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10 **UNITED STATES DISTRICT COURT**
11 **EASTERN DISTRICT OF CALIFORNIA, FRESNO DIVISION**

12
13 DARREN NOBLE, individually and on
behalf of decedent, DYLAN NOBLE;
14 DARREN NOBLE, as Successor-in-
Interest to the Estate of Dylan Noble,

15 Plaintiff,

16 v.

17 CITY OF FRESNO, and the CITY OF
FRESNO POLICE DEPARTMENT,
18 RAYMOND CAMACHO, ROBERT
CHAVEZ, and DOES 1 thru 50, inclusive,

19 Defendants.
20

21 VERONICA NELSON, individually, and
on behalf of Decedent, DYLAN NOBLE;
22 VERONICA NELSON, as Successor-in-
Interest to the Estate of Dylan Noble,

23 Plaintiff,

24 v.

25 CITY OF FRESNO; CITY OF FRESNO
POLICE DEPARTMENT; RAYMOND
26 CAMACHO; ROBERT CHAVEZ; and
DOES 1 to 25, inclusive,

27 Defendants.
28

U.S. Magistrate Judge Barbara A. McAuliffe
Lead Case No.: 1:16-cv-01690-DAD-BAM
Member Case No.: 1:16-cv-01754-DAD-BAM

**STIPULATION AND JOINT REQUEST
FOR ENTRY OF PROTECTIVE ORDER
REGARDING CONFIDENTIAL
DOCUMENTS**

Action Filed: September 1, 2016
Trial Date: October 16, 2018

Hearing Date: December 15, 2017
Time: 10:00 a.m.
Department: 8

1 Pursuant to this Court’s Order of November 27, 2017, Plaintiff DARREN NOBLE,
2 individually and on behalf of Decedent, Dylan Noble, as Successor-in-Interest to the Estate of
3 Dylan Noble, Plaintiff VERONICA NELSON, individually and on behalf of Decedent, Dylan
4 Noble, as Successor-in-Interest to the Estate of Dylan Noble, and Defendant CITY OF FRESNO,
5 and the CITY OF FRESNO Police Department, Defendant RAYMOND CAMACHO, and
6 Defendant ROBERT CHAVEZ (collectively referred to as the “Parties”), by and through their
7 attorneys, hereby stipulate and ask for the Court to enter an Order upon this stipulation, for an
8 Order that will protect the confidentiality of the information that may be produced in documents,
9 written discovery responses, at deposition, and at the time of trial (through a separate agreement or
10 Order as referenced in paragraph 5.2(j) herein) by Plaintiffs, Defendants, or third parties. The
11 Parties enter into this Stipulation for a Protective Order:

12 **1. PURPOSES AND LIMITATIONS**

13 Disclosure and discovery activity in this action may involve production of confidential,
14 proprietary, or private information for which special protection from public disclosure and from
15 use for any purpose other than prosecuting this litigation may be warranted.

16 **2. SCOPE**

17 The protections conferred by this Order cover not only the Protected Materials (as
18 identified in paragraph 4.1), but also (1) any information copied or extracted from Protected
19 Material; (2) all copies, excerpts, summaries, or compilations of Protected Material; and (3) any
20 testimony, conversations, or presentations by Parties or their Counsel that might reveal Protected
21 Material. However, the protections conferred by this Order do not cover the following
22 information: (a) any information that is in the public domain at the time of its disclosure to
23 Plaintiff as a result of publication not involving a violation of this Order, including becoming part
24 of the public record through trial or otherwise; and (b) any information known to the Plaintiff prior
25 to the disclosure or obtained by the Plaintiff after the disclosure from a source who obtained the
26 information lawfully and under no obligation of confidentiality to the Defendants. Any use of
27 Protected Material at trial shall be governed by a separate agreement or order.
28

1 **3. DURATION**

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

8 **4. PROTECTED MATERIAL**

9 4.1 Protected Materials

10 Defendants shall produce the following Protected Materials subject to this Protective Order
11 on the following conditions:

12 (a) Documents Subject to Disclosure Limited to This Action. The documents
13 requested by Plaintiffs through discovery come from Fresno Police Department's policies and
14 procedures adopted at the time of the traffic stop of DYLAN NOBLE on June 25, 2016; Fresno
15 Police Department's training materials in use at the time of the traffic stop of DYLAN NOBLE on
16 June 25, 2016; and the Defendants' personnel files from citizen complaints, accident review
17 boards, and internal investigations relating to Defendant Officers Camacho and Chavez. The
18 following confidential documents and the information contained therein shall be used solely in
19 connection with this litigation, including appeals, and not for any other purpose, including other
20 litigation:

21 Records of Officer Camacho

- 22 - Personnel File
23 - Training Records
24 - All Internal Affairs Investigations (concerning subject shooting and any factually
25 related shootings or use of excessive force)

26 Records of Officer Chavez

- 27 - Personnel File
28 - Training Records
- All Internal Affairs Investigations (concerning subject shooting and any factually
related shootings or use of excessive force)

1 Fresno Police Department Training Materials

- 2 - Entire Officer Training Manual (in effect at the time of the subject OIS)
3 - All Modifications to Training Manual Since January 1, 2011

4 Witness Statements

- 5 - AXON Bodycam of All Responding and Investigatory Officers Containing
6 Identification of Witnesses and Witness Statements
7 - All Audio and Written Statements of Witnesses Interviewed Related to the OIS
8 (including, but not limited to: Officers Camacho, Chavez, Reese, Escareno,
9 Rosario, Meiss, Calomiris, Jackson, Cervantes, Yang, and percipient or lay
10 witnesses Nick Taylor, Raphael Golarado. Patricia Martinez, Pamoon
11 Donsanouphit, Luis Cardenas, Juan Rendon, Samantha Rocha, Luke Phan,
12 Phox Thammovang, Brandon Phan, Alina Phan, John Nieblas, Chai Her, Marco
13 Gordillo, Chick Price, Miguel Sanchez Jiminez, Mateo Estrada, and Lacey Clark).

14 Items Not Specified Herein Above That Were Otherwise Identified by the Court

- 15 - Any and all records that, in its Order dated November 27, 2017 [Dkt. Doc. 38], the
16 Court identified as being confidential, privileged, or subject to a proper protective
17 order in this case.

18 Nothing in this Stipulation shall be construed as Defendants' agreement that any or all of
19 the above specified items or materials are discoverable in this action or otherwise.

20
21 (b) Redaction of Confidential Information. Considering the privacy concerns
22 contained in the personnel and Internal Investigation Records, and for any records produced in this
23 matter, , the producing party shall redact the personal identifying information (such as social
24 security numbers, dates of birth, driver's license number, home address, telephone numbers,
25 financial and credit histories, medical and psychological information) for Defendant Officers
26 Camacho and Chavez, Non-Defendant Officers, and any other persons identified in such records.

27 4.2 Manner and Timing of Designation. Designation in conformity with the Order
28 requires:

- (a) For information in documentary form (e.g. paper or electronic documents,

1 but excluding transcripts of depositions or other pretrial or trial proceedings), that the City affix
2 “CONFIDENTIAL” to each page of the protected material.

3 (b) For testimony given in deposition or in other pretrial or trial proceedings,
4 that the City identify on the record, before the close of the deposition, hearing or other proceeding,
5 all protected testimony.

6 (c) For information produced in some form other than documentary and for any
7 other tangible items, the City affix in a prominent place on the exterior of the container or
8 containers in which the information or item is stored the legend “CONFIDENTIAL”.

9 4.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
10 designate qualified information or items does not, standing alone, waive the City’s right to secure
11 protection under this Order for such material. Upon timely correction of a designation, Plaintiffs
12 must make reasonable efforts to assure that the material is treated in accordance with the
13 provisions of this Order.

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

15 5.1 Basic Principles. The Parties may use Protected Material that is disclosed or
16 produced in connection with this case only for prosecuting, defending, or attempting to settle this
17 litigation except as needed by officials or employees of the City of Fresno, or other authorized
18 government officials, to perform the normal course of their official duties as set forth in paragraph
19 5.2(i) herein. The Parties shall refrain from any public dissemination or disclosure of Protected
20 Material that is deemed confidential and subject to this Protective Order. Such Protected Material
21 may be disclosed only to the categories of persons under the conditions described in this Order.
22 When the litigation has been terminated, Plaintiffs must comply with the provision of section 9
23 below (FINAL DISPOSITION).

24 5.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless the Court Orders
25 otherwise, confidential documents and the information contained therein may be disclosed only to
26 the following persons:

- 27 (a) Counsel of record and the named parties;
28 (b) Attorney, paralegal, secretarial, stenographic, and clerical personnel
employed by counsel of record;
(c) The Court and its personnel;

1 (d) Stenographic reporters and videographers engaged in such proceedings that
2 are incidental to preparation for trial in this action;

3 (e) Any outside expert or consultant retained by the parties for purposes of this
4 litigation;

5 (f) Witnesses to whom the documents and the information contained in the
6 documents may be disclosed during, or in the preparation for, a deposition taken in this matter, or
7 otherwise during the preparation for trial and during trial, provided that the witness may not leave
8 any deposition with copies of any of the confidential documents, and shall be informed of and
shall agree to be bound by the terms of this Order; and

9 (g) Any person expressly named and agreed to in writing by the parties. All
10 such aforementioned persons are expressly bound by the terms of this Stipulation and its
11 associated Order. Nothing in this Stipulation or any associated Order shall be construed as
binding on the Court or its staff.

12 (h) Notwithstanding the foregoing, protected health information may be
13 disclosed to the successors-in-interest of the estate of the decedent about whose health the
14 information refers.

15 (i) Nothing in this Protective Order is intended to prevent officials or
16 employees of the City of Fresno, or other authorized government officials, from having access to
17 confidential documents to which they would have access in the normal course of their official
18 duties.

19 (j) Any use of Protected Material at trial shall be governed by a separate
20 agreement or Order of this Court.

21 **6. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN**
22 **OTHER LITIGATION**

23 If a Party is served with a subpoena or a Court Order issued in other litigation that compels
24 disclosure of any information or items designated in this action as “CONFIDENTIAL”, that Party
25 must:

26 (a) Promptly notify in writing the Defendants. Such notification shall include a
copy of the subpoena or court order;

27 (b) Promptly notify in writing the party who caused the subpoena or order to
28 issue in the other litigation that some or all of the material covered by the subpoena or order is

1 subject to this Protective Order. Such notification shall include a copy of this Protective Order;
2 and

3 (c) Cooperate with respect to all reasonable procedures sought to be pursued by
4 the Defendants whose Protective Material may be affected.

5 The Plaintiffs shall not produce any information that they know is designated in this or any
6 other action as “CONFIDENTIAL” before a determination by the Court from which the subpoena
7 or order was issued that the information is not protected confidential information, unless Plaintiffs
8 have obtained the Defendants’ permission. The Defendants shall bear the burden and expense of
9 seeking protection in that Court of its confidential material – and nothing in these provisions
10 should be construed as authorizing or encouraging a Plaintiff in this action to disobey a lawful
11 directive from another Court.

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

13 (a) With the exception of disclosure pursuant to paragraphs 5.2(a), (b), (c), and
14 (h) above, each person to whom the parties’ counsel discloses confidential information or
15 Protected Material shall, prior to the time of disclosure, be provided with a copy of this Protective
16 Order and shall sign the “Acknowledgment and Agreement to Be Bound” that is attached hereto as
17 Exhibit “A”.

18 (b) Plaintiffs’ and Defendants’ counsel, including paralegal, stenographic,
19 secretarial, and clerical personnel employed by counsel of record shall not make copies of the
20 confidential documents, or provide original to anybody, except as necessary for purposes of this
21 litigation, including appeals, and shall not provide any copies or original to any named Plaintiff.
22 Plaintiffs’ and Defendants’ counsel are responsible to ensure that their respective employees and
23 agents comply with this Protective Order.

24 (c) If Plaintiff(s) learn that, by inadvertence or otherwise, (s)he has disclosed
25 Protected Material to any person or in any circumstance not authorized under this Protective
26 Order, the Plaintiff(s) must immediately (a) notify the Defendants in writing of the unauthorized
27 disclosure(s), (b) use his/her best efforts to retrieve all unauthorized copies of the Protected
28 Material, (c) inform the person or persons to whom unauthorized disclosure(s) were made of all
the terms of this Protective Order and provide them with a copy, and (d) request that person or
persons execute the “Acknowledgment and Agreement to Be Bound” that is attached hereto as
Exhibit “A”.

1 **8. UNPROTECTED MATERIAL**

2 It is understood that there may be evidence contained in Documents listed as Protected
3 Material herein that may not be subject of a Protective Order. To the extent the documents
4 contained in this Protective Order herein constitute evidence not subject to this Protective Order,
5 the Documents will be Provided NOT marked Confidential and NOT subject to this Protective
6 Order except as otherwise set forth in paragraph 8.1 herein regarding bodycam recordings and
7 incident videos. It is further understood that some Documents being sought in discovery to date
8 are NOT subject to a confidentiality agreement and are deemed as Unprotected Materials. The
9 definition of Unprotected Material was stated in the Court’s Order of November 27, 2017 [Dkt.
10 Doc. 38]: which is incorporated here by reference, and all future Orders of the Court, which are
11 incorporated here by reference

11 **8.1 Unprotected Material**

12 As defined by the Court in the Court’s November 27, 2017, Order [Dkt. Doc. 38],
13 “objective factual information” related to the incident is deemed Unprotected Material, and
14 includes:

- 14 1. Pre-incident police reports
- 15 2. Post-incident police reports
- 16 3. Initial 911 calls
- 17 4. Dispatch audio communicated to officers
- 18 5. Photographs taken by officers and witnesses
 - 19 a. Pictures of the scene
 - 20 b. Pictures of the suspect
 - 21 c. Pictures of the suspect’s vehicle
 - 22 d. Pictures of weapons
 - 23 e. Pictures of clothing
 - 24 f. Pictures of the officers’ vehicles
 - 25 g. Aerial shots
 - 26 h. Autopsy pictures
- 27 6. Evidence logs
- 28 7. Evidence property sheets
8. Casings and ballistic evidence
9. Hospital and ambulance transport records

- 1 10. Coroner's report
- 2 11. Crime scene logs
- 3 12. Call event reports
- 4 13. Toxicology reports
- 5 14. Search warrant report
- 6 15. Search warrant return
- 7 16. Impound reports
- 8 17. Perimeter reports
- 9 18. Crime scene preservation reports
- 10 19. Shots-fired reports
- 11 20. Other items directly related to the scene of the use of force incident

12 Upon the execution of this Protective Order by the Court, this Unprotected Material shall
13 be produced to Plaintiffs. Any items included in this section are subject to the same redaction
14 provisions set forth in paragraph 4.1(b) herein, and the Parties agree to meet and confer with
15 regard to any concerns that arise regarding any items listed as Unprotected Material if a dispute
16 arises over the confidentiality of any information contained in such materials related to the Court's
17 privacy concerns. If the Parties are unable to agree and resolve the concerns, the Parties will
18 follow the Resolution Process set forth in paragraph 9.4 herein.

19 Officers' Bodycam Recordings and Incident Videos Taken by Officers and Witnesses:

20 The parties agree that all bodycam recordings and incident videos shall be preliminarily provided
21 by the producing Party subject to the confidentiality of this Protective Order despite being
22 considered Unprotected Material so the Parties can address the Court's privacy concerns. Nothing
23 in this Stipulation shall be construed as Plaintiffs' agreement that bodycam recordings and
24 incident videos should be confidential or protected from disclosure in any way.

25 The Parties shall timely review all bodycam recordings and incident videos to identify the
26 recordings and/or videos, and portions thereof, containing identification of witnesses, witness
27 statements, and other Protected Material that should be subject to the confidentiality of this
28 Protective Order to address the Court's privacy concerns. The Parties shall then participate in a
preemptive meet and confer conference within thirty (30) days of the receiving Party's receipt of

1 the bodycam recordings and incident videos regarding any material contained within the bodycam
2 recordings and/or incident videos that it believes should be subject to the confidentiality of this
3 Protective Order to address the Court’s privacy concerns, including the provision of time stamps
4 identifying the potentially protected material prior to the conference. This meet and confer
5 conference of the Parties shall take place prior to any public dissemination or disclosure of any
6 bodycam recordings and incident videos by the receiving Party, or any further public
7 dissemination or disclosure of any bodycam recordings and incident videos by the producing
8 Party. If the Parties are unable to agree upon the protected status of a specific portion of a
9 bodycam recording or incident video, the Parties agree to follow the Court’s informal discovery
10 dispute resolution procedures for a determination regarding the protected status of the material,
11 and the Parties shall refrain from disclosure and/or dissemination of the material unless and until
12 such determination is made by the Court.

12 **9. MISCELLANEOUS**

13 9.1 Right to Assert Other Objections. With the entry of this Protective Order, no Party
14 waives the right it otherwise would have to object to disclosing or producing any information or
15 item on any ground not addressed in this Protective Order. Similarly, no Party waives any right to
16 object on any ground to use in evidence of any material covered by this Protective Order.

17 9.2 Filing Protected Material. All Protected Material that is filed with the Court shall
18 be filed with a request to seal documents in accordance with Eastern District of California Local
19 Rule 141. Upon failure of the filing party to file confidential documents under seal in accordance
20 with Local Rule 141, any party may request that the Court place the documents under seal.

21 9.3 Future Discovery. With regard to future discovery requests, if the Parties cannot
22 agree in writing that the producing Party has a right to withhold a document or material without a
23 non-disclosure and confidentiality agreement, the producing Party may provide the documents or
24 materials subject to dispute to the requesting Party marked clearly as “CONFIDENTIAL”. The
25 production shall include a short statement as to why the producing Party contends the documents
26 or materials are confidential. The receiving Party shall treat said documents or materials as
27 “CONFIDENTIAL” and subject to this Protective Order until completion of the Resolution
28 Process. If the documents or materials are items included in the Court’s November 27, 2017,
Order [Dkt. Doc. 38] as “objective factual information”, they shall be deemed Unprotected
Material and produced not subject to this Protective Order.

1 The Parties agree that documents or materials produced in the course of discovery by a
2 third party who is not a party to this action, may be subject to this Protective Order. If any party
3 believes documents or materials sought from a third party, by subpoena or otherwise, should be
4 treated as “CONFIDENTIAL” (e.g. the psychiatric or medical records of a party), the party
5 claiming such confidentiality shall, upon notice that the documents or materials are being sought,
6 notify the other party that the documents or materials are to be deemed “CONFIDENTIAL” and
7 subject to this Protective Order. If the Parties are unable to agree that the documents or materials
8 should be subject to this Protective Order, the Parties will follow the Resolution Process set forth
9 in paragraph 9.4 herein. The Parties shall treat said documents or materials as
10 “CONFIDENTIAL” and subject to this Protective Order until completion of the Resolution
11 Process.

12 9.4 Resolution Process. Upon receipt of the documents claimed to be and marked
13 “CONFIDENTIAL” and subject to this Protective Order that the Parties could not reach an
14 agreement on in writing, the receiving Party shall review the documents or materials in good faith
15 and will agree to accept the documents, in writing, subject to the confidentiality of this Protective
16 Order. If the receiving Party does not agree that the documents or materials should be treated as
17 confidential, the receiving Party will notify the producing Party in writing within seven (7) days
18 that they believe the items produced are not subject to this Protective Order and why. The Parties
19 will then follow the Court’s informal discovery dispute resolution process and procedures for the
20 Court’s determination regarding the confidential status of the documents or materials.

21 **10. FINAL DISPOSITION**

22 Within 60 days after the final disposition of this action, as defined in paragraph 3,
23 Plaintiffs must return all Protected Material to Defendants or destroy such material. As used in
24 this subdivision, “all Protected Material” includes all copies, abstracts, compilations, summaries,
25 and any other format reproducing or capturing any of the Protected Material. Whether the
26 Protected Material is returned or destroyed, Plaintiffs must submit a written certification to the
27 Defendants by the 60 day deadline that (1) identifies (by category, where appropriate) all the
28 Protected Material that was returned or destroyed and (2) affirms that Plaintiffs have not retained
any copies, abstracts, compilations, summaries or any other format reproducing or capturing any
of the Protected Material. Notwithstanding this provision, Counsel are entitled to retain an
archival copy of all pleadings, motion papers, trial, depositions, and hearing transcripts, legal

1 memoranda, correspondence, deposition and trial exhibits, expert reports, attorney work product,
2 and consultant and expert work product, even if such materials contain Protected Material. Any
3 such archival copies that contain or constitute Protected Material remain subject to this Protective
4 Order as set forth in Section 3 (DURATION).

5 **EXHIBIT "A"**

6 ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

7
8 I, _____ [print or type full name], of
9 _____ [print or type full address],
10 declare under penalty of perjury that I have read in its entirety and understand the Protective Order
11 that was issued by the United States District Court for the Eastern District of California on
12 December ____, 2017 in the case of *Noble, et al. v. City of Fresno, et al., Case No. 1:16-cv-01690-*
13 *DAD-BAM*. I agree to comply with and to be bound by all the terms of this Protective Order and I
14 understand and acknowledge that failure to so comply could expose me to sanctions and
15 punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner
16 any information or item that is subject to this Stipulated Protective Order to any person or entity
17 except in strict compliance with the provisions of this Order.

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

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

26 Date : _____

27 City and State where sworn and signed : _____

1 Printed Name : _____
2
3 Signature : _____

4 **IT IS SO AGREED.**

5
6 DATED: December 21, 2017 BARADAT & PABOOJIAN, INC.

7 By: /s/ Adam B. Stirrup
8 Adam B. Stirrup, Esq.
9 Attorneys for Plaintiff, DARREN NOBLE

10 DATED: December 21, 2017 STUART R. CHANDLER, APC

11 By: /s/ Stuart R. Chandler (as authorized on 12/21/17)
12 Stuart R. Chandler, Esq.
13 Attorney for Plaintiff, VERONICA NELSON

14 DATED: December 21, 2017 MANNING & KASS
15 ELLROD, RAMIREZ, TRESTER, LLP

16 By: /s/ Mildred R. O'Linn (as authorized on 12/21/17)
17 Mildred R. O'Linn, Esq.
18 Attorneys for Defendants, CITY OF
19 FRESNO and OFFICER RAYMOND
20 CAMACHO

21 DATED: December 21, 2017 FERGUSON PRAET & SHERMAN

22 By: /s/ Bruce D. Praet (as authorized on 12/21/17)
23 Bruce D. Praet, Esq.
24 Attorneys for Defendant, OFFICER ROBERT
25 CHAVEZ

26 The Court having reviewed the stipulation for a protective order,

27 **IT IS SO ORDERED.**

28 Dated: December 22, 2017 /s/ Barbara A. McAuliffe
UNITED STATES MAGISTRATE JUDGE

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