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 6 CITY OF SANTA MONICA, SCOTT MATSUDA, GEORGE MENDEZ,  
 SCOTT McGOWAN and MARILYN AMIACHE  
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 9 **UNITED STATES DISTRICT COURT**  
 10 **CENTRAL DISTRICT OF CALIFORNIA**

11 JORGE AVILA,  
 12 Plaintiff,

CASE NO.: CV 13-03570-ODW  
 (JCGX)

13 v.

Honorable Otis D. Wright, II

14 CITY OF SANTA MONICA, SCOTT  
 MATSUDA, GEORGE MENDEZ, SCOTT  
 15 McGOWAN, MARILYN AMIACHE and  
 Does 1-10, inclusive  
 16 Defendants.  
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**[PROPOSED] ORDER ON SECOND  
 STIPULATED PROTECTIVE  
 ORDER**

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 19 Plaintiff JORGE AVILA, and defendants CITY OF SANTA MONICA,  
 20 SCOTT MATSUDA, GEORGE MENDEZ, SCOTT McGOWAN and MARILYN  
 21 AMIACHE, have stipulated and agreed to a SECOND STIPULATED PROTECTIVE  
 22 ORDER now before this Court, pursuant to Fed.R.Civ.P. 26(a)(1) to govern the  
 23 disclosure of CONFIDENTIAL information described therein, precluding publication  
 24 and limiting the use of said documents and information which defendants maintain  
 25 contain confidential and privileged information.

26 After due consideration of the SECOND STIPULTED PROTECTIVE ORDER  
 27 submitted by the parties, and good cause appearing therefore, the Court rules as  
 28 follows:


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The terms and conditions of the SECOND STIPULATED PROTECTIVE  
*as revised by the Court*  
ORDER shall govern the disclosure of the information/documents set forth therein.

**IT IS SO ORDERED**

*See attached.*

Dated: 1-25-2014

  
\_\_\_\_\_  
Honorable United States Magistrate Judge  
Jay C. Gandhi

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10 CITY OF SANTA MONICA, SCOTT MATSUDA, GEORGE MENDEZ,  
11 SCOTT McGOWAN and MARILYN AMIACHE

12 **UNITED STATES DISTRICT COURT**  
13 **CENTRAL DISTRICT OF CALIFORNIA**

14 JORGE AVILA,  
15 Plaintiff,

16 v.

17 CITY OF SANTA MONICA, SCOTT  
18 MATSUDA, GEORGE MENDEZ, SCOTT  
19 McGOWAN, MARILYN AMIACHE and  
20 Does 1-10, inclusive  
21 Defendants.

CASE NO.: CV 13-03570-ODW  
(JCGX)

Honorable Otis D. Wright, II

**SECOND STIPULATED  
PROTECTIVE ORDER;  
[PROPOSED] ORDER THEREON  
FILED CONCURRENTLY**

22 **I. INTRODUCTION**

23 Plaintiff JORGE AVILA, and defendants CITY OF SANTA MONICA,  
24 SCOTT MATSUDA, GEORGE MENDEZ, SCOTT McGOWAN and MARILYN  
25 AMIACHE, hereby stipulate and agree as follows:

26 The defendants and/or plaintiff will disclose documents and/or discovery  
27 requests have or will be served that require Defendants and/or plaintiff to disclose  
28 confidential information. The following procedures shall be employed and the terms,  
conditions, and restrictions shall govern with respect to all applicable documents  
disclosed under Fed.R.Civ.P. 26(a)(1) and discovery propounded by any party to this  
case, including all summaries, copies, abstracts, extracts and/or other documents  
pertaining to this case and the information contained therein which shall be designated

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1 as CONFIDENTIAL, as well as any summaries, copies, abstracts, extracts and/or  
2 other documents derived in whole or in part from the material designated as  
3 CONFIDENTIAL (hereinafter "Confidential Material"):

4 (a) Any party or other person producing information in this case may, in  
5 good faith, designate information as CONFIDENTIAL. Confidential Material is any  
6 information produced in connection with this litigation that the producing party  
7 reasonably believes is information that has not been, and should not be, made public,  
8 and includes, but not limited to, confidential, private, medical or proprietary  
9 information, the disclosure of which would constitute either (1) an invasion of the  
10 privacy of any party or non-party to this action; (2) a potential for harm to the Santa  
11 Monica Police Department's internal investigatory system; and/or (3) a potential for  
12 harm to significant governmental interests. At the time of production or other  
13 disclosure of such CONFIDENTIAL information, the producing party or other person  
14 shall designate such material by placing the word or words CONFIDENTIAL or  
15 "Confidential Material subject to Protective Order" on each such document or other  
16 material, or if it is not possible to do so label the material, by means of such other  
17 designation as will identify the CONFIDENTIAL information with sufficient  
18 specificity to permit counsel to adhere to the provisions of this Protective Order.

19 (b) The designation of information as CONFIDENTIAL shall not be  
20 considered conclusive or binding on any party, and such designation may be contested  
21 by noticed motion ~~at any time~~. However, unless and until an order of this Court sets  
22 aside a designation of CONFIDENTIAL, all documents and information so designated  
23 shall be treated as CONFIDENTIAL, pursuant to the terms of this Protective Order. If  
24 any party who receives CONFIDENTIAL information is served with a subpoena or  
25 other request seeking documents containing CONFIDENTIAL information, he/she  
26 shall immediately give written notice to counsel for the party that disclosed the  
27 CONFIDENTIAL information, identifying the CONFIDENTIAL information sought  
28 and the time in which production or other disclosure is required, and shall object to the

1 request or subpoena on the grounds of this Order so as to afford the party that  
2 disclosed the CONFIDENTIAL information an opportunity to obtain an Order barring  
3 production or other disclosure, or to otherwise respond to the subpoena or other  
4 request for production or disclosure of documents containing CONFIDENTIAL  
5 information. In no event should production or disclosure be made without written  
6 approval by the party that disclosed the CONFIDENTIAL information unless required  
7 by Court order, of which the party disclosing the CONFIDENTIAL information has  
8 been given prior notice, arising from a motion to compel production or disclosure of  
9 documents containing CONFIDENTIAL information.

10 (c) Any CONFIDENTIAL information that is produced pursuant to this  
11 Stipulation may be produced only to counsel of record for the parties in this litigation.  
12 Counsel for any party who obtains any CONFIDENTIAL information from any other  
13 party shall protect it and its contents from all disclosure to anyone save the persons  
14 designated in this paragraph. CONFIDENTIAL material and information derived  
15 from CONFIDENTIAL material shall be used only as reasonably necessary for  
16 preparation of mediation briefs, arbitration briefs and/or trial of this action, including  
17 use at depositions and in support of motions as further set forth in this Stipulation,  
18 and, including any appeal or retrial, and shall not be used for any other purpose,  
19 including, without limitation, any other litigation or proceeding, or any business, or  
20 governmental purpose or function. Copies of the records deemed CONFIDENTIAL  
21 may be used at the time of trial only if so ordered by the Court, or agreed to between  
22 the parties. Additionally, reference to the content of any CONFIDENTIAL records or  
23 the existence of any such record shall only be made after so ordered by the Court, or  
24 agreed to between the parties. Counsel of record may disclose CONFIDENTIAL  
25 information where necessary to the proper preparation for, and trial of, this case to:

26 (i) their employees, including paralegal, clerical and secretarial staff, as well  
27 as contract staff;

28 (ii) experts and consultants retained only for the purpose of aiding counsel of

1 record in connection with counsel's preparation for trial, including the use at  
2 depositions, and in support of motions and Rule 26 Declarations;

3 (iii) individuals testifying under oath at deposition in this action<sup>1</sup>;

4 (iv) a party, or officer, director or employee of a party to this action, deemed  
5 necessary by counsel to aid in the prosecution, defense or settlement of this action;

6 (v) the Court and members of its staff, including stenographic and other  
7 reporters; or

8 (vi) court reporters employed by counsel in this action.

9  
10 (d) Each person identified in subparagraphs (i) through (vi) above, excluding  
11 the Court and its staff, shall, before s/he receives CONFIDENTIAL information, be  
12 provided by the person furnishing him with such information a copy of this order and  
13 agree in writing to be bound by its terms, and shall certify that s/he has carefully read  
14 the order and fully understands its terms. Such person also must consent in writing to  
15 be subject to the jurisdiction of this court with respect to any proceeding relating to  
16 enforcement of this order. An agreement incorporating these terms shall be prepared  
17 and agreed to by the parties and executed by the person before receiving the  
18 CONFIDENTIAL information. The executed agreement shall be made a part of the  
19 deposition transcript when it is executed by a deponent.

20 (e) Whenever any CONFIDENTIAL information is introduced or used at a  
21 deposition, those portions of the deposition that concern CONFIDENTIAL  
22 information (i) shall be conducted in such a way that only persons authorized by the  
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25 <sup>1</sup> In the event a party intends to question a deponent at deposition about  
26 CONFIDENTIAL Material, the party noticing the Deposition shall include a statement of such intent  
27 in the Notice of Deposition and shall describe the CONFIDENTIAL Material to be disclosed to the  
28 deponent at the deposition in sufficient time for the opposing party to seek a protective order. If the  
non-noticing party desires to question a deponent at deposition about CONFIDENTIAL Material,  
that party must advise the noticing party of such intent, and shall describe the CONFIDENTIAL  
Material to be disclosed to the deponent at the deposition in sufficient time for the noticing party to  
seek a protective order. The parties shall meet and confer in good faith in an effort to resolve all  
disputes regarding CONFIDENTIAL Material in an effort to avoid the necessity for Court  
intervention.

1 Protective Order to have access to such matters are present; and (ii) shall be separately  
2 bound after transcription and marked as CONFIDENTIAL, and then shall be deemed  
3 to be subject to the terms of the Protective Order. For convenience, if a deposition  
4 transcript contains repeated references to CONFIDENTIAL material that cannot  
5 conveniently be segregated from non-CONFIDENTIAL material, any party may  
6 request that the entire transcript or exhibits be maintained by the reporter as  
7 CONFIDENTIAL.

8 (f) If a party wishes to file with the court documents which contain  
9 information designated as CONFIDENTIAL, that party shall notify the party  
10 disclosing the CONFIDENTIAL information, in writing, via personal delivery and/or  
11 fax, at least 10 court days prior to filing any pleadings, motions, briefs, declarations,  
12 stipulations, exhibits or other written submissions (collectively "papers") with this  
13 Court, which contain, reflect, incorporate or refer to CONFIDENTIAL  
14 INFORMATION, in order to allow the party disclosing the CONFIDENTIAL  
15 information, to make a written application to seal the subject material. Pending a  
16 ruling on the application, the "papers" are to be filed <sup>in strict compliance</sup> consistent with Local Rule 79-  
17 5.1. ~~The parties agree to cooperate to the extent possible to expedite the ruling on any~~  
18 ~~such application.~~

19 (g) Failure of counsel to designate testimony or exhibits as  
20 CONFIDENTIAL at deposition shall not constitute a waiver of the confidentiality of  
21 the testimony or exhibits. Upon receipt of the transcript of the deposition, counsel  
22 shall be entitled to designate specific pages and lines of the transcript or exhibits as  
23 CONFIDENTIAL; however, any other party shall be entitled to treat the transcript or  
24 exhibits as non-CONFIDENTIAL material until such time as the CONFIDENTIAL  
25 designation is made.

26 (h) Discovering counsel may show CONFIDENTIAL material to a deponent  
27 at a deposition and examine that deponent concerning same, subject to the provisions  
28 of paragraph(c)(iii). Examining counsel will, at the outset of the deposition, inquire as

1 to whether the deponent agrees to be bound by the terms of this Protective Order. If  
2 the deponent does not agree, the CONFIDENTIAL material shall not be disclosed to  
3 the deponent. If the deponent agrees to be bound by the terms of the Protective Order  
4 and executes the agreement referred to in I (d) above, the reporter shall be instructed  
5 to give the deponent written notice when the transcript has been prepared, stating that  
6 the deponent may inspect the transcript and its exhibits, including the  
7 CONFIDENTIAL material, in the reporter's office. If the original deposition  
8 transcript is not signed within thirty (30) days after the date of the notice, it will be  
9 used as if it is signed. The deponent shall not be furnished with a copy of the portions  
10 of the deposition transcript or exhibits that have been designated as CONFIDENTIAL.  
11 Alternatively, counsel for the parties who have executed this Protective Order, or their  
12 authorized representatives, may make other arrangements for the review and signing  
13 of a deposition in this matter that uphold the stipulations herein and protect the  
14 confidentiality of the CONFIDENTIAL MATERIAL provided pursuant to this  
15 Protective Order. Furthermore, any audiotape and/or videotape of any such deposition  
16 shall be subject to this Order.

17 (i) If any CONFIDENTIAL material is provided to a discovering party  
18 without being marked as CONFIDENTIAL, the failure to mark the material shall not  
19 be deemed a waiver of its confidentiality. Until the material is designated as  
20 CONFIDENTIAL by the producing party, however, the discovering party shall be  
21 entitled to treat the material as non-CONFIDENTIAL. Upon designation, such  
22 material shall be treated as CONFIDENTIAL in accordance with the provisions of this  
23 Protective Order.

24 (j) This Stipulation for Protective Order shall survive the final termination of  
25 this action, to the extent that the information contained in CONFIDENTIAL Material  
26 is not or does not become known to the public, and the Court shall retain jurisdiction  
27 to resolve any dispute concerning the use of information disclosed hereunder. Within  
28 thirty (30) days after the final settlement or conclusion of this action, discovering



1 counsel shall return to producing counsel all CONFIDENTIAL documents including,  
2 without limitation, depositions and trial, hearing, or other transcripts containing  
3 information designated as CONFIDENTIAL, as well as all copies, and shall return or  
4 destroy any extracts, summaries, or material derived from the information. ~~In~~  
5 addition, the parties agree to cooperate in obtaining from the Clerk of this Court all  
6 documents, transcripts, exhibits and any other materials containing information  
7 designated as CONFIDENTIAL that have been filed with this Court and securing their  
8 return to producing party or destroying them as set forth above.

9 (k) This Stipulation for Protective Order is entered solely for the purpose of  
10 facilitating the exchange of documents and information between the parties to this  
11 action without involving the Court unnecessarily in the process. Nothing in this Order  
12 nor the production of any information or document under the terms of this Order nor  
13 any proceedings pursuant to this Order shall be deemed to have the effect of an  
14 admission or waiver by either party or of altering the confidentiality or non-  
15 confidentiality of any such document or information or altering any existing  
16 obligation of any party of the absence thereof. Further, nothing in this Order shall  
17 constitute a waiver by any party of any applicable privilege or other protection, nor  
18 shall this Order or the production of the documents in question be construed so as to  
19 make any document or other material described herein admissible in any proceeding  
20 before this or any other court. Nothing in this Order shall prejudice any parties' rights  
21 to object to the introduction of any CONFIDENTIAL information into evidence, on  
22 grounds, including, but not limited to, relevance and privilege.

23 ~~(l) Counsel for the parties hereto agree to request that any motions, applications~~  
24 ~~or other pre-trial proceedings in this Court which could entail the discussion or~~  
25 ~~disclosure of CONFIDENTIAL documents, be heard by the Court outside the~~  
26 ~~presence of all individuals, including the jury, except for those individuals indicated in~~  
27 ~~paragraph I (e)(i) through (vi) above.~~

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II. STATEMENT OF GOOD CAUSE

(m) Pursuant to the [proposed] protective order herein, defendant, the City of Santa Monica, (“DISCLOSING PARTY” ) contends that the below listed confidential material related to underlying incident of April 6, 2012 , involving the arrest of plaintiff, which plaintiff seeks, is subject to various protections, including, but not limited to, Governmental Privilege, the Official Information Privilege, and also the privilege of critical self-examination/analysis and/or the deliberative process privilege, Evidence Code § § 1040, et seq., Penal Code § § 146e, 832.5, 832.7, 832.8, and Government Code § § 3300, et seq. and 6254. Further, such material also contains private and confidential information including private and confidential third-party information.

(n) Such CONFIDENTIAL material kept by DISCLOSING PARTY are governmental documents that contain official information. Such CONFIDENTIAL material has been maintained by the DISCLOSING PARTY in confidence and contains sensitive and private information.

(o) The DISCLOSING PARTY is extremely concerned that dissemination of subject information, documents, and materials related to the incident, relevant personnel, and other confidential internal investigations could compromise the efficacy of such undertakings in the future and act to discourage cooperation from the public. Further, disclosure of which without a protective order may compromise the safety of the subject peace officers and their families and third parties.

(p) In light of the aforementioned facts, and given the strong public policies in favor of encouraging witnesses to cooperate in investigations, protecting those who assist in investigations, protecting society’s interests in investigating such incidents, it is necessary and proper to enter into an order carefully limiting the use and dissemination of the information, documents, and materials that are the subject of this Stipulation. In order to informally resolve this matter, the Parties have agreed to this stipulated protective order.

1 III. THE CONFIDENTIAL MATERIALS

2 (q) This Order, based upon the assertions and stipulations herein, shall apply to  
3 protect from unauthorized disclosure the following CONFIDENTIAL information,  
4 which will be provided to plaintiff as CONFIDENTIAL material after the parties have  
5 executed the instant Stipulated Protective Order and the Court has thereafter signed  
6 the [Proposed] Order thereon.

- 7 1. Recorded I.A interview of Jorge Avila (1)  
8 2. Recorded I.A. interview of Officer Marilyn Amiache  
9 3. Recorded I.A. interview of Officer George Mendez  
10 4. Recorded I.A. interview of Witness Louis Emile  
11 5. Recorded I.A. interview of Officer Blake Cooper  
12 6. Recorded I.A. interview of Officer Russ Grimmond  
13 7. Recorded I.A. interview of Officer James Weese  
14 8. Recorded I.A. interview of Officer Scott McGowan  
15 9. Recorded I.A. interview of Jorge Avila (2)  
16 10. Recorded I.A. interview of Officer Scott Matsuda

17 (r) This Stipulation for Protective Order is entered into without prejudice to  
18 the right of any party to waive the applicability of this Stipulation for Protective Order  
19 as to any information produced by the party. Upon the application to this Court by  
20 noticed motion, any party may:

- 21 (i) seek additional protective treatment for any information or documents  
22 that might become the subject of discovery;  
23 (ii) object to the designation of any document as CONFIDENTIAL; or  
24 (iii) seek any modification of, or relief from, this Protective Order and such  
25 other relief as may seem appropriate. Prior to any such application, counsel shall  
26 confer to try to obtain agreement without resort to the intervention of the Court.

27 (s) Attorneys of the parties receiving CONFIDENTIAL  
28 documents/information shall not cause or knowingly permit disclosure of the contents

1 of the CONFIDENTIAL DOCUMENTS beyond the disclosure permitted under the  
2 terms and conditions of this Stipulation.

3 (t) No document covered by this Stipulation may be used for any purpose  
4 not set forth herein, or revealed to any person not described herein, absent further  
5 order of this Court.

6 (u) This Stipulation shall survive the termination of this action, and the Court  
7 retains jurisdiction to resolve any dispute concerning the disclosure or use of the  
8 CONFIDENTIAL material disclosed pursuant to this Stipulation.

9 **IT IS SO STIPULATED:**

10  
11 DATED: January 16, 2014

LAW OFFICES OF DALE K. GALIPO

*/s/Kaveh Navab*

12  
13 By: \_\_\_\_\_  
14 KAVEH NAVAB

15 Attorneys for Plaintiff  
16 JORGE AVILA

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19  
20 DATED: January 16 , 2014

MARSHA JONES MOUTRIE  
City Attorney

*/s/ Carol Ann Rohr*

21  
22 By: \_\_\_\_\_  
23 CAROL ANN ROHR  
24 Deputy City Attorney

25 Attorneys for Defendants  
26 CITY OF SANTA MONICA. et al..  
27  
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