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10 UNITED STATES DISTRICT COURT  
11 EASTERN DISTRICT OF CALIFORNIA

12 THE ESTATE OF AARON ALLEN  
13 MARCHESE, ROSEANNE  
14 GARCIA, an individual and as  
15 successor-in-interest to AARON  
16 ALLEN MARCHESE,

17 Plaintiff,

18 vs.

19 CITY OF FRESNO; CLAYTON  
20 SMITH, an individual, and DOES 1  
21 through 10, inclusive,

22 Defendants.

Case No. 1:16-cv-01340-LJO-SAB

ORDER RE STIPULATION FOR  
PROTECTIVE ORDER

(ECF No. 27)

23 To expedite the flow of discovery materials, to facilitate the prompt  
24 resolution of disputes over confidentiality of discovery materials, to adequately  
25 protect information the parties are entitled to keep confidential, to ensure that only  
26 materials that the parties and third-parties are entitled to keep confidential are  
27 subject to such treatment, and to ensure that the parties are permitted reasonably  
28 necessary uses of such materials in preparation for and in the conduct of trial,

1 pursuant to Rule 26(c) of the Federal Rules of Civil Procedure, it is hereby  
2 stipulated by and between the parties by their respective counsel:

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

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

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13 3. “Confidential – Counsel Only” documents shall be defined as  
14 “Confidential” documents, as defined in paragraph 2, that also contain sensitive  
15 personal information, including, for example, personnel records and medical  
16 records.  
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19 4. Protected Information shall be used solely in connection with the civil case  
20 of *Estate of Aaron Allen Marchese, et al. v. City of Fresno, et al.*, Case No. 1:16-  
21 CV-01340-LJO-SAB, and in the preparation of trial of this case, or any related  
22 proceeding.

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

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4 6. Protected Information designated under this Protective Order as  
5 "Confidential" may only be disclosed to the following persons:

6 a) Counsel for the parties;

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

11  
12 c) Court personnel including stenographic reporters or videographers  
13 engaged in proceedings as are necessarily incidental to the preparation for the trial  
14 of the civil action;

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16 d) Any expert or consultant retained in connection with this action;

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18 e) The finder of fact at the time of trial, subject to the court's rulings on in  
19 limine motions and objections of counsel; and

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

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24 7. Protected Information designated under this Protective Order as  
25 "Confidential – Counsel Only" may only be disclosed to the following persons:

26 a) Outside counsel for the parties;

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1           b) Paralegal, clerical, and secretarial personnel regularly employed by  
2 counsel referred to in subpart (a) directly above, including stenographic deposition  
3 reporters or videographers retained in connection with this action;  
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5           c) Court personnel including stenographic reporters or videographers  
6 engaged in proceedings as are necessarily incidental to the preparation for the trial  
7 of the civil action;  
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9           d) Any expert or consultant retained in connection with this action; and

10           e) The finder of fact at the time of trial, subject to the court's rulings on in  
11 limine motions and objections of counsel.  
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13           8. All Protected Information filed with the Court for any purpose shall be  
14 filed and served under seal in accordance with Local Rule 141.  
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16           9. The designation of information as Protected Information, and the  
17 subsequent production thereof, is without prejudice to the right of any party to  
18 oppose the admissibility of the designated information.  
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20           10. A nonparty producing information or material voluntarily or pursuant to a  
21 subpoena or a court order may designate such material or information as Protected  
22 Information pursuant to the terms of this Protective Order. The signatories to this  
23 Protective Order will treat such information as Protected Information to the same  
24 extent as if it had been produced by a party.  
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26           11. A party may apply to the Court for an order that information designated  
27 as Protected Information pursuant to this Protective Order is not, in fact,  
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1 “Confidential,” or appropriately designated as “Confidential – Counsel Only.” Prior  
2 to so applying, the party seeking to reclassify Protected Information shall meet and  
3 confer with the producing party. Until the matter is resolved by the parties or the  
4 Court, the Protected Information in question shall continue to be treated according  
5 to its designation under the terms of this Protective Order. The  
6 producing party shall have the burden of establishing the propriety of the  
7 “Confidential” or “Confidential – Counsel Only” designation. A party shall not be  
8 obligated to challenge the propriety of a confidentiality designation at the time  
9 made, and a failure to do so shall not preclude a subsequent challenge thereto.  
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13 12. Each person to whom disclosure is made, with the exception of counsel,  
14 and its paralegal, clerical, and secretarial personnel, who are presumed to know the  
15 contents of this Protective Order, shall, prior to the time of disclosure, be provided  
16 by the person furnishing him or her such material, a copy of this Protective Order.  
17 Each person to whom disclosure is made shall agree on the record or in writing that  
18 he/she has read the Protective Order and he/she understands the provisions of the  
19 Protective Order. Such person must also consent to be subject to the jurisdiction of  
20 the United States District Court, Eastern District of California, with respect to any  
21 proceeding related to enforcement of this Protective Order, including without  
22 limitation, any proceeding for contempt. Provisions of this Protective Order, insofar  
23 as they restrict disclosure and use of the material, shall be in effect until further  
24 order of this Court.  
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1 13. After the conclusion of this litigation, all documents, in whatever form  
2 stored or reproduced, containing Protected Information will remain confidential and  
3 subject to this Protective Order. The conclusion of this litigation means a  
4 termination of the case following applicable post-trial motions, appeal and/or  
5 retrial. After the conclusion of this litigation, all Protected Information received  
6 under the provisions of this Protective Order, including copies made, shall be  
7 destroyed, or tendered back to the attorneys for the party or parties producing the  
8 documents. The parties will also take all reasonable and necessary steps to ensure  
9 that persons to whom they disclose another party's Protected Information destroy or  
10 return the Protected Information to the producing party.  
11

12 Dated: FERGUSON, PRAET & SHERMAN  
13 A Professional Corporation

14 By: /s/ Bruce D. Praet  
15 Bruce D. Praet, Attorneys for  
16 Defendants

17 Dated: THE SEHAT LAW FIRM, PLC

18 By: /s/ Cameron Sehat  
19 Cameron Sehat, Attorneys for  
20 Plaintiffs

21 Dated: SCOTT D. HUGHES, APLC

22 By: /s/ Scott D. Hughes  
23 Scott D. Hughes, Attorneys for  
24 Plaintiffs

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**ORDER**

Pursuant to the stipulation of the parties, IT IS HEREBY ORDERED that:

1. The protective order is entered;
2. The parties are advised that pursuant to the Local Rules of the United States District Court, Eastern District of California, any documents which are to be filed under seal will require a written request which complies with Local Rule 141; and
3. The party making a request to file documents under seal shall be required to show good cause for documents attached to a nondispositive motion or compelling reasons for documents attached to a dispositive motion. Pintos v. Pacific Creditors Ass'n, 605 F.3d 665, 677-78 (9th Cir. 2009).

IT IS SO ORDERED.

Dated: March 16, 2017

  
UNITED STATES MAGISTRATE JUDGE