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 7 STEPHEN RODRIGUEZ, CYTHINA MENDEZ
 RICHARD HERRERA
 8

9 UNITED STATES DISTRICT COURT
 10 CENTRAL DISTRICT OF CALIFORNIA

11 JOSE MARTIN HERNANDEZ
 GONZALEZ; HORACIO
 12 HERNANDEZ DE LOS SANTOS,

Case No: SACV10-01763 JST(MLGx)

13 Plaintiffs,

**STIPULATED PROTECTIVE
 ORDER**

14 vs.

15 CITY OF FULLERTON, JOSE
 TORRES; STEPHEN RODRIGUEZ;
 16 CYTHIA MENDEZ; RICHARD
 HERRERA; and DOES 1-10,
 17 inclusive,

18 Defendants.

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1 **[PROPOSED] STIPULATED PROTECTIVE ORDER**

2 Pursuant to Rule 26(c), Defendants City of Fullerton, Jose Torres, Stephen
3 Rodriguez, Cynthia Mendez and Richard Herrera ("City Defendants") and Plaintiffs Jose
4 Martin Hernandez Gonzalez and Horacio Hernandez De Los Santos (collectively "the
5 Parties"), by their undersigned counsel, agree to be bound to the terms of the following
6 Protective Order. The Parties represent that pre-trial discovery in this case may include
7 matters that are confidential and privileged and may require the production of Peace
8 Officer Personnel File Information and/or Documents which the Parties agree includes:
9 (1) Personal data, including marital status, family members, educational and employment
10 history, home addresses, or similar information; (2) Medical history; (3) Election of
11 employee benefits; (4) Employee advancement, appraisal, or discipline; and (5)
12 Complaints, or investigations of complaints, concerning an event or transaction in which
13 a peace officer participated, or which a peace officer perceived, and pertaining to the
14 manner in which the peace officer performed his or her duties. Such information is
15 privileged as official information. Sanchez v. City of Santa Ana, 936 F.2d 1027, 1033
16 (9th Cir. Cal. 1990); see also Kerr v. United States Dist. Ct. for N.D. Cal., 511 F.2d 192,
17 198 (9th Cir.1975), aff'd, 426 U.S. 394, 96 S.Ct. 2119, 48 L.Ed.2d 725 (1976). Peace
18 Officer Personnel File Information and/or Documents is hereinafter referred to as
19 "Confidential Information".

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21 The Parties represent that public disclosure of such material poses a substantial
22 risk of embarrassment, oppression and/or physical harm to peace officers whose
23 Confidential Information is disclosed. The Parties further represent that the risk of harm
24 to peace officers is greater than with other government employees due to the nature of
25 their profession. Finally, the Parties represent that the benefit of public disclosure of
26 Confidential Information is minimal while the potential disadvantages are great.

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Accordingly, good cause exists for entry of this Protective Order to facilitate pre-trial disclosure while assuring the safety of these sensitive disclosures. See Fed. R. Civ. Proc. 26(c).

SO STIPULATED

Dated: Respectfully submitted,
JONES & MAYER

By: _____
JAMES R. TOUCHSTONE
DENISE L. ROCAWICH
Attorneys for City of Fullerton, Jose
Torres, Stephen Rodriguez, Cynthia
Mendez and Richard Herrera

Dated: Respectfully submitted,
STOCK LAW CORPORATION

By: _____
JOSHUA R. STOCK
Attorney for Plaintiffs
Jose Martin Hernandez Gonzalez and
Horacio Hernandez De Los Santos

1 **[PROPOSED] PROTECTIVE ORDER**

2 PER THE STIPULATION OF THE PARTIES AND GOOD CAUSE
3 APPEARING, **IT IS HEREBY ORDERED** that the terms and conditions of this
4 Protective Order shall govern the handling of Discovery Materials containing
5 Confidential Information in matter of *Gonzalez et al. v. City of Fullerton et al. USCD*
6 *Case No. SACV09-1347 JVS(RNBX)* ("the Litigation"):

7 **1. Applicability of Order:** This Order does not and will not govern any trial
8 proceedings in this Litigation, but will otherwise be applicable to and govern the handling
9 of documents, depositions, deposition exhibits, interrogatory responses, responses to
10 requests for admissions, responses to requests for production of documents, and all other
11 discovery obtained pursuant to the Federal Rules of Civil Procedure by Plaintiffs in
12 connection with the Litigation (this information hereinafter referred to as "Discovery
13 Material").

14 **2. Designation of Material:** City Defendants may designate Discovery
15 Material that is in their possession, custody or control to be produced to Plaintiffs as
16 "Confidential Information" under the terms of this Order if City Defendants in good faith
17 reasonably believe that such Discovery Material contains non-public, confidential
18 material as defined in section 4 below.

19 **3. Exercise of Restraint and Care in Designating Material for Protection:**
20 When designating Discovery Material for protection as Confidential Information under
21 this Order, City Defendants must take care to limit any such designation to specific
22 material that qualifies under the appropriate standards. Mass, indiscriminate, or
23 routinized designations are prohibited.

24 **4. Confidential Information:** For purposes of this Order, Confidential
25 Information is any information and/or documents that City Defendants believe in good
26 faith to be Peace Officer Personnel File Information and/or Documents including: (1)
27 Personal data, including marital status, family members, educational and employment
28 history, home addresses, or similar information; (2) Medical history; (3) Election of

1 employee benefits; (4) Employee advancement, appraisal, or discipline; and (5)
2 Complaints, or investigations of complaints, concerning an event or transaction in which
3 a peace officer participated, or which a peace officer perceived, and pertaining to the
4 manner in which the peace officer performed his or her duties.

5 **5. Designating Confidential Information:** The designation of Discovery
6 Material as Confidential Information for purposes of this Order shall be made in the
7 following manner:

- 8 a. Documents: In the case of documents or other materials (apart from
9 depositions or other pre-trial testimony), designation shall be made
10 by stamping “Confidential” to each page containing any
11 Confidential Information.
- 12 b. Deposition and Other Proceedings: In the case of depositions or
13 other pre-trial testimony, designation of the portion of the transcript
14 (including exhibits) which contains Confidential Information shall
15 be made (i) by a statement to such effect on the record during the
16 proceeding in which the testimony is received, or (ii) by written
17 notice served on counsel of record in this Litigation within thirty
18 (30) business days after the receipt of the draft transcript of such
19 deposition or other pre-trial proceeding. However, before such thirty
20 (30) day period expires, all testimony, exhibits and transcripts of
21 depositions or other testimony shall be treated as Confidential
22 Information. Thereafter, only those portions properly designated
23 shall be deemed Confidential Information.
- 24 c. Non-Written Materials: Any non-written Confidential Information
25 (e.g., videotape, audio tape, computer disk, etc.) may be designated
26 as such by labeling the outside of such non-written material
27 designated as “Confidential”. In the event Plaintiffs generate any
28 “hard copy” transcription or printout from any such designated non-

1 written materials, the person who generates such “hard copy”
2 transcription shall take reasonable steps to maintain the
3 confidentiality of such materials.

4 **6. Inadvertent Disclosure:** The inadvertent failure to designate Discovery
5 Information as "Confidential" does not constitute a waiver of such claim and may be
6 remedied by prompt supplemental written notice upon discovery of the inadvertent
7 disclosure, with the effect that such Discovery Material will be subject to the protections
8 of this Order. Plaintiffs shall exercise good faith efforts to ensure that copies they make
9 of Confidential Information produced to them, and copies made by others who obtained
10 such Confidential Information directly or indirectly from the Plaintiffs include the
11 appropriate confidentiality legend, to the same extent that the Confidential Information
12 has been marked with the appropriate confidentiality legend by the City Defendants.

13 **7. No Waiver of Privilege:** Inadvertent disclosure of Confidential
14 Information or otherwise privileged information shall not constitute a waiver of, or
15 estoppel as to any claim of privilege. This Order is intended to provide the full protection
16 afforded by Federal Rule of Evidence 502(d).

17 **8. Claw-Back:** Pursuant to Federal Rule of Civil Procedure 26(b)(5), upon
18 learning it may have produced Confidential or otherwise privileged Information, City
19 Defendants shall, within ten (10) days of such discovery, request the return of such
20 Information in writing by indentifying the Confidential or otherwise privileged
21 Information and stating the basis on which the Information should be withheld from
22 production. After being notified, Plaintiffs must promptly return, sequester, or destroy the
23 Confidential or otherwise privileged Information and any copies, must not use or disclose
24 the Information until the claim is resolved and must take reasonable steps to retrieve the
25 Confidential or otherwise privileged Information if he disclosed the Information before
26 being notified. If Plaintiffs dispute City Defendants' claim of confidentiality or privilege;
27 they shall notify City Defendants of the dispute and the basis therefore in writing within
28 thirty (30) days of receipt of the request for the return of the Confidential or otherwise

1 privileged Information. The Parties thereafter shall meet and confer in good faith
2 regarding the disputed claim within thirty (30) days. In the event that the Parties do not
3 resolve their dispute, either party may bring a motion for a determination of whether a
4 privilege applies. If such a motion is made, City Defendants shall submit to the Court for
5 in camera review under seal a copy of the disputed Information in connection with its
6 motion papers. The submission to the Court shall not constitute a waiver of any privilege
7 or protection. City Defendants must preserve the Information claimed to be privileged or
8 otherwise protected until the claim is resolved.

9 **9. Notes of Confidential Information:** Any notes, lists, memoranda, indices,
10 compilations prepared or based on an examination of Confidential Information that quote
11 from or paraphrase, Confidential Information with such specificity that the Confidential
12 Information can be identified, or by reasonable logical extension can be identified, shall
13 be accorded the same status of confidentiality as the underlying Confidential Information
14 from which they are made and shall be subject to all of the terms of this Order.

15 **10. Persons Authorized To Receive Confidential Information:** Discovery
16 Material designated “Confidential” may be disclosed, summarized, described,
17 characterized or otherwise communicated or made available in whole or in part only to
18 the following persons:

- 19 a. The Court, persons employed by the Court who are necessary for the
20 handling of the Litigation, and court reporters transcribing the
21 testimony or argument at a hearing, trial or deposition in this
22 Litigation or any appeal there from;
- 23 b. Counsel of record in this Litigation, as well as paralegals, technical,
24 administrative and clerical employees working under the direct
25 supervision of such counsel;
- 26 c. Experts or consultants assisting any counsel of record in this
27 Litigation, provided such experts and consultants have signed the
28 “Agreement Concerning Information Covered by Protective Order”

1 attached hereto as Exhibit "A" prior to the time such Information is
2 disclosed; and

3 d. Any other person, only upon order of the Court or upon stipulation
4 of the City, and who has signed the "Agreement Concerning
5 Information Covered by Protective Order" attached hereto as Exhibit
6 "A" prior to the time such Information is disclosed. However, under
7 no circumstances shall home addresses or telephone numbers of
8 individual defendants be provided to Plaintiffs .

9 **11. Use of Confidential Discovery Material:** Discovery Material containing
10 Confidential Information shall be used solely for purposes of the Litigation, including
11 any appeal and re-trial. Any person or entity in possession of Discovery Material
12 designated Confidential shall maintain those materials in accordance with Paragraph
13 (storage) below.

14 **12. Storage Of Confidential Information:** The recipient of any Confidential
15 Information that is provided under this Protective Order shall maintain such information
16 in a reasonably secure and safe manner that ensures that access is limited to the persons
17 authorized under this Order.

18 **13. Filing of Confidential Information:** Without written permission from City
19 Defendants or a Court order, Plaintiffs may not file in the public record in this action any
20 Confidential Information. The Parties shall comply with Local Rule 79-5 when seeking to
21 file Confidential Information under seal. The party desiring to place any Confidential
22 Information before the Court shall lodge the information in a sealed envelope along with
23 an application to file the papers or the portion thereof containing Confidential
24 Information under seal and a copy of a Proposed Order Sealing Documents. Said
25 envelope shall be endorsed with the title of the Litigation, an indication of the nature of
26 the contents of such sealed envelope, the identity of the party filing the materials, the
27 phrase "Confidential Information" and a statement substantially in the following form:
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1 THIS ENVELOPE CONTAINS MATERIALS SUBJECT TO A
2 PROTECTIVE ORDER ENTERED IN THIS LITIGATION. IT
3 IS NOT TO BE OPENED NOR ARE ITS CONTENTS TO BE
4 DISPLAYED, REVEALED, OR MADE PUBLIC, EXCEPT BY
5 ORDER OF THE COURT. UNLESS THE COURT ORDERS THAT IT
6 NOT BE FILED, IT SHALL BE FILED UNDER SEAL.

7 Additionally, within seven (7) days from the date that the papers (or portions
8 thereof) were filed under seal consistent with the above procedures, the party who filed
9 the papers under seal also shall file in the public record a version of the papers that has
10 been redacted to omit the Confidential Information or any references thereto).

11 The Parties shall also comply with Local Rule 79-5.4 with respect to the
12 appropriate treatment of personal identifier information in connection with any filing
13 with the Court.

14 **14. No Prejudice:** Agreeing to be bound by this Protective Order, agreeing to
15 and/or producing or receiving Confidential Information or otherwise complying with the
16 terms of this Order shall not:

- 17 a. Prejudice in any way the rights of City Defendants to object to the
18 production of documents it considers not subject to discovery, or
19 operate as an admission by City Defendants that the restrictions and
20 procedures set forth herein constitute adequate protection for any
21 particular information deemed by City Defendants to be Confidential
22 Information;
- 23 b. Prejudice in any way the rights of City Defendants to object to the
24 authenticity or admissibility into evidence of any document,
25 testimony or other evidence subject to this Order;
- 26 c. Prejudice in any way the rights of City Defendants to seek a
27 determination by the Court whether any Confidential Information
28 should be subject to the terms of this Order;

1 **15. Challenging Designation of Information:** Plaintiffs may challenge the
2 propriety of a Confidential Information designation by providing to City Defendants a
3 writing which briefly: (i) identifies with reasonable particularity the documents and/or
4 information which are the subject of the challenge; and (ii) describes the basic legal or
5 factual grounds for the challenge. Once a challenge is made, City Defendants will bear
6 the burden of initiating and conducting a sufficient meet and confer (per Local Rule 37-
7 1); and, if necessary, City Defendants will bear the burdens of proof and persuasion in
8 moving for a Protective Order (per Local Rule 37-2) to uphold the challenged
9 Confidential Information designation(s). Until the Court rules on the timely filed Motion
10 for Protective Order, all parties shall continue to afford the material in question the level
11 of protection to which it is entitled under the City’s designation.

12 **16. Additional Parties or Attorneys:** In the event additional parties join or
13 intervene in this action, the newly joined party(ies) shall not have access to Confidential
14 Information until its counsel has executed an agreement to be fully bound by this Order.
15 If any additional attorneys make appearances in this Litigation, those attorneys shall not
16 have access to Confidential Information until they execute the “Agreement Concerning
17 Information Covered by Protective Order” attached hereto as Exhibit "A".

18 **17. Protective Order Remains In Force:** This Protective Order shall remain
19 in force and effect until modified, superseded, or terminated by consent of the Parties or
20 by order of the Court made upon reasonable written notice. Unless otherwise ordered, or
21 agreed upon by the parties, this Protective Order shall survive the termination of this
22 action. The Court retains jurisdiction even after termination of this action to enforce this
23 Protective Order and to make such amendments, modifications, deletions and additions to
24 this Protective Order as the Court may from time to time deem appropriate.

25 **18. Conclusion of Litigation:** Within ninety (90) days after receiving notice of
26 the entry of an order, judgment or decree finally disposing of this Litigation, all persons
27 having received Confidential Information shall either return such material and all copies
28 thereof to counsel for City Defendants or destroy all such Confidential Information

1 including the Confidential Information Plaintiffs provided to other persons. In either
2 case, counsel for Plaintiffs must certify that fact to counsel for the City.

3 **19. Redaction Allowed:** City Defendants may redact Confidential Information
4 from documents and things produced. City Defendants shall mark each thing where
5 matter has been redacted with a legend stating “REDACTED,” as appropriate, or a
6 comparable notice.

7 **20. Violations of Protective Order:** In the event that any person or party
8 should violate the terms of this Protective Order, the aggrieved party should apply to the
9 Court obtain relief against any such person or party violating or threatening to violate any
10 of the terms of this Protective Order. In the event that the aggrieved party seeks
11 injunctive relief, it must petition the District Judge for such relief, which may be granted
12 at the sole discretion of the District Judge.

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14 **IT IS SO ORDERED.**

15 Dated: December 8, 2011

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20 MARC L. GOLDMAN
21 United States Magistrate Judge
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EXHIBIT "A" TO STIPULATED PROTECTIVE ORDER

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

JOSE MARTIN HERNANDEZ
GONZALEZ; HORACIO
HERNANDEZ DE LOS SANTOS,

Plaintiffs,

vs.

CITY OF FULLERTON, JOSE
TORRES; STEPHEN RODRIGUEZ;
CYTHIA MENDEZ; RICHARD
HERRERA; and DOES 1-10, inclusive,

Defendants.

Case No: SACV10-01763 JST(MLGx)

**AGREEMENT CONCERNING
INFORMATION COVERED BY
STIPULATED PROTECTIVE ORDER**

1. I, _____, hereby acknowledge that I have received a copy of the Stipulated Protective Order entered in this Litigation (Case No. SACV09-1347 JVS(RNBX) by the United States District Court for the Central District of California (hereinafter, "the Protective Order").

2. I have either read the Protective Order or have had the terms of the Protective Order explained to me by my attorney.

3. I understand the terms of the Protective Order and agree to comply with and to be bound by such terms.

4. If I receive documents or information designated as Confidential Information (as that term is defined in the Protective Order), I understand that such Information is provided to me pursuant to the terms and restrictions of the Protective Order.

1 5. I agree to hold in confidence and not further disclose or use for any purpose
2 (other than is permitted by the Protective Order) any Confidential Information disclosed
3 to me pursuant to the terms of the Protective Order.

4 6. I hereby submit myself to the jurisdiction of the United States District
5 Court for the Central District of California for resolution of any matters pertaining to the
6 Protective Order.

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8 My address is: _____

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10 My present employer is: _____

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12 Dated: _____

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16 Signed: _____

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