

1 **1. GENERAL**

2 1.1 Purposes and Limitations. Discovery in this action is likely to involve
3 production of confidential, proprietary, or private information for which special
4 protection from public disclosure and from use for any purpose other than
5 prosecuting this litigation may be warranted. Accordingly, the parties hereby
6 stipulate to and petition the Court to enter the following Stipulated Protective Order.
7 The parties acknowledge that this Order does not confer blanket protections on all
8 disclosures or responses to discovery and that the protection it affords from public
9 disclosure and use extends only to the limited information or items that are entitled
10 to confidential treatment under the applicable legal principles. The parties further
11 acknowledge, as set forth in Section 12.3, below, that this Stipulated Protective
12 Order does not entitle them to file confidential information under seal; Civil Local
13 Rule 79-5 sets forth the procedures that must be followed and the standards that will
14 be applied when a party seeks permission from the court to file material under seal.
15

16 1.2 Good Cause Statement. Good cause exists for the Court to enter this
17 pretrial protective order. *Cf. Oliner v. Kontrabecki*, 745 F.3d 1024, 1026 (9th Cir.
18 2014). This civil action involves allegations that Defendant the City of Los Angeles’
19 (“Defendant” or “City”) officers and employees unlawfully confiscated and
20 summarily destroyed Plaintiff’s property, in violation of Plaintiff’s rights under the
21 Fourth, Fifth, and Fourteenth Amendments to the United States Constitution and
22 California constitutional and statutory law. Plaintiff, a disabled homeless individual,
23 further alleges that at all times relevant to this action, he was a qualified individual
24 with disabilities within the meaning of Title II of the Americans with Disabilities
25 act, and that the Defendant’s policy and practice of seizing and destroying his
26 essential property violated his rights on the basis of his disabilities. Defendant
27 denies these allegations.
28

1 This action is likely to involve documents which contain private and
2 confidential information pertaining to Plaintiff's, Defendant, and non-parties. These
3 documents include, but are not limited to, Plaintiff's medical records, social security
4 number, telephonic records involving non-parties, and police reports including
5 names and dates of birth of non-parties.

6 These documents also include materials and information that the City
7 maintains as confidential, such as personnel files of the police officers involved in
8 this incident, Internal Affairs materials and information, video recordings, and
9 information and other administrative materials and information currently in the
10 possession of the City that requires special protection from public disclosure and
11 from use for any purpose other than prosecuting this litigation. The confidentiality
12 of these materials and information is recognized by California and federal law, as
13 evidenced inter alia by California *Penal Code* section 832.7 and *Kerr v. United*
14 *States Dist. Ct. for N.D. Cal.*, 511 F.2d 192, 198 (9th Cir. 1975), aff'd, 426 U.S. 394
15 (1976). The City has not publicly released the materials and information referenced
16 above except under protective order or pursuant to a court order, if at all. The City
17 contends that absent a protective order delineating the responsibilities of
18 nondisclosure on the part of the parties hereto, there is a specific risk of unnecessary
19 and undue disclosure and the corollary risk of embarrassment, harassment and
20 professional and legal harm on the part of the Defendant's officers referenced in the
21 materials and information.

22 Accordingly, to expedite the flow of information, to facilitate the prompt
23 resolution of disputes over confidentiality of discovery materials, to adequately
24 protect information the parties are entitled to keep confidential, to ensure that the
25 parties are permitted reasonable necessary uses of such material in preparation for
26 and in the conduct of trial, to address their handling at the end of the litigation, and
27 serve the ends of justice, a protective order for such information is justified in this
28

1 matter. It is the intent of the parties that information will not be designated as
2 confidential for tactical reasons and that nothing be so designated without a good
3 faith belief that it has been maintained in a confidential, non-public manner, and
4 there is good cause why it should not be part of the public record of this case.

5 **2. DEFINITIONS**

6 2.1 Action: this pending federal lawsuit.

7 2.2 Challenging Party: a Party or Non-Party that challenges the designation
8 of information or items under this Order.

9 2.3 “CONFIDENTIAL” Information or Items: information (regardless of
10 how it is generated, stored or maintained) or tangible things that qualify for
11 protection under Federal Rule of Civil Procedure 26(c), and as specified above in
12 the Good Cause Statement.

13 2.4 Counsel: Outside Counsel of Record and House Counsel (as well as
14 their support staff).

15 2.5 Designating Party: a Party or Non-Party that designates information or
16 items that it produces in disclosures or in responses to discovery as
17 “CONFIDENTIAL.”

18 2.6 Disclosure or Discovery Material: all items or information, regardless
19 of the medium or manner in which it is generated, stored, or maintained (including,
20 among other things, testimony, transcripts, and tangible things), that are produced or
21 generated in disclosures or responses to discovery in this matter.

22 2.7 Expert: a person with specialized knowledge or experience in a matter
23 pertinent to the litigation who has been retained by a Party or its counsel to serve as
24 an expert witness or as a consultant in this Action.

25 2.8 House Counsel: attorneys who are employees of a party to this Action.
26 House Counsel does not include Outside Counsel of Record or any other outside
27 counsel.
28

1 2.9 Non-Party: any natural person, partnership, corporation, association, or
2 other legal entity not named as a Party to this action.

3 2.10 Outside Counsel of Record: attorneys who are not employees of a party
4 to this Action but are retained to represent or advise a party to this Action and have
5 appeared in this Action on behalf of that party or are affiliated with a law firm that
6 has appeared on behalf of that party, including support staff.

7 2.11 Party: any party to this Action, including all of its officers, directors,
8 employees, consultants, retained experts, and Outside Counsel of Record (and their
9 support staffs).

10 2.12 Producing Party: a Party or Non-Party that produces Disclosure or
11 Discovery Material in this Action.

12 2.13 Professional Vendors: persons or entities that provide litigation support
13 services (e.g., photocopying, videotaping, translating, preparing exhibits or
14 demonstrations, and organizing, storing, or retrieving data in any form or medium)
15 and their employees and subcontractors.

16 2.14 Protected Material: any Disclosure or Discovery Material that is
17 designated as “CONFIDENTIAL.”

18 2.15 Receiving Party: a Party that receives Disclosure or Discovery Material
19 from a Producing Party.

20 **3. SCOPE**

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

26 Any use of Protected Material at trial shall be governed by the orders of the
27 trial judge. This Order does not govern the use of Protected Material at trial.

28

1 **4. DURATION**

2 Once a case proceeds to trial, all of the court-filed information to be
3 introduced that was previously designated as confidential or maintained pursuant to
4 this protective order becomes public and will be presumptively available to all
5 members of the public, including the press, unless compelling reasons supported by
6 specific factual findings to proceed otherwise are made to the trial judge in advance
7 of the trial. *See Kamakana v. City and Cty. of Honolulu*, 447 F.3d 1172, 1180-81
8 (9th Cir. 2006) (distinguishing “good cause” showing for sealing documents
9 produced in discovery from “compelling reasons” standard when merits-related
10 documents are part of court record). Accordingly, the terms of this protective order
11 do not extend beyond the commencement of the trial.

12 **5. DESIGNATING PROTECTED MATERIAL**

13 5.1 Exercise of Restraint and Care in Designating Material for Protection.

14 Each Party or Non-Party that designates information or items for protection under
15 this Order must take care to limit any such designation to specific material that
16 qualifies under the appropriate standards. The Designating Party must designate for
17 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,
19 or communications for which protection is not warranted are not swept unjustifiably
20 within the ambit of this Order.

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

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

1 5.2 Manner and Timing of Designations. Except as otherwise provided in
2 this Order (*see, e.g.*, second paragraph of section 5.2(a) below), or as otherwise
3 stipulated or ordered, Disclosure or Discovery Material that qualifies for protection
4 under this Order must be clearly so designated before the material is disclosed or
5 produced.

6 Designation in conformity with this Order requires:

7 (a) for information in documentary form (e.g., paper or electronic
8 documents, but excluding transcripts of depositions or other pretrial or trial
9 proceedings), that the Producing Party affix, at a minimum, the legend
10 “CONFIDENTIAL” (hereinafter “CONFIDENTIAL legend”), to each
11 page that contains protected material. If only a portion or portions of the
12 material on a page qualifies for protection, the Producing Party also must
13 clearly identify the protected portion(s) (e.g., by making appropriate
14 markings in the margins). A Party or Non-Party that makes original
15 documents available for inspection need not designate them for protection
16 until after the inspecting Party has indicated which documents it would
17 like copied and produced. During the inspection and before the
18 designation, all of the material made available for inspection shall be
19 deemed “CONFIDENTIAL.” After the inspecting Party has identified the
20 documents it wants copied and produced, the Producing Party must
21 determine which documents, or portions thereof, qualify for protection
22 under this Order. Then, before producing the specified documents, the
23 Producing Party must affix the “CONFIDENTIAL legend” to each page
24 that contains Protected Material. If only a portion or portions of the
25 material on a page qualifies for protection, the Producing Party also must
26 clearly identify the protected portion(s) (e.g., by making appropriate
27 markings in the margins).

28 (b) for testimony given in depositions, that the Designating Party

1 identify the Disclosure or Discovery Material on the record, before the
2 close of the deposition.

3 (c) for information produced in some form other than documentary
4 and for any other tangible items, that the Producing Party affix in a
5 prominent place on the exterior of the container or containers in which the
6 information is stored the legend "CONFIDENTIAL." If only a portion or
7 portions of the information warrants protection, the Producing Party, to the
8 extent practicable, shall identify the protected portion(s).

9 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
10 failure to designate qualified information or items does not, standing alone, waive
11 the Designating Party's right to secure protection under this Order for such material.
12 Upon timely correction of a designation, the Receiving Party must make reasonable
13 efforts to assure that the material is treated in accordance with the provisions of this
14 Order.

15 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

16 6.1 Timing of Challenges. Any Party or Non-Party may challenge a
17 designation of confidentiality at any time that is consistent with the Court's
18 Scheduling Order.

19 6.2 Meet and Confer. The Challenging Party shall initiate the dispute
20 resolution process under Local Rule 37-1, et seq. Any discovery motion must
21 strictly comply with the procedures set forth in Local Rules 37-1, 37-2, and 37-3.

22 6.3 Burden. The burden of persuasion in any such challenge proceeding
23 shall be on the Designating Party. Frivolous challenges, and those made for an
24 improper purpose (e.g., to harass or impose unnecessary expenses and burdens on
25 other parties) may expose the Challenging Party to sanctions. Unless the Designating
26 Party has waived or withdrawn the confidentiality designation, all parties shall
27 continue to afford the material in question the level of protection to which it is
28 entitled under the Producing Party's designation until the Court rules on the

1 challenge.

2 **7. ACCESS TO AND USE OF PROTECTED MATERIAL**

3 7.1 Basic Principles. A Receiving Party may use Protected Material that is
4 disclosed or produced by another Party or by a Non-Party in connection with this
5 Action only for prosecuting, defending, or attempting to settle this Action. Such
6 Protected Material may be disclosed only to the categories of persons and under the
7 conditions described in this Order. When the Action has been terminated, a
8 Receiving Party must comply with the provisions of section 13 below (FINAL
9 DISPOSITION).

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

13 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless
14 otherwise ordered by the Court or permitted in writing by the Designating Party, a
15 Receiving Party may disclose any information or item designated
16 “CONFIDENTIAL” only to:

17 (a) the Receiving Party’s Outside Counsel of Record in this Action, as
18 well as employees of said Outside Counsel of Record to whom it is reasonably
19 necessary to disclose the information for this Action;

20 (b) the officers, directors, and employees (including House Counsel) of
21 the Receiving Party to whom disclosure is reasonably necessary for this Action;

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

25 (d) the Court and its personnel;

26 (e) court reporters and their staff;

27 (f) professional jury or trial consultants, mock jurors, and Professional
28 Vendors to whom disclosure is reasonably necessary for this Action and who have

1 signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

2 (g) the author or recipient of a document containing the information or
3 a custodian or other person who otherwise possessed or knew the information;

4 (h) during their depositions, witnesses, and attorneys for witnesses, in
5 the Action to whom disclosure is reasonably necessary provided: (1) the deposing
6 party requests that the witness sign the form attached as Exhibit A hereto; and (2)
7 they will not be permitted to keep any confidential information unless they sign the
8 “Acknowledgment and Agreement to Be Bound” (Exhibit A), unless otherwise
9 agreed by the Designating Party or ordered by the Court. Pages of transcribed
10 deposition testimony or exhibits to depositions that reveal Protected Material may
11 be separately bound by the court reporter and may not be disclosed to anyone except
12 as permitted under this Stipulated Protective Order; and

13 (i) any mediator or settlement officer, and their supporting personnel,
14 mutually agreed upon by any of the parties engaged in settlement discussions.

15 **8. PROTECTED MATERIAL SUBPOENAED OR ORDERED**
16 **PRODUCED IN OTHER LITIGATION**

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

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

22 (b) promptly notify in writing the party who caused the subpoena or order to
23 issue in the other litigation that some or all of the material covered by the subpoena
24 or order is subject to this Protective Order. Such notification shall include a copy of
25 this Stipulated Protective Order; and

26 (c) cooperate with respect to all reasonable procedures sought to be pursued
27 by the Designating Party whose Protected Material may be affected. If the
28

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

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

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

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

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

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

26 (3) make the information requested available for inspection by the Non-
27 Party, if requested.
28

1 (c) If the Non-Party fails to seek a protective order from this Court within 14
2 days of receiving the notice and accompanying information, the Receiving Party
3 may produce the Non-Party's confidential information responsive to the discovery
4 request. If the Non-Party timely seeks a protective order, the Receiving Party shall
5 not produce any information in its possession or control that is subject to the
6 confidentiality agreement with the Non-Party before a determination by the Court.
7 Absent a court order to the contrary, the Non-Party shall bear the burden and expense
8 of seeking protection in this Court of its Protected Material.

9 **10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

10 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed
11 Protected Material to any person or in any circumstance not authorized under this
12 Stipulated Protective Order, the Receiving Party must immediately (a) notify in
13 writing the Designating Party of the unauthorized disclosures, (b) use its best efforts
14 to retrieve all unauthorized copies of the Protected Material, (c) inform the person
15 or persons to whom unauthorized disclosures were made of all the terms of this
16 Order, and (d) request such person or persons to execute the "Acknowledgment and
17 Agreement to Be Bound" that is attached hereto as Exhibit A.

18 **11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE**
19 **PROTECTED MATERIAL**

20 When a Producing Party gives notice to Receiving Parties that certain
21 inadvertently produced material is subject to a claim of privilege or other protection,
22 the obligations of the Receiving Parties are those set forth in Federal Rule of Civil
23 Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure
24 may be established in an e-discovery order that provides for production without prior
25 privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar as the
26 parties reach an agreement on the effect of disclosure of a communication or
27 information covered by the attorney-client privilege or work product protection, the
28

1 parties may incorporate their agreement in the stipulated protective order submitted
2 to the Court

3 **12. MISCELLANEOUS**

4 12.1 Right to Further Relief. Nothing in this Order abridges the right of any
5 person to seek its modification by the Court in the future.

6 12.2 Right to Assert Other Objections. By stipulating to the entry of this
7 Protective Order, no Party waives any right it otherwise would have to object to
8 disclosing or producing any information or item on any ground not addressed in this
9 Stipulated Protective Order. Similarly, no Party waives any right to object on any
10 ground to use in evidence of any of the material covered by this Protective Order.

11 12.3 Filing Protected Material. A Party that seeks to file under seal any
12 Protected Material must comply with Civil Local Rule 79-5. Protected Material may
13 only be filed under seal pursuant to a court order authorizing the sealing of the
14 specific Protected Material at issue; good cause must be shown in the request to file
15 under seal. If a Party's request to file Protected Material under seal is denied by the
16 Court, then the Receiving Party may file the information in the public record unless
17 otherwise instructed by the Court

18 **13. FINAL DISPOSITION**

19 After the final disposition of this Action, within 60 days of a written request
20 by the Designating Party, each Receiving Party must return all Protected Material to
21 the Producing Party or destroy such material. As used in this subdivision, "all
22 Protected Material" includes all copies, abstracts, compilations, summaries, and any
23 other format reproducing or capturing any of the Protected Material. Whether the
24 Protected Material is returned or destroyed, the Receiving Party must submit a
25 written certification to the Producing Party (and, if not the same person or entity, to
26 the Designating Party) by the 60 day deadline that (1) identifies (by category, where
27 appropriate) all the Protected Material that was returned or destroyed, and (2) affirms
28 that the Receiving Party has not retained any copies, abstracts, compilations,

1 summaries or any other format reproducing or capturing any of the Protected
2 Material. Notwithstanding this provision, counsel are entitled to retain an archival
3 copy of all pleadings, motion papers, trial, deposition, and hearing transcripts, legal
4 memoranda, correspondence, deposition and trial exhibits, expert reports, attorney
5 work product, and consultant and expert work product, even if such materials contain
6 Protected Material. Any such archival copies that contain or constitute Protected
7 Material remain subject to this Protective Order as set forth in Section 4
8 (DURATION).

9 **14. VIOLATION OF ORDER**

10 Any violation of this Order may be punished by any and all appropriate
11 measures including, without limitation, contempt proceedings and/or monetary
12 sanctions.

13 **IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD:**

14 DATED: July 16, 2019

LAW OFFICE OF CAROL A. SOBEL

15
16 By: /s/ Monique A. Alarcon
17 Monique A. Alarcon
18 Attorneys for Plaintiff

19 DATED: July 16, 2019

MICHAEL N. FEUER, CITY ATTORNEY
KATHLEEN A. KENEALY, SR. ASST. CITY ATTORNEY
GABRIEL S. DERMER, ASST. CITY ATTORNEY
20 **FELIX LEBRON, DEPUTY CITY ATTORNEY**

21
22
23 By: /s/ Felix Lebron
24 FELIX LEBRON
25 Deputy City Attorney
26 Attorney for Defendant
27 **CITY OF LOS ANGELES**
28

EXHIBIT A
ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

1
2
3 I, _____ [print or type full name], of
4 _____ [print or type full address], declare under penalty of
5 perjury that I have read in its entirety and understand the Stipulated Protective Order
6 that was issued by the United States District Court for the Central District of
7 California on [date] in the case of Rex Schellenberg v. City of Los Angeles, et al.,
8 Case No. 2:18-cv-07670-CAS-PLA. I agree to comply with and to be bound by all
9 the terms of this Stipulated Protective Order and I understand and acknowledge that
10 failure to so comply could expose me to sanctions and punishment in the nature of
11 contempt. I solemnly promise that I will not disclose in any manner any information
12 or item that is subject to this Stipulated Protective Order to any person or entity
13 except in strict compliance with the provisions of this Order.

14 I further agree to submit to the jurisdiction of the United States District Court
15 for the Central District of California for enforcing the terms of this Stipulated
16 Protective Order, even if such enforcement proceedings occur after termination of
17 this action. I hereby appoint _____ [print or type full
18 name] of _____ [print or type full address and
19 telephone number] as my California agent for service of process in connection with
20 this action or any proceedings related to enforcement of this Stipulated Protective
21 Order.

22
23 Date: _____

24 City and State where sworn and Signed: _____

25 Printed Name: _____

26
27 Signature: _____