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 6 CITY OF OAKLAND and
 R.CHAN
 7

8 **UNITED STATES DISTRICT COURT**
 9 **NORTHERN DISTRICT OF CALIFORNIA**

10 LORENZO JOHNSON,
 11
 Plaintiff,
 12

Case No. C08-03932 JSW

**STIPULATION AND [PROPOSED]
 PROTECTIVE ORDER**

13 v.

14 CITY OF OAKLAND; R. CHAN, as an
 Oakland police officer, and as an individual;
 15 O. SAEPARN, as an Oakland police officer
 and an individual; and DOES 1-25,
 inclusive,
 16

Defendants
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18 Plaintiffs LORENZO JOHNSON by and through his attorney ADANTE POINTER
 19 individually and on behalf of THE LAW OFFICES OF JOHN L. BURRIS; Defendant O.
 20 SAEPARN by and through his attorney JOHN VERBER individually and on behalf of the
 21 law offices of BURNHAM & BROWN; and Defendants CITY OF OAKLAND and R. CHAN,
 22 by and through their attorney, STEPHEN Q. ROWELL, individually and on behalf the
 23 Oakland City Attorney's Office, hereby stipulate to the following protective order:
 24

25 **1. DEFINITIONS**
 26

1 1.1 Party: any party to this action, including all of its officers, directors,
2 employees, consultants, retained experts, and outside counsel (and their support staff).

3 1.2 Disclosure or Discovery Material: all items or information, regardless of
4 the medium or manner generated, stored, or maintained (including, among other things;

5 1.3 "Confidential" Information or Items: information (regardless of how
6 generated, stored or maintained) or tangible things qualify for protection under standards
7 developed under F.R.Civ. P. 26(c). **This material subject to this stipulation are the
8 personnel records of Officer O. Saeparn and Officer R. Chan; Internal Affairs files
9 pertaining to Officer O. Saeparn and R. Chan for allegations of untruthfulness, false
10 arrest or use of excessive force from August 24, 2002 through August 24, 2007; the
11 Internal Affairs file pertaining to the incident which is the subject of plaintiff's
12 complaint. .**

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14
15 1.4 Receiving Party: a Party that receives Disclosure or Discovery
16 Material from a Producing Party.

17 1.5 Producing Party: a Party or non-party that produces Disclosure or
18 Discovery Material in this action.

19 1.6. Designating Party: a Party or non-party that designates information
20 or items that it produces in disclosures or in responses to discovery as "Confidential".

21 1.7. Protected Material: any Disclosure or Discovery Material that is
22 designated as "Confidential" or as "Highly Confidential-Attorneys' Eyes Only."

23 1.8. Outside Counsel: attorneys who are not employees of a Party but
24 who are retained to represent or advise a Party in this action.

25 1.9. House Counsel: attorneys who are employees of a Party.
26

1 1.10. Counsel (without qualifier): Outside Counsel and House Counsel (as
2 well as their support staffs).

3 1.11. Expert: a person with specialized knowledge or experience in a
4 matter pertinent to the litigation who has been retained by a Party or its counsel to serve
5 as an expert witness or as an consultant in this action and who is not a past or a current
6 employee of a Party and who, at the time of retention, is not anticipated to become an
7 employee of a Party. This definition includes a professional jury or trial consultant
8 retained in connection with this litigation.

9 1.12. Professional Vendors: person or entities that provide litigation
10 support services (e.g., photocopying; videotaping; translating; preparing exhibits or
11 demonstrations; organizing, storing, retrieving data in any form or medium; etc.) and their
12 employees and subcontractors.

13 2. SCOPE

14 The protections conferred by this Stipulation and Order cover not only
15 Protected Material (as defined above), but also any information copied or extracted
16 therefrom, as well as all copies, excerpts, summaries, or compilations thereof, plus
17 testimony, conversations, or presentations by parties or counsel to or in court or in other
18 settings that might reveal Protected Material.

19 3. DURATION

20 Even after the termination of this litigation, the confidentiality obligations
21 imposed by this Order shall remain in effect until a Designating Party agrees otherwise in
22 writing or court order otherwise directs.

23 4. DESIGNATING PROTECTED MATERIAL

24 4.1 F.R.Civ. P. 26(c). The information sought to be protected must be
25 properly qualified for protection under F.R.Civ. P. 26(c). Counsel shall not designate any
26 discovery material "CONFIDENTIAL" without first making a good faith determination that

1 protection is warranted.

2 4.2 Manner and Timing of Designations. Except as otherwise provided in
3 this Order (see, e.g., second paragraph of section 4.2(a), below), or as otherwise
4 stipulated or ordered, material that qualified for protection under the Order must be clearly
5 so designated before the material is disclosed or produced.

6 Designation in conformity with this Order requires:

7 (a) for information in documentary form (apart from transcripts of depositions
8 or other pretrial or trial proceedings), that the Producing Party affix the legend
9 “CONFIDENTIAL” at the top of each page that contains protected material.

10 (b) for testimony given in deposition or in other pretrial or trial proceedings,
11 that the Party or non-party offering or sponsoring the testimony identify on the record,
12 before the close of the deposition, hearing, or other proceeding. Only those portions of
13 the testimony that are appropriately designated for protection within the 20 days shall be
14 covered by the provisions of this Stipulated Protective Order.

15 Transcript pages containing Protected Material must be separately bound by
16 the court reporter, who must affix to the top of each such page the legend
17 “CONFIDENTIAL” as instructed by the Party or non-party offering or sponsoring the
18 witness or presenting the testimony.

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

23 4.3. Inadvertent Failures to Designate. If timely corrected, an inadvertent
24 failure to designate qualified information or items as “Confidential” does not, standing
25 alone, waive the Designating Party’s right to secure protection under this Order for such
26 material. If material is appropriately designated as “Confidential” after the material was

1 initially produced, the Receiving Party, on timely notification of the designation, must make
2 reasonable efforts to assure that the material is treated in accordance with the provisions
3 of the Order.

4 5. CHALLENGING CONFIDENTIALITY DESIGNATIONS

5 5.1 Timing of Challenges. Unless a proper challenge to a Designating
6 Party's confidentially designation is necessary to avoid foreseeable substantial unfairness,
7 unnecessary economic burden, or a later significant disruption or delay of the litigation, a
8 Party does not waive its right to challenge a confidentiality designation by electing not to
9 mount a challenge promptly after the original designation is disclosed.

10 5.2 Meet and Confer. A Party that elects to initiate a challenge to a
11 Designating Party's confidentiality designation must do so in good faith and must begin the
12 process by conferring directly (in voice to voice dialogue; other forms of communication are
13 not sufficient) with counsel for the Designating Party. In conferring, the challenging Party
14 must explain the basis for its belief that the confidentiality designation was not proper and
15 must give the Designating Party an opportunity to review the designated material, to
16 reconsider the circumstances, and, if no change in designation is offered, to explain the
17 basis for the chose designation. A challenging Party may proceed to the next stage of the
18 challenge process only if it has engaged in this meet and confer process first.

19 5.3 Judicial Intervention. A Party that elects to press a challenge to a
20 confidentiality designation after considering the justification offered by the Designating
21 Party may file and serve a motion under Civil Rule 7 (and in compliance with Civil Local
22 Rule 79-5, if applicable) that identifies the challenged material and sets forth in detail the
23 basis for the challenge. Each such motion must be accompanied by a competent
24 declaration that affirms that the movant has complied with the meet and confer
25 requirements imposed in the preceding paragraph and that sets forth with specificity the
26 justification for the confidentiality designation that was given by the Designating Party in

1 the meet and confer dialogue.

2 The burden of persuasion in any such challenge proceeding shall be on the
3 Designating Party. Until the court rules on the challenge, all parties shall continue to afford
4 the material in question the level of protection to which it is entitled under the Producing
5 Party's designation.

6 6. ACCESS TO AND USE OF PROTECTED MATERIAL

7 6.1 Basic Principles. A Receiving Party may use Protected Material that is
8 disclosed or produced by another Party or by a non-party in connection with this case only
9 for prosecuting, defending, or attempting to settle this litigation. Such Protected material
10 may be disclosed only to the categories of persons and under the conditions described in
11 this Order. When the litigation has terminated, a Receiving Party must comply with the
12 provisions of section 10, below (FINAL DISPOSITION).

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

16 6.2 Disclosure of "CONFIDENTIAL: Information or Items". Unless
17 otherwise ordered by the court or permitted in writing by the Designating Party, a Receiving
18 Party may disclose any information or item designated CONFIDENTIAL only to:

19 (a) employees of the Receiving Party to whom disclosure is reasonably
20 necessary for this litigation and who have signed the "Agreement to Be Bound by
21 Protective Order" (Exhibit A);

22 (b) experts (as defined in this Order) of the Receiving Party to whom
23 disclosure is reasonably necessary for this litigation and who have signed the "Agreement
24 to Be Bound by Protective Order" (Exhibit A);

25 (c) the Court and its personnel;

26 (d) court reporters, their staffs, and professional vendors to whom disclosure

1 is reasonably necessary for this litigation and who have signed the "Agreement to Be
2 Bound by Protective Order" (Exhibit A);

3 (e) during their deposition, witnesses in the action to whom disclosure is
4 reasonably necessary and who have signed the "Agreement to Be Bound by Protective
5 Order" (Exhibit A). Pages of transcribed deposition testimony or exhibits to depositions
6 that reveal Protected Material must be separately bound by the court reporter and may not
7 be disclosed to anyone except as permitted under this Stipulated Protective Order.

8 (f) the author the document or the original source of the information.

9

10 7. PROTECTED MATERIAL SUBPOENAED OR ORDERED
11 PRODUCED IN OTHER LITIGATION

12 If a Receiving Party is served with a subpoena or an order issued in other
13 litigation that would compel disclosure of any information or items designated in this action
14 as "CONFIDENTIAL" the Receiving Party must so notify the Designating Party, in writing
15 (by fax, if possible) immediately and in no event more than three court days after receiving
16 the subpoena or order. Such notification must include a copy of the subpoena or court
17 order.

18 The Receiving Party also must immediately inform in writing the Party who
19 caused the subpoena or order to issue in the other litigation that some or all the material
20 covered by the subpoena or order is the subject of this Protective Order. In addition, the
21 Receiving Party must deliver a copy of this Stipulated Protective Order promptly to the
22 Party in the other action that caused the subpoena or order to issue.

23 The purpose of imposing these duties is to alert the interested parties to the
24 existence of this Protective Order and to afford the Designation Party in this case an
25 opportunity to try to protect its confidentiality interests in the court from which the
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1 subpoena or order issued. The Designating Party shall bear the burdens and the
2 expenses of seeking protection in that court of its confidential material—and nothing in
3 these provisions should be construed as authorizing or encouraging a Receiving Party in
4 this action to disobey a lawful directive from another court.

5 8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

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

14 9. FILING PROTECTED MATERIAL. Without written permission from the

15 Designating Party or a court order secured after appropriate notice to all interested
16 persons, a Party may not in the public record in this action any Protected material. A
17 Party that seeks to file under seal any Protected Material must comply with Civil Local
18 Rule 79-5. In addition to placing the documents in a sealed envelope with instructions
19 that the envelope is not to be opened absent further order of the court, the envelope
20 should be labeled to identify title of the case, the case number, and the title of the
21 document.

22 10. FINAL DISPOSITION. Unless otherwise ordered or agreed in writing by

23 the Producing Party, within sixty days after the final termination of this action, each
24 Receiving Party must return all Protected Material to the Producing Party, as used in this
25 subdivision, “all Protected Material” includes all copies, abstracts compilations, summaries
26 or any other form of reproducing or capturing any of the Protected Material. With

1 permission in writing from the Designating Party, the Receiving Party may destroy some or
 2 all of the Protected Material instead of returning it. Whether the Protected Material is
 3 returned or destroyed, the Receiving Party must submit a written certification to the
 4 Producing Party (and, if not the same person or entity, to the Designating Party) by the
 5 sixty day deadline that identifies (by category, where appropriate) all the Protected
 6 Material that was returned or destroyed and that affirms that the Receiving Party has not
 7 retained any copies, abstracts, compilations, summaries or other forms of reproducing or
 8 capturing any of the Protected Material. Notwithstanding this provision, Counsel are
 9 entitled to retain an archival copy of all pleadings, motion papers, transcripts, legal
 10 memoranda, correspondence or attorney work product, even if such materials contain
 11 Protected Material. Any such archival copies that contain or constitute Protected Material
 12 remain subject to this Protective Order as set forth in Section 4 (DURATION), above.

13 **11. MISCELLANEOUS**

14 **Right to Further Relief.** Nothing in this Order abridges the right of any
 15 person to seek its modification by the Court in the future.

16 **12. JURISDICTION.** The Court shall retain jurisdiction over any matter
 17 covered by this Stipulation and Order for 24 months after the final termination of this
 18 action.

19 **IT IS SO STIPULATED.**

20
 21 Dated:

22 _____
ADANTE POINTER
 Attorney for Plaintiffs

23
 24 Dated:

25 _____
JOHN J. VERBER
 Attorney for Defendant
 O. SAEARN

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20
21 Dated:

5/15/09



ADANTE POINTER
Attorney for Plaintiffs

22
23
24 Dated:

JOHN J. VERBER
Attorney for Defendant
CITY OF OAKLAND

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 6 Material that was returned or destroyed and that affirms that the Receiving Party has not
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 8 capturing any of the Protected Material. Notwithstanding this provision, Counsel are
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 17 covered by this Stipulation and Order for 24 months after the final termination of this
 18 action.

19 **IT IS SO STIPULATED.**

20
21 Dated:


22 _____
 23 **ADANTE POINTER**
 Attorney for Plaintiffs

24 Dated: *May 7, 2009*

25 _____
 26 **JOHN J. VERBER**
 Attorney for Defendant
 Officer O. Saeparn

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Dated: *6/16/09*



STEPHEN Q. ROWELL
Attorney for Defendants
CITY OF OAKLAND and R. CHAN

PURSUANT TO STIPULATION, IT IS SO ORDERED.

DATED: June 17, 2009



JEFFERY S. WHITE
Judge, United States District Court

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

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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 Court for the Northern District of California on

_____ [date] in the case of LORENZO JOHNSON, et al, v CITY

OF OAKLAND, et al, USDC No. C08-03932 JSW. I agree to comply with and 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 for the

Northern 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.

1 Date: _____

2 City and State where sworn and signed: _____

3 Printed name: _____
4 [printed name]

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6 Signature: _____
7 [signature]

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