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5 Attorneys for Defendants
CITY OF STOCKTON, STOCKTON POLICE
6 DEPARTMENT, ERIC JONES, KEVIN JAYE HACHLER,
ERIC B. HOWARD, MICHAEL GANDY, CONNER
7 NELSON, and SGT. UNDERWOOD

8 UNITED STATES DISTRICT COURT
9 EASTERN DISTRICT OF CALIFORNIA
10 SACRAMENTO COURTHOUSE

11 FRANCISCO DUARTE AND
12 ALEJANDRO GUTIERREZ,

13 Plaintiff,

14 v.

15 CITY OF STOCKTON, STOCKTON
POLICE DEPARTMENT, ERIC JONES,
16 KEVIN JAYE HACKLER (1641); ERIC
B. HOWARD (2448); MICHAEL
17 GANDY (2858), CONNER NELSON
(2613), SGT. UNDERWOOD, AND
18 DOES 1-50,

19 Defendants.

Case No. 2:19-CV-00007-MCE-CKD

STIPULATED PROTECTIVE ORDER

Hon. Morrison C. England, Jr.

Trial: None Set

20
21 1. PURPOSES AND LIMITATIONS

22 Disclosure and discovery activity in this action are likely to involve production of
23 confidential, proprietary, or private information for which special protection from public
24 disclosure and from use for any purpose other than prosecuting this litigation may be warranted.
25 Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated
26 Protective Order. The parties acknowledge that this Order does not confer blanket protections on
27 all disclosures or responses to discovery and that the protection it affords from public disclosure
28 and use extends only to the limited information or items that are entitled to confidential treatment

1 under the applicable legal principles. The parties further acknowledge, as set forth in Section
2 12.3, below, that this Stipulated Protective Order does not entitle them to file confidential
3 information under seal; Civil Local Rule 141 sets forth the procedures that must be followed and
4 the standards that will be applied when a party seeks permission from the court to file material
5 under seal.

6 2. DEFINITIONS

7 2.1 Challenging Party: a Party or Non-Party that challenges the designation of
8 information or items under this Order.

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

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

18 2.3 Counsel (without qualifier): Outside Counsel of Record and House Counsel (as
19 well as their support staff).

20 2.4 Designating Party: a Party or Non-Party that designates information or items that
21 it produces in disclosures or in responses to discovery as “CONFIDENTIAL.”

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

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

1 2.7 House Counsel: attorneys who are employees of a party to this action. House
2 Counsel does not include Outside Counsel of Record or any other outside counsel.

3 2.8 Non-Party: any natural person, partnership, corporation, association, or other legal
4 entity not named as a Party to this action.

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

8 2.10 Party: any party to this action, including all of its officers, directors, employees,
9 consultants, retained experts, and Outside Counsel of Record (and their support staffs).

10 2.11 Producing Party: a Party or Non-Party that produces Disclosure or Discovery
11 Material in this action.

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

16 2.13 Protected Material: any Disclosure or Discovery Material that is designated as
17 “CONFIDENTIAL.”

18 2.14 Receiving Party: a Party that receives Disclosure or Discovery Material from a
19 Producing Party.

20 3. SCOPE

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

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

7 4. DURATION

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

15 5. DESIGNATING PROTECTED MATERIAL

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

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

27 If it comes to a Designating Party's attention that information or items that it designated
28 for protection do not qualify for protection, that Designating Party must promptly notify all other

1 Parties that it is withdrawing the mistaken designation.

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

6 Designation in conformity with this Order requires:

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

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

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

26 (c) for information produced in some form other than documentary and for any other
27 tangible items, that the Producing Party affix in a prominent place on the exterior of the container
28 or containers in which the information or item is stored the legend “CONFIDENTIAL.” If only a

1 portion or portions of the information or item warrant protection, the Producing Party, to the
2 extent practicable, shall identify the protected portion(s).

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

8 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

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

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

1 6.3 Judicial Intervention. If the Parties cannot resolve a challenge without court
2 intervention, the Designating Party shall file and serve a motion to retain confidentiality (and in
3 compliance with Civil Local Rule 141, if applicable) within 21 days of the initial notice of
4 challenge or within 14 days of the parties agreeing that the meet and confer process will not
5 resolve their dispute, whichever is earlier. Each such motion must be accompanied by a
6 competent declaration affirming that the movant has complied with the meet and confer
7 requirements imposed in the preceding paragraph. Failure by the Designating Party to make such
8 a motion including the required declaration within 21 days (or 14 days, if applicable) shall
9 automatically waive the confidentiality designation for each challenged designation. In addition,
10 the Challenging Party may file a motion challenging a confidentiality designation at any time if
11 there is good cause for doing so, including a challenge to the designation of a deposition
12 transcript or any portions thereof. Any motion brought pursuant to this provision must be
13 accompanied by a competent declaration affirming that the movant has complied with the meet
14 and confer requirements imposed by the preceding paragraph.

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

22 7. ACCESS TO AND USE OF PROTECTED MATERIAL

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

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

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

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

9 (b) the court and its personnel;

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

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

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

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

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

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

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

1 other litigation that some or all of the material covered by the subpoena or order is subject to this
2 Protective 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
4 Designating Party whose Protected Material may be affected.

5 If the Designating Party timely seeks a protective order, the Party served with the
6 subpoena or court order shall not produce any information designated in this action as
7 “CONFIDENTIAL” before a determination by the court from which the subpoena or order
8 issued, unless the Party has obtained the Designating Party’s permission. The Designating Party
9 shall bear the burden and expense of seeking protection in that court of its confidential material –
10 and nothing in these provisions should be construed as authorizing or encouraging a Receiving
11 Party in this action to disobey a lawful directive from another 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
15 action and designated as “CONFIDENTIAL.” Such information produced by Non-Parties in
16 connection with this litigation is protected by the remedies and relief provided by this Order.
17 Nothing in these provisions should be construed as prohibiting a Non-Party from seeking
18 additional protections.

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

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

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

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

28 (c) If the Non-Party fails to object or seek a protective order from this court within 14

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

7 10. 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 this Stipulated Protective
10 Order, the Receiving Party must immediately (a) notify in writing the Designating Party of the
11 unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the
12 Protected Material, (c) inform the person or persons to whom unauthorized disclosures were
13 made of all the terms of this Order, and (d) request such person or persons to execute the
14 “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit A.

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

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

26 12. MISCELLANEOUS

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

1 12.2 Right to Assert Other Objections. By stipulating to the entry of this Protective
2 Order no Party waives any right it otherwise would have to object to disclosing or producing any
3 information or item on any ground not addressed in this Stipulated Protective Order. Similarly, no
4 Party waives any right to object on any ground to use in evidence of any of the material covered
5 by this Protective Order.

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

14 13. FINAL DISPOSITION

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

1 archival copies that contain or constitute Protected Material remain subject to this Protective
2 Order as set forth in Section 4 (DURATION).

3 14. SPECIFICS

4 For the purposes of this specifics of this stipulation, the parties agree that this stipulation
5 will only confer Protected Material status to the following materials:

- 6 (1) Police Personnel and Human Resources records;
7 (2) IA Investigations; and
8 (3) The Police Report and Internal Memorandums related to the “Weaver” incident.

9 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

10 DATED: 10/17/19 /s/ Yolanda Huang
11 Attorney for Plaintiffs

12 DATED: 10/11/2019 /s/ Patrick D. Moriarty
13 Attorney for Defendants

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16
17 PURSUANT TO STIPULATION, IT IS SO ORDERED, with the following amendments
18 and clarifications:

19 1. The parties shall comply with the provisions and procedures of Local Rules 140
20 and 141 with respect to sealing or redaction requests. To the extent that the parties’ stipulation
21 conflicts with the Local Rules, the Local Rules shall govern.

22 2. Prior to filing any motion related to this stipulated protective order or other
23 discovery motion, the parties shall first exhaust informal meet-and-confer efforts and otherwise
24 comply with Local Rule 251.

25 3. Nothing in this order limits the testimony of parties or non-parties, or the use of
26 certain documents, at any court hearing or trial—such determinations will only be made by the
27 court at the hearing or trial, or upon an appropriate motion.

28 4. Pursuant to Local Rule 141.1(f), the court will not retain jurisdiction over

1 enforcement of the terms of this stipulated protective order after the action is terminated.

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Dated: October 23, 2019

CAROLYN K. DELANEY
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 Stipulated Protective Order that was issued by the United States District Court for the Eastern District of California on _____ in the case of *Francisco Duarte and Alejandro Gutierrez v. City of Stockton, et al.* I agree to comply with and to be bound by all the terms of this Stipulated 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 Stipulated 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 Stipulated Protective Order, even if such enforcement proceedings occur after termination of this action.

I hereby appoint _____ [print or type full name] of _____ [print or type full address and telephone number] as my California agent for service of process in connection with this action or any proceedings related to enforcement of this Stipulated Protective Order.

Date: _____

City and State where sworn and signed: _____

Printed name: _____

Signature: _____