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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

DESHAWN CATHEY,  
Plaintiff,  
v.  
CITY OF VALLEJO, et al.,  
Defendants.

No. 2:14-cv-01749-JAM-AC

ORDER

This matter is before the undersigned pursuant to Local Rule 302(c)(21). Currently before the court is defendants’ proposed protective order.

On August 26, 2015, the court held a hearing on motions to compel by both parties, along with plaintiff’s self-styled motion to include Frederick “Marc” Cooley in a protective order. ECF No. 41. At that hearing, the court explained that it could not grant plaintiff’s protective order motion because a protective order was not yet in place. Nevertheless, in light of the sensitive discoverable information in this matter, the court agreed that a protective order was warranted. Accordingly, in the court’s September 29, 2015, order disposing of the parties’ motions it instructed defendants to file a proposed protective order within thirty days. ECF No. 46. The court also instructed plaintiff to file his objections, if any, within fourteen days of the filing of the proposed protective order. Id. Once that protective order is in place defendants will have thirty days to respond to plaintiff’s discovery requests. Id.

1           On October 28, 2015, defendants filed a proposed protective order and on November 10,  
2 2015, plaintiff filed his objections. ECF Nos. 48, 49. Plaintiff objects to the proposed protective  
3 order on a number of grounds. First, plaintiff argues that defendants have not made a showing  
4 that a protective order is required. As plaintiff correctly points out, the moving party bears the  
5 burden to show good cause for issuance of a protective order. Phillips ex rel. Estates of Byrd v.  
6 Gen. Motors Corp., 307 F.3d 1206, 1211 n.1 (9th Cir. 2002). However, plaintiff ignores the  
7 court’s August 26, 2015 hearing and the instructions that followed, which explicitly included  
8 findings that a protective order was appropriate. ECF No. 46 at 11 (“[S]ome of the above  
9 information is sensitive and private, and accordingly should not be disclosed in the absence of a  
10 protective order.”). Even if the court had not already made such a finding, it is well-settled that  
11 official police department records should be subject to a protective order to protect the privacy of  
12 the officers involved and prevent undue annoyance and embarrassment to the police department.  
13 See, e.g., Macias v. City of Clovis, No. 1:13-CV-01819-BAM, 2015 U.S. Dist. LEXIS 156106, at  
14 \*17 (E.D. Cal. Nov. 18, 2015) (M.J. McAuliffe) (noting that courts routinely endorse the use of  
15 protective orders to prevent the disclosure of sensitive information in § 1983 actions based on  
16 allegations of excessive force).

17           Plaintiff also argues that the proposed protective order should allow him to share  
18 documents with Mr. Cooley, who has assisted him in the filing of his complaint and the ensuing  
19 litigation. Defendants, on the other hand, argued both at the court’s August 26, 2015, hearing and  
20 in their papers that any protective order should *not* allow plaintiff to share protected documents  
21 with Mr. Cooley because Mr. Cooley cannot be trusted to keep these documents confidential. Mr.  
22 Cooley assists a number of other pro se plaintiffs in cases against the City of Vallejo, and  
23 defendants contend that he is likely to share whatever documents he receives with those plaintiffs.

24           In light of plaintiff’s pro se status, the court finds it is appropriate to allow Mr. Cooley  
25 access to documents produced subject to the protective order. While Mr. Cooley’s involvement  
26 in other cases may create a risk of unauthorized disclosure, that risk can be managed by the  
27 availability of sanctions for violation of the protective order. Accordingly, the court will include  
28 language in the protective order allowing plaintiff to designate one person with whom he can

1 share confidential documents, as long as that person agrees to be bound by the protective order  
2 and subject to this court's jurisdiction for purposes of enforcement of that order. Both plaintiff  
3 and Mr. Cooley are advised that if Mr. Cooley were to share confidential documents with even a  
4 single plaintiff in another case, both he and Mr. Cathey could be subject to monetary sanctions.  
5 Any violation of the protective order by Mr. Cooley could also result in him being precluded from  
6 further involvement in this and potentially other cases before this court. The court finds the  
7 availability of the foregoing sanctions sufficient at this time to ensure the confidentiality of  
8 protected documents.

9 Finally, plaintiff argues that he should not be required to seek the sealing of documents he  
10 wishes to file with the court which have been deemed confidential pursuant to the protective  
11 order. The court agrees. Defendants' proposed protective order includes a provision requiring  
12 plaintiff to move to seal any protected document that he wishes to file with this court. As plaintiff  
13 points out, it is not appropriate to require him to move for the sealing of documents that he does  
14 not believe should be under seal. Accordingly, the court will adopt a provision similar to that  
15 ordered in Cooley v. Vallejo, 2:12-cv-00591 LKK AC, at ECF No. 54, requiring that any party  
16 wishing to file confidential discovery documents provide advance notice to all parties. Any party  
17 wishing the material to be filed under seal can then make the appropriate request.

18 For the reasons stated above, and good cause appearing, the court adopts a modified  
19 version of the defendants' proposed protective order, as follows:

- 20 1. In order to protect the confidentiality of the records described below, the following  
21 discovery materials are to be disclosed pursuant to protective order and designated as  
22 "Confidential Material":

23 Vallejo Police Department Internal Affairs records regarding complaints of non-  
24 lethal excessive force, including conduct alleged to have occurred while an  
25 arrestee was in police custody, investigation thereof and official resolution from  
26 March 2005 through March 2015.

- 27 2. Confidential Material may not be disclosed except as set forth in paragraphs 3-7.
- 28 3. Prior to the release of Confidential Material, defendants shall redact any birth dates,

1 Social Security numbers, driver's license numbers and home addresses.

2 4. Confidential Material may be disclosed only to the following persons:

- 3 a. Counsel for any party to this action;
- 4 b. Paralegal, stenographic, clerical and secretarial personnel regularly employed  
5 by counsel referred to in 4(a);
- 6 c. One designee of the pro se plaintiff, if plaintiff deems the disclosure necessary  
7 to aid plaintiff's prosecution of the case. No Confidential Material shall be  
8 disclosed to this designee unless and until (1) the designee completes the  
9 ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND that is attached  
10 to this Protective Order as EXHIBIT A; AND plaintiff files a copy of the  
11 completed ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND  
12 with the Court;
- 13 d. Court personnel including stenographic reporters engaged in such proceedings  
14 as are necessarily incidental to preparation for the trial of this action;
- 15 e. Any outside expert or consultant retained in connection with this action and not  
16 otherwise employed by either party;
- 17 f. Any "in house" expert designated by Defendant to testify at trial in this matter;
- 18 g. Witnesses, other than the Plaintiff herein, who may have the documents  
19 disclosed to them during deposition proceedings; the witnesses may not leave  
20 the depositions with copies of the documents, and shall be bound by the  
21 provisions of paragraph 5;
- 22 h. Any neutral evaluator or other designated ADR provider;
- 23 i. Parties to this action; and
- 24 j. The jury, should this matter go to trial.

25 5. Each person to whom disclosure is made, with the exception of counsel who are  
26 presumed to know of the contents of this protective order, shall, prior to disclosure:  
27 (1) be provided with a copy of this order by the person furnishing him/her such  
28 material, and (2) agree on the record or in writing that she/he has read the protective


1 order and that she/he understand the provisions of the protective order. Such person  
2 must also consent to be subject to the jurisdiction of the United States District Court,  
3 Eastern District, with respect to any proceeding relating to the enforcement of this  
4 order. Defendants City of Vallejo and the named Defendants herein shall be entitled  
5 to retain possession of the original writings described above. Nothing in this  
6 paragraph is intended to prevent officials or employees of the City of Vallejo or other  
7 authorized government officials or any other persons from having access to the  
8 documents if they would have had access in the normal course of their job duties or  
9 rights as a citizen. Further, nothing in this order prevents a witness from disclosing  
10 events or activities personal to them, i.e., a witness can disclose to others previous  
11 information given to the City of Vallejo with respect to what she/he saw, heard, or  
12 otherwise sensed.

- 13 6. Confidential Material disclosed may be used in the litigation of this action only, and  
14 not for any other purpose.
- 15 7. At the conclusion of the trial and of any appeal or upon other termination of this  
16 litigation, all Confidential Material received under the provision of this order  
17 (including any copies made) shall be delivered back to the City of Vallejo. Provisions  
18 of this order insofar as they restrict disclosure and use of the material shall be in effect  
19 until all Confidential Material (including all copies thereof) are returned to  
20 Defendants.
- 21 8. Should a party intend to file Confidential Material with the court, as an exhibit to a  
22 pleading or otherwise, that party must first notify all other parties (defendants through  
23 their attorneys or plaintiff pro se), no less than fourteen days before the intended filing  
24 date, giving any such party reasonable notice and an opportunity to apply to the court  
25 for an order to file the material under seal.
- 26 9. No document shall be filed under seal unless a party secures a court order allowing the  
27 filing of a document under seal in accordance with the provisions of E.D. Local Rule  
28 141.

- 1 10. Nothing in this order shall preclude a party from showing or disclosing any  
2 documents, e.g., deposition transcript, pleading or brief, which otherwise contain  
3 Confidential Material as defined in paragraph 1, as long as such document has been  
4 redacted so as to prevent disclosure of such Confidential Material.
- 5 11. The foregoing is without prejudice to the right of any party (a) to apply to the Court  
6 for a further protective order relating to any Confidential Material or relating to  
7 discovery in this litigation; (b) to apply to the Court for an order removing the  
8 Confidential Material designation from any document; and (c) to apply to the Court  
9 for an order compelling production of documents or modification of this order or for  
10 any order permitting disclosure of Confidential Materials beyond the terms of this  
11 order.
- 12 12. Upon receipt of this Protective Order and disclosure of the Confidential Material it  
13 will be presumed that plaintiff knows of the contents of this Protective Order,  
14 understands the provisions of this Protective Order and consents to be subject to the  
15 jurisdiction of the United States District Court, Eastern District, with respect to any  
16 proceeding relating to the enforcement of this Protective Order.
- 17 13. Violation of the terms of this Protective Order may subject a party, or any non-party  
18 to whom disclosure is made pursuant to this protective order, to any and all  
19 permissible sanctions, including dismissal.

20 IT IS SO ORDERED.

21 DATED: December 4, 2015

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23 ALLISON CLAIRE  
24 UNITED STATES MAGISTRATE JUDGE  
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**EXHIBIT A**

**ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND**

I, \_\_\_\_\_ [print or type full name], of \_\_\_\_\_  
[print or type full address], declare under penalty of perjury that I have read in its entirety and understand the Protective Order that was issued by the United States District Court for the Eastern District of California on \_\_\_\_\_ [date] in the case of Deshawn Cathey v. City of Vallejo, et al., No. 2:14-cv-01749-JAM-AC. I agree to comply with and to be bound by all the terms of this Protective Order and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any information or item that is subject to this Protective Order to any person or entity except in strict compliance with the provisions of this Order.

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

Date: \_\_\_\_\_

City and State where sworn and signed: \_\_\_\_\_

Printed name: \_\_\_\_\_

Signature: \_\_\_\_\_