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11 SANDRA SPAGNOLI, City Manager
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13 HARTIG, Sergeant BOB OETTINGER,
14 Sergeant CHRIS BIDOU, Sergeant
15 SCOTT PRZEKURAT, Officer JOHN
16 McFADDEN, Officer MARK MENESINI,
17 Officer JAMES LAUGHTER, Officer
18 KEVIN ROSE, Officer JASON EAKIN,
19 Officer TED CRIADO and Officer
20 JAKE HEINEMEYER

21 UNITED STATES DISTRICT COURT
22 EASTERN DISTRICT OF CALIFORNIA

23 PETER KNOWLES,

24 Plaintiff,

25 v.

26 CITY OF BENICIA, Police Chief
27 SANDRA SPAGNOLI, City Manager
28 JIM ERICKSON, Sergeant FRANK
HARTIG, Sergeant BOB OETTINGER,
Sergeant CHRIS BIDOU, Sergeant
SCOTT PRZEKURAT, Officer JOHN
McFADDEN, Officer MARK MENESINI,
Officer JAMES LAUGHTER, Officer
KEVIN ROSE, Officer JASON EAKIN,
Officer TED CRIADO, Officer JAKE
HEINEMEYER and DOES I through
XXX, inclusive,

Defendants.

CASE NO. 2:09-CV-03470-WBS-DAD

**REVISED STIPULATION REGARDING
CONFIDENTIALITY AND FOR
PROTECTIVE ORDER REGARDING
PSYCHOLOGICAL TESTING DOCUMENTS;
ORDER**

IT IS HEREBY STIPULATED by and between plaintiff Peter
Knowles, through his counsel of record, and defendants City of

1 Benicia, Police Chief Sandra Spagnoli, City Manager Jim Erickson,
2 Sergeant Frank Hartig, Sergeant Bob Oettinger, Sergeant Chris
3 Bidou, Sergeant Scott Przekurat, Officer John McFadden, Officer
4 Mark Menesini, Officer James Laughter, Officer Kevin Rose,
5 Officer Jason Eakin, Officer Ted Criado, and Officer Jake
6 Heinemeyer, through their counsel of record, as follows:

7 1. Information and Matters Subject to this ORDER. This
8 stipulation and order (hereafter "**ORDER**") shall govern certain
9 "**CONFIDENTIAL INFORMATION**" (as defined hereafter) not
10 specifically addressed by either the July 9, 2010 Protective
11 Order (Docket No. 16) or the February 10, 2011 Protective Order
12 (Docket No. 68) and all information derived therefrom, including,
13 but not limited to, all copies, excerpts or summaries thereof.
14 This stipulation supplements and does not supersede the
15 Protective Orders of July 9, 2010 and February 10, 2011. All
16 references herein to "**PARTIES**" shall include plaintiff Peter
17 Knowles, and his counsel of record, and defendants City of
18 Benicia, Police Chief Sandra Spagnoli, City Manager Jim Erickson,
19 Sergeant Frank Hartig, Sergeant Bob Oettinger, Sergeant Chris
20 Bidou, Sergeant Scott Przekurat, Officer John McFadden, Officer
21 Mark Menesini, Officer James Laughter, Officer Kevin Rose,
22 Officer Jason Eakin, Officer Ted Criado, and Officer Jake
23 Heinemeyer, and their counsel of record in the above-entitled
24 action. In addition, all references herein to "**PSYCHOLOGICAL**
25 **EXPERTS**" shall include any California licensed psychologist
26 retained as a consultant or expert witness by any **PARTY** in
27 connection with these proceedings.

1 2. Definitions. The following definitions shall apply in
2 the construction and application of this **ORDER**.

3 a. The term "**INFORMATION**" means any materials, as defined
4 by Federal Rule of Evidence 1001, produced by the **PARTIES** or any
5 person or entity subject to their employ or control in
6 conjunction with this proceeding, specifically including
7 documents prepared, generated or utilized by any **PSYCHOLOGICAL**
8 **EXPERTS** retained by the **PARTIES** relating to any psychological
9 testing or evaluation conducted in connection with these
10 proceedings.

11 b. The term "**CONFIDENTIAL**" means any **INFORMATION** designated
12 as **CONFIDENTIAL** by the **PARTIES**. In addition to the categories
13 set forth in the July 9, 2010 Protective Order (Docket No. 16)
14 and the February 10, 2011 Protective Order (Docket No. 68), the
15 following **INFORMATION** may be so designated:

16 All **INFORMATION** regarding psychological testing records of
17 PETER KNOWLES generated in connection with this litigation,
18 including documents and test data relating to any consultation or
19 mental examination by any **PSYCHOLOGICAL EXPERTS** retained by the
20 **PARTIES**, including the following:

21 i. Copies of answer sheets completed or prepared by
22 plaintiff in connection with the administration of any
23 psychological testing conducted in connection with these
24 proceedings, including the answer sheet plaintiff completed in
25 connection with MMPI-2 test conducted by Dr. Ronald Roberts in
26 connection with the Independent Mental Examination of plaintiff
27 on February 7, 2011, and any other **PSYCHOLOGICAL EXPERT** who

1 performs any mental examination subject to disclosure or is
2 designated to testify at trial;

3 ii. Copies of any raw test data utilized during or
4 generated following the administration of any psychological
5 testing conducted in connection with these proceedings, including
6 the computer printouts containing raw test data generated
7 following the administration of the MMPI-2 and Rorschach tests
8 conducted by Dr. Ronald Roberts in connection with the
9 Independent Mental Examination of plaintiff on February 7, 2011,
10 and any other **PSYCHOLOGICAL EXPERT** who performs any mental
11 examination subject to disclosure or is designated to testify at
12 trial;

13 iii. Any document identifying the scoring system used to
14 interpret any of plaintiff's test answers, such as for the
15 Rorschach test identifying whether the "Exner" scoring system or
16 some other system was used, and identifying the actual Rorschach
17 cards shown to plaintiff in the event that such information is
18 not readily apparent from the materials produced pursuant to
19 subsections i and ii above, so long as such documents do not
20 constitute testing materials for either the MMPI-2 or Rorschach
21 tests, as set forth in paragraph 2.b.iv. below.

22 iv. **CONFIDENTIAL INFORMATION** as defined herein specifically
23 does not include the testing materials for either the MMPI-2 or
24 Rorschach tests conducted in connection with these proceedings,
25 including, but not limited to, the test materials, booklets,
26 computer programs and other documents that would constitute the
27 testing materials utilized by the **PSYCHOLOGICAL EXPERTS** in

1 connection with the administration of the psychological testing.

2 c. The term "**QUALIFIED PERSONS**" means (1) the Presiding
3 Judge and any of his or her staff, (2) any referee appointed by a
4 judge in this matter to preside over any hearings in this matter
5 and any of his or her staff, (3) stenographic reporters engaged
6 in these proceedings as are necessarily incident to the
7 preparation for trial and/or trial of this action, (4) counsel
8 for the **PARTIES** in this litigation, (5) paralegal, stenographic,
9 clerical, and secretarial personnel employed by counsel for the
10 **PARTIES**, and (6) **PSYCHOLOGICAL EXPERTS** retained by the **PARTIES** in
11 this proceeding to assist such counsel in this proceeding.

12 d. The term "**DISCLOSE**" or any version thereof means to
13 show, give, make available, or communicate in any fashion to any
14 person any **CONFIDENTIAL INFORMATION**, information concerning the
15 existence or content of any **CONFIDENTIAL INFORMATION**, or any
16 copy, portion, version, or summary of any **CONFIDENTIAL**
17 **INFORMATION**.

18 3. Grounds for Protection of **CONFIDENTIAL INFORMATION**. The
19 **PARTIES** acknowledge and recognize the **INFORMATION** identified as
20 **CONFIDENTIAL INFORMATION** herein in paragraph 2 is protected by a
21 right of privacy under both state and federal laws. Further, the
22 **PARTIES** acknowledge and recognize that the disclosure of
23 **INFORMATION** identified as **CONFIDENTIAL INFORMATION** herein is
24 governed by ethical and contractual duties of the **PSYCHOLOGICAL**
25 **EXPERTS** who have either prepared, generated or utilized this
26 **CONFIDENTIAL INFORMATION**, including, but not limited to, Sections
27 9.04 and 9.11 and of the American Psychological Association

1 Ethical Principles of Psychologists and Code of Conduct. This
2 **ORDER** is necessary in order to protect the important privacy
3 interests of the plaintiff, as well as the ethical duties of any
4 **PSYCHOLOGICAL EXPERTS** with regard to the **CONFIDENTIAL INFORMATION**
5 by protecting such **CONFIDENTIAL INFORMATION** from public
6 disclosure and misuse, while meeting the respective concerns of
7 the **PARTIES** and their **PSYCHOLOGICAL EXPERTS** and permitting the
8 **PARTIES** to expedite discovery.

9 4. Use of **CONFIDENTIAL INFORMATION**. The particular types
10 of **CONFIDENTIAL INFORMATION** defined above in section 2(b)(i)-(iv)
11 herein shall be subject to the following conditions:

12 a. Such **CONFIDENTIAL INFORMATION** shall be used solely for
13 professional purposes by counsel for the **PARTIES** and their
14 **PSYCHOLOGICAL EXPERTS** in connection with, and only as necessary
15 to, this action and the preparation and trial of this action, or
16 any related proceeding, including, but not limited to, appeal or
17 writ, and not for any other purpose, including, without
18 limitation, any civil, criminal, administrative, or personal
19 purpose or function;

20 b. Such **CONFIDENTIAL INFORMATION** shall not be **DISCLOSED** to
21 anyone other than counsel for the **PARTIES** and their **PSYCHOLOGICAL**
22 **EXPERTS**, as well as other **QUALIFIED PERSONS** as necessary an in
23 accordance with this **ORDER**; and

24 c. Such **CONFIDENTIAL INFORMATION**, including any copies or
25 summaries thereof, shall be returned to the **PSYCHOLOGICAL EXPERTS**
26 from whom production originated at the conclusion of this
27 litigation.

1 Control and distribution of all **CONFIDENTIAL INFORMATION**
2 shall be the responsibility of the attorneys of record. The
3 provisions of this **ORDER**, insofar as they restrict the
4 communication and use of **CONFIDENTIAL INFORMATION** produced
5 hereunder, copies or summaries thereof, or information obtained
6 therefrom, shall continue to be binding after the conclusion of
7 this action.

8 5. Designation of **INFORMATION** as **CONFIDENTIAL**. In the
9 preparation for any trial of this proceeding, and any appeal or
10 writ taken herein, **CONFIDENTIAL INFORMATION** shall be designated
11 in the following manner:

12 a. **INFORMATION** subject to this **ORDER** shall be designated,
13 whenever possible prior to production, by placing or affixing on
14 each page of such material in a manner that will not interfere
15 with its legibility the words "**CONFIDENTIAL**," or by the
16 designation of categories of documents as "**CONFIDENTIAL**." If
17 such designation is not possible prior to production, the
18 designation must be made by the producing party within twenty
19 (20) days after disclosure. The **INFORMATION** shall be treated as
20 **CONFIDENTIAL** until the twenty (20) days has elapsed. Within such
21 twenty (20)-day period, the disclosing party must notify all
22 **PARTIES** in writing of the precise **INFORMATION** sought to be
23 designated as **CONFIDENTIAL**. Absent such notice, the **INFORMATION**
24 cannot be treated as **CONFIDENTIAL**.

25 6. **DISCLOSURE of CONFIDENTIAL INFORMATION**. Each
26 individual, other than counsel whose law firms are actual
27 signatories to this **ORDER**, to whom the particular types of

1 **CONFIDENTIAL INFORMATION** defined about in Section (b) (i)-(iv) is
2 furnished, shown, or **DISCLOSED**, shall, prior to the time s/he
3 receives access to such materials, be provided by counsel
4 furnishing her/him such material a copy of this **ORDER** and agree
5 to be bound by its terms, and shall certify that s/he has
6 carefully read the **ORDER** and fully understands its terms. Such
7 person must also consent to be subject to the personal
8 jurisdiction of the United States District Court, Eastern
9 District of California, with respect to any proceeding relating
10 to enforcement of this **ORDER**, including any proceeding relating
11 to contempt of court. The certificate shall be in the form
12 attached hereto. Counsel making **DISCLOSURE** to any person as
13 described herein shall retain the original executed copy of such
14 certificate until final termination of this case.

15 a. **DISCLOSURE During Depositions.** In the event that
16 **CONFIDENTIAL INFORMATION** is **DISCLOSED**, revealed, utilized,
17 examined or referred to during depositions, then only **QUALIFIED**
18 **PERSONS**, the deponent, and the court reporter shall be present.
19 If **CONFIDENTIAL INFORMATION** is made exhibits to, or if
20 **CONFIDENTIAL INFORMATION** is the subject of examination during, a
21 deposition, then arrangements will be made with the court
22 reporter to separately bind those exhibits and those portions of
23 the transcript containing **CONFIDENTIAL INFORMATION**, and each page
24 on which such **CONFIDENTIAL INFORMATION** appears shall be stamped
25 with the word "**CONFIDENTIAL.**" Those exhibits and transcript
26 portions shall be placed in a sealed envelope or other
27 appropriate sealed container on which shall be endorsed "Knowles

1 v. City of Benicia, et al., Confidential Pursuant to Order in
2 Case No. 2:09-CV-03470-WBS-DAD," and a statement substantially in
3 the following form:

4 "THIS ENVELOPE IS SEALED PURSUANT TO STIPULATED PROTECTIVE
5 ORDER OF COURT, IN "Knowles v. City of Benicia, et al., UNITED
6 STATES DISTRICT COURT, EASTERN DISTRICT OF CALIFORNIA, CASE NO.
7 2:09-CV-03470-WBS-DAD, AND CONTAINS CONFIDENTIAL DOCUMENTS
8 PRODUCED OR GENERATED BY PARTIES TO THE PROCEEDING. IT IS NOT TO
9 BE OPENED, OR THE CONTENTS THEREOF TO BE DISCLOSED, EXCEPT TO
10 QUALIFIED PERSONS AS DEFINED BY SAID ORDER."

11 Each court reporter participating in any deposition
12 involving **CONFIDENTIAL INFORMATION** shall be informed of and
13 provided with a copy of this **ORDER** and exhibit hereto and shall
14 be requested to sign a copy of said exhibit. Furthermore, each
15 court reporter participating in any deposition involving
16 **CONFIDENTIAL INFORMATION** shall show a copy of this **ORDER** to any
17 other person participating in the preparation of any deposition
18 transcript and shall have such person sign a copy of said
19 exhibit.

20 b. Papers Filed in Court. If any **PARTY** wishes to file any
21 document containing **CONFIDENTIAL INFORMATION** with the court, that
22 **PARTY** shall file and serve a motion requesting an order
23 authorizing the filing of such documents under seal, or an order
24 authorizing the redaction of **CONFIDENTIAL INFORMATION** from the
25 documents. The motion shall be filed and served in accordance
26 with Local Rules 140 and 141 and all documents requested to be
27 filed under seal shall be submitted to the Court in accordance

1 with Local Rule 141(b). Upon the Court's Order granting a motion
2 to file **CONFIDENTIAL INFORMATION** under seal, all documents that
3 the Court Orders to be filed under seal shall be submitted to the
4 Court in accordance with Local Rule 141(e) (2).

5 In the event that the Court denies any **PARTY's** motion
6 requesting an order authorizing the filing of documents
7 containing **CONFIDENTIAL INFORMATION** under seal or in redacted
8 form, such **CONFIDENTIAL INFORMATION** shall not be filed with the
9 Court, but shall instead be returned to the moving party.

10 c. DISCLOSURE to Experts. In case of any **DISCLOSURE** to an
11 **PSYCHOLOGICAL EXPERT** retained by any **PARTY**, counsel for the
12 disclosing party shall make reasonable efforts to ensure that the
13 **CONFIDENTIAL INFORMATION DISCLOSED** is not disseminated in any
14 form to anyone by such expert, consultant, or other **QUALIFIED**
15 **PERSON** and that said **CONFIDENTIAL INFORMATION** and any copies or
16 summaries thereof are returned in their entirety to the
17 disclosing party after they are no longer needed in this action.

18 7. DISCLOSURE of CONFIDENTIAL INFORMATION to Other Than
19 QUALIFIED PERSONS. In the event that any party desires
20 **CONFIDENTIAL INFORMATION** to be **DISCLOSED**, discussed, or made
21 available to any person other than **QUALIFIED PERSONS**, such party
22 shall submit to opposing counsel a written statement specifically
23 identifying the **CONFIDENTIAL INFORMATION** to be **DISCLOSED** and the
24 name, title, and business relationship of the persons with whom
25 they wish to communicate. Counsel for the opposing party shall
26 have fifteen (15) calendar days from the date notice was served
27 to object to the **DISCLOSURE** to any person identified in the

1 notice. If the **PARTIES** are unable to agree on the terms and
2 conditions of the requested **DISCLOSURE**, the **PARTY** seeking
3 disclosure may file and serve on opposing counsel a notice of
4 motion and motion for authority to make such **DISCLOSURE**. Such
5 motion shall be filed and served pursuant to Local Rule 251.

6 a. Unless opposing counsel responds timely in writing to
7 the fifteen (15)-day notification provided for above, the persons
8 named in the notice shall, subject to the terms and conditions of
9 this **ORDER**, be entitled to receive only that **CONFIDENTIAL**
10 **INFORMATION** specified in this notice.

11 8. **DISCLOSURE to Author or Addressee.** Nothing in this
12 **ORDER** shall preclude the **DISCLOSURE** of **CONFIDENTIAL INFORMATION**
13 to any person who authored, prepared, was an addressee of,
14 received a copy of, or participated in the preparation of such
15 **CONFIDENTIAL INFORMATION**.

16 9. Objections To Designation. Should any party to whom
17 **CONFIDENTIAL INFORMATION** is disclosed object to classification of
18 such materials, and should the **PARTIES** be unable to resolve the
19 objection informally, then the objecting party ("the moving
20 party") shall have the burden of moving forward and may move, at
21 any time upon proper notice, for an order determining whether or
22 not the materials are properly designated. Until a motion is
23 filed and resolved by the Court, all materials designated
24 **CONFIDENTIAL INFORMATION** shall be treated as **CONFIDENTIAL**. In
25 the event such a motion is made, the party opposing the motion
26 (the "opposing party") shall have the burden of providing and
27 establishing that the **INFORMATION** is protected as privileged

1 within the meaning of and under applicable federal laws and the
2 laws of the State of California. This burden, imposed on the
3 opposing party, shall include, but shall not be limited to, the
4 burden imposed on any party seeking a protective **ORDER**.

5 10. Objections To Production. Nothing in this **ORDER** shall
6 be deemed to limit or waive any right of any party to object to
7 discovery with respect to any **INFORMATION** which may be claimed to
8 be outside the scope of discovery for any reason, privileged, or
9 otherwise protected or protectable under applicable federal laws
10 and the laws of the State of California

11 11. Further Protection. Nothing contained in this **ORDER**
12 shall be deemed to preclude any party at any time (a) from
13 seeking and obtaining from the opposing party or the Court, on
14 appropriate showing, a further protective **ORDER** relating to
15 **CONFIDENTIAL INFORMATION** or relating to any discovery in this
16 case, (b) to apply to the Court for an **ORDER** requiring the
17 removal of the **CONFIDENTIAL** designation from any document
18 pursuant to Paragraph 4 above; and (c) to apply to the Court for
19 any relief from a provision of this Stipulation and **ORDER**, upon
20 good cause shown. Nothing in this **ORDER** shall be construed as
21 preventing any party from making application to the Court for
22 revision of the terms of this **ORDER**.

23 12. Contempt. Upon any violation of the provisions set
24 forth in this **ORDER**, the **PARTY** asserting the violation may file
25 and serve an appropriate motion seeking an order holding the
26 violating **PARTY** either in contempt of this Court or in violation
27 of this **ORDER**.

1 **ORDER** unless notified in writing of a change.

2 f. This **ORDER** shall not constitute an admission by any of
3 the **PARTIES** that **INFORMATION** identified as **CONFIDENTIAL** is in
4 fact confidential or the subject of entitlement thereto. This
5 **ORDER** is entered into solely to expedite discovery and meet the
6 respective concerns of the **PARTIES**. This **ORDER** not be considered
7 an admission of validity to any claim of confidentiality
8 hereunder except as is necessary to enforce the terms of the
9 **ORDER** as provided herein.

10 g. The Court's jurisdiction to enforce the terms of this
11 order shall extend until six months after the final termination
12 of this action.

13 The above is stipulated to by the respective counsel for the
14 **PARTIES** as follows:

15
16 DATED: March 9, 2011 ROSEN, BIEN & GALVAN, LLP

17
18 By: /s/ Ernest Galvan (as authorized
19 on March 9, 2011)
20 ERNEST GALVAN
21 Attorneys for Plaintiff, PETER
22 KNOWLES
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DATED: March 9, 2011

SELMAN BREITMAN LLP

By: /s/ Jennifer L. Rusnak
GREGG A. THORNTON
DANIELLE K. LEWIS
JENNIFER L. RUSNAK
Attorneys for Defendants
CITY OF BENICIA, Police Chief
SANDRA SPAGNOLI, City Manager JIM
ERICKSON, Sergeant FRANK HARTIG,
Sergeant BOB OETTINGER, Sergeant
CHRIS BIDOUE, Sergeant SCOTT
PRZEKURAT, Officer JOHN MCFADDEN,
Officer MARK MENESINI, Officer
JAMES LAUGHTER, Officer KEVIN ROSE,
Officer JASON EAKIN, Officer TED
CRIADO and Officer JAKE HEINEMEYER

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EXHIBIT A

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8 Attorneys for Defendants
9 CITY OF BENICIA, Police Chief
10 SANDRA SPAGNOLI, City Manager
11 JIM ERICKSON, Sergeant FRANK
12 HARTIG, Sergeant BOB OETTINGER,
13 Sergeant CHRIS BIDOU, Sergeant
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15 McFADDEN, Officer MARK MENESINI,
16 Officer JAMES LAUGHTER, Officer
17 KEVIN ROSE, Officer JASON EAKIN,
18 Officer TED CRIADO and Officer
19 JAKE HEINEMEYER

20 UNITED STATES DISTRICT COURT
21 EASTERN DISTRICT OF CALIFORNIA

22 PETER KNOWLES,

23 Plaintiff,

24 v.

25 CITY OF BENICIA, Police Chief
26 SANDRA SPAGNOLI, City Manager
27 JIM ERICKSON, Sergeant FRANK
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Officer JAMES LAUGHTER, Officer
KEVIN ROSE, Officer JASON EAKIN,
Officer TED CRIADO, Officer JAKE
HEINEMEYER and DOES I through
XXX, inclusive,

Defendants.

CASE NO. 2:09-CV-03470-WBS-DAD

**NON-DISCLOSURE AGREEMENT RELATING
TO STIPULATION REGARDING
CONFIDENTIALITY AND FOR
PROTECTIVE ORDER**

I, _____, declare as follows:

1. My address and telephone number is

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2. I have received a copy of the Stipulation Regarding Confidentiality and for Protective Order and Protective Order (hereinafter the "**ORDER**") filed in the above-entitled action.

3. I have carefully read and understand the terms of the **ORDER**.

5. I hereby agree to be bound by the terms of the **ORDER**.

6. During the pendency and after final resolution of this case, I will hold in confidence and not disclose to anyone not qualified under the terms of the **ORDER** any confidential writings, documents, things, information, or discovery disclosed to me.

7. I agree to be subject to the personal jurisdiction of the United States District Court, Eastern District of California, with regard to any proceeding relating to the enforcement of the **ORDER**.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed this ____ day of _____ (month), ____ (year), at _____ (city), California.

DATED: _____

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ORDER

IT IS SO ORDERED.

Date: 3/15/2011

Dale A. Drozd

DALE A. DROZD
UNITED STATES MAGISTRATE JUDGE

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Selman Breitman
LLP

ATTORNEYS
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LAW