of such Counsel to whom it is reasonably necessary to disclose the  
24 information for this litigation;

25 (b) the officers, directors, and employees (including House Counsel) of the  
26 Receiving Party to whom disclosure is reasonably necessary for this litigation – each of  
27 whom, by accepting receipt of such Protected Material, thereby agree to be bound by  
28 the parties’ Stipulation and this Order;

1 (c) Experts (as defined in the parties’ Stipulation and this Order) of the  
2 Receiving Party to whom disclosure is reasonably necessary for this litigation – each of  
3 whom, by accepting receipt of such Protected Material, thereby agree to be bound by  
4 the parties’ Stipulation and this Order;

5 (d) court reporters, their staffs, and Professional Vendors to whom disclosure  
6 is reasonably necessary for this litigation – each of whom, by accepting receipt of such  
7 Protected Material, thereby agree to be bound by the parties’ Stipulation and this Order;

8 (e) during their depositions, witnesses in the action to whom disclosure is  
9 reasonably necessary – each of whom, by accepting receipt of such Protected Material,  
10 thereby agree to be bound by the parties’ Stipulation and this Order. Pages of  
11 transcribed deposition testimony or exhibits to depositions that reveal Protected  
12 Material may not be disclosed to anyone except as permitted under the parties’  
13 Stipulation and this Protective Order.

14 (f) the author or custodian of a document containing the information that  
15 constitutes Protected Material, or other person who otherwise possessed or knew the  
16 information.

17 5.3. Notice of Confidentiality. Prior to producing or disclosing Protected  
18 Material/Confidential Documents to persons to whom the parties’ Stipulation and this  
19 Order permits disclosure or production (see section 5.2, *supra*), a Receiving Party shall  
20 provide a copy of the parties’ Stipulation and Order to such persons so as to put such  
21 persons on notice as to the restrictions imposed upon them herein: except that, for court  
22 reporters, Professional Vendors, and for witnesses being provided with Protected  
23 Material during a deposition, it shall be sufficient notice for Counsel for the Receiving  
24 Party to give the witness a verbal admonition (on the record, for witnesses) regarding  
25 the provisions of the parties’ Stipulation and this Order and such provisions’  
26 applicability to specified Protected Material at issue.

27 5.4. Reservation of Rights. Nothing in the parties’ Stipulation and this Order  
28 shall be construed so as to require any Producing Party to designate any records or

1 materials as “CONFIDENTIAL.” Nothing in the parties’ Stipulation or this Order shall  
2 be construed so as to prevent the admission of Protected Material into evidence at the  
3 trial of this action, or in any appellate proceedings for this action, solely on the basis  
4 that such Disclosure or Discovery Material has been designated as Protected  
5 Material/Confidential Documents. Notwithstanding the foregoing, nothing in the  
6 parties’ Stipulation or this Order shall be construed as a waiver of any privileges or of  
7 any rights to object to the use or admission into evidence of any Protected Material in  
8 any proceeding; nor shall anything herein be construed as a concession that any  
9 privileges asserted or objections made are valid or applicable.

10 Nothing in the parties’ Stipulation or this Order shall be construed so as to  
11 prevent the Designating Party (or its Counsel or custodian of records) from having  
12 access to and using Protected Material designated by that Party in the manner in which  
13 such persons or entities would typically use such materials in the normal course of their  
14 duties or profession – except that the waiver of confidentiality provisions shall apply  
15 (see section 4.4(c), *supra*).

16 5.5. Requirement to File Confidential Documents Under Seal. Confidential  
17 Documents may be submitted in all law and motion proceedings before the Court if  
18 done so under seal pursuant to Federal Rules of Civil Procedure 5.2 and 26 and/or  
19 United States District Court, Eastern District of California Local Rules 141, 141.1, 143,  
20 230 and/or 251 (as applicable) and pursuant to the provisions of the parties’ Stipulation  
21 and this Order. If any Receiving Party attaches any Confidential Documents to any  
22 pleading, motion, or other paper to be filed, lodged, or otherwise submitted to the  
23 Court, such Confidential Document(s) shall be filed/lodged under seal pursuant to  
24 Federal Rules of Civil Procedure 5.2 and 26 and/or United States District Court,  
25 Eastern District of California Local Rules 141, 141.1, 143, 230 and/or 251 to the extent  
26 applicable.

27 However, this paragraph (§ 5.5) shall not be construed so as to prevent a  
28 Designating Party or counsel from submitting, filing, lodging, or publishing any

1 document it has previously designated as a Confidential Document without compliance  
2 with this paragraph’s requirement to do so under seal (i.e., a producing-disclosing party  
3 or counsel may submit or publish its own Confidential Documents without being in  
4 violation of the terms of the parties’ Stipulation and this Protective Order).

5 Furthermore, a Receiving Party shall be exempted from the requirements of this  
6 paragraph as to any specifically identified Confidential Document(s) where – prior to  
7 the submission or publication of the Confidential Document(s) at issue – the  
8 Designating Party of such specifically identified Confidential Document(s) has  
9 waived/withdrawn the protections of the parties’ Stipulation and this Order (pursuant to  
10 paragraph 4.4, *supra*).

11 A Receiving Party shall also be exempt from the sealing requirements of this  
12 paragraph (§ 5.5) where the Confidential Documents/Protected Material at issue is/are  
13 **not** documents, records, or information regarding:

14 (1) private, personal information contained in peace officer personnel files  
15 (such as social security numbers, driver’s license numbers or comparable personal  
16 government identification numbers, residential addresses, compensation or pension or  
17 personal property information, credit card numbers or credit information, dates of birth,  
18 tax records and information, information related to the identity of an officer’s family  
19 members or co-residents, and comparable personal information about the officer or his  
20 family);

21 (2) any internal affairs or comparable investigation by any law enforcement  
22 agency into alleged officer misconduct; and/or

23 (3) the medical records or records of psychiatric or psychological treatment of  
24 any peace officer or party to this action.

25 Nothing in this paragraph shall be construed to bind the Court or its authorized  
26 staff so as to limit or prevent the publication of any Confidential Documents to the jury  
27 or factfinder, at the time of trial of this matter, where the Court has deemed such  
28 Confidential Documents to be admissible into evidence.

1 **6. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED**  
2 **IN OTHER LITIGATION.**

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

6 (a) promptly notify in writing the Designating Party, preferably (though not  
7 necessarily) by facsimile or electronic mail. Such notification shall include a copy of  
8 the subpoena or court order at issue;

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

13 (c) cooperate with respect to all reasonable procedures sought to be pursued by  
14 all sides in any such situation, while adhering to the terms of the parties’ Stipulation  
15 and this Order.

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

24 The purpose of this section is to ensure that the affected Party has a meaningful  
25 opportunity to preserve its confidentiality interests in the court from which the  
26 subpoena or court order issued.

27 **7. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL.**

28 7.1. Unauthorized Disclosure of Protected Material.

1 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed  
2 Protected Material to any person or in any circumstance not authorized under the  
3 parties' Stipulation and this Order, the Receiving Party must immediately:

4 (a) notify in writing the Designating Party of the unauthorized disclosures;

5 (b) use its best efforts to retrieve all copies of the Protected Material;

6 (c) inform the person or persons to whom unauthorized disclosures were made of  
7 all the terms of this Order; and

8 (d) request such person or persons consent to be bound by the Stipulation and  
9 this Order.

10 7.2. Inadvertent Production of Privileged or Otherwise Protected Material.

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

21 **8. PUBLICATION OF PROTECTED MATERIAL PROHIBITED.**

22 8.1. Filing of Protected Material.

23 Without advance written permission from the Designating Party, or a court order  
24 secured after appropriate notice to all interested persons, a Receiving Party may not file  
25 in the public record in this action any Protected Material. A Party that seeks to file  
26 under seal any Protected Material must comply with the applicable Federal and Local  
27 Rules.

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1           8.2. Public Dissemination of Protected Material.

2           A Receiving Party shall not publish, release, post, or disseminate Protected  
3 Material to any persons except those specifically delineated and authorized by the  
4 parties' Stipulation and this Order (see section 5, *supra*); nor shall a Receiving Party  
5 publish, release, leak, post, or disseminate Protected Material/Confidential Documents  
6 to any news media, member of the press, website, or public forum (except as permitted  
7 under this Order regarding filings with the court in this action and under seal).

8 **9. FINAL DISPOSITION.**

9           Unless otherwise ordered or agreed in writing by the Producing Party, within  
10 thirty (30) days after the final termination of this action (defined as the dismissal or  
11 entry of judgment by the above named court, or if an appeal is filed, the disposition of  
12 the appeal), upon written request by the Producing Party, each Receiving Party must  
13 return all Protected Material to the Producing Party – whether retained by the Receiving  
14 Party or its Counsel, Experts, Professional Vendors, agents, or any non-party to whom  
15 the Receiving Party produced or shared such records or information. As used in this  
16 subdivision, “all Protected Material” includes all copies, abstracts, compilations,  
17 summaries or any other form of reproducing or capturing any of the Protected Material,  
18 regardless of the medium (hardcopy, electronic, or otherwise) in which such Protected  
19 Material is stored or retained.

20           In the alternative, at the discretion of the Receiving Party, the Receiving Party  
21 may destroy some or all of the Protected Material instead of returning it – unless such  
22 Protected Material is an original, in which case, the Receiving Party must obtain the  
23 Producing Party's written consent before destroying such original Protected Material.

24           Whether the Protected Material is returned or destroyed, the Receiving Party  
25 must submit a written certification to the Producing Party (and, if not the same person  
26 or entity, to the Designating Party) within thirty (30) days of the aforementioned  
27 written request by the Designating Party that specifically identifies (by category, where  
28 appropriate) all the Protected Material that was returned or destroyed and that affirms



1 that the Receiving Party has not retained any copies, abstracts, compilations, summaries  
2 or other forms of reproducing or capturing any of the Protected material (in any  
3 medium, including but not limited to any hardcopy, electronic or digital copy, or  
4 otherwise).

5 Notwithstanding this provision, Counsel are entitled to retain an archival copy of  
6 all pleadings, motion papers, transcripts, legal memoranda filed with the court in this  
7 action, as well as any correspondence or attorney work product prepared by Counsel for  
8 the Receiving Party, even if such materials contain Protected Material; however, any  
9 such archival copies that contain or constitute Protected Material remain subject to this  
10 Protective Order as set forth in Section 2, above. This court shall retain jurisdiction in  
11 the event that a Designating Party elects to seek court sanctions for violation of the  
12 parties' Stipulation and this Order.

13 **10. MISCELLANEOUS.**

14 10.1. Right to Further Relief. Nothing in the parties' Stipulation or this Order  
15 abridges the right of any person to seek its modification by the Court in the future.

16 10.2. Right to Assert Other Objections. By stipulating to the entry of this  
17 Protective Order pursuant to the parties' Stipulation, no Party waives any right it  
18 otherwise would have to object to disclosing or producing any information or item on  
19 any ground not addressed in the parties' Stipulation or this Order. Similarly, no Party  
20 waives any right to object on any ground to use in evidence any of the material covered  
21 by the parties' Stipulation and this Protective Order.

22 The provisions of the parties' Stipulation and this Protective Order shall be in  
23 effect until further Order of the Court.

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1 Respectfully Submitted By:  
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10  
11 Attorneys for Defendant,  
12 CITY OF FRESNO (erroneously named as two  
13 parties: CITY OF FRESNO and FRESNO  
14 POLICE DEPARTMENT)  
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**ORDER**

**The parties' stipulated protective order is hereby adopted. Any challenge to the designation, for trial purposes, must be made sufficiently in advance of trial to permit the trial judge to consider and rule upon the challenge.**

IT IS SO ORDERED.

Dated: July 17, 2015

/s/ Barbara A. McAuliffe  
UNITED STATES MAGISTRATE JUDGE