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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

ANTHONY SILVA, et al.,
Plaintiffs,

v.

STANISLAUS COUNTY, et al.,
Defendants.

Case No. 2:23-cv-01887-DJC-CSK


ORDER GRANTING MODIFIED
STIPULATED PROTECTIVE ORDER

(ECF No. 20)

The Court has reviewed the parties' stipulated protective order below (ECF No. 20), and finds it comports with the relevant authorities and the Court's Local Rule. See L.R. 141.1. The Court APPROVES the protective order, subject to the following clarification.

The Court's Local Rules indicate that once an action is closed, it "will not retain jurisdiction over enforcement of the terms of any protective order filed in that action." L.R. 141.1(f); see *Bylin Heating Sys., Inc. v. Thermal Techs., Inc.*, 2012 WL 13237584, at *2 (E.D. Cal. Oct. 29, 2012) (noting that courts in the district generally do not retain jurisdiction for disputes concerning protective orders after closure of the case). Thus, the Court will not retain jurisdiction over this protective order once the case is closed.

Dated: November 1, 2024



CHI SOO KIM
UNITED STATES MAGISTRATE JUDGE

4, silv1887.23

1 **P O R T E R | S C O T T**

2 A PROFESSIONAL CORPORATION

3 John R. Whitefleet, SBN 213301

4 jwhitefleet@porterscott.com

5 Colin J. Nystrom, SBN 354503

6 cnystrom@porterscott.com

7 2180 Harvard Street, Suite 500

8 Sacramento, California 95815

9 TEL: 916.929.1481

10 FAX: 916.927.3706

11 Attorneys for Defendants

12 STANISLAUS COUNTY, JUSTIN CAMARA, ZA XIONG, ERIC BAVARO

13 (*Exempt from Filing Fees Pursuant to Government Code § 6103*)

14 UNITED STATES DISTRICT COURT EASTERN DISTRICT OF CALIFORNIA

15 DOROTHEE HEIMBACH, individually and
16 as successor in interest to Anthony Silva,

17 Plaintiff,

18 v.

19 STANISLAUS COUNTY; and JUSTIN
20 CAMARA, ZA XIONG, and ERIC
21 BAVARO, in their individual capacities,

22 Defendants.

23 Case No. 2:23-cv-01887-DJC-CSK

24 STIPULATED PROTECTIVE ORDER;
25 ~~PROPOSED~~ ORDER

26 First Amended Complaint Filed: 11/21/2023

27 Second Amended Complaint Filed: 3/14/2024

28 Plaintiff DOROTHEE HEIMBACH, individually and as successor in interest to Anthony Silva (“Plaintiff”), and Defendants STANISLAUS COUNTY, JUSTIN CAMARA, ZA XIONG, ERIC BAVARO (“Defendants”), by and through their respective counsel, hereby stipulate and in good faith believe that documents potentially within the scope of discovery for the instant matter, including but not limited to the documents identified below that have been or will be requested by Plaintiff, are subject to protection pursuant to Fed. R. Civ. P. 26(c). The terms of this protective order shall apply to the items

1 listed below and any future production of confidential documents that Defendants may designate in good
2 faith to be confidential.

3 **STIPULATION AND PROTECTIVE ORDER**

4 Defendants take the position that certain materials, including but not limited to personnel records,
5 internal affairs and use of force records, are confidential and/or implicate privacy rights, and are thus
6 subject to protection pursuant to Fed. R. Civ. P. 26(c). Therefore, the parties jointly request a protective
7 order be entered in this case to protect the above referenced confidential records.

8 **A. DEFINITIONS**

9 The following definitions shall apply to this Protective Order:

- 10 1. The “Action” shall mean and refer to the above-captioned matter and to all actions now or later
11 consolidated with the Action, and any appeal from the Action and from any other action
12 consolidated at any time under the above-captioned matter, through final judgment.
- 13 2. “Documents” or “Confidential Documents” shall mean the Documents that Defendant or
14 Plaintiff designates as “Confidential” in the manner set forth in this Protective Order.
- 15 3. “Confidential” shall mean information designated “Confidential” pursuant to this Protective
16 Order. Information designated “Confidential” shall be information that is determined in good
17 faith by the attorneys representing the Designating Party to be subject to protection pursuant
18 to Fed. R. Civ. P. 26(c). Confidential Documents, material, and/or information shall be used
19 solely for purposes of litigation. Confidential Information shall not be used by the non-
20 Designating Party for any business or other purpose, unless agreed to in writing by all Parties
21 to this action or as authorized by further order of the Court.
- 22 4. “Defendant” shall mean any person designated as a Defendant in Plaintiff’s operative
23 complaint.
- 24 5. “Discovery Material” shall refer to all items or information that are produced or generated in
25 disclosures or responses to discovery in this Action, regardless of the medium or way it was
26 stored, generated, or maintained.

1 6. "Document" shall have the same meaning as provided in Rule 34 of the Federal Rules of Civil
2 Procedure, and shall include, without limitation, all original, written, recorded, electronic,
3 visual, audio or graphic materials, including all photographic, video or audio recordings,
4 drawings or other physical renderings and all copies, duplicates or abstracts thereof including,
5 but not limited to, notes on documents including information contained therein or derived
6 therefrom.

7 7. "Information" shall include Documents as described above as well as recordings (including
8 associated metadata) whether on paper, film or other media, as discrete files stored
9 electronically, optically, or magnetically, or as a record within a database, archive, or container
10 file, including emails, messages, word processed documents, digital presentations,
11 spreadsheets, and database content and the content contained therein.

12 **B. TERMS OF THE PROTECTIVE ORDER**

13 IT IS HEREBY STIPULATED by, among and between the parties through their counsel of record,
14 that the following terms apply to documents designated as "Confidential" as described above, by the
15 Defendant and produced by subpoena or otherwise, subject to the following Protective Order:

16 1. The Confidential Documents shall be used solely in connection with the above-captioned
17 case and in the preparation and trial of the case. The Parties do not waive any objections
18 to the admissibility of the documents or portions thereof in future proceedings in this case,
19 including trial.

20 2. All records subject to this protective order shall be designated as confidential by affixing a
21 mark labelling them "Confidential" by the designating party.

22 3. The Confidential Documents may only be disclosed to the following persons:

23 (a) Counsel for Plaintiff, including partners and associate attorneys in their offices, as
24 counsel for Plaintiff in this case;

25 (b) Counsel for Defendants, including partners and associate attorneys in their offices,
26 as counsel for Defendants in this case;

- 1 (c) Paralegal, clerical, and secretarial personnel regularly employed by counsel
2 referred to in subparts (a) and (b), including stenographic deposition reporters or
3 videographers retained in connection with this action;
- 4 (d) Court personnel, including stenographic reporters or videographers engaged in
5 proceedings as are necessarily incidental to the preparation for the trial in the civil
6 action;
- 7 (e) Any expert, consultant, or investigator retained in connection with this action,
8 however, such persons must be advised of and abide by this protective order;
- 9 (f) The finder of fact at the time of trial, subject to the court's rulings on *in limine*
10 motions and objections of counsel;
- 11 (g) Witnesses during their depositions in this action. If confidential documents are used
12 in the deposition, the documents must be identified as "Confidential" and the
13 portion of the deposition in which the documents are described should also be
14 considered confidential; and
- 15 (h) The parties to this action and any representatives acting on their behalf for this
16 action.
- 17 4. Before any Confidential Documents may be disclosed to persons described in Subsections
18 (a)-(h) in paragraph 3 above, each person to whom such Confidential Documents are
19 disclosed, except for Court officials and employees, shall be provided with a copy of this
20 Protective Order and shall agree to be bound by and comply with the terms of this Order.
- 21 5. No notes, lists, memoranda, index, electronic images, databases or compilation prepared
22 based wholly or in part upon examination of Confidential Documents shall be disseminated
23 to anyone not authorized to have access to Confidential Documents.
- 24 6. If the Confidential Documents are filed with any motion or other pleading, a party may
25 seek permission from the Court to file the Confidential Documents under seal according to
26 Local Rule 141. If permission is granted, the Confidential Documents will be filed and
27 served in accordance with Local Rule 141.

1 7. The designation of the Confidential Documents as “Confidential” and the subsequent
2 production thereof is without prejudice to the right of any party to oppose the admissibility
3 of the Confidential Documents or information contained therein.

4 8. Any party or non-party may challenge a designation of confidentiality at any time. A party
5 or non-party does not waive its right to challenge a confidentiality designation by electing
6 not to mount a challenge promptly after the original designation is disclosed. The
7 Challenging Party shall initiate the dispute resolution process by providing written notice
8 of each designation it is challenging and describing the basis for each challenge. The parties
9 shall attempt to resolve each challenge in good faith and must begin the process by
10 conferring directly (in voice-to-voice dialogue; other forms of communication are not
11 sufficient) within seven (7) days of the date of receiving notice of the challenge. In
12 conferring, the Challenging Party must explain the basis for its belief that the
13 confidentiality designation was not proper and must give the Designating Party an
14 opportunity to review the designated material, to reconsider the circumstances, and, if no
15 change in designation is offered, to explain the basis for the chosen designation. A
16 Challenging Party may proceed to the next stage of the challenge process only if it has
17 engaged in this meet and confer process first or establishes that the Designating Party is
18 unwilling to participate in the meet and confer process in a timely manner. If the Parties
19 cannot resolve a challenge without Court intervention, the Designating Party may file and
20 serve a motion for protective order pursuant to Fed. R. Civ. P. 26(c) and E.D. Cal. L.R. 251
21 within twenty-one (21) days of the initial notice of challenge. Failure by the Designating
22 Party to make such a motion within twenty-one (21) days shall automatically waive the
23 “Confidential” designation for each challenged designation. In addition, the Challenging
24 Party may file a motion challenging a confidentiality designation at any time if there is
25 good cause for doing so. The burden of persuasion in any such challenge proceeding shall
26 be on the Designating Party. Unless the Designating Party has waived the confidentiality
27 designation by failing to file a motion to retain confidentiality as described above, all

1 parties shall continue to afford the material in question the level of protection to which it
2 is entitled under the Designating Party's designation until the Court rules on the challenge.

3 9. Notwithstanding the provisions of Paragraph 3, the Confidential Documents and
4 information contained therein may not be delivered, exhibited or otherwise disclosed to
5 any reporter, writer or employee of any trade publication, newspaper, magazine or other
6 media organization, including but not limited to radio and television media, provided that
7 the Challenging Party has not obtained, by challenge or otherwise, the removal of the
8 confidentiality designation from the Confidential Documents.

9 10. Should the Confidential Documents or any information contained therein be disclosed,
10 through inadvertence or otherwise, to any person not authorized to receive it under this
11 Protective Order, the disclosing person(s) shall promptly (a) inform counsel of the
12 recipient(s) and the circumstances of the unauthorized disclosure to the relevant producing
13 person(s) and (b) use best efforts to bind the recipient(s) to the terms of this Protective
14 Order.

15 11. The Confidential Documents shall not lose its confidential status because it was
16 inadvertently or unintentionally disclosed to a person not authorized to receive it under this
17 Protective Order.

18 12. After the conclusion of this litigation, the Confidential Documents will remain confidential,
19 unless the Challenging Party has obtained removal of the confidentiality designations.
20 "Conclusion" of this litigation means a termination of the case following a trial, settlement,
21 or dismissal of the Action with prejudice for any other reason.

22 13. This Stipulated Protective Order shall remain in full force and effect and shall continue to
23 be binding on all parties and affected persons until this litigation terminates, subject to any
24 subsequent modifications of this Stipulated Protective Order for good cause shown by this
25 Court or any Court having jurisdiction over an appeal of this action. Upon termination of
26 this litigation, the parties agree the Stipulated Protective Order shall continue in force as a
27

1 private agreement between the parties, unless the Challenging Party has obtained removal
2 of the confidentiality designations from certain documents.

3 14. During the pendency of this lawsuit, the Court shall (a) make such amendments,
4 modifications and additions to this Protective Order as it may deem appropriate upon good
5 cause shown; and (b) adjudicate any dispute arising under it.

6 **IT IS SO STIPULATED.**

7
8 Dated: October 29, 2024 LAW OFFICES OF DALE K GALIPO

9
10 By /s/Cooper Alison-Mayne
11 Cooper Alison-Mayne

12
13 Dated: October 29, 2024 LAW OFFICES OF DEAN PETRULAKIS

14
15 By /s/Dean Petrulakis
16 Dean Petrulakis

17
18 Dated: October 29, 2024 PORTER | SCOTT
19 A PROFESSIONAL CORPORATION

20
21 By /s/John R. Whitefleet
22 John R. Whitefleet
23 Attorneys for Defendants

**CERTIFICATION RE
AGREEMENT CONCERNING DOCUMENTS
COVERED BY PROTECTIVE ORDER**

I hereby certify my understanding that Confidential Documents are being provided to me pursuant to the terms and restrictions of the Protective Order dated _____ (hereinafter “Order”), *HEIMBACH v STANISLAUS COUNTY, et al., 23-CV-01887*.

I have been given a copy of that Order and read it.

I agree to be bound by the Order. I will not reveal Confidential Documents to anyone, except as allowed by the Order. I will maintain all such Confidential Documents – including copies, notes, or other transcriptions made therefrom – in a secure matter to prevent unauthorized access to it. Not later than thirty (30) days after the conclusion of this action, I shall either (a) return such documents to counsel for the party or non-party who provided such information, or at my election, (b) destroy such documents and certify in writing that the documents have been destroyed.

I hereby consent to the jurisdiction of the Eastern District of California for the purpose of enforcing the Order.

I declare under penalty of perjury that the foregoing is true and correct and that this certificate is executed this ____ day of _____, at _____, _____.

By: _____

Address: _____

Phone: _____