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

PATRICIA MUGRAUER and WADE  
MUGRAUER,

Plaintiffs,

v.

CITY OF MODESTO, a municipal  
corporation, Modesto Police Department Chief  
GALEN CARROLL, in his individual and  
official capacities, Modesto Police Officer  
JOHN C. LEE, individually, and DOES 1  
through 50, jointly and severally,

Defendants.

Case No. 16-cv-00480-AWI-SAB

**PROTECTIVE ORDER**

(ECF No. 7)

**1. PURPOSES AND LIMITATIONS**

Disclosure and discovery activity in this action are likely to involve production of confidential, proprietary, or private information for which special protection from public disclosure and from use for any purpose other than prosecuting this litigation may be warranted. Accordingly, the parties hereby stipulate to and petition the Court to enter the following Stipulated Protective Order. The parties acknowledge that this Order does not confer blanket protections on all disclosures or responses to discovery and that the protection it affords from

1 public disclosure and use extends only to the limited information or items that are entitled to  
2 confidential treatment under the applicable legal principles. The parties further acknowledge, as  
3 set forth in Section 12.3, below, that this Stipulated Protective Order does not entitle them to file  
4 confidential information under seal; the Civil Local Rules set forth the procedures that must be  
5 followed and the standards that will be applied when a party seeks permission from the court to  
6 file material under seal.

7 Pursuant to Local Rule 141.1, the parties believe that the information claimed by  
8 Defendants – or characterized by Defendants as – confidential, proprietary, or private  
9 information likely to be produced in this action consists of, among other things, records in police  
10 officer personnel files and internal affairs files relating to the individual Defendants. Defendants  
11 are unwilling to produce highly sensitive materials in their personnel files, nor information  
12 characterized by Defendants as “confidential official information,” without a protective order  
13 entered by this Court.

14 The parties seek a court-entered protective order governing the production of this  
15 confidential information. The production and handling of information produced pursuant to the  
16 Court’s order will be governed by the following terms of this protective order.

17 **2. DEFINITIONS**

18 2.1 Challenging Party: a Party or Non-Party that challenges the designation of  
19 information or items under this Order.

20 2.2 “CONFIDENTIAL” Information or Items: information (regardless of how it is  
21 generated, stored or maintained) or tangible things that qualify for protection under Federal Rule  
22 of Civil Procedure 26(c).

23 2.3 Counsel (without qualifier): Outside Counsel of Record and House Counsel (as  
24 well as their support staff).

25 2.4 Designating Party: a Party or Non-Party that designates information or items that  
26 it produces in disclosures or in responses to discovery as “CONFIDENTIAL.”

27 2.5 Disclosure or Discovery Material: all items or information, regardless of the  
28 medium or manner in which it is generated, stored, or maintained (including, among other things,

1 testimony, transcripts, and tangible things), that are produced or generated in disclosures or  
2 responses to discovery in this matter.

3       2.6    Expert: a person with specialized knowledge or experience in a matter pertinent  
4 to the litigation who has been retained by a Party or its counsel to serve as an expert witness or as  
5 a consultant in this action.

6       2.7    House Counsel: attorneys who are employees of a party to this action. House  
7 Counsel does not include Outside Counsel of Record or any other outside counsel.

8       2.8    Non-Party: any natural person, partnership, corporation, association, or other  
9 legal entity not named as a Party to this action.

10       2.9    Outside Counsel of Record: attorneys who are not employees of a party to this  
11 action but are retained to represent or advise a party to this action and have appeared in this  
12 action on behalf of that party or are affiliated with a law firm which has appeared on behalf of  
13 that party.

14       2.10   Party: any party to this action, including all of its officers, directors, employees,  
15 consultants, retained experts, and Outside Counsel of Record (and their support staffs).

16       2.11   Producing Party: a Party or Non-Party that produces Disclosure or Discovery  
17 Material in this action.

18       2.12   Professional Vendors: persons or entities that provide litigation support services  
19 (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations, and  
20 organizing, storing, or retrieving data in any form or medium) and their employees and  
21 subcontractors.

22       2.13   Protected Material: any Disclosure or Discovery Material that is designated as  
23 “CONFIDENTIAL.”

24       2.14   Receiving Party: a Party that receives Disclosure or Discovery Material from a  
25 Producing Party.

26 **3.    SCOPE**

27       The protections conferred by this Stipulation and Order cover not only Protected Material  
28 (as defined above), but also (1) any information copied or extracted from Protected Material; (2)

1 all copies, excerpts, summaries, or compilations of Protected Material; and (3) any testimony,  
2 conversations, or presentations by Parties or their Counsel that might reveal Protected Material.  
3 However, the protections conferred by this Stipulation and Order do not cover the following  
4 information: (a) any information that is in the public domain at the time of disclosure to a  
5 Receiving Party or becomes part of the public domain after its disclosure to a Receiving Party as  
6 a result of publication not involving a violation of this Order, including becoming part of the  
7 public record through trial or otherwise; and (b) any information known to the Receiving Party  
8 prior to the disclosure or obtained by the Receiving Party after the disclosure from a source who  
9 obtained the information lawfully and under no obligation of confidentiality to the Designating  
10 Party. Any use of Protected Material at trial shall be governed by a separate agreement or order.

11 **4. DURATION**

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

19 **5. DESIGNATING PROTECTED MATERIAL**

20 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each Party  
21 or Non-Party that designates information or items for protection under this Order must take care  
22 to limit any such designation to specific material that qualifies under the appropriate standards.  
23 The Designating Party must designate for protection only those parts of material, documents,  
24 items, or oral or written communications that qualify – so that other portions of the material,  
25 documents, items, or communications for which protection is not warranted are not swept  
26 unjustifiably within the ambit of this Order.

27 Mass, indiscriminate, or routinized designations are prohibited. Designations that are  
28 shown to be clearly unjustified or that have been made for an improper purpose (e.g., to

1 unnecessarily encumber or retard the case development process or to impose unnecessary  
2 expenses and burdens on other parties) expose the Designating Party to sanctions.

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

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

10 Designation in conformity with this Order requires:

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

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

27 (b) for testimony given in deposition or in other pretrial or trial proceedings, that the  
28 Designating Party (or the non-party offering or sponsoring the testimony) identify, within 30

1 business days of receipt of the deposition transcript, all portions of the testimony for which  
2 protection is sought. Testimony given in deposition shall be treated provisionally as  
3 “CONFIDENTIAL” from the time of the deposition through the earlier of (i) the Designating  
4 Party’s identification of the testimony to be protected; or (ii) 30 business days after the  
5 Designating Party’s receipt of the deposition transcript.

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

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

16 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

17 6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation of  
18 confidentiality at any time. Unless a prompt challenge to a Designating Party’s confidentiality  
19 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic  
20 burdens, or a significant disruption or delay of the litigation, a Party does not waive its right to  
21 challenge a confidentiality designation by electing not to mount a challenge promptly after the  
22 original designation is disclosed.

23 6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution  
24 process by providing written notice of each designation it is challenging and describing the basis  
25 for each challenge. To avoid ambiguity as to whether a challenge has been made, the written  
26 notice must recite that the challenge to confidentiality is being made in accordance with this  
27 specific paragraph of the Protective Order. The parties shall attempt to resolve each challenge in  
28 good faith and must begin the process by conferring directly (in voice to voice dialogue; other

1 forms of communication are not sufficient) within 14 days of the date of service of notice. In  
2 conferring, the Challenging Party must explain the basis for its belief that the confidentiality  
3 designation was not proper and must give the Designating Party an opportunity to review the  
4 designated material, to reconsider the circumstances, and, if no change in designation is offered,  
5 to explain the basis for the chosen designation. A Challenging Party may proceed to the next  
6 stage of the challenge process only if it has engaged in this meet and confer process first or  
7 establishes that the Designating Party is unwilling to participate in the meet and confer process in  
8 a timely manner.

9           6.3     Judicial Intervention. If the Parties cannot resolve a challenge without court  
10 intervention, the Challenging Party may file a motion challenging a confidentiality designation at  
11 any time if there is good cause for doing so, including a challenge to the designation of a  
12 deposition transcript or any portions thereof. Any motion brought pursuant to this provision  
13 must be accompanied by a competent declaration affirming that the movant has complied with  
14 the meet and confer requirements imposed by the preceding paragraph.

15           Until the Court rules on the challenge, all parties shall continue to afford the material in  
16 question the level of protection to which it is entitled under the Producing Party's designation  
17 until the Court rules on the challenge.

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

19           7.1     Basic Principles. A Receiving Party may use Protected Material that is disclosed  
20 or produced by another Party or by a Non-Party in connection with this case only for  
21 prosecuting, defending, or attempting to settle this litigation. Such Protected Material may be  
22 disclosed only to the categories of persons and under the conditions described in this Order.  
23 After final disposition of this action, a Receiving Party must comply with the provisions of  
24 section 13 below (FINAL DISPOSITION).

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

27           7.2     Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise  
28 ordered by the court or permitted in writing by the Designating Party, a Receiving Party may

1 disclose any information or item designated “CONFIDENTIAL” only to:

2 (a) the Receiving Party’s Outside Counsel of Record in this action, as well as employees  
3 of said Outside Counsel of Record to whom it is reasonably necessary to disclose the information  
4 for this litigation and who have signed the “Acknowledgment and Agreement to Be Bound” that  
5 is attached hereto as Exhibit A;

6 (b) the officers, directors, and employees (including House Counsel) of the Receiving  
7 Party to whom disclosure is reasonably necessary for this litigation and who have signed the  
8 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

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

12 (d) the court and its personnel;

13 (e) court reporters and their staff, professional jury or trial consultants, mock jurors, and  
14 Professional Vendors to whom disclosure is reasonably necessary for this litigation;

15 (f) during their depositions, witnesses in the action to whom disclosure is reasonably  
16 necessary and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit  
17 A), **unless otherwise agreed by the Designating Party or ordered by the court.** Pages of  
18 transcribed deposition testimony or exhibits to depositions that reveal Protected Material must be  
19 separately bound by the court reporter and may not be disclosed to anyone except as permitted  
20 under this Stipulated Protective Order; and

21 (g) the author or recipient of a document containing the information or a custodian or  
22 other person who otherwise possessed or knew the information.

23 **8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN**  
24 **OTHER LITIGATION**

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

28 (a) promptly notify in writing the Designating Party. Such notification shall include a



1 copy of the subpoena or court order;

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

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

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

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

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

21 (b) In the event that a Party is required, by a valid discovery request, to produce a  
22 Non-Party’s confidential information in its possession, and the Party is subject to an agreement  
23 with the Non-Party not to produce the Non-Party’s confidential information, then the Party shall:  
24 promptly notify in writing the Requesting Party and the Non-Party that some or all of the  
25 information requested is subject to a confidentiality agreement with a Non-Party;  
26 promptly provide the Non-Party with a copy of the Stipulated Protective Order in this litigation,  
27 the relevant discovery request(s), and a reasonably specific description of the information  
28 requested; and make the information requested available for inspection by the Non-Party.

1 (c) If the Non-Party fails to object or seek a protective order from this court within 14  
2 days of receiving the notice and accompanying information, the Receiving Party may produce  
3 the Non-Party's confidential information responsive to the discovery request. If the Non-Party  
4 timely seeks a protective order, the Receiving Party shall not produce any information in its  
5 possession or control that is subject to the confidentiality agreement with the Non-Party before a  
6 determination by the court.<sup>1</sup> Absent a court order to the contrary, the Non-Party shall bear the  
7 burden and expense of seeking protection in this court of its Protected Material.

8 **10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

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

16 **11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE**  
17 **PROTECTED MATERIAL**

18 When a Producing Party gives notice to Receiving Parties that certain inadvertently  
19 produced material is subject to a claim of privilege or other protection, the obligations of the  
20 Receiving Parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). Nothing in  
21 this Order is intended to limit the application or scope of Federal Rule of Evidence 502.

22 **12. MISCELLANEOUS**

23 12.1 Right to Further Relief. Nothing in this Order abridges the right of any person to  
24 seek its modification by the court in the future.

25 12.2 Right to Assert Other Objections. By stipulating to the entry of this Protective  
26 Order, no Party waives any right it otherwise would have to object to disclosing or producing

27 \_\_\_\_\_  
28 <sup>1</sup> The purpose of this provision is to alert the interested parties to the existence of confidentiality rights of a Non-Party and to afford the Non-Party an opportunity to protect its confidentiality interests in this court.

1 any information or item on any ground not addressed in this Stipulated Protective Order.

2 Similarly, no Party waives any right to object on any ground to use in evidence of any of the  
3 material covered by this Protective Order.

4 12.3 Filing Protected Material. Without written permission from the Designating Party  
5 or a court order secured after appropriate notice to all interested persons, a Party may not file in  
6 the public record in this action any Protected Material. A Party that seeks to file under seal any  
7 Protected Material must comply with the applicable Local Rules, General Orders, and Judge's  
8 individual rules/practices. Protected Material may only be filed under seal pursuant to  
9 applicable Local Rule or court order. If a Receiving Party's request to file Protected Material  
10 under seal is denied by the Court, the Receiving Party may file the information in the public  
11 record unless otherwise instructed by the Court.

12 **13. FINAL DISPOSITION**

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

27 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.  
28



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 penalty of perjury that I have read in its entirety and  
5 understand the Stipulated Protective Order that was issued by the United States District Court for  
6 the Eastern District of California in the case of *Magrauer, et al. v. City of Modesto, et al.*, Case  
7 No: 16-00480-AWI-SAB. I agree to comply with and to be bound by all the terms of this  
8 Stipulated Protective Order and I understand and acknowledge that failure to so comply could  
9 expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will  
10 not disclose in any manner any information or item that is subject to this Stipulated Protective  
11 Order to any person or entity except in strict compliance with the provisions of this Order.

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

15 I hereby appoint \_\_\_\_\_ [print or type full name] of  
16 \_\_\_\_\_ [print or type full address and telephone  
17 number] as my California agent for service of process in connection with this action or any  
18 proceedings related to enforcement of this Stipulated Protective Order.

19  
20 Date: \_\_\_\_\_

21 City and State where sworn and signed: \_\_\_\_\_

22  
23 Printed name: \_\_\_\_\_

24 [printed name]

25  
26 Signature: \_\_\_\_\_

27 [signature]