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CITY OF CLOVIS

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UNITED STATES DISTRICT COURT

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EASTERN DISTRICT OF CALIFORNIA - FRESNO

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DAVID JESSEN and GRETCHEN  
JESSEN,

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Plaintiffs,

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v.

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COUNTY OF FRESNO, CITY OF  
CLOVIS, and DOES 1 to 100, inclusive,

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Defendants.

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1. PURPOSES AND LIMITATIONS

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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 public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles. The parties further acknowledge, as set forth in Section 12.3, below, that this Stipulated Protective Order does not entitle them to file confidential

1 information under seal; Civil Local Rule 141 sets forth the procedures that must be followed and  
2 the standards that will be applied when a party seeks permission from the court to file material  
3 under seal.

4 2. DEFINITIONS

5 2.1 Challenging Party: a Party or Non-Party that challenges the designation of  
6 information or items under this Order.

7 2.2 “CONFIDENTIAL” Information or Items: information (regardless of how it is  
8 generated, stored or maintained) or tangible things that qualify for protection under Federal Rule  
9 of Civil Procedure 26(c). It encompasses information where public disclosure is likely to result in  
10 particularized harm, or where public disclosure would violate privacy interests recognized by law.  
11 Examples of confidential information include, but are not limited to, the following:

- 12 a. personnel file records of any peace officer;
  - 13 b. medical records;
  - 14 c. social security numbers and similar sensitive identifying information
- 15 (unless redacted by order or by agreement of all parties).

16 2.3 Counsel (without qualifier): Outside Counsel of Record and House Counsel (as  
17 well as their support staff).

18 2.4 Designating Party: a Party or Non-Party that designates information or items that  
19 it produces in disclosures or in responses to discovery as “CONFIDENTIAL.”

20 2.5 Disclosure or Discovery Material: all items or information, regardless of the  
21 medium or manner in which it is generated, stored, or maintained (including, among other things,  
22 testimony, transcripts, and tangible things), that are produced or generated in disclosures or  
23 responses to discovery in this matter.

24 2.6 Expert: a person with specialized knowledge or experience in a matter pertinent to  
25 the litigation who has been retained by a Party or its counsel to serve as an expert witness or as a  
26 consultant in this action.

27 2.7 House Counsel: attorneys who are employees of a party to this action. House  
28 Counsel does not include Outside Counsel of Record or any other outside counsel.

1           2.8    Non-Party: any natural person, partnership, corporation, association, or other legal  
2 entity not named as a Party to this action.

3           2.9    Outside Counsel of Record: attorneys who are not employees of a party to this  
4 action but are retained to represent or advise a party to this action and have appeared in this action  
5 on behalf of that party or are affiliated with a law firm which has appeared on behalf of that party.

6           2.10   Party: any party to this action, including all of its officers, directors, employees,  
7 consultants, retained experts, and Outside Counsel of Record (and their support staffs).

8           2.11   Producing Party: a Party or Non-Party that produces Disclosure or Discovery  
9 Material in this action.

10          2.12   Professional Vendors: persons or entities that provide litigation support services  
11 (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations, and  
12 organizing, storing, or retrieving data in any form or medium) and their employees and  
13 subcontractors.

14          2.13   Protected Material: any Disclosure or Discovery Material that is designated as  
15 “CONFIDENTIAL.”

16          2.14   Receiving Party: a Party that receives Disclosure or Discovery Material from a  
17 Producing Party.

18    3.    SCOPE

19           The protections conferred by this Stipulation and Order cover not only Protected Material  
20 (as defined above), but also (1) any information copied from Protected Material; (2) all copies,  
21 excerpts, summaries, or compilations of Protected Material that reveal the source of the Protected  
22 Material or that reveal specific information, i.e., the raw data gleaned from protected documents,  
23 entitled to confidentiality under this stipulated order; and (3) any testimony, conversations, or  
24 presentations by Parties or their Counsel that might reveal Protected Material. However, the  
25 protections conferred by this Stipulation and Order do not cover the following information: (a)  
26 any information that is in the public domain at the time of disclosure to a Receiving Party or  
27 becomes part of the public domain after its disclosure to a Receiving Party as a result of  
28 publication not involving a violation of this Order, including becoming part of the public record

1 through trial or otherwise; and (b) any information known to the Receiving Party prior to the  
2 disclosure or obtained by the Receiving Party after the disclosure from a source who obtained the  
3 information lawfully and under no obligation of confidentiality to the Designating Party. Any use  
4 of Protected Material at trial shall be governed by a separate agreement or order.

5 4. DURATION

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

13 5. DESIGNATING PROTECTED MATERIAL

14 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each Party  
15 or Non-Party that designates information or items for protection under this Order must take care  
16 to limit any such designation to specific material that qualifies under the appropriate standards.  
17 The Designating Party must designate for protection only those parts of material, documents,  
18 items, or oral or written communications that qualify – so that other portions of the material,  
19 documents, items, or communications for which protection is not warranted are not swept  
20 unjustifiably within the ambit of this Order.

21 Mass, indiscriminate, or routinized designations are prohibited. Designations that are  
22 shown to be clearly unjustified or that have been made for an improper purpose (e.g., to  
23 unnecessarily encumber or retard the case development process or to impose unnecessary  
24 expenses and burdens on other parties) expose the Designating Party to sanctions.

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

28 5.2 Manner and Timing of Designations. Except as otherwise provided in this Order

1 (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered,  
2 Disclosure or Discovery Material that qualifies for protection under this Order must be clearly so  
3 designated before the material is disclosed or produced.

4 Designation in conformity with this Order requires:

5 (a) for information in documentary form (e.g., paper or electronic documents, but  
6 excluding transcripts of depositions or other pretrial or trial proceedings), that the Producing  
7 Party affix the legend “CONFIDENTIAL” to each page that contains protected material. If only a  
8 portion or portions of the material on a page qualifies for protection, the Producing Party also  
9 must clearly identify the protected portion(s) (e.g., by making appropriate markings in the  
10 margins).

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

21 (b) for testimony given in deposition or in other pretrial or trial proceedings, that the  
22 Designating Party identify on the record, before the close of the deposition, hearing, or other  
23 proceeding, all protected testimony.

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

1           5.3    Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to  
2 designate qualified information or items does not, standing alone, waive the Designating Party's  
3 right to secure protection under this Order for such material. Upon timely correction of a  
4 designation, the Receiving Party must make reasonable efforts to assure that the material is  
5 treated in accordance with the provisions of this Order.

6    6.    CHALLENGING CONFIDENTIALITY DESIGNATIONS

7           6.1    Timing of Challenges. Any Party or Non-Party may challenge a designation of  
8 confidentiality at any time. Unless a prompt challenge to a Designating Party's confidentiality  
9 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic  
10 burdens, or a significant disruption or delay of the litigation, a Party does not waive its right to  
11 challenge a confidentiality designation by electing not to mount a challenge promptly after the  
12 original designation is disclosed.

13          6.2    Meet and Confer. The Challenging Party shall initiate the dispute resolution  
14 process by providing written notice of each designation it is challenging and describing the basis  
15 for each challenge. To avoid ambiguity as to whether a challenge has been made, the written  
16 notice must recite that the challenge to confidentiality is being made in accordance with this  
17 specific paragraph of the Protective Order. The parties shall attempt to resolve each challenge in  
18 good faith and must begin the process by conferring directly (in voice to voice dialogue; other  
19 forms of communication are not sufficient) within 14 days of the date of service of notice. In  
20 conferring, the Challenging Party must explain the basis for its belief that the confidentiality  
21 designation was not proper and must give the Designating Party an opportunity to review the  
22 designated material, to reconsider the circumstances, and, if no change in designation is offered,  
23 to explain the basis for the chosen designation. A Challenging Party may proceed to the next  
24 stage of the challenge process only if it has engaged in this meet and confer process first or  
25 establishes that the Designating Party is unwilling to participate in the meet and confer process in  
26 a timely manner.

27          6.3    Judicial Intervention. If the Parties cannot resolve a challenge without court  
28 intervention, the parties shall request an informal discovery dispute conference pursuant to the

1 ~~undersigned Magistrate Judge's case management procedures. Designating Party shall file and~~  
2 ~~serve a motion to retain confidentiality (and in compliance with Civil Local Rule 141, if~~  
3 ~~applicable) within 21 days of the initial notice of challenge or within 14 days of the parties~~  
4 ~~agreeing that the meet and confer process will not resolve their dispute, whichever is earlier. Each~~  
5 ~~such motion must be accompanied by a competent declaration affirming that the movant has~~  
6 ~~complied with the meet and confer requirements imposed in the preceding paragraph. Failure by~~  
7 ~~the Designating Party to make such a motion including the required declaration within 21 days (or~~  
8 ~~14 days, if applicable) shall automatically waive the confidentiality designation for each~~  
9 ~~challenged designation. In addition, the Challenging Party may file a motion challenging a~~  
10 ~~confidentiality designation at any time if there is good cause for doing so, including a challenge to~~  
11 ~~the designation of a deposition transcript or any portions thereof. Any motion brought pursuant to~~  
12 ~~this provision must be accompanied by a competent declaration affirming that the movant has~~  
13 ~~complied with the meet and confer requirements imposed by the preceding paragraph.~~

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

## 21 7. ACCESS TO AND USE OF PROTECTED MATERIAL

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

28 Protected Material must be stored and maintained by a Receiving Party at a location and

1 in a secure manner that ensures that access is limited to the persons authorized under this Order.

2 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise ordered  
3 by the court or permitted in writing by the Designating Party, a Receiving Party may disclose any  
4 information or item designated “CONFIDENTIAL” only to:

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

8 (b) the court and its personnel;

9 (c) court reporters and their staff, professional jury or trial consultants, mock jurors, and  
10 Professional Vendors to whom disclosure is reasonably necessary for this litigation and who have  
11 signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

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

18 (e) the author or recipient of a document containing the information or a custodian or  
19 other person who otherwise possessed or knew the information.

20 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER  
21 LITIGATION

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

25 (a) promptly notify in writing the Designating Party. Such notification shall include a  
26 copy of the subpoena or court order;

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



1 Protective Order. Such notification shall include a copy of this Stipulated Protective Order; and

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

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

11 9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN THIS  
12 LITIGATION

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

18 (b) In the event that a Party is required, by a valid discovery request, to produce a Non-  
19 Party’s confidential information in its possession, and the Party is subject to an agreement with  
20 the Non-Party not to produce the Non-Party’s confidential information, then the Party shall:

21 (1) promptly notify in writing the Requesting Party and the Non-Party that some or all of  
22 the information requested is subject to a confidentiality agreement with a Non-Party;

23 (2) promptly provide the Non-Party with a copy of the Stipulated Protective Order in this  
24 litigation, the relevant discovery request(s), and a reasonably specific description of the  
25 information requested; and

26 (3) make the information requested available for inspection by the Non-Party.

27 (c) If the Non-Party fails to object or seek a protective order from this court within 14  
28 days of receiving the notice and accompanying information, the Receiving Party may produce the

1 Non-Party's confidential information responsive to the discovery request. If the Non-Party timely  
2 seeks a protective order, the Receiving Party shall not produce any information in its possession  
3 or control that is subject to the confidentiality agreement with the Non-Party before a  
4 determination by the court. Absent a court order to the contrary, the Non-Party shall bear the  
5 burden and expense of seeking protection in this court of its Protected Material.

6 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

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

14 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED  
15 MATERIAL

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

25 12. MISCELLANEOUS

26 12.1 Right to Further Relief. Nothing in this Order abridges the right of any person to  
27 seek its modification by the court in the future.

28 12.2 Right to Assert Other Objections. By stipulating to the entry of this Protective

1 Order no Party waives any right it otherwise would have to object to disclosing or producing any  
2 information or item on any ground not addressed in this Stipulated Protective Order. Similarly, no  
3 Party waives any right to object on any ground to use in evidence of any of the material covered  
4 by this Protective Order.

5       12.3 Filing Protected Material. Without written permission from the Designating Party  
6 or a court order secured after appropriate notice to all interested persons, a Party may not file in  
7 the public record in this action any Protected Material. A Party that seeks to file under seal any  
8 Protected Material must comply with Civil Local Rule 141. Protected Material may only be filed  
9 under seal pursuant to a court order authorizing the sealing of the specific Protected Material at  
10 issue. Pursuant to Civil Local Rule 141, a sealing order will issue only upon a request establishing  
11 that the Protected Material at issue is privileged, protectable as a trade secret, or otherwise  
12 entitled to protection under the law.

13 13. FINAL DISPOSITION

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

1 Order as set forth in Section 4 (DURATION).

2 14. LOCAL RULE 141.1

3 Pursuant to Local Rule 141.1(c)(1), the kinds of confidential information eligible for  
4 protection under this Order include, but are not limited to:

- 5 a. peace officer personnel files;
- 6 b. peace office training records;
- 7 c. SWAT records (e.g. training manuals, instructional materials,  
8 training sessions/reports, operational guidelines);
- 9 d. Training manuals, instructional materials, training sessions/reports  
10 on other, non-SWAT police activities (e.g. use of helicopters,  
11 canines, Crisis Negotiation Team);

12 Pursuant to Local Rule 141.1(c)(2), the above categories warrant protection by this Order  
13 because they concern private information (personnel files and training records) and/or the public  
14 safety (police operations). With respect to the latter, public dissemination of  
15 how/why/when/where Fresno County and/or Clovis deploys its SWAT team, utilizes certain  
16 assets (e.g. helicopter), or tactically handles a particular situation (e.g. armed, barricaded suspect),  
17 would endanger their use in the future.

18 Pursuant to Local Rule 141.1(c)(3), a court order is needed because a private agreement  
19 does not carry the timeliness, the force, or effect of such order (e.g. the possibility of evidentiary  
20 or other sanctions if the order is breached, upon motion). Breach of a private agreement, by  
21 comparison, would result in a breach of contract, to be litigated in a separate action likely to take  
22 years to resolve.

23 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

24 DATED: 4-16-18

/s/ Richard A. Bardinelli  
Attorney for Plaintiffs  
DAVID JESSEN  
GRETCHEN JESSEN

26 DATED: 4-16-18

/s/ Kevin P. Allen  
Attorney for Defendant

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CITY OF CLOVIS

DATED: 4-16-18

/s/ Leslie M. Dillahunty  
Attorney for Defendant  
COUNTY OF FRESNO

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**ORDER**

Pursuant to the above stipulation and the Court's modification to Paragraph 6.3 above, the stipulated protective order is hereby adopted.

IT IS SO ORDERED.

Dated: April 17, 2018

/s/ Eric P. Gray  
UNITED STATES MAGISTRATE JUDGE