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14 Attorneys for Plaintiff  
15 MONTAE HOWARD

16 UNITED STATES DISTRICT COURT  
17 EASTERN DISTRICT OF CALIFORNIA  
18

19 MONTAE HOWARD, an individual,

20 Plaintiff,

21 v.

22 CITY OF VALLEJO, a municipal corporation;  
23 ROBERT GREENBERG and ROBERT  
24 KERR, individually and in their official  
25 capacities as law enforcement officers for the  
26 City of Vallejo Police Department; DOES 1-50,  
27 inclusive; individually and in their capacities as  
law enforcement officers and/or personnel for  
the City of Vallejo Police Department,

28 Defendants.

Case No. 2:13-cv-01439-LKK-KJN

**STIPULATED PROTECTIVE ORDER**

1     1.     PURPOSES AND LIMITATIONS

2             Disclosure and discovery activity in this action are likely to involve production of confidential,  
3 proprietary, or private information for which special protection from public disclosure and from use for  
4 any purpose other than prosecuting this litigation may be warranted. Accordingly, the parties hereby  
5 stipulate to and petition the court to enter the following Stipulated Protective Order. The parties  
6 acknowledge that this Order does not confer blanket protections on all disclosures or responses to  
7 discovery and that the protection it affords from public disclosure and use extends only to the limited  
8 information or items that are entitled to confidential treatment under the applicable legal principles. This  
9 stipulation and the order sought herein is specifically intended to protect the confidentiality of the  
10 records, including, but not necessarily limited to the following, and any of said records disclosed are  
11 subject to a protective order:

- 12             a. The investigative report in this matter;
- 13             b. Any internal affairs reports or materials, including the internal affairs report concerning  
14                 the incident that is the subject of this litigation;
- 15             c. Any officer personnel records, including but not limited to citizens’ complaints, internal  
16                 affairs materials and training records;
- 17             d. Citizens’ complaints and or any disciplinary records regarding any officer;
- 18             e. Any records prepared by and produced by defendants regarding plaintiff’s contact with  
19                 the Vallejo Police Department.

20             The parties further acknowledge, as set forth in Section 12.3, below, that this Stipulated  
21 Protective Order does not entitle them to file confidential information under seal; Civil Local Rule 141  
22 sets forth the procedures that must be followed and the standards that will be applied when a party seeks  
23 permission from the court to file material under seal.

24     2.     DEFINITIONS

25             2.1     Challenging Party: a Party or Non-Party that challenges the designation of information or  
26 items under this Order.

27             2.2     “CONFIDENTIAL” Information or Items: information (regardless of how it is generated,  
28 stored or maintained) or tangible things that qualify for protection under Federal Rule of Civil Procedure

1 26(c).

2 2.3 Counsel (without qualifier): Outside Counsel of Record and House Counsel (as well as  
3 their support staff).

4 2.4 Designating Party: a Party or Non-Party that designates information or items that it  
5 produces in disclosures or in responses to discovery as “CONFIDENTIAL.”

6 2.5 Disclosure or Discovery Material: all items or information, regardless of the medium or  
7 manner in which it is generated, stored, or maintained (including, among other things, testimony,  
8 transcripts, and tangible things), that are produced or generated in disclosures or responses to discovery  
9 in this matter.

10 2.6 Expert: a person with specialized knowledge or experience in a matter pertinent to the  
11 litigation who has been retained by a Party or its counsel to serve as an expert witness or as a consultant  
12 in this action.

13 2.7 House Counsel: attorneys who are employees of a party to this action. House Counsel  
14 does not include Outside Counsel of Record or any other outside counsel.

15 2.8 Non-Party: any natural person, partnership, corporation, association, or other legal entity  
16 not named as a Party to this action.

17 2.9 Outside Counsel of Record: attorneys who are not employees of a party to this action but  
18 are retained to represent or advise a party to this action and have appeared in this action on behalf of that  
19 party or are affiliated with a law firm which has appeared on behalf of that party.

20 2.10 Party: any party to this action, including all of its officers, directors, employees,  
21 consultants, retained experts, and Outside Counsel of Record (and their support staffs).

22 2.11 Producing Party: a Party or Non-Party that produces Disclosure or Discovery Material in  
23 this action.

24 2.12 Professional Vendors: persons or entities that provide litigation support services (e.g.,  
25 photocopying, videotaping, translating, preparing exhibits or demonstrations, and organizing, storing, or  
26 retrieving data in any form or medium) and their employees and subcontractors.

27 2.13 Protected Material: any Disclosure or Discovery Material that is designated as  
28 “CONFIDENTIAL.”

1           2.14 Receiving Party: a Party that receives Disclosure or Discovery Material from a Producing  
2 Party.

3           3.     SCOPE

4           The protections conferred by this Stipulation and Order cover not only Protected Material (as  
5 defined above), but also (1) any information copied or extracted from Protected Material; (2) all copies,  
6 excerpts, summaries, or compilations of Protected Material; and (3) any testimony, conversations, or  
7 presentations by Parties or their Counsel that might reveal Protected Material. However, the protections  
8 conferred by this Stipulation and Order do not cover the following information: (a) any information that  
9 is in the public domain at the time of disclosure to a Receiving Party or becomes part of the public  
10 domain after its disclosure to a Receiving Party as a result of publication not involving a violation of this  
11 Order, including becoming part of the public record through trial or otherwise; and (b) any information  
12 known to the Receiving Party prior to the disclosure or obtained by the Receiving Party after the  
13 disclosure from a source who obtained the information lawfully and under no obligation of  
14 confidentiality to the Designating Party. Any use of Protected Material at trial shall be governed by a  
15 separate agreement or order.

16          4.     DURATION

17          Even after final disposition of this litigation, the confidentiality obligations imposed by this Order  
18 shall remain in effect until a Designating Party agrees otherwise in writing or a court order otherwise  
19 directs. Final disposition shall be deemed to be the later of (1) dismissal of all claims and defenses in this  
20 action, with or without prejudice; and (2) final judgment herein after the completion and exhaustion of all  
21 appeals, rehearings, remands, trials, or reviews of this action, including the time limits for filing any  
22 motions or applications for extension of time pursuant to applicable law.

23          5.     DESIGNATING PROTECTED MATERIAL

24          5.1     Exercise of Restraint and Care in Designating Material for Protection. Each Party or Non-  
25 Party that designates information or items for protection under this Order must take care to limit any such  
26 designation to specific material that qualifies under the appropriate standards. The Designating Party  
27 must designate for protection only those parts of material, documents, items, or oral or written  
28 communications that qualify – so that other portions of the material, documents, items, or

1 communications for which protection is not warranted are not swept unjustifiably within the ambit of this  
2 Order.

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

7 If it comes to a Designating Party's attention that information or items that it designated for  
8 protection do not qualify for protection, that Designating Party must promptly notify all other Parties that  
9 it is withdrawing the mistaken designation.

10 5.2 Manner and Timing of Designations. Except as otherwise provided in this Order (see,  
11 e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered, Disclosure or  
12 Discovery Material that qualifies for protection under this Order must be clearly so designated before the  
13 material is disclosed or produced.

14 Designation in conformity with this Order requires:

15 (a) for information in documentary form (e.g., paper or electronic documents, but excluding  
16 transcripts of depositions or other pretrial or trial proceedings), that the Producing Party affix the legend  
17 "CONFIDENTIAL" to each page that contains protected material. If only a portion or portions of the  
18 material on a page qualifies for protection, the Producing Party also must clearly identify the protected  
19 portion(s) (e.g., by making appropriate markings in the margins).

20 A Party or Non-Party that makes original documents or materials available for inspection need  
21 not designate them for protection until after the inspecting Party has indicated which material it would  
22 like copied and produced. During the inspection and before the designation, all of the material made  
23 available for inspection shall be deemed "CONFIDENTIAL." After the inspecting Party has identified  
24 the documents it wants copied and produced, the Producing Party must determine which documents, or  
25 portions thereof, qualify for protection under this Order. Then, before producing the specified documents,  
26 the Producing Party must affix the "CONFIDENTIAL" legend to each page that contains Protected  
27 Material. If only a portion or portions of the material on a page qualifies for protection, the Producing  
28 Party also must clearly identify the protected portion(s) (e.g., by making appropriate markings in the

1 margins).

2 (b) for testimony given in deposition or in other pretrial or trial proceedings, that the Designating  
3 Party identify on the record, before the close of the deposition, hearing, or other proceeding, all protected  
4 testimony.

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

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

15 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

16 6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation of  
17 confidentiality at any time. Unless a prompt challenge to a Designating Party's confidentiality  
18 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic burdens, or a  
19 significant disruption or delay of the litigation, a Party does not waive its right to challenge a  
20 confidentiality designation by electing not to mount a challenge promptly after the original designation is  
21 disclosed.

22 6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution process by  
23 providing written notice of each designation it is challenging and describing the basis for each challenge.  
24 To avoid ambiguity as to whether a challenge has been made, the written notice must recite that the  
25 challenge to confidentiality is being made in accordance with this specific paragraph of the Protective  
26 Order. The parties shall attempt to resolve each challenge in good faith and must begin the process by  
27 conferring directly (in voice to voice dialogue; other forms of communication are not sufficient) within  
28 14 days of the date of service of notice. In conferring, the Challenging Party must explain the basis for its

1 belief that the confidentiality designation was not proper and must give the Designating Party an  
2 opportunity to review the designated material, to reconsider the circumstances, and, if no change in  
3 designation is offered, to explain the basis for the chosen designation. A Challenging Party may proceed  
4 to the next stage of the challenge process only if it has engaged in this meet and confer process first or  
5 establishes that the Designating Party is unwilling to participate in the meet and confer process in a  
6 timely manner.

7           6.3     Judicial Intervention. If the Parties cannot resolve a challenge without court intervention,  
8 the Designating Party shall file and serve a motion to retain confidentiality under Civil Local Rule 230  
9 (and in compliance with Civil Local Rule 141, if applicable) within 21 days of the initial notice of  
10 challenge or within 14 days of the parties agreeing that the meet and confer process will not resolve their  
11 dispute, whichever is earlier. Each such motion must be accompanied by a competent declaration  
12 affirming that the movant has complied with the meet and confer requirements imposed in the preceding  
13 paragraph. Failure by the Designating Party to make such a motion including the required declaration  
14 within 21 days (or 14 days, if applicable) shall automatically waive the confidentiality designation for  
15 each challenged designation. In addition, the Challenging Party may file a motion challenging a  
16 confidentiality designation at any time if there is good cause for doing so, including a challenge to the  
17 designation of a deposition transcript or any portions thereof. Any motion brought pursuant to this  
18 provision must be accompanied by a competent declaration affirming that the movant has complied with  
19 the meet and confer requirements imposed by the preceding paragraph.

20           The burden of persuasion in any such challenge proceeding shall be on the Designating Party.  
21 Frivolous challenges, and those made for an improper purpose (e.g., to harass or impose unnecessary  
22 expenses and burdens on other parties) may expose the Challenging Party to sanctions. Unless the  
23 Designating Party has waived the confidentiality designation by failing to file a motion to retain  
24 confidentiality as described above, all parties shall continue to afford the material in question the level of  
25 protection to which it is entitled under the Producing Party's designation until the court rules on the  
26 challenge.

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28 ///

1 7. ACCESS TO AND USE OF PROTECTED MATERIAL

2 7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed or  
3 produced by another Party or by a Non-Party in connection with this case only for prosecuting,  
4 defending, or attempting to settle this litigation. Such Protected Material may be disclosed only to the  
5 categories of persons and under the conditions described in this Order. When the litigation has been  
6 terminated, a Receiving Party must comply with the provisions of section 13 below (FINAL  
7 DISPOSITION).

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

10 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise ordered by the  
11 court or permitted in writing by the Designating Party, a Receiving Party may disclose any information  
12 or item designated “CONFIDENTIAL” only to:

13 (a) the Receiving Party’s Outside Counsel of Record in this action, as well as employees of said  
14 Outside Counsel of Record to whom it is reasonably necessary to disclose the information for this  
15 litigation and who have signed the “Acknowledgment and Agreement to Be Bound” that is attached  
16 hereto as Exhibit A;

17 (b) the officers, directors, and employees (including House Counsel) of the Receiving Party to  
18 whom disclosure is reasonably necessary for this litigation and who have signed the “Acknowledgment  
19 and Agreement to Be Bound” (Exhibit A);

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

23 (d) the court and its personnel;

24 (e) court reporters and their staff, professional jury or trial consultants, mock jurors, and  
25 Professional Vendors to whom disclosure is reasonably necessary for this litigation and who have signed  
26 the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

27 (f) during their depositions, witnesses in the action to whom disclosure is reasonably necessary  
28 and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A), unless otherwise



1 agreed by the Designating Party or ordered by the court. Pages of transcribed deposition testimony or  
2 exhibits to depositions that reveal Protected Material must be separately bound by the court reporter and  
3 may not be disclosed to anyone except as permitted under this Stipulated Protective Order.

4 (g) the author or recipient of a document containing the information or a custodian or other  
5 person who otherwise possessed or knew the information.

6 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER  
7 LITIGATION

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

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

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

15 (c) cooperate with respect to all reasonable procedures sought to be pursued by the Designating  
16 Party whose Protected Material may be affected.

17 If the Designating Party timely seeks a protective order, the Party served with the subpoena or  
18 court order shall not produce any information designated in this action as “CONFIDENTIAL” before a  
19 determination by the court from which the subpoena or order issued, unless the Party has obtained the  
20 Designating Party’s permission. The Designating Party shall bear the burden and expense of seeking  
21 protection in that court of its confidential material – and nothing in these provisions should be construed  
22 as authorizing or encouraging a Receiving Party in this action to disobey a lawful directive from another  
23 court.

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

26 (a) The terms of this Order are applicable to information produced by a Non-Party in this action  
27 and designated as “CONFIDENTIAL.” Such information produced by Non-Parties in connection with  
28 this litigation is protected by the remedies and relief provided by this Order. Nothing in these provisions

1 should be construed as prohibiting a Non-Party from seeking additional protections.

2 (b) In the event that a Party is required, by a valid discovery request, to produce a Non-Party's  
3 confidential information in its possession, and the Party is subject to an agreement with the Non-Party  
4 not to produce the Non-Party's confidential information, then the Party shall:

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

7 (2) promptly provide the Non-Party with a copy of the Stipulated Protective Order in this  
8 litigation, the relevant discovery request(s), and a reasonably specific description of the information  
9 requested; and

10 (3) make the information requested available for inspection by the Non-Party.

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

18 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

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

26 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED  
27 MATERIAL

28 When a Producing Party gives notice to Receiving Parties that certain inadvertently produced

1 material is subject to a claim of privilege or other protection, the obligations of the Receiving Parties are  
2 those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify  
3 whatever procedure may be established in an e-discovery order that provides for production without prior  
4 privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar as the parties reach an  
5 agreement on the effect of disclosure of a communication or information covered by the attorney-client  
6 privilege or work product protection, the parties may incorporate their agreement in the stipulated  
7 protective order submitted to the court.

8 12. MISCELLANEOUS

9 12.1 Right to Further Relief. Nothing in this Order abridges the right of any person to seek its  
10 modification by the court in the future.

11 12.2 Right to Assert Other Objections. By stipulating to the entry of this Protective Order no  
12 Party waives any right it otherwise would have to object to disclosing or producing any information or  
13 item on any ground not addressed in this Stipulated Protective Order. Similarly, no Party waives any  
14 right to object on any ground to use in evidence of any of the material covered by this Protective Order.

15 12.3 Filing Protected Material. Without written permission from the Designating Party or a  
16 court order secured after appropriate notice to all interested persons, a Party may not file in the public  
17 record in this action any Protected Material. A Party that seeks to file under seal any Protected Material  
18 must comply with Civil Local Rule 141. Protected Material may only be filed under seal pursuant to a  
19 court order authorizing the sealing of the specific Protected Material at issue. Pursuant to Civil Local  
20 Rule 141, a sealing order will issue only upon a request establishing that the Protected Material at issue  
21 should be sealed pursuant to statute or other authority. If a Receiving Party's request to file Protected  
22 Material under seal pursuant to Civil Local Rule 141 is denied by the court, then the Receiving Party may  
23 file the information in the public record unless otherwise instructed by the court.

24 13. FINAL DISPOSITION

25 Within 60 days after the final disposition of this action, as defined in paragraph 4, each Receiving  
26 Party must return all Protected Material to the Producing Party or destroy such material. As used in this  
27 subdivision, "all Protected Material" includes all copies, abstracts, compilations, summaries, and any  
28 other format reproducing or capturing any of the Protected Material. Whether the Protected Material is

1 returned or destroyed, the Receiving Party must submit a written certification to the Producing Party  
2 (and, if not the same person or entity, to the Designating Party) by the 60 day deadline that (1) identifies  
3 (by category, where appropriate) all the Protected Material that was returned or destroyed and (2) affirms  
4 that the Receiving Party has not retained any copies, abstracts, compilations, summaries or any other  
5 format reproducing or capturing any of the Protected Material. Notwithstanding this provision, Counsel  
6 are entitled to retain an archival copy of all pleadings, motion papers, trial, deposition, and hearing  
7 transcripts, legal memoranda, correspondence, deposition and trial exhibits, expert reports, attorney work  
8 product, and consultant and expert work product, even if such materials contain Protected Material. Any  
9 such archival copies that contain or constitute Protected Material remain subject to this Protective Order  
10 as set forth in Section 4 (DURATION).

11 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

12 DATED: July 31, 2014

/s/ Richard W. Osman

Attorneys for Defendant

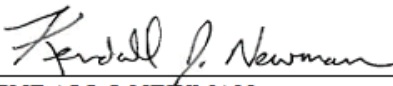
14 DATED: July 31, 2014

/s/ Dewitt M. Lacy

Attorneys for Plaintiff

17 PURSUANT TO STIPULATION, IT IS SO ORDERED, except that any discovery-related  
18 motions must be brought pursuant to the notice and briefing provisions of Civil Local Rule 251 (and not  
19 Civil Local Rule 230).

20 Dated: August 5, 2014

  
KENDALL J. NEWMAN  
UNITED STATES MAGISTRATE JUDGE

1  
2 EXHIBIT A

3 ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

4 I, \_\_\_\_\_ [print or type full name], of \_\_\_\_\_ [print or  
5 type full address], declare under penalty of perjury that I have read in its entirety and understand the  
6 Stipulated Protective Order that was issued by the United States District Court for the Eastern District of  
7 California on [date] in the case of \_\_\_\_\_ [**insert formal name of the case and the number and**  
8 **initials assigned to it by the court**]. I agree to comply with and to be bound by all the terms of this  
9 Stipulated Protective Order and I understand and acknowledge that failure to so comply could expose me  
10 to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in any  
11 manner any information or item that is subject to this Stipulated Protective Order to any person or entity  
12 except in strict compliance with the provisions of this Order.

13 I further agree to submit to the jurisdiction of the United States District Court for the Eastern  
14 District of California for the purpose of enforcing the terms of this Stipulated Protective Order, even if  
15 such enforcement proceedings occur after termination of this action.

16 I hereby appoint \_\_\_\_\_ [print or type full name] of  
17 \_\_\_\_\_ [print or type full address and telephone number] as my  
18 California agent for service of process in connection with this action or any proceedings related to  
19 enforcement of this Stipulated Protective Order.

20 Date: \_\_\_\_\_

21 City and State where sworn and signed: \_\_\_\_\_

22  
23 Printed name: \_\_\_\_\_

24  
25 Signature: \_\_\_\_\_