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15 CHRISTOPHER GRIMM and KEITH PULSIPHER

16 UNITED STATES DISTRICT COURT

17 EASTERN DISTRICT OF CALIFORNIA

18 BILLY ROBERT COOK, MICHAEL JOHN
19 MAROULAS, AND BECKY SMISEK-GAGE,

20 Plaintiffs,

21 v.

22 CITY OF FAIRFIELD, FRANK PIRO,
23 KELLY ROMBACH, ADAM BRUNIE,
24 CHRISTOPHER GRIMM, KEITH
25 PULSIPHER, and DOES 1-50, individually and
26 in their capacities as peace officers,

27 Defendants.

Case No. 2:15-CV-02339-KJM-KJN

STIPULATED PROTECTIVE ORDER

HON. KIMBERLY J. MUELLER

1 1. PURPOSES AND LIMITATIONS

2 Disclosure and discovery activity in this action are likely to involve production of confidential,
3 proprietary, or private information for which special protection from public disclosure and from use for
4 any purpose other than prosecuting this litigation may be warranted. Accordingly, the parties hereby
5 stipulate to and petition the court to enter the following Stipulated Protective Order under Civil Local
6 Rule 141.1. The parties acknowledge that this Order does not confer blanket protections on all
7 disclosures or responses to discovery and that the protection it affords from public disclosure and use
8 extends only to the limited information or items that are entitled to confidential treatment under the
9 applicable legal principles.

10 The parties further acknowledge, as set forth in Section 12.3, below, that this Stipulated
11 Protective Order does not entitle them to file confidential information under seal; Civil Local Rule 141
12 sets forth the procedures that must be followed and the standards that will be applied when a party seeks
13 permission from the court to file material under seal.

14 2. DEFINITIONS

15 2.1 Challenging Party: a Party or Non-Party that challenges the designation of information or
16 items under this Order.

17 2.2 “CONFIDENTIAL” Information or Items: information (regardless of how it is generated,
18 stored or maintained) or tangible things that qualify for protection under Federal Rule of Civil Procedure
19 26(c).

20 2.3 Counsel (without qualifier): Outside Counsel of Record and counsel for Plaintiff (as well
21 as their support staff).

22 2.4 Designating Party: a Party or Non-Party that designates information or items that it
23 produces in disclosures or in responses to discovery as “CONFIDENTIAL.”

24 2.5 Disclosure or Discovery Material: all items or information, regardless of the medium or
25 manner in which it is generated, stored, or maintained (including, among other things, testimony,
26 transcripts, and tangible things), that are produced or generated in disclosures or responses to discovery
27 in this matter.

28 2.6 Expert: a person with specialized knowledge or experience in a matter pertinent to the

1 litigation who has been retained by a Party or its counsel to serve as an expert witness or as a consultant
2 in this action.

3 2.7 House Counsel: attorneys who are employees of a party to this action. House Counsel
4 does not include Outside Counsel of Record or any other outside counsel.

5 2.8 Non-Party: any natural person, partnership, corporation, association, or other legal entity
6 not named as a Party to this action.

7 2.9 Outside Counsel of Record: attorneys who are not employees of a party to this action but
8 are retained to represent or advise a party to this action and have appeared in this action on behalf of that
9 party or are affiliated with a law firm which has appeared on behalf of that party.

10 2.10 Party: any party to this action, including all of its officers, directors, employees,
11 consultants, retained experts, and Outside Counsel of Record (and their support staffs).

12 2.11 Producing Party: a Party or Non-Party that produces Disclosure or Discovery Material in
13 this action.

14 2.12 Professional Vendors: persons or entities that provide litigation support services (e.g.,
15 photocopying, videotaping, translating, preparing exhibits or demonstrations, and organizing, storing, or
16 retrieving data in any form or medium) and their employees and subcontractors.

17 2.13 Protected Material: any Disclosure or Discovery Material that is designated as
18 "CONFIDENTIAL."

19 2.14 Receiving Party: a Party that receives Disclosure or Discovery Material from a Producing
20 Party.

21 3. SCOPE

22 The protections conferred by this Stipulation and Order cover not only Protected Material (as
23 defined above), but also (1) any information copied or extracted from Protected Material; (2) all copies,
24 excerpts, summaries, or compilations of Protected Material; and (3) any testimony, conversations, or
25 presentations by Parties or their Counsel that might reveal Protected Material.

26 However, the protections conferred by this Stipulation and Order do not cover the following
27 information: (a) any information that is in the public domain at the time of disclosure to a Receiving
28 Party or becomes part of the public domain after its disclosure to a Receiving Party as a result of

1 publication not involving a violation of this Order, including becoming part of the public record through
2 trial or otherwise; and (b) any information known to the Receiving Party prior to the disclosure or
3 obtained by the Receiving Party after the disclosure from a source who obtained the information lawfully
4 and under no obligation of confidentiality to the Designating Party. Any use of Protected Material at trial
5 shall be governed by a separate agreement or order.

6 4. DURATION

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

13 5. DESIGNATING PROTECTED MATERIAL

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

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

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

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

1 e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered, Disclosure or
2 Discovery Material that qualifies for protection under this Order must be clearly so designated before the
3 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 excluding
6 transcripts of depositions or other pretrial or trial proceedings), that the Producing Party affix the legend
7 “CONFIDENTIAL” to each page that contains protected material. If only a portion or portions of the
8 material on a page qualifies for protection, the Producing Party also must clearly identify the protected
9 portion(s) (e.g., by making appropriate markings in the margins).

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

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

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

5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to designate

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

5 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

6 6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation of
7 confidentiality at any time. Unless a prompt challenge to a Designating Party's confidentiality
8 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic burdens, or a
9 significant disruption or delay of the litigation, a Party does not waive its right to challenge a
10 confidentiality designation by electing not to mount a challenge promptly after the original designation is
11 disclosed.

12 6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution process by
13 providing written notice of each designation it is challenging and describing the basis for each challenge.
14 To avoid ambiguity as to whether a challenge has been made, the written notice must recite that the
15 challenge to confidentiality is being made in accordance with this specific paragraph of the Protective
16 Order. The parties shall attempt to resolve each challenge in good faith and must begin the process by
17 conferring directly (in voice to voice dialogue; other forms of communication are not sufficient) within
18 14 days of the date of service of notice. In conferring, the Challenging Party must explain the basis for its
19 belief that the confidentiality designation was not proper and must give the Designating Party an
20 opportunity to review the designated material, to reconsider the circumstances, and, if no change in
21 designation is offered, to explain the basis for the chosen designation. A Challenging Party may proceed
22 to the next stage of the challenge process only if it has engaged in this meet and confer process first or
23 establishes that the Designating Party is unwilling to participate in the meet and confer process in a
24 timely manner.

25 6.3 Judicial Intervention. If the Parties cannot resolve a challenge without court intervention,
26 the Designating Party shall file and serve a motion to retain confidentiality under Civil Local Rule 230
27 (and in compliance with Civil Local Rule 141, if applicable) within 21 days of the initial notice of
^^ challenge or within 14 days of the parties agreeing that the meet and confer process will not resolve their

1 dispute, whichever is earlier. Each such motion must be accompanied by a competent declaration
2 affirming that the movant has complied with the meet and confer requirements imposed in the preceding
3 paragraph. Failure by the Designating Party to make such a motion including the required declaration
4 within 21 days (or 14 days, if applicable) shall automatically waive the confidentiality designation for
5 each challenged designation. In addition, the Challenging Party may file a motion challenging a
6 confidentiality designation at any time if there is good cause for doing so, including a challenge to the
7 designation of a deposition transcript or any portions thereof. Any motion brought pursuant to this
8 provision must be accompanied by a competent declaration affirming that the movant has complied with
9 the meet and confer requirements imposed by the preceding paragraph.

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

17 7. ACCESS TO AND USE OF PROTECTED MATERIAL

18 7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed or
19 produced by another Party or by a Non-Party in connection with this case only for prosecuting,
20 defending, or attempting to settle this litigation. Such Protected Material may be disclosed only to the
21 categories of persons and under the conditions described in this Order. When the litigation has been
22 terminated, a Receiving Party must comply with the provisions of section 13 below (FINAL
23 DISPOSITION).

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

26 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise ordered by the
27 court or permitted in writing by the Designating Party, a Receiving Party may disclose any information
or item designated "CONFIDENTIAL" only to:

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

5 (b) the officers, directors, and employees (including House Counsel) of the Receiving Party to
6 whom disclosure is reasonably necessary for this litigation and who have signed the “Acknowledgment
7 and Agreement to Be Bound” (Exhibit A);

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

11 (d) the court and its personnel;

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

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

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

22 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER
23 LITIGATION

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

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

28 (b) promptly notify in writing the party who caused the subpoena or order to issue in the other

1 litigation that some or all of the material covered by the subpoena or order is subject to this Protective
2 Order. Such notification shall include a copy of this Stipulated Protective Order; and

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

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

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

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

18 (b) In the event that a Party is required, by a valid discovery request, to produce a Non-Party’s
19 confidential information in its possession, and the Party is subject to an agreement with the Non-Party
20 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 the
22 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 information
25 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 days of
receiving the notice and accompanying information, the Receiving Party may produce the Non-Party’s

1 confidential information responsive to the discovery request. If the Non-Party timely seeks a protective
2 order, the Receiving Party shall not produce any information in its possession or control that is subject to
3 the confidentiality agreement with the Non-Party before a determination by the court. Absent a court
4 order to the contrary, the Non-Party shall bear the burden and expense of seeking protection in this court
5 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 Material
8 to any person or in any circumstance not authorized under this Stipulated Protective Order, the Receiving
9 Party must immediately (a) notify in writing the Designating Party of the unauthorized disclosures, (b)
10 use its best efforts to retrieve all unauthorized copies of the Protected Material, (c) inform the person or
11 persons to whom unauthorized disclosures were made of all the terms of this Order, and (d) request such
12 person or persons to execute the “Acknowledgment and Agreement to Be Bound” that is attached hereto
13 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 produced
17 material is subject to a claim of privilege or other protection, the obligations of the Receiving Parties are
18 those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify
19 whatever procedure may be established in an e-discovery order that provides for production without prior
20 privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar as the parties reach an
21 agreement on the effect of disclosure of a communication or information covered by the attorney-client
22 privilege or work product protection, the parties may incorporate their agreement in the stipulated
23 protective order submitted to the court.

24 12. MISCELLANEOUS

25 12.1 Right to Further Relief. Nothing in this Order abridges the right of any person to seek its
26 modification by the court in the future.

27 12.2 Right to Assert Other Objections. By stipulating to the entry of this Protective Order no
28 Party waives any right it otherwise would have to object to disclosing or producing any information or

1 item on any ground not addressed in this Stipulated Protective Order. Similarly, no Party waives any
2 right to object on any ground to use in evidence of any of the material covered by this Protective Order.

3 12.3 Filing Protected Material. Without written permission from the Designating Party or a
4 court order secured after appropriate notice to all interested persons, a Party may not file in the public
5 record in this action any Protected Material. A Party that seeks to file under seal any Protected Material
6 must comply with Civil Local Rule 141. Protected Material may only be filed under seal pursuant to a
7 court order authorizing the sealing of the specific Protected Material at issue. Pursuant to Civil Local
8 Rule 141, a sealing order will issue only upon a request establishing that the Protected Material at issue
9 should be sealed pursuant to statute or other authority. If a Receiving Party's request to file Protected
10 Material under seal pursuant to Civil Local Rule 141 is denied by the court, then the Receiving Party may
11 file the information in the public record unless otherwise instructed by the court.

12 13. FINAL DISPOSITION

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

1 IT IS SO STIPULATED:

2 Dated: October 20, 2017

BERTRAND, FOX, ELLIOT, OSMAN & WENZEL

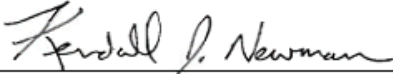
3
4 By: /s/Parry A. Black
Gregory M. Fox
Parry A. Black
Attorneys for Defendants
5 CITY OF FAIRFIELD, FRANK PIRO, KELLY
6 ROMBACH, ADAM BRUNIE, CHRISTOPHER
7 GRIMM and KEITH PULSIPHER

8 Dated: October 20, 2017

9
10 By: /s/ Justin Tabayoyon (as auth. on 10/10/17)
Justin K. Tabayoyon
Attorney for Plaintiffs
11 BILLY ROBERT COOK, MICHAEL JOHN
12 MAROULAS, AND BECKY SMISEK-GAGE

13 IT IS SO ORDERED.

14
15 Dated: October 20, 2017

16 
17 KENDALL J. NEWMAN
UNITED STATES MAGISTRATE JUDGE

18 **ATTORNEY ATTESTATION**

19 I, Parry A. Black, am the ECF User whose ID and password are being used to file this
20 STIPULATION AND PROPOSED ORDER. I have obtained concurrence in and authorization of the
21 filing of this document from Justin Tabayoyon. I shall maintain records to support this concurrence for
22 subsequent production for the Court if so ordered or for inspection upon request by a party.
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28

1 Dated: October 20, 2017

BERTRAND, FOX, ELLIOT, OSMAN & WENZEL

2
3 By: Parry A. Black
4 Gregory M. Fox
5 Parry A. Black
6 Attorneys for Defendants
7 CITY OF FAIRFIELD, FRANK PIRO, KELLY
8 ROMBACH, ADAM BRUNIE, CHRISTOPHER
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