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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

DEREK FLOYD,

Plaintiff,

v.

CITY OF SAN DIEGO,

Defendant.

Case No.: 3:20-cv-01737-BAS-AHG

**ORDER GRANTING JOINT  
MOTION FOR PROTECTIVE  
ORDER**

**[ECF No. 8]**

Before the Court is the parties' Joint Motion for Protective Order. ECF No. 8. Having reviewed the motion and the parties' proposed protective order, good cause appearing, the Court **GRANTS** the motion. The Court enters the following Stipulated Protective Order exactly as submitted by the parties:

1 The parties recognize that at least some of the documents, video/audio recordings  
2 and information (“materials”) being sought through discovery in the above-captioned  
3 action may, for public safety and privacy reasons, be kept confidential by the parties. The  
4 parties have agreed to be bound by the terms of this Protective Order (“Order”) in this  
5 action.

6 The materials to be exchanged throughout the course of the litigation between the  
7 parties may contain confidential information affecting public safety, information may be  
8 deemed unduly prejudicial if not protected, as well as private information, as is  
9 contemplated by Federal Rule of Civil Procedure 26(c)(1)(B). The purpose of this Order is  
10 to protect the confidentiality of such materials as much as practical during the litigation.

11 THEREFORE:

12 DEFINITIONS

13 1. The term “confidential information” will mean and include information  
14 contained or disclosed in any materials, including documents, portions of documents,  
15 videos, audio recordings, answers to interrogatories, responses to requests for admissions,  
16 trial testimony, deposition testimony, and transcripts of trial testimony and depositions,  
17 including data, summaries, and compilations derived therefrom that is deemed to be  
18 “CONFIDENTIAL” information by any party to which it belongs.

19 2. The term “counsel” will mean counsel of record, and other attorneys,  
20 paralegals, secretaries, and other support staff employed in the law firms identified below:

21 Counsel for Plaintiff

21 Counsel for Defendant

22 Thomas E. Robertson, Esq.

22 Dave E. Abad, Esq.

23 Law Offices of Thomas E. Robertson

23 San Diego City Attorney’s Office

24 501 W. Broadway, Suite 1510

24 1200 Third Avenue, Suite 1100

25 San Diego, CA 92101

25 San Diego, CA 92101

26 (619) 544-9911

26 (619) 533-5800

1 IT IS HEREBY ORDERED that:

2 1. **Scope of Order.** This Protective Order (“Order”) shall govern the use and  
3 disclosure of all designated confidential information (“Protected Information”) produced  
4 by or on behalf of any Party, or furnished by any person associated with any Party, on or  
5 after the date of this Order in any pleading, discovery request, discovery response,  
6 document production, subpoena, or any other disclosure or discovery proceeding in this  
7 Action. Any alleged Confidential Information produced in discovery shall only be used  
8 for the purposes of preparing for and conducting this Action and only as provided in this  
9 Order.

10 2. **Confidentiality Designations.** Any Party, or other person or entity producing  
11 information in this Action, may designate any document, information, thing, or discovery  
12 response as protected by marking it at or before the time of production or exchange with  
13 the legend “CONFIDENTIAL.” If it is impracticable to mark something with such a  
14 legend (e.g., information contained on a computer hard drive), the designation may be  
15 made in writing. All “CONFIDENTIAL” designations must be based on the good faith  
16 belief that the information constitutes (a) Confidential Information or (b) information  
17 subject to a legally protected right of privacy.

18 3. **Undertaking.** Any document or item marked “CONFIDENTIAL” shall be  
19 held in confidence by each Party or person to whom it is disclosed according to the  
20 procedures set forth in this Order; shall be used only for purposes of preparation, trial, and  
21 appeal or confirmation of this Action; shall not be used for any business or commercial  
22 purpose; and shall not be disclosed to any person who is not authorized to receive such  
23 information as provided herein. All documents or materials so marked shall be carefully  
24 maintained in secure facilities.

25 4. **Manner of Designation.**

26 a. The designation of documents or other materials shall be made by  
27 written notice in the documents or materials by affixing to it, in a manner that shall not  
28 interfere with its legibility, the word “CONFIDENTIAL” on all or any part of the document

1 or thing. Wherever practicable, the designation of “CONFIDENTIAL” shall be made by  
2 the producing Party, person or entity prior to, or contemporaneously with, production or  
3 disclosure. Documents or information designated as “CONFIDENTIAL” before entry of  
4 this Order shall be treated as “CONFIDENTIAL” within the meaning of this Order. Any  
5 non-designating Party may challenge any designation of confidentiality in accordance with  
6 Paragraph 11 below.

7           b. All deposition transcripts in this Action shall be treated by all parties as  
8 provisionally protected as “CONFIDENTIAL” for a period of fourteen (14) calendar days  
9 following receipt of the transcripts. Within the fourteen (14) day period, any party may  
10 designate particular portions of a transcript as “CONFIDENTIAL” Information by giving  
11 written notice of such designation to every other party to the Action. To the extent possible,  
12 the Party, person or entity making the designation shall be responsible for assuring those  
13 portions of the deposition transcript and exhibits designated “CONFIDENTIAL” are  
14 appropriately bound by the reporter. The Parties should avoid designating entire transcripts  
15 as “CONFIDENTIAL” where only a portion thereof or the exhibits used therewith qualify  
16 for protection under this Order; to the extent reasonably practicable, only such portions or  
17 exhibits should be designated as Confidential Information. Failure of a Party, person or  
18 entity to so designate any particular portion of the transcript or exhibits within the 14-day  
19 time period will presumptively establish any such portion(s) are not subject to this Order.  
20 However, a Party may seek relief from the Court if such a failure to so designate within the  
21 14-day time period occurs.

22           c. In the event that a Party is permitted by agreement with other Parties or  
23 by order of the Court to inspect or review documents prior to official production in response  
24 to a Party’s discovery request(s), all documents and things produced at such inspection will  
25 be considered to be “CONFIDENTIAL.” At the time any such responsive documents  
26 and/or things are officially produced, however, an appropriate designation, if any, shall be  
27 placed on each document or thing in accordance with this Protective Order.

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1           **5. Use and Access of Confidential Information.**

2           a.     **CONFIDENTIAL:** Except as set forth herein, or in any subsequent  
3 order of the Court or by express written consent by counsel of record for the Parties, no  
4 documents, things or information designated as  
5 “CONFIDENTIAL” shall be, directly or indirectly, delivered, exhibited or disclosed to any  
6 person, other than:

- 7           i.     the Court, any Court personnel, and/or any court reporter or  
8           videographer recording or transcribing testimony in a deposition,  
9           hearing, or other proceeding in this Action;
- 10          ii.    Counsel for the Parties and the attorneys, paralegals, law clerks, and  
11          clerical staff who are providing active assistance to Counsel in this  
12          Action;
- 13          iii.   any person identified from the four corners of the information,  
14          document or thing itself as having authored or previously received the  
15          information, document or thing; and
- 16          iv.   the Parties to this Action; provided, however, that disclosure may be  
17          made only to the extent necessary for the prosecution or defense of this  
18          litigation;
- 19          v.     any actual or potential witness, provided that said witness has  
20          executed a certification in accordance with Paragraph 6 below;
- 21          vi.    any person testifying at a deposition, provided that said person has  
22          executed a certification in accordance with Paragraph 6 below;
- 23          vii.   any expert, technical advisor, or consultant retained, employed, or  
24          consulted by any Party for the purposes of this Action, provided that  
25          said experts or consultants have executed a certification in accordance  
26          with Paragraph 6 below; and
- 27          viii.  other persons who may be specifically designated by consent of all  
28          Counsel of record for the Parties, or pursuant to an order of the Court,

1 provided that said person has executed a certification in accordance  
2 with Paragraph 6 below.

3 **6. Disclosure to Witnesses, Technical Advisers, Experts and/or Consultants;**  
4 **and Certification of Confidentiality.** Before giving any witness, expert, technical adviser  
5 and/or consultant as described in Paragraph 5 above access to information, documents or  
6 things designated as “CONFIDENTIAL,” the Party’s Counsel who seeks to disclose any  
7 such information to any such person shall require that person to read and agree to be bound  
8 by this Order by signing a certification that must be maintained by Counsel for the Party  
9 seeking to disclose such information until complete resolution of the following. The term  
10 “technical adviser” shall mean any person, including but not limited to a proposed expert  
11 witness or non-testifying consultant, with whom counsel may deem it necessary to consult  
12 concerning any technical, financial, or other aspect of this case for the preparation of  
13 litigating and/or conducting trial in this Action. The certification to be signed must state the  
14 following:

15 I certify my understanding that any documents, information, answers,  
16 responses, and/or other materials that are provided to me in this case are  
17 subject to the terms and restrictions of the Stipulated Protective Order in  
18 Floyd v. City of San Diego 20cv1737 BAS (AHG). I have been given a copy  
19 and have read that Order. I have had its meaning and effect explained to me  
20 by counsel who provided me with the above described information. I  
21 understand that any such information and/or documents, and any copies,  
22 notes or other memoranda regarding information in such documents, shall  
23 not be disclosed to others except in accordance with that Order, and shall be  
24 used only for purposes of this proceeding. I agree to comply with the Order.

25 **7. Safeguarding Confidential Information.** The recipient of any  
26 “CONFIDENTIAL” material provided pursuant to this Order shall maintain such  
27 information in a secure and safe area and shall exercise due and proper care with respect  
28 to its storage, custody and use, so long as it remains so designated.

1           8.     **Filing Under Seal.** No document shall be filed under seal unless counsel  
2 secures a court order allowing the filing of a document, or portion thereof, under seal. An  
3 application to file a document under seal shall be served on opposing counsel, and on the  
4 person or entity that has custody and control of the document, if different from opposing  
5 counsel. If opposing counsel, or the person or entity who has custody and control of the  
6 document, wishes to oppose the application, they must contact the chambers of the judge  
7 who will rule on the application to notify the Court that an opposition to the application  
8 will be filed.

9           9.     **Final Disposition.** Within ninety (90) days of the conclusion of this Action,  
10 including any appeals, all “CONFIDENTIAL” information furnished pursuant to the terms  
11 of this Order, any notes reflecting Confidential Information and all copies thereof, which  
12 are not in the custody of the Court, shall, upon request, be returned to the Party furnishing  
13 that Confidential Information or be destroyed (and certified by affidavit as having been  
14 destroyed) by the Party in possession thereof, provided that counsel for the Parties may  
15 retain their notes and any work product materials and litigation files.

16           10.    **No Presumption of Protected Status.** This Stipulated Protective Order does  
17 not address discovery objections, nor does it preclude any party from asserting objections  
18 to any discovery request for any reason permitted by the applicable rules of civil procedure  
19 or as otherwise permitted by law. This Order does not preclude any party from moving for  
20 any relief cognizable under rules of civil procedure.

21           11.    **Challenging Confidential Designation.** A party may oppose the designation  
22 of Confidential Information by notifying the designating Party in writing. If a Party  
23 opposes the designation of any particular document or information designated as  
24 “CONFIDENTIAL,” the Parties shall make a good faith attempt to resolve the dispute by  
25 agreement. If the Parties are unable to resolve the dispute, then the Party opposing the  
26 designation may seek relief from the Court pursuant to the 45-day rule and procedures set  
27 forth in the chambers’ rules. The burden remains on the designating Party to demonstrate  
28 the propriety of the designation. Until a motion is filed and resolved by the Court, all



1 documents and materials with which a confidential designation is being challenged shall  
2 be treated in the confidential manner that they have been designated by the producing Party,  
3 person, or entity as prescribed in this Order. Any motion filed pursuant to this paragraph  
4 shall identify with specificity each and every document or piece of information for which  
5 a confidentiality designation is being challenged and state the basis for such challenge.

6       12. **Modifications By the Court.** The Court may modify the protective order sua  
7 sponte in the interests of justice or for public policy reasons.

8       13. **Modification By The Parties.** Nothing in this Order shall preclude any party  
9 from applying to the Court for an appropriate modification of this Order; provided,  
10 however, that before such an application, the Parties, persons, or entities involved shall  
11 make a good faith effort to resolve the matter by agreement. Furthermore, the Parties can  
12 agree in writing, without approval from the Court, on the exclusion of particular  
13 information, documents, answers, or responses from the scope of this Order.

14       14. **Inadvertent Production.** The inadvertent production pursuant to discovery  
15 by any Party, person, or entity, of any document or communication that is protected by  
16 privilege, work product doctrine or statutory confidentiality, will not operate as a waiver  
17 of the producing person's right to assert a defense to production of that document or  
18 communication, or any other document or communication, and any such material shall be  
19 returned promptly to the person producing it on timely written demand identifying the  
20 specific document(s). Any information, document or thing mistakenly produced or  
21 disclosed without a "CONFIDENTIAL" designation may be subsequently designated by  
22 the producing Party, person, or entity as "CONFIDENTIAL" at any time pursuant to the  
23 terms of this paragraph without waiving the confidential nature of the document or  
24 information. In each such case, the designating person shall provide to all other parties  
25 notice, either orally followed by written notice within five (5) business days or by written  
26 notice within five (5) business days, of that subsequent designation and a copy of the  
27 document or thing marked in accordance with this paragraph.

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1           15.    **Continuing Jurisdiction.** Unless superseded by later order, this Order shall  
2 remain in full force and effect after the termination of this Action and the Parties agree that  
3 the Court may enforce the terms of this Order and/or redress any violations thereof.

4           16.    **Non-Parties.** The existence of this Order may be disclosed to any non-party  
5 producing documents or information in this Action who may reasonably be expected to  
6 desire confidential treatment of such information. Such non-parties may avail themselves  
7 of the protections of this Order. By availing themselves of the protections of this Order,  
8 such non-parties consent to the jurisdiction of the Court for purposes of enforcing the terms  
9 of this Order only.

10          17.    **Exclusions.** The restrictions set forth in any of the paragraphs hereof with  
11 respect to information, documents, or things designated as “CONFIDENTIAL” shall not  
12 apply to:

13           a.    any information, document or thing which at the time of disclosure to a  
14 receiving party is in the public domain in its protected form;

15           b.    any information, document or thing which after disclosure to a  
16 receiving party becomes part of the public domain in its protected form as a result of  
17 publication not involving a violation of this Order;

18           c.    any information, document or thing which a receiving party can show  
19 was received by it, whether before or after the disclosure, from a source who obtained the  
20 information lawfully and under no obligation of confidentiality to the producing party; or

21           d.    to any party who produced the information, document or thing  
22 designated as “CONFIDENTIAL”.

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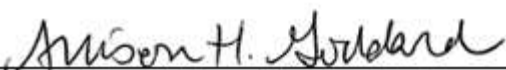
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18. **Existing Obligations.** This protective order shall not be construed as, and does not constitute, a novation of any existing obligations of confidentiality a Party may owe another Party, person, or entity. To the extent they already exist, all such obligations remain in full force and effect notwithstanding the provisions of this protective order.

**IT IS SO ORDERED.**

Dated: November 18, 2020

  
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Honorable Allison H. Goddard  
United States Magistrate Judge