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

ANTHONY PEREZ, individually,  
CECILIA PEREZ, individually,  
TERRALEE PEREZ, individually and  
as successor in interest to Joseph Perez,  
JOSEPH PEREZ, JR., individually and  
as successor in interest to Joseph Perez,  
and X.P., a minor, by and through his  
Guardian ad Litem, MICHELLE  
PEREZ, individually and as successor  
in interest to Joseph Perez,

Plaintiffs,

v.

CITY OF FRESNO, COUNTY OF  
FRESNO, JAMES ROSSETTI, an  
individual, SEAN CALVERT, an  
individual, CHRIS MARTINEZ, an  
individual, BRAITHAN  
STOLTENBERG, an individual,  
ROBERT MCEWEN, an individual,  
KARLSON MANASAN, an individual,  
JIMMY ROBNETT, an individual, and  
DOES 1-10, inclusive,

Defendants.

Case No. 1:18-cv-00127-AWI-EPG

**PROTECTIVE ORDER RE  
CONFIDENTIAL DOCUMENTS**

(ECF No. 30)

1 **SCOPE OF PROTECTION.**

2 The protections conferred by the parties' Stipulation and this Order cover not  
3 only Protected Material/Confidential Documents (as defined above), but also (1) any  
4 information copied or extracted from Protected Material; (2) all copies, excerpts,  
5 summaries, or compilations of Protected Material; and (3) any testimony,  
6 conversations, or presentations by Parties or their Counsel that might reveal Protected  
7 Material. However, the protections conferred by the parties' Stipulation and this Order  
8 do *not* cover the following information: (a) any information that is in the public domain  
9 at the time of disclosure to a Receiving Party or becomes part of the public domain after  
10 its disclosure to a Receiving Party as a result of publication not involving a violation of  
11 this Order, including becoming part of the public record through trial or otherwise; and  
12 (b) any information known to the Receiving Party prior to the disclosure or obtained by  
13 the Receiving Party after the disclosure from a source who obtained the information  
14 lawfully and under no obligation of confidentiality to the Designating Party.

15 The Definitions section of the parties' associated Stipulation (§ 2) is incorporated  
16 by reference herein.

17 **Any use of Protected Material at trial shall be governed by the Orders of the**  
18 **trial judge: this Stipulation and its associated Protective Order do(es) not govern**  
19 **the use of Protected Material at trial.**

20 **PURPOSES AND LIMITATIONS.**

21 Disclosure and discovery activity in this action are likely to involve production  
22 of confidential, proprietary, or private information for which special protection from  
23 public disclosure and from use for any purpose other than prosecuting or defending this  
24 litigation would be warranted. Accordingly, the parties have stipulated to and  
25 petitioned the court to enter the following Order.

26 The parties have acknowledged that this Order does not confer blanket  
27 protections on all disclosures or responses to discovery and that the protection it affords  
28

1 extends only to the specified information or items that are entitled, under the applicable  
2 legal principles, to treatment as confidential.

3 The parties further acknowledge, as set forth below, that this Order creates no  
4 entitlement to file confidential information under seal, except to the extent specified  
5 herein; Eastern District Local Rules 141, 141.1, 143, 230 and/or 251 forth the  
6 procedures that must be followed and reflects the standards that will be applied when a  
7 party seeks permission from the court to file material under seal.

8 Nothing in this Order shall be construed so as to require or mandate that any  
9 Party disclose or produce privileged information or records that could be designated as  
10 Confidential Documents/Protected Material hereunder.

11 **DURATION OF PROTECTION.**

12 Even after final disposition of this litigation, the confidentiality obligations  
13 imposed by this Order shall remain in effect until a Designating Party agrees otherwise  
14 in writing or a court order otherwise directs.

15 Final disposition shall be deemed to be the later of (1) dismissal of all claims and  
16 defenses in this action, with or without prejudice; and (2) final judgment herein after  
17 the completion and exhaustion of all appeals, rehearings, remands, trials, or reviews of  
18 this action, including the time limits for filing any motions or applications for extension  
19 of time pursuant to applicable law.

20 **DESIGNATION OF PROTECTED MATERIAL/CONFIDENTIAL**  
21 **DOCUMENTS.**

22 3.1. Exercise of Restraint and Care in Designating Material for Protection.

23 Each Party or non-party that designates information or items for protection under the  
24 parties' Stipulation and this Order must take care to limit any such designation to  
25 specific material that qualifies under the appropriate standards. A Designating Party  
26 must take care to designate for protection only those parts of material, documents,  
27 items, or oral or written communications that qualify – so that other portions of the  
28 material, documents, items or communications for which protection is not warranted

1 are not swept unjustifiably within the ambit of this Order.

2 Mass, indiscriminate, or routine designations are prohibited. Designations that  
3 are shown to be clearly unjustified, or that have been made for an improper purpose  
4 (e.g., to unnecessarily encumber or inhibit the case development process, or to impose  
5 unnecessary expenses and burdens on other parties), expose the Designating Party to  
6 sanctions.

7 If it comes to a Party's or a non-party's attention that information or items that it  
8 designated for protection do not qualify for protection at all, or do not qualify for the  
9 level of protection initially asserted, that Party or non-party must promptly notify all  
10 other parties that it is withdrawing the mistaken designation.

11 (a) Redaction of Confidential Information: Peace Officer Personnel Records.  
12 Considering the privacy concerns contained in the personnel and Internal Investigation  
13 Records, the producing party is permitted to redact the names and personal identifying  
14 information (such as social security numbers, dates of birth, driver's license number,  
15 home address, telephone numbers, financial and credit histories, medical and  
16 psychological information) for any non-defendant officers, third party witnesses, and  
17 any other persons identified in such records. For any defendant officers, only the  
18 personal identifying information, if any, contained in such documents will be redacted.

19 3.2. Manner and Timing of Designations. Except as otherwise provided in this  
20 Order, or as otherwise stipulated or ordered, material that qualifies for protection under  
21 this Order must be clearly so designated before the material is disclosed or produced.  
22 Designation in conformity with this Order requires:

23 (a) for information in documentary form (apart from transcripts of depositions  
24 or other pretrial or trial proceedings, and regardless of whether produced in hardcopy or  
25 electronic form), that the Producing Party affix the legend "CONFIDENTIAL" to each  
26 page that contains Protected Material. If only a portion or portions of the material on a  
27 page qualifies for protection, the Producing Party also must clearly identify the  
28 protected portion(s) (e.g., by making appropriate markings in the margins) and must

1 specify, for each portion that it is “CONFIDENTIAL.” The placement of such  
2 “CONFIDENTIAL” stamp on such page(s) shall not obstruct the substance of the  
3 page’s (or pages’) text or content.

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

15 (b) for testimony given in deposition or in other pretrial or trial proceedings,  
16 that the Party or non-party offering or sponsoring the testimony identify on the record,  
17 before the close of the deposition, hearing, or other proceeding, all protected testimony,  
18 and further specify any portions of the testimony that qualify as “CONFIDENTIAL.”  
19 When it is impractical to identify separately each portion of testimony that is entitled to  
20 protection, and when it appears that substantial portions of the testimony may qualify  
21 for protection, the Producing Party may invoke on the record (before the deposition or  
22 proceeding is concluded) a right to have up to twenty (20) days to identify the specific  
23 portions of the testimony as “CONFIDENTIAL.” Only those portions of the testimony  
24 that are appropriately designated as “CONFIDENTIAL” for protection within the 20  
25 days shall be covered by the provisions of the parties’ Stipulation and this Protective  
26 Order.

27 Transcript pages containing Protected Material must be separately bound by the  
28 court reporter, who must affix to each such page the legend “CONFIDENTIAL,” as

1 instructed by the Producing Party.

2 (c) for information produced in some form other than documentary, and for  
3 any other tangible items (including but not limited to information produced on disc or  
4 electronic data storage device), that the Producing Party affix in a prominent place on  
5 the exterior of the container or containers in which the information or item is stored the  
6 legend “CONFIDENTIAL.” If only portions of the information or item warrant  
7 protection, the Producing Party, to the extent practicable, shall identify the protected  
8 portions, specifying the material as “CONFIDENTIAL.”

9 3.3. Inadvertent Failures to Designate. If timely corrected (preferably, though  
10 not necessarily, within 30 days of production or disclosure of such material), an  
11 inadvertent failure to designate qualified information or items as “CONFIDENTIAL”  
12 does not, standing alone, waive the Designating Party’s right to secure protection under  
13 the parties’ Stipulation and this Order for such material. If material is appropriately  
14 designated as “CONFIDENTIAL” *after* the material was initially produced, the  
15 Receiving Party, on timely notification of the designation, must make reasonable efforts  
16 to assure that the material is treated in accordance with the parties’ Stipulation and this  
17 Order.

18 3.4. Alteration of Confidentiality Stamp Prohibited. A Receiving Party shall  
19 not alter, edit, or modify any Protected Material so as to conceal, obscure, or remove a  
20 “CONFIDENTIAL” stamp or legend thereon; nor shall a Receiving Party take any  
21 other action so as to make it appear that Protected Material is not subject to the terms  
22 and provisions of the parties’ Stipulation and this Order. However, nothing in this  
23 section shall be construed so as to prevent a Receiving Party from challenging a  
24 confidentiality designation subject to the provisions of section 4, *infra*.

25 **CHALLENGING CONFIDENTIALITY DESIGNATIONS.**

26 4.1. Timing of Challenges. Any Party or Non-Party may challenge a  
27 designation of confidentiality at any time that is consistent with the Court's Scheduling  
28 Order. Unless a prompt challenge to a Designating Party’s confidentiality designation

1 is necessary to avoid foreseeable substantial unfairness, unnecessary economic burdens,  
2 or a later significant disruption or delay of the litigation, a Party does not waive its right  
3 to challenge a confidentiality designation by electing not to mount a challenge promptly  
4 after the original designation is disclosed.

5 4.2. Meet and Confer. Prior to challenging a confidentiality designation, a  
6 Challenging Party shall initiate a dispute resolution process by providing written notice  
7 of each specific designation it is challenging, and describing the basis (and supporting  
8 authority or argument) for each challenge. To avoid ambiguity as to whether a  
9 challenge has been made, the written notice must recite that the challenge to  
10 confidentiality is being made in accordance with this specific paragraph of this  
11 Protective Order. The parties shall attempt to resolve each challenge in good faith and  
12 must begin the process by conferring directly (in voice to voice dialogue, either in  
13 person, telephonically, or by other comparable means, but *not* by correspondence)  
14 within 14 days of the date of service of notice.

15 In conferring, the Challenging Party must explain the specific basis for its belief  
16 that the confidentiality designation was not proper and must give the Designating Party  
17 an opportunity to review the designated material, to reconsider the circumstances, and,  
18 if no change in designation is offered, to explain the basis for the chosen designation. A  
19 Challenging Party may proceed to the next stage of the challenge process only if it has  
20 engaged in this meet and confer process first or establishes that the Designating Party is  
21 unwilling to participate in the meet and confer process in a timely manner.

22 Frivolous challenges, and those challenges made for an improper purpose (*e.g.*,  
23 to harass or impose unnecessary expenses and burdens on other parties), may expose  
24 the Challenging Party to sanctions.

25 4.3. Judicial Intervention. If the Parties cannot resolve a confidentiality  
26 challenge without court intervention, the parties shall request an informal discovery  
27 dispute conference pursuant to the undersigned Magistrate Judge's case management  
28 procedures. ~~the Challenging Party shall file and serve a motion to remove~~

1 confidentiality (under the applicable rules for filing and service of discovery motions)  
2 within 14 days of the parties agreeing that the meet and confer process will not resolve  
3 their dispute, or by the first day of trial of this matter, whichever date is earlier—unless  
4 the parties agree in writing to a longer time.

5 ——— The parties must strictly comply with Eastern District Local Rules 141, 141.1,  
6 143, 230 and/or 251 (including the joint statement re-discovery dispute requirement) in  
7 any motion associated with this Protective Order.

8 ——— Each such motion must be accompanied by a competent declaration affirming  
9 that the movant has complied with the meet and confer requirements imposed in the  
10 preceding paragraph. In addition, the Challenging Party may file a motion challenging  
11 a confidentiality designation at any time if there is good cause for doing so, including a  
12 challenge to the designation of a deposition transcript or any portions thereof. Any  
13 motion brought pursuant to this provision must be accompanied by a competent  
14 declaration affirming that the movant has complied with the meet and confer  
15 requirements imposed by the preceding paragraph.

16 ——— The burden of persuasion in any such challenge proceeding shall be on the  
17 Designating Party, regardless of whether the Designating Party is the moving party or  
18 whether such Party sought or opposes judicial intervention. Frivolous challenges, and  
19 those made for an improper purpose (*e.g.*, to harass or impose unnecessary expenses  
20 and burdens on other parties) may expose the Challenging Party to sanctions. Unless  
21 the Designating Party has waived the confidentiality designation by failing to oppose a  
22 motion to remove confidentiality as described above, all parties shall continue to afford  
23 the material in question the level of protection to which it is entitled under the  
24 Producing Party’s designation until the court rules on the challenge.

25 4.4. Withdrawal of “CONFIDENTIAL” Designation. At its discretion, a  
26 Designating Party may remove Protected Material/Confidential Documents from some  
27 or all of the protections and provisions of the parties’ Stipulation and this Order at any  
28 time by any of the following methods:



1 (a) Express Written Withdrawal. A Designating Party may withdraw a  
2 “CONFIDENTIAL” designation made to any specified Protected Material/Confidential  
3 Documents from some or all of the protections of the parties’ Stipulation and this Order  
4 by an express withdrawal in a writing signed by such Party (or such Party’s Counsel,  
5 but not including staff of such Counsel) that specifies and itemizes the Disclosure or  
6 Discovery Material previously designated as Protected Material/Confidential  
7 Documents that shall no longer be subject to all or some of the provisions of the  
8 parties’ Stipulation and Order. Such express withdrawal shall be effective when  
9 transmitted or served upon the Receiving Party. If a Designating Party is withdrawing  
10 Protected Material from only some of the provisions/protections of the parties’  
11 Stipulation and this Order, such Party must state which specific provisions are no  
12 longer to be enforced as to the specified material for which confidentiality protection  
13 hereunder is withdrawn: otherwise, such withdrawal shall be construed as a withdrawal  
14 of such material from all of the protections/provisions of the parties’ Stipulation and  
15 this Order;

16 (b) Express Withdrawal on the Record. A Designating Party may withdraw a  
17 “CONFIDENTIAL” designation made to any specified Protected Material/ Confidential  
18 Documents from all of the provisions/protections of the parties’ Stipulation and this  
19 Order by verbally consenting in court proceedings on the record to such withdrawal –  
20 provided that such withdrawal specifies the Disclosure or Discovery Material  
21 previously designated as Protected Material/Confidential Documents that shall no  
22 longer be subject to any of the provisions of the parties’ Stipulation and this Order. A  
23 Designating Party is not permitted to withdraw Protected Material from only some of  
24 the protections/ provisions of the parties’ Stipulation and this Order by this method;

25 (c) Implicit Withdrawal by Publication or Failure to Oppose Challenge. A  
26 Designating Party shall be construed to have withdrawn a “CONFIDENTIAL”  
27 designation made to any specified Protected Material/Confidential Documents from all  
28 of the provisions/protections of the parties’ Stipulation and this Order by either

1 (1) making such Protected Material/Confidential Records part of the public record –  
2 including but not limited to attaching such as exhibits to any filing with the court  
3 without moving, prior to such filing, for the court to seal such records; or (2) failing to  
4 timely oppose a Challenging Party’s motion to remove a “CONFIDENTIAL”  
5 designation to specified Protected Material/Confidential Documents.

6 Nothing in the parties’ Stipulation and this Order shall be construed so as to  
7 require any Party to file Protected Material/Confidential Documents under seal, unless  
8 expressly specified herein.

9 **ACCESS TO AND USE OF PROTECTED MATERIAL.**

10 5.1. Basic Principles. A Receiving Party may use Protected Material that is  
11 disclosed or produced by another Party or by a non-party in connection with this case  
12 only for preparing, prosecuting, defending, or attempting to settle this litigation – up to  
13 and including final disposition of the above-entitled action – and not for any other  
14 purpose, including any other litigation or dispute outside the scope of this action. Such  
15 Protected Material may be disclosed only to the categories of persons and under the  
16 conditions described in the parties’ Stipulation and this Order. When the above entitled  
17 litigation has been terminated, a Receiving Party must comply with the provisions of  
18 section 9, below (FINAL DISPOSITION).

19 Protected Material must be stored and maintained by a Receiving Party at a location  
20 and in a secure manner that ensures that access is limited to the persons authorized  
21 under the parties’ Stipulation and its Order.

22 5.2. Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise  
23 ordered by the Court or permitted in writing by the Designating Party, a Receiving  
24 Party may disclose any information or item designated CONFIDENTIAL only to:

25 (a) the Receiving Party’s Outside Counsel of record in this action, as well as  
26 employees of such Counsel to whom it is reasonably necessary to disclose the  
27 information for this litigation;

28 (b) the officers, directors, and employees (including House Counsel) of the

1 Receiving Party to whom disclosure is reasonably necessary for this litigation – each of  
2 whom, by accepting receipt of such Protected Material, thereby agree to be bound by  
3 the parties’ Stipulation and this Order;

4 (c) Experts (as defined in the parties’ Stipulation and this Order) of the  
5 Receiving Party to whom disclosure is reasonably necessary for this litigation – each of  
6 whom, by accepting receipt of such Protected Material, thereby agree to be bound by  
7 the parties’ Stipulation and this Order;

8 (d) court reporters, their staffs, and Professional Vendors to whom disclosure  
9 is reasonably necessary for this litigation – each of whom, by accepting receipt of such  
10 Protected Material, thereby agree to be bound by the parties’ Stipulation and this Order;

11 (e) during their depositions, witnesses in the action to whom disclosure is  
12 reasonably necessary – each of whom, by accepting receipt of such Protected Material,  
13 thereby agree to be bound by the parties’ Stipulation and this Order. Pages of  
14 transcribed deposition testimony or exhibits to depositions that reveal Protected  
15 Material may not be disclosed to anyone except as permitted under the parties’  
16 Stipulation and this Protective Order.

17 (f) the author or custodian of a document containing the information that  
18 constitutes Protected Material, or other person who otherwise possessed or knew the  
19 information.

20 5.3. Notice of Confidentiality. All witnesses, including experts, who receive a  
21 copy of this Stipulation and Order shall sign and return the ACKNOWLEDGEMENT  
22 AND AGREEMENT TO BE BOUND (Exhibit A). Prior to producing or disclosing  
23 Protected Material/Confidential Documents to persons to whom the parties’ Stipulation  
24 and this Order permits disclosure or production (see section 5.2, *supra*), a Receiving  
25 Party shall provide a copy of the parties’ Stipulation and Order to such persons so as to  
26 put such persons on notice as to the restrictions imposed upon them herein: except that,  
27 for court reporters, Professional Vendors, and for witnesses being provided with  
28 Protected Material during a deposition, it shall be sufficient notice for Counsel for the

1 Receiving Party to give the witness a verbal admonition (on the record, for witnesses)  
2 regarding the provisions of the parties' Stipulation and this Order and such provisions'  
3 applicability to specified Protected Material at issue. The witness shall verbally  
4 acknowledge his or her understanding and agreement to be bound by this Stipulation  
5 and Order.

6 5.4. Reservation of Rights. Nothing in the parties' Stipulation and this Order  
7 shall be construed so as to require any Producing Party to designate any records or  
8 materials as "CONFIDENTIAL." Nothing in the parties' Stipulation or this Order shall  
9 be construed so as to prevent the admission of Protected Material into evidence at the  
10 trial of this action, or in any appellate proceedings for this action, solely on the basis  
11 that such Disclosure or Discovery Material has been designated as Protected  
12 Material/Confidential Documents. Notwithstanding the foregoing, nothing in the  
13 parties' Stipulation or this Order shall be construed as a waiver of any privileges or of  
14 any rights to object to the use or admission into evidence of any Protected Material in  
15 any proceeding; nor shall anything herein be construed as a concession that any  
16 privileges asserted or objections made are valid or applicable.

17 Nothing in the parties' Stipulation or this Order shall be construed so as to  
18 prevent the Designating Party (or its Counsel or custodian of records) from having  
19 access to and using Protected Material designated by that Party in the manner in which  
20 such persons or entities would typically use such materials in the normal course of their  
21 duties or profession – except that the waiver of confidentiality provisions shall apply  
22 (see section 4.4(c), *supra*).

23 5.5. Requirement to File Confidential Documents Under Seal. Confidential  
24 Documents may be submitted in all law and motion proceedings before the Court if  
25 done so under seal pursuant to Federal Rules of Civil Procedure 5.2 and 26 and/or  
26 United States District Court, Eastern District of California Local Rules 141, 141.1, 143,  
27 230 and/or 251 (as applicable) and pursuant to the provisions of the parties' Stipulation  
28 and this Order. If any Receiving Party attaches any Confidential Documents to any

1 pleading, motion, or other paper to be filed, lodged, or otherwise submitted to the  
2 Court, such Confidential Document(s) shall be filed/lodged under seal pursuant to  
3 Federal Rules of Civil Procedure 5.2 and 26 and/or United States District Court,  
4 Eastern District of California Local Rules 141, 141.1, 143, 230 and/or 251 to the extent  
5 applicable.

6 However, this paragraph (§ 5.5) shall not be construed so as to prevent a  
7 Designating Party or counsel from submitting, filing, lodging, or publishing any  
8 document it has previously designated as a Confidential Document without compliance  
9 with this paragraph's requirement to do so under seal (i.e., a producing-disclosing party  
10 or counsel may submit or publish its own Confidential Documents without being in  
11 violation of the terms of the parties' Stipulation and this Protective Order).

12 Furthermore, a Receiving Party shall be exempted from the requirements of this  
13 paragraph as to any specifically identified Confidential Document(s) where – prior to  
14 the submission or publication of the Confidential Document(s) at issue – the  
15 Designating Party of such specifically identified Confidential Document(s) has  
16 waived/withdrawn the protections of the parties' Stipulation and this Order (pursuant to  
17 paragraph 4.4, *supra*).

18 A Receiving Party shall also be exempt from the sealing requirements of this  
19 paragraph (§ 5.5) where the Confidential Documents/Protected Material at issue is/are  
20 **not** documents, records, or information regarding:

21 (1) private, personal information contained in peace officer personnel files  
22 (such as social security numbers, driver's license numbers or comparable personal  
23 government identification numbers, residential addresses, compensation or pension or  
24 personal property information, credit card numbers or credit information, dates of birth,  
25 tax records and information, information related to the identity of an officer's family  
26 members or co-residents, and comparable personal information about the officer or his  
27 family);

28 (2) any internal affairs or comparable investigation by any law enforcement

1 agency into alleged officer misconduct; and/or

2 (3) the medical records or records of psychiatric or psychological treatment of  
3 any peace officer or party to this action.

4 Nothing in this paragraph shall be construed to bind the Court or its authorized  
5 staff so as to limit or prevent the publication of any Confidential Documents to the jury  
6 or factfinder, at the time of trial of this matter, where the Court has deemed such  
7 Confidential Documents to be admissible into evidence.

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

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

13 (a) promptly notify in writing the Designating Party, preferably (though not  
14 necessarily) by facsimile or electronic mail. Such notification shall include a copy of  
15 the subpoena or court order at issue;

16 (b) promptly notify in writing the party who caused the subpoena or order to  
17 issue in the other litigation that some or all of the material covered by the subpoena or  
18 order is subject to the parties’ Stipulation and this Protective Order. Such notification  
19 shall include a copy of the parties’ Stipulation and this Protective Order; and

20 (c) cooperate with respect to all reasonable procedures sought to be pursued by  
21 all sides in any such situation, while adhering to the terms of the parties’ Stipulation  
22 and this Order.

23 If the Designating Party timely seeks a protective order, the Party served with the  
24 subpoena or court order shall not produce any information designated in this action as  
25 “CONFIDENTIAL” before a determination by the court from which the subpoena or  
26 order issued, unless the Party has obtained the Designating Party’s permission. The  
27 Designating Party shall bear the burden and expense of seeking protection in that court  
28 of its confidential material – and nothing in these provisions should be construed as

1 authorizing or encouraging a Receiving Party in this action to disobey a lawful directive  
2 from another court.

3 The purpose of this section is to ensure that the affected Party has a meaningful  
4 opportunity to preserve its confidentiality interests in the court from which the  
5 subpoena or court order issued.

6 **UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL.**

7 7.1. Unauthorized Disclosure of Protected Material.

8 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected  
9 Material to any person or in any circumstance not authorized under the parties'  
10 Stipulation and this Order, the Receiving Party must immediately:

- 11 (a) notify in writing the Designating Party of the unauthorized disclosures;
- 12 (b) use its best efforts to retrieve all copies of the Protected Material;
- 13 (c) inform the person or persons to whom unauthorized disclosures were made of  
14 all the terms of this Order; and
- 15 (d) request such person or persons consent to be bound by the Stipulation and  
16 this Order.

17 7.2. Inadvertent Production of Privileged or Otherwise 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  
20 of the Receiving Parties are those set forth in Federal Rule of Civil Procedure  
21 26(b)(5)(B). This provision is not intended to modify whatever procedure may be  
22 established in an e-discovery order that provides for production without prior privilege  
23 review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar as the parties  
24 reach an agreement on the effect of disclosure of a communication or information  
25 covered by the attorney-client privilege or work product protection, the parties may  
26 incorporate their agreement in the stipulated protective order submitted to the court.

27 **PUBLICATION OF PROTECTED MATERIAL PROHIBITED.**

28 8.1. Filing of Protected Material.

1 Without advance written permission from the Designating Party, or a court order  
2 secured after appropriate notice to all interested persons, a Receiving Party may not file  
3 in the public record in this action any Protected Material. A Party that seeks to file  
4 under seal any Protected Material must comply with the applicable Federal and Local  
5 Rules.

6 8.2. Public Dissemination of Protected Material.

7 A Receiving Party shall not publish, release, post, or disseminate Protected  
8 Material to any persons except those specifically delineated and authorized by the  
9 parties' Stipulation and this Order (see section 5, *supra*); nor shall a Receiving Party  
10 publish, release, leak, post, or disseminate Protected Material/Confidential Documents  
11 to any news media, member of the press, website, or public forum (except as permitted  
12 under this Order regarding filings with the court in this action and under seal).

13 **FINAL DISPOSITION.**

14 Unless otherwise ordered or agreed in writing by the Producing Party, within  
15 thirty (30) days after the final termination of this action (defined as the dismissal or  
16 entry of judgment by the above named court, or if an appeal is filed, the disposition of  
17 the appeal), upon written request by the Producing Party, each Receiving Party must  
18 return all Protected Material to the Producing Party – whether retained by the Receiving  
19 Party or its Counsel, Experts, Professional Vendors, agents, or any non-party to whom  
20 the Receiving Party produced or shared such records or information. As used in this  
21 subdivision, “all Protected Material” includes all copies, abstracts, compilations,  
22 summaries or any other form of reproducing or capturing any of the Protected Material,  
23 regardless of the medium (hardcopy, electronic, or otherwise) in which such Protected  
24 Material is stored or retained.

25 In the alternative, at the discretion of the Receiving Party, the Receiving Party  
26 may destroy some or all of the Protected Material instead of returning it – unless such  
27 Protected Material is an original, in which case, the Receiving Party must obtain the  
28 Producing Party's written consent before destroying such original Protected Material.



1 Whether the Protected Material is returned or destroyed, the Receiving Party  
2 must submit a written certification to the Producing Party (and, if not the same person  
3 or entity, to the Designating Party) within thirty (30) days of the aforementioned  
4 written request by the Designating Party that specifically identifies (by category, where  
5 appropriate) all the Protected Material that was returned or destroyed and that affirms  
6 that the Receiving Party has not retained any copies, abstracts, compilations, summaries  
7 or other forms of reproducing or capturing any of the Protected material (in any  
8 medium, including but not limited to any hardcopy, electronic or digital copy, or  
9 otherwise).

10 Notwithstanding this provision, Counsel are entitled to retain an archival copy of  
11 all pleadings, motion papers, transcripts, legal memoranda filed with the court in this  
12 action, as well as any correspondence or attorney work product prepared by Counsel for  
13 the Receiving Party, even if such materials contain Protected Material; however, any  
14 such archival copies that contain or constitute Protected Material remain subject to this  
15 Protective Order as set forth in Section 2, above. This court shall retain jurisdiction in  
16 the event that a Designating Party elects to seek court sanctions for violation of the  
17 parties' Stipulation and this Order.

18 **MISCELLANEOUS.**

19 10.1. Right to Further Relief. Nothing in the parties' Stipulation or this Order  
20 abridges the right of any person to seek its modification by the Court in the future.

21 10.2. Right to Assert Other Objections. By stipulating to the entry of this  
22 Protective Order pursuant to the parties' Stipulation, no Party waives any right it  
23 otherwise would have to object to disclosing or producing any information or item on  
24 any ground not addressed in the parties' Stipulation or this Order. Similarly, no Party  
25 waives any right to object on any ground to use in evidence any of the material covered  
26 by the parties' Stipulation and this Protective Order.

27 The provisions of the parties' Stipulation and this Protective Order shall be in  
28 effect until further Order of the Court.

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**ORDER**

The above Protective Order re Confidential Documents, with the Court’s modification to Paragraph 4.3 and the Stipulation for an Entry of Protective Order re Confidential Documents, (ECF No. 30), incorporated therein by reference, is hereby adopted.

IT IS SO ORDERED.

Dated: May 25, 2018

/s/ Eric P. Grogan  
UNITED STATES MAGISTRATE JUDGE