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12 **UNITED STATES DISTRICT COURT**  
13 **FOR THE EASTERN DISTRICT OF CALIFORNIA**

14 KEITH ALLEN McNEIL, ) CASE NO. 1:17-cv-00799-SAB  
15 Plaintiff, )  
16 vs. ) **ORDER RE STIPULATED PROTECTIVE**  
17 ) **ORDER**  
18 DEPUTY JAMES FUNK; DEPUTY FLORES; )  
19 UNKNOWN LAW ENFORCEMENT ) Complaint Filed: June 12, 2017  
20 OFFICERS; COUNTY OF FRESNO, ) Trial Date: February 5, 2019  
21 Defendants. )

22 **STIPULATED PROTECTIVE ORDER**

23 1. PURPOSES AND LIMITATIONS

24 Disclosure and discovery activity in this action are likely to involve production of  
25 confidential or private information for which special protection from public disclosure and from  
26 use for any purpose other than prosecuting this litigation may be warranted. Accordingly, the  
27 parties hereby stipulate to and petition the court to enter the following Stipulated Protective  
28 Order, so the documents can be used by the parties in preparation for trial and shared with  
witnesses and expert witnesses, who would not be subject to a private agreement between the  
parties.

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

1 and use extends only to the limited information or items that are entitled to confidential  
2 treatment under the applicable legal principles. The parties further acknowledge, as set forth in  
3 Section 12.3, below, that this Stipulated Protective Order does not entitle them to file  
4 confidential information under seal. Local Rule 141.1 sets 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 2. DEFINITIONS

8 2.1 Challenging Party: A Party or Non-Party that challenges the designation of  
9 information or items under this Order.

10 2.2 Confidential Information or Items: Information (regardless of how it is generated,  
11 stored or maintained) or tangible things that qualify for protection under Federal Rule of Civil  
12 Procedure 26(c).

13 2.3 Counsel: Attorneys (and their support staff) who are retained to represent or advise a  
14 party to this action and have appeared in this action on behalf of that party or are affiliated with  
15 a law firm which has appeared on behalf of that party.

16 2.4 Designating Party: A Party or Non-Party that designates information or items that it  
17 produces in disclosures or in responses to discovery. The information or items shall be  
18 identified as follows: CONFIDENTIAL MATERIAL SUBJECT TO PROTECTIVE ORDER,  
19 *McNeil v. County of Fresno* USDC Case No. 1:17-cv-00799-SAB.

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  
22 things, testimony, transcripts, and tangible things), that are produced or generated in disclosures  
23 or 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  
26 a consultant in this action.

27 2.7 Non-Party: Any natural person, partnership, corporation, association, or other legal  
28 entity not named as a Party to this action.

1           2.8 Party: Any party to this action, including all of its officers, directors, employees,  
2 consultants, retained experts, and Outside Counsel of Record (and their support staffs).

3           2.9 Producing Party: A Party or Non-Party that produces Disclosure or Discovery  
4 Material in this action.

5           2.10 Professional Vendors: Persons or entities that provide litigation support services  
6 (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations, and  
7 organizing, storing, or retrieving data in any form or medium) and their employees and  
8 subcontractors.

9           2.11 Protected Material: Any Disclosure or Discovery Material that is designated as  
10 “Confidential Material.”

11           2.12 Receiving Party: A Party that receives Disclosure or Discovery Material from a  
12 Producing Party.

13 3.     SCOPE

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

27 4.     DURATION

28           Even after final disposition of this litigation, the confidentiality obligations imposed by

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

7 5. PROTECTED MATERIAL

8 5.1 Protected Materials

9 Defendants shall produce the confidential material, subject to this Protective Order on  
10 the following conditions:

11 (a) Documents Subject to Disclosure Limited to This Action. The  
12 documents requested by Plaintiff through discovery come from Fresno County Sheriff's  
13 Office's personnel files, citizen complaints, and internal investigations relating to Deputy James  
14 Funk and non-defendant Fresno County Sheriff's Office employees, which are protected by the  
15 California Peace Officers Bill of Rights, the federal common law qualified privilege known as  
16 the Official Information Privilege, California Evidence Code §1040, et seq., California Penal  
17 Code §§832.7 and 832.8, the Right to Privacy of Deputy James Funk, third-party non-defendant  
18 Fresno County Sheriff's Office employees, domestic violence victims, minors as guaranteed by  
19 the United States Constitution and the California Constitution (Cal. Const., Art. 1, §1); and from  
20 photographic evidence taken from a gang shooting documented in Fresno Sheriff's Office Case  
21 Report Numbers 160011897.1 – 160011897.17, which are protected by the Right to Privacy of  
22 the third-party victims and witnesses of a gang shooting as guaranteed by the United States  
23 Constitution and the California Constitution (Cal. Const., Art. 1, §1).

24 The following confidential documents and the information contained therein shall be  
25 used solely in connection with this litigation, including appeals, and not for any other purpose,  
26 including other litigation:

27 Personnel File Records of Deputy James Funk:

28 - IA No. 16-29 RTB

1 Fresno Sheriff's Office Case Report Numbers 160011897.1 – 160011897.17:

- 2 - Photographs of third-party victims' gunshot injuries  
3 - Photographs of third-party witnesses to gang shooting  
4 - Photographs of Driver's License cards of third-party witnesses to gang  
5 shooting

6 (b) Redaction of Confidential Information. Considering the privacy concerns  
7 contained in the personnel and Internal Investigation Records, Defendants shall redact the  
8 identities and personal identifying information (social security numbers, dates of birth, driver's  
9 license number, home addresses, and telephone numbers) for non-defendant Fresno County  
10 Sheriff's Office employees, minors, and domestic violence victims.

11 5.2 Manner and Timing of Designations. Except as otherwise provided in this Order, or  
12 as otherwise stipulated or ordered, Disclosure or Discovery Material that qualifies for protection  
13 under this Order must be clearly so designated before the material is disclosed or produced.

14 Designation in conformity with this Order requires:

15 (a) for information in documentary form (e.g., paper or electronic documents, but  
16 excluding transcripts of depositions or other pretrial or trial proceedings), that the Producing  
17 Party affix the designation "CONFIDENTIAL MATERIAL SUBJECT TO PROTECTIVE  
18 ORDER, *McNeil v. County of Fresno*, et al., USDC Case No. 1:17-cv-00799-SAB" pursuant to  
19 section 2.4 above, to each page that contains protected material.

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

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

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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 process  
14 by providing written notice of each designation it is challenging and describing the basis for  
15 each challenge. To avoid ambiguity as to whether a challenge has been made, the written notice  
16 must recite that the challenge to confidentiality is being made in accordance with this specific  
17 paragraph of the Protective Order. The parties shall attempt to resolve each challenge in good  
18 faith and must begin the process by conferring directly (in voice to voice dialogue; other forms  
19 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  
26 in a timely manner.

27           6.3 Judicial Intervention. If the Parties cannot resolve a challenge without court  
28 intervention, the Designating Party shall file and serve a motion to retain confidentiality within

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

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

19 7. ACCESS TO AND USE OF PROTECTED MATERIAL

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

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

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1           7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise ordered  
2 by the court or permitted in writing by the Designating Party, a Receiving Party may disclose  
3 any information or item designated “CONFIDENTIAL” only to:

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

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

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

14           (d) The court and its personnel;

15           (e) Court reporters and their staff, professional jury or trial consultants, mock jurors, and  
16 Professional Vendors to whom disclosure is reasonably necessary for this litigation and who  
17 have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

18           (f) During their depositions, witnesses in the action to whom disclosure is reasonably  
19 necessary and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit  
20 A), unless otherwise agreed by the Designating Party or ordered by the court. Pages of  
21 transcribed deposition testimony or exhibits to depositions that reveal Protected Material must  
22 be separately bound by the court reporter and may not be disclosed to anyone except as  
23 permitted under this Stipulated Protective Order. Witnesses shall not leave the deposition with a  
24 copy of Confidential documents unless expressly agreed to on the record by the Designating  
25 Party.

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

28       ///



1 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN  
2 OTHER LITIGATION

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

6 (a) Promptly notify in writing the Designating Party. Such notification shall include a  
7 copy of the subpoena or court order;

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

12 (c) Cooperate with respect to all reasonable procedures sought to be pursued by the  
13 Designating Party whose Protected Material may be affected.

14 If the Designating Party timely seeks a protective order, the Party served with the  
15 subpoena or court order shall not produce any information designated in this action as  
16 CONFIDENTIAL before a determination by the court from which the subpoena or order issued,  
17 unless the Party has obtained the Designating Party’s written permission. The Designating Party  
18 shall bear the burden and expense of seeking protection in that court of its confidential material.

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

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

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

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

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

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

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

14 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

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

23 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED  
24 MATERIAL

25 When a Producing Party gives notice to Receiving Parties that certain inadvertently  
26 produced material is subject to a claim of privilege or other protection, the obligations of the  
27 Receiving Parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B).

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1     12.     MISCELLANEOUS

2             12.1 Right to Further Relief. Nothing in this Order abridges the right of any person to  
3 seek its modification by the court in the future.

4             12.2 Right to Assert Other Objections. By stipulating to the entry of this Protective  
5 Order no Party waives any right it otherwise would have to object to disclosing or producing  
6 any information or item on any ground not addressed in this Stipulated Protective Order.  
7 Similarly, no Party waives any right to object on any ground to use in evidence of any of the  
8 material covered by this Protective Order.

9             12.3 Filing Protected Material. Without written permission from the Designating Party  
10 or a court order secured after appropriate notice to all interested persons, a Party may not file in  
11 the public record in this action any Protected Material. A Party that seeks to file under seal any  
12 Protected Material must comply with Local Rule 141.1. Protected Material may only be filed  
13 under seal pursuant to a court order authorizing the sealing of the specific Protected Material at  
14 issue. A sealing order will issue only upon a request establishing that the Protected Material at  
15 issue is privileged, protectable as a trade secret, or otherwise entitled to protection under the  
16 law. If a Receiving Party's request to file Protected Material under seal is denied by the court,  
17 then the Receiving Party may file the information in the public record unless otherwise  
18 instructed by the court.

19     13.     FINAL DISPOSITION

20             Within 60 days after the final disposition of this action, as defined in paragraph 4, each  
21 Receiving Party must return all Protected Material to the Producing Party or destroy such  
22 material. As used in this subdivision, “all Protected Material” includes all copies, abstracts,  
23 compilations, summaries, and any other format reproducing or capturing any of the Protected  
24 Material. Whether the Protected Material is returned or destroyed, the Receiving Party must  
25 submit a written certification to the Producing Party (and, if not the same person or entity, to the  
26 Designating Party) by the 60 day deadline that (1) identifies (by category, where appropriate) all  
27 the Protected Material that was returned or destroyed and (2) affirms that the Receiving Party  
28 has not retained any copies, abstracts, compilations, summaries or any other format reproducing

1 or capturing any of the Protected Material.

2 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

3  
4 DATED: April 17, 2018

WEAKLEY & ARENDT, LLP

5  
6 By: /s/ Brande L. Gustafson

James D. Weakley  
Brande L. Gustafson  
Attorneys for Defendants

7  
8  
9 DATED: April 17, 2018

LAW OFFICE OF KEVIN G. LITTLE

10 By: /s/ Robert A. Fuentes (As authorized on 4/17/18)

Kevin G. Little  
Robert A. Fuentes  
Attorneys for Plaintiff

11  
12 **ORDER**

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

- 14
- 15 1. The protective order is entered;
  - 16 2. The parties are advised that pursuant to the Local Rules of the United States  
17 District Court, Eastern District of California, any documents which are to  
18 be filed under seal will require a written request which complies with Local  
19 Rule 141; and
  - 20 3. The party making a request to file documents under seal shall be required to  
21 show good cause for documents attached to a nondispositive motion or  
22 compelling reasons for documents attached to a dispositive motion. Pintos v.  
23 Pacific Creditors Ass'n, 605 F.3d 665, 677-78 (9th Cir. 2009).

24 IT IS SO ORDERED.

25 Dated: April 18, 2018

26   
UNITED STATES MAGISTRATE JUDGE