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13 IN THE UNITED STATES DISTRICT COURT
14 FOR THE EASTERN DISTRICT OF CALIFORNIA
15 FRESNO DIVISION

17 **ERNEST J. ESPINOZA,**

18 Plaintiff,

19 v.

21 **CALIFORNIA HIGHWAY PATROL;
22 OFFICER MATT A. ASHE,**

23 Defendant.

Case No.: 1:16-cv-00193-JLT

**[PROPOSED] PROTECTIVE ORDER ON
STIPULATION AND
CONFIDENTIALITY AGREEMENT**

(Doc. 48)

1 COMES NOW, Plaintiff Ernest J. Espinoza (“Plaintiff”), through his counsel of record
2 Gregory Peacock of Layfield and Barrett, APC, and Defendant California Highway Patrol Officer
3 Matt A. Ashe (“Defendant”), though his counsel of record, Deputy Attorney General Kenny V.
4 Nguyen of the California Office of the Attorney General hereby stipulate and agree to the
5 following Confidentiality Agreement and Protective Order:

6 1. The records identified below are designated as “Confidential Material” and may be
7 only disclosed in this action subject to protective order and this agreement:

8 a. California Highway Patrol (“CHP”) records regarding the investigation, arrest,
9 and detention of Plaintiff , including but not limited to audio or video recordings,
10 Mobile Video Audio Recording System recordings (“MVARs”), ballistics analysis,
11 witness statements, dispatch recordings and transcripts, SMS or text messages, and
12 emails and other written correspondence. All birthdates, social security numbers,
13 home and work addresses, drivers’ license numbers, home and work telephone
14 numbers, of third party witnesses will be redacted.

15 b. CHP records regarding internal investigation into the use of force on Plaintiff
16 All birthdates, social security numbers, home and work addresses, drivers’ license
17 numbers, home and work telephone numbers, of third party witnesses will be
18 redacted.

19 c. Personnel records relating to the training and qualifications of Defendant,
20 including but not limited his job application, performance reviews, training records,
21 any records of citizen complaints pertaining to excessive use of force, discipline
22 records. All personal identifying information such as birthdate, home address, home
23 phone number, social security and drivers’ license numbers will be redacted.
24 Irrelevant personnel records such as benefits information will not be produced.

25 d. Highway Patrol Manuals.

26 2. Confidential Material may not be disclosed except as set forth in paragraphs 3, 4 and

27 5.

28 3. Confidential Material may be disclosed only to the following persons:

- 1 a. Counsel for any party to this action;
- 2 b. Paralegal, stenographic, clerical and secretarial personnel regularly employed
3 by counsel referred to in 3a.
- 4 c. Court personnel including stenographic reporters engaged in such proceedings
5 as are necessarily incidental to preparation for the trial of this action;
- 6 d. Any outside expert or consultant retained in connection with this action and not
7 otherwise employed by any party;
- 8 e. Any “in house” expert designated by Defendant to testify at trial in this matter;
- 9 f. Witnesses, other than the Plaintiff herein, who may have the documents
10 disclosed to them during deposition proceedings; the witnesses may not leave the depositions
11 with copies of the documents, and shall be bound by the provisions of paragraphs 4 and 5;
- 12 g. Any neutral evaluator or other designated ADR provider;
- 13 h. CHP, its representatives and counsel;
- 14 j. The jury, should this matter go to trial.

15 4. Each person to whom disclosure is made, with the exception of counsel who are
16 presumed to know of the contents of this protective order, shall, prior to disclosure: (1) be
17 provided with a copy of this order by the person furnishing him/her such material, and (2) agree
18 on the record or in writing that she/he has read the protective order and that she/he understand the
19 provisions of the protective order. Such person must also consent to be subject to the jurisdiction
20 of the United States District Court, Eastern District, with respect to any proceeding relating to the
21 enforcement of this order. As counsel for Defendant and non-party CHP, the California Office of
22 the Attorney General herein shall be entitled to retain possession of the original writings
23 described above. Nothing in this paragraph 4 is intended to prevent officials or employees of the
24 CHP or other authorized government officials or any other persons from having access to the
25 documents if they would have had access in the normal course of their job duties or rights as a
26 citizen. Further, nothing in this order prevents a witness from disclosing events or activities
27 personal to them, i.e., a witness can disclose to others previous information given to the CHP or
28 other law enforcement with respect to what she/he saw, heard, or otherwise sensed. The

1 Plaintiff's expert(s) or consultant(s) must sign an acknowledgement and agreement to be bound
2 by the terms of this Agreement and protective order, an executed copy of which will be provided
3 to CHP's counsel (i.e., the California Office of the Attorney General) within seven (7) days after
4 formal disclosure of such consultants as expert witnesses in this litigation. The acknowledgment
5 and agreement must contain the following language:

6 "As an expert witness for the Plaintiff in this lawsuit, I hereby acknowledge receipt of
7 a copy of the signed Confidentiality Agreement and Protective Order, approved and
8 entered by the Court in this action, and I agree to be bound by all terms and
9 conditions in that Protective Order and recognize that I may be personally found in
contempt of Court or subject to other sanctions determined by the Court should I
violate any term or condition in that Protective Order."

10 5. At the conclusion of the trial and of any appeal or upon other termination of this
11 litigation, all Confidential Material received under the provision of this order (including any
12 copies made) shall be delivered back to counsel for Defendant (i.e., the California Office of the
13 Attorney General). Provisions of this order insofar as they restrict disclosure and use of the
14 material shall be in effect until all Confidential Material (including all copies thereof) are returned
15 to counsel for Defendant (i.e., the California Office of the Attorney General).

16 6. In the event that any party wishes to file Confidential Material with the court, as an
17 exhibit to a pleading or otherwise, the filing party shall first seek an order to file under seal
18 pursuant to Local Rule 141. The Request to Seal documents shall refer to this stipulation and
19 protective order.

20 7. Nothing in this order shall preclude a party from showing or disclosing any
21 documents, e.g., deposition transcript, pleading or brief, which otherwise contain Confidential
22 Material as defined in paragraph 1, as long as such document has been redacted so as to prevent
23 disclosure of such Confidential Material.

24 8. The foregoing is without prejudice to the right of any party (a) to apply to the Court
25 for a further protective order relating to any Confidential Material or relating to discovery in this
26 litigation; (b) to apply to the Court for an order removing the Confidential Material designation
27 from any document; and (c) to apply to the Court for an order compelling production of
28 documents or modification of this order or for any order permitting disclosure of Confidential

1 Materials beyond the terms of this order. The party making the motion must comply with all
2 meet and confer requirements of the Court.

3 9. Stipulation to this Confidentiality Agreement and protective order does not constitute
4 a waiver of any objections, including but not limited to, to any discovery on the grounds of
5 relevance, overbreadth, undue burden, equal access, admissibility, materiality, attorney-client
6 privilege, attorney work product, official information privilege, deliberate process privilege,
7 investigative privilege, law enforcement privilege, privileges pursuant to California Penal Code
8 sections 832.7 and 832.8, Evidence Code section 1040, Government Code section 6250 et seq.,
9 Peace Officers Bill of Rights, Government Code section 3300, et seq., Information Practices Act
10 of 1977, Civil Code sections 1798 *et seq*, HIPAA, and federal and state privacy laws.

11 10. Confidential Material disclosed may be used in the litigation of this action only, and
12 not for any other purpose or in any other lawsuit, related or otherwise.

13 11. Violation of the terms of this protective order may subject a party, and any signatories
14 who violate the protective order including any party's experts or consultants, to any and all
15 permissible sanctions, including dismissal.

16
17 **SO STIPULATED:**

18 Dated: January 18, 2017

KAMALA D. HARRIS
Attorney General of California
PETER A. MESHOT
Supervising Deputy Attorney General

21
22 */s/ Kenny V. Nguyen*

23 KENNY V. NGUYEN
24 Deputy Attorney General
25 *Attorneys for Defendant Officer Matt A.
26 Ashe*

1 Dated: January 18, 2017

/s/ Gregory P. Peacock

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Gregory P. Peacock
Attorneys for Plaintiff Ernest J. Espinoza

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ORDER

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Upon good cause shown, the above Stipulation of the parties is hereby approved and made
7 the Order of this Court.

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IT IS SO ORDERED.

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10 Dated: January 18, 2017

/s/ Jennifer L. Thurston
UNITED STATES MAGISTRATE JUDGE

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