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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

ELLIOT SCOTT GRIZZLE,

Plaintiff,

v.

COUNTY OF SAN DIEGO, et al.,

Defendants.

Case No.: 3:17-cv-00813-JLS-RBM

**ORDER GRANTING JOINT
MOTION FOR PROTECTIVE
ORDER WITH MODIFICATIONS**

[Doc. 123]

On November 24, 2020, the parties filed a joint motion requesting the Court to enter the parties’ proposed stipulated Protective Order. (Doc. 123.) The Court has considered the parties’ proposed Protective Order. *See* Attach. A. Good cause appearing, the joint motion for Protective Order is **GRANTED**, however, the parties’ proposed Protective Order is modified as follows:

Paragraph 22 is Modified as Follows: “Upon final termination of this action, including any and all appeals, counsel for each party must, upon request of the producing party, return all confidential information to the party that produced the information, including any copies, excerpts, and summaries of that information, or must destroy same at the option of the receiving party, and must purge all such information from all machine-readable media on which it resides. Notwithstanding the foregoing, counsel for each party

1 may retain all pleadings, briefs, memoranda, motions, and other documents filed with the
2 Court that refer to or incorporate confidential information and will continue to be bound
3 by this Protective Order with respect to all such retained information. Further, attorney
4 work-product materials that contain confidential information need not be destroyed, but, if
5 they are not destroyed, the person in possession of the attorney work product will continue
6 to be bound by this Order with respect to all such retained information. Absent an ex parte
7 motion made within ten (10) calendar days of the termination of the case, the parties
8 understand that the Court will destroy any confidential documents in its possession.”

9 **Paragraph 27 is Modified as Follows:** “The Court may modify the terms and
10 conditions of this Order for good cause, or in the interest of justice, or on its own order at
11 any time in these proceedings.”

12 **Paragraph 28 is Added as Follows:** “Without separate court order, the Protective
13 Order and the parties’ stipulation do not change, amend, or circumvent any court rule or
14 local rule.”

15 **IT IS SO ORDERED.**

16 DATE: December 2, 2020

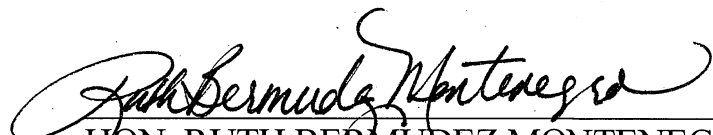
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18 HON. RUTH BERMUDEZ MONTENEGRO
19 UNITED STATES MAGISTRATE JUDGE
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EXHIBIT A

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**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

Elliot Scott Grizzle

Plaintiff,

v.

County of San Diego, individually and
officially, Sheriff William Gore,
Lieutenant Lovelace, Lieutenant
Froistad, Aaron Boorman, and Does 1 -
25,

Defendants.

No. 17-cv-00813-JLS-RBM

STIPULATED PROTECTIVE ORDER

Magistrate Ruth Bermudez Montenegro

The Court recognizes that at least some of the documents and information (“materials”) being sought through discovery in the above-captioned action are private, privileged or confidential information that is not generally available to the public and normally kept confidential by the parties. The materials to be exchanged throughout the course of the litigation between the parties may contain medical and mental health records, law enforcement records, and other materials containing confidential sensitive information maintained for law enforcement purposes.

The purpose of this Protective Order (“Protective Order” or “Order”) is to protect the confidentiality of such materials as much as practical during the litigation. The parties have agreed to be bound by the terms of this Order in this action.

GENERAL RULES

1
2 3. Each party to this litigation that produces or discloses any materials, answers
3 to interrogatories, responses to requests for admission, trial testimony, deposition
4 testimony, and transcripts of trial testimony and depositions, or information that the
5 producing party believes should be subject to this Protective Order may designate the
6 same as “CONFIDENTIAL” or “CONFIDENTIAL - FOR COUNSEL ONLY.”

7 a. Any party may designate information or materials as
8 “CONFIDENTIAL” only if, in the good faith belief of such party and its counsel,
9 the information or materials contain private, privileged or otherwise confidential
10 information, which is not generally available to the public.

11 b. Designation as "CONFIDENTIAL - FOR COUNSEL ONLY": Any
12 party may designate information as "CONFIDENTIAL - FOR COUNSEL ONLY"
13 only if, in the good faith belief of such party and its counsel, the information is
14 among that considered to be most sensitive by the party, including but not limited
15 to highly sensitive official information, trade secret or other confidential research,
16 development, financial or other commercial information.

17 4. Whenever a deposition taken on behalf of any party involves a disclosure of
18 confidential information of any party:

19 a. the deposition or portions of the deposition must be designated as
20 containing confidential information subject to the provisions of this
21 Protective Order; such designation must be made on the record whenever
22 possible, but a party may designate portions of depositions as containing
23 confidential information after transcription of the proceedings. A party will
24 have until fourteen (14) days after receipt of the deposition transcript to
25 inform the other party or parties to the action of the portions of the transcript
26 to be designated “CONFIDENTIAL;”

27 b. the disclosing party will have the right to exclude from attendance at
28 the deposition, during such time as the confidential information is to be

1 disclosed, any person other than the deponent, counsel (including their staff
2 and associates), the court reporter, and the person(s) agreed upon pursuant to
3 paragraph 7 below; and

4 c. the originals of the deposition transcripts and all copies of the
5 deposition must bear the legend "CONFIDENTIAL," as appropriate, and the
6 original or any copy ultimately presented to a court for filing must not be
7 filed unless it can be accomplished under seal, identified as being subject to
8 this Protective Order, and protected from being opened except by order of
9 this Court.

10 5. All confidential information designated as "CONFIDENTIAL" or
11 "CONFIDENTIAL FOR COUNSEL ONLY" must not be disclosed by the receiving
12 party to anyone other than those persons designated within this order and must be
13 handled in the manner set forth below and, in any event, must not be used for any
14 purpose other than in connection with this litigation, unless and until such designation is
15 removed either by agreement of the parties, or by order of the Court. In advance of
16 providing any confidential information of the producing party to an independent expert,
17 the receiving party will obtain an executed copy of the form attached hereto as Exhibit A
18 from the independent expert. The receiving party agrees to promptly produce a copy of
19 the executed form attached hereto as Exhibit A to the producing party upon written
20 request. Any objection by the producing party to an independent expert receiving
21 confidential information must be made in writing within fourteen (14) days following
22 receipt of the identification of the proposed expert.

23 6. Information designated "CONFIDENTIAL - FOR COUNSEL ONLY" must
24 be viewed only by counsel of the receiving party, and by independent experts under the
25 conditions set forth in this Paragraph. The right of any independent expert to receive any
26 confidential information designated as "for counsel only" will be subject to the advance
27 approval of such expert by the producing party or by permission of the Court. The party
28 seeking approval of an independent expert must provide the producing party with the

1 name and curriculum vitae of the proposed independent expert, and an executed copy of
2 the form attached hereto as Exhibit A, in advance of providing any confidential
3 information of the producing party to the expert. Any objection by the producing party to
4 an independent expert receiving confidential information must be made in writing within
5 fourteen (14) days following receipt of the identification of the proposed expert.
6 Confidential information may be disclosed to an independent expert if the fourteen (14)
7 day period has passed and no objection has been made. The approval of independent
8 experts must not be unreasonably withheld.

9 7. Information designated "CONFIDENTIAL" must be viewed only by
10 counsel of the receiving party, the receiving party, by independent experts (pursuant to
11 the terms of paragraphs 5 and 7), by court personnel, and by the additional individuals
12 listed below, provided each such individual has read this Protective Order in advance of
13 disclosure and has agreed in writing to be bound by its terms:

- 14 a. Executives or management personnel who are required to participate
15 in policy decisions with reference to this action;
- 16 b. Technical personnel of the parties with whom counsel for the parties
17 find it necessary to consult, in the discretion of such counsel, in preparation
18 for trial of this action; and
- 19 c. Stenographic and clerical employees associated with the individuals
20 identified above.

21 8. With respect to material designated "CONFIDENTIAL" or
22 "CONFIDENTIAL – FOR COUNSEL ONLY," any person indicated on the face of the
23 document to be its originator, author or a recipient of a copy of the document, may be
24 shown the same.

25 9. All information that has been designated as "CONFIDENTIAL" or
26 "CONFIDENTIAL -FOR COUNSEL ONLY" by the producing or designating party, and
27 any and all reproductions of that information, must be retained in the custody of the
28 counsel for the receiving party except that independent experts authorized to view such

1 information under the terms of this Protective Order may retain custody of copies such as
2 are necessary for their participation in this litigation.

3 10. Before any materials produced in discovery, answers to interrogatories,
4 responses to requests for admissions, deposition transcripts, or other documents which
5 are designated as confidential information are filed with the Court for any purpose, the
6 party seeking to file such material must seek permission of the Court to file the material
7 under seal. No items will be electronically filed under seal without a prior application to,
8 and order from, the judge presiding over the hearing or trial. Only when the judge
9 presiding over the hearing or trial permits filing an item or items under seal may
10 confidential material be filed with the Court under seal. The parties shall follow and
11 abide by applicable law, including Civ. L.R. 79.2, ECF Administrative Policies and
12 Procedures, Section II.j, and the chambers' rules, with respect to filing documents under
13 seal.

14 11. Specifically, with respect to filing documents under seal. Nothing shall be
15 filed under seal, and the Court shall not be required to take any action, without separate
16 prior order by the Judge before whom the hearing or proceeding will take place, after
17 application by the affected party with appropriate notice to opposing counsel. The parties
18 shall follow and abide by applicable law, including Civ. L.R. 79.2, ECF Administrative
19 Policies and Procedures, Section II.j, and the chambers' rules, with respect to filing
20 documents under seal. A sealing order may issue only upon a showing that the
21 information is privileged or protectable under the law. The request must be narrowly
22 tailored to seek sealing only of the confidential or privileged material.

23 12. To file a document under seal, the parties must comply with the procedures
24 explained in Section 2.j of the Electronic Case Filing Administrative Policies and
25 Procedures Manual for the United States District Court for the Southern District of
26 California and Civil Local Rule 79.2. In addition, a party must file a redacted version of
27 any document that it seeks to file under seal. The document must be titled to show that it
28 corresponds to an item filed under seal, e.g., "Redacted Copy of Sealed Declaration of

1 John Smith in Support of Motion for Summary Judgment.” The party should file the
2 redacted document(s) simultaneously with a joint motion or ex parte application
3 requesting that the confidential portions of the document(s) be filed under seal and setting
4 forth good cause for the request.

5 13. At any stage of these proceedings, any party may object to a designation of
6 the materials as confidential information. The party objecting to confidentiality must
7 notify, in writing, counsel for the designating party of the objected-to materials and the
8 grounds for the objection. If the dispute is not resolved consensually between the parties
9 within seven (7) days of receipt of such a notice of objections, the objecting party may
10 move the Court for a ruling on the objection in accordance with the deadlines for
11 resolving discovery disputes set forth in the Court’s chamber rules. The materials at
12 issue must be treated as confidential information, as designated by the designating party,
13 until the Court has ruled on the objection or the matter has been otherwise resolved.

14 14. All confidential information must be held in confidence by those inspecting
15 or receiving it, and must be used only for purposes of this action. Counsel for each party,
16 and each person receiving confidential information must take reasonable precautions to
17 prevent the unauthorized or inadvertent disclosure of such information. If confidential
18 information is disclosed to any person other than a person authorized by this Protective
19 Order, the party responsible for the unauthorized disclosure must immediately bring all
20 pertinent facts relating to the unauthorized disclosure to the attention of the other parties
21 and, without prejudice to any rights and remedies of the other parties, make every effort
22 to prevent further disclosure by the party and by the person(s) receiving the unauthorized
23 disclosure.

24 15. No party will be responsible to another party for disclosure of confidential
25 information under this Protective Order if the information in question is not labeled or
26 otherwise identified as such in accordance with this Order.

27 16. Pursuant to Fed. R. Evid. 502(d), the inadvertent production of documents
28 and data pursuant to this Order shall not result in the waiver of an applicable privilege as

1 to those documents and data. Also, the inadvertent production of privileged or protected
2 documents or data under this Order shall not result in the waiver of the applicable
3 privilege as to those documents and data in any other Federal or State proceeding. Any
4 privileged material inadvertently disclosed shall be and remain the property of the
5 producing party.

6 17. If a party determines that it has produced a document or data to which it
7 wishes to assert a claim of privilege or protection, its counsel shall notify opposing
8 counsel promptly of its claim. As part of the notification, the party's counsel shall
9 identify, by Bates number(s), the document(s) as to which the party is asserting a claim of
10 privilege or protection. The receiving party must treat the materials as confidential, once
11 the designating party so notifies the receiving party. If the receiving party has disclosed
12 the materials before receiving the designation, the receiving party must notify the
13 designating party in writing of each such disclosure. Counsel for the parties will agree on
14 a mutually acceptable manner of labeling or marking the inadvertently produced
15 materials as "CONFIDENTIAL" or "CONFIDENTIAL - FOR COUNSEL ONLY" -
16 SUBJECT TO PROTECTIVE ORDER.

17 18. Nothing within this Order will prejudice the right of any party to object to
18 the production of any discovery material on the grounds that the material is protected
19 from disclosure on any ground, including privilege or as attorney work-product.

20 19. Nothing in this Order will bar counsel from rendering advice to their clients
21 with respect to this litigation and, in the course thereof, relying upon any information
22 designated as confidential information, provided that the contents of the information must
23 not be disclosed.

24 20. This Order will be without prejudice to the right of any party to oppose
25 production of any information for lack of relevance or any other ground other than the mere
26 presence of confidential information. The existence of this Order must not be used by
27 either party as a basis for discovery that is otherwise improper under the Federal Rules of
28 Civil Procedure or Federal Rules of Evidence.

1 21. Nothing within this Order will be construed to prevent disclosure of
2 confidential information if such disclosure is required by law or by order of the Court.

3 22. Upon final termination of this action, including any and all appeals, counsel
4 for each party must, upon request of the producing party, return all confidential information
5 to the party that produced the information, including any copies, excerpts, and summaries
6 of that information, or must destroy same at the option of the receiving party, and must
7 purge all such information from all machine-readable media on which it resides.
8 Notwithstanding the foregoing, counsel for each party may retain all pleadings, briefs,
9 memoranda, motions, and other documents filed with the Court that refer to or incorporate
10 confidential information, and will continue to be bound by this Protective Order with
11 respect to all such retained information. Further, attorney work-product materials that
12 contain confidential information need not be destroyed, but, if they are not destroyed, the
13 person in possession of the attorney work product will continue to be bound by this Order
14 with respect to all such retained information.

15 23. The restrictions and obligations set forth within this Order will not apply to
16 any information that: (a) the parties agree should not be designated confidential
17 information; (b) the parties agree, or the Court rules, is already public knowledge; (c) the
18 parties agree, or the Court rules, has become public knowledge other than as a result of
19 disclosure by the receiving party, its employees, or its agents in violation of this Protective
20 Order; or (d) has come or will come into the receiving party's legitimate knowledge
21 independently of the production by the designating party. Prior knowledge must be
22 established by pre-production documentation.

23 24. The restrictions and obligations within this Order will not be deemed to
24 prohibit discussions of any confidential information with anyone if that person already has
25 or obtains legitimate possession of that information.

26 25. Transmission by email or some other currently utilized method of
27 transmission is acceptable for all notification purposes within this Protective Order.

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EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ **[full name]**, of _____

_____ **[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 Southern District of California in the case of *Elliot Scott Grizzle v. County of San Diego, et al.*, USDC No. No.17-cv-00813-JLS-RBM. 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 that any information designated confidential pursuant thereto which is delivered to me will be segregated and kept by me in a safe place, and will not be made known to others except in accordance with the terms of said Order. I further understand and agree that any summaries or other documents containing knowledge or information obtained from confidential documents or information furnished to me shall also be treated by me as confidential. I also agree to dispose of all such confidential documents and all summaries or other documents containing knowledge or information obtained therefrom in such manner as I may be instructed after completing my services.

I further agree to submit to the jurisdiction of the United States District Court for the Southern 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.

Date: _____

Printed name: _____

Signature: _____