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MAR 31 2008  
U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

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13 UNITED STATES DISTRICT COURT  
14 NORTHERN DISTRICT OF CALIFORNIA

15 MARVETIA LYNN RICHARDSON; ) Case No. CIV 08 3470 - JSW  
16 LATOYA NORMAN; SAMONIA )  
17 NELSON-CALIP; and LAMONA NELSON ) **STIPULATED PROTECTIVE ORDER**  
18 as guardian ad litem for "KC," a minor, )  
19 )  
20 Plaintiffs, )  
21 )  
22 v. )  
23 )  
24 CITY OF ANTIOCH; CITY OF ANTIOCH )  
25 POLICE DEPARTMENT; POLICE CHIEF )  
26 JAMES HYDE; OFFICER SANTIAGO )  
27 MARTINEZ, JR; OFFICER JASON )  
28 VANDERPOOL OFFICER JASON )  
JOANNINDES; SGT. THOMAS )  
FUHRMANN and DOES 1 TO 100, )  
inclusive. )  
Defendants. )

1           1.     PURPOSES AND LIMITATIONS

2           Disclosure and discovery activity in this action are likely to involve production of  
3 confidential, proprietary, or private information for which special protection from public  
4 disclosure and from use for any purpose other than prosecuting this litigation would be warranted.

5           Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated  
6 Protective Order. The parties acknowledge that this Order does not confer blanket protections on  
7 all disclosures or responses to discovery and that the protection it affords extends only to the  
8 limited information or items that are entitled under the applicable legal principles to treatment as  
9 confidential. The parties further acknowledge, as set forth in Section 10, below, that this  
10 Stipulated Protective Order creates no entitlement to file confidential information under seal; Civil  
11 Local Rule 79-5 sets forth the procedures that must be followed and reflects the standards that will  
12 be applied when a party seeks permission from the court to file material under seal.  
13  
14

15           This Stipulated Protective Order is primarily intended to protect personal personnel records  
16 and "police internal affairs" records that specifically refer to or relate to individual police officers  
17 involved in this case, including plaintiff Marvetia Lynn Richardson and officers of the Antioch  
18 Police Department.  
19

20           2.     DEFINITIONS

21           2.1     Party: any party to this action, including all of its officers, directors,  
22 employees, consultants, retained experts, and outside counsel (and their support staff).

23           2.2     Disclosure or Discovery Material: all items or information, regardless  
24 of the medium or manner generated, stored, or maintained (including, among other things,  
25 testimony, transcripts, or tangible things) that are produced or generated in disclosures or  
26 responses to discovery in this matter.  
27

28           2.3     "Confidential" Information or Items: information (regardless of how generated,

1 stored or maintained) or tangible things that qualify for protection under standards developed  
2 under F.R.Civ.P.26(c). Individual police officer's personnel records and police internal affairs  
3 records will be designated "confidential."

4 2.4 "Highly Confidential – Attorneys' Eyes Only": Information or Items:

5 Extremely sensitive "Confidential Information or Items" whose disclosure to another Party  
6 or non-party would create a substantial risk of serious injury that could not be avoided by less  
7 restrictive means.

8  
9 2.5 Receiving Party: a Party that receives Disclosure or Discovery Material from a  
10 Producing Party.

11 2.6 Producing Party: a Party or non-party that produces Disclosure or Discovery  
12 Material in this action.

13  
14 2.7 Designating Party: a Party or non-party that designates information or items that it  
15 produces in disclosures or in responses to discovery as "Confidential" or "Highly Confidential-  
16 Attorneys' Eyes Only."

17 2.8 Protected Material: any Disclosure or Discovery Material that is designated as  
18 "Confidential" or as "Highly Confidential – Attorneys' Eyes Only."

19  
20 2.9 Outside Counsel: attorneys who are not employees of a Party but who are retained  
21 to represent or advise a Party in this action.

22 2.10 House Counsel: attorneys who are employees of a Party.

23 2.11 Counsel (without qualifier): Outsider Counsel and House Counsel (as well as their  
24 support staffs).

25  
26 2.12 Expert: a person with specialized knowledge or experience in a matter pertinent to  
27 the litigation who has been retained by a Party or its counsel to serve as an expert witness or as a  
28 consultant in this action and who is not a past or a current employee of a Party or of a competitor

1 of a Party's and who, at the time of retention, is not anticipated to become and employee of a Party  
2 or Competitor of a Party. This definition includes a professional jury or a trial consultant retained  
3 in connection with this litigation.

4           2.13 Professional Vendors: persons or entities that provide litigation support services,  
5 (e.g., photocopying; videotaping; translating; preparing exhibits or demonstrations; organizing;  
6 storing, retrieving data in any form or medium; etc.) and their employees and subcontractors.  
7

8           3. SCOPE

9           The protections conferred by this Stipulation and Order cover not only Protected Material  
10 (as defined above), but also any information copied or extracted therefrom, as well as all copies,  
11 excerpts, summaries, or compilations thereof, plus testimony, conversations, or presentations by  
12 parties or counsel to or in court or in other settings that might reveal Protected Material.  
13

14           4. DURATION

15           Even after the termination of this litigation, the confidentiality obligations imposed by this  
16 Order shall remain in effect until a Designating Party agrees otherwise in writing or a court order  
17 otherwise directs.  
18

19           5. DESIGNATING PROTECTED MATERIAL

20           5.1 Exercise of Restraint and Care in Designating Material for Protection.

21           Each Party or non-party that designates information or items for protection under this  
22 Order must take care to limit any such designation to specific material that qualifies under the  
23 appropriate standards. A Designating Party must take care to designate for protection only those  
24 parts of material, documents, items, or oral or written communications that qualify – so that other  
25 portions of the material, documents, items, or communications for which protection is not  
26 warranted are not swept unjustifiably within the ambit of this Order.  
27

28           Mass, indiscriminate, or routinized designations are prohibited. Designations that are

1 shown to be clearly unjustified, or that have been made for an improper purpose (e.g., to  
2 unnecessarily encumber or retard the case development process, or to impose unnecessary  
3 expenses and burdens on other parties), expose the Designating Party to sanctions, including  
4 attorney fees and costs.

5  
6 If it comes to a Party's or a non-party's attention that information or items that it  
7 designated for protection do not qualify for protection at all, or do not qualify for the level of  
8 protection initially asserted, that Party or non-party must promptly notify all other parties that its is  
9 withdrawing the mistaken designation.

10 5.2 Manner and Timing of Designations. Except as otherwise provided in this Order  
11 (see, e.g., second paragraph of section 5.2(a), below), or as otherwise stipulated or ordered,  
12 material that qualifies for protection under this Order must be clearly so designated before the  
13 material is disclosed or produced.  
14

15 Designation in conformity with this Order requires:

16 (a) for information in documentary form (apart from transcripts of depositions or other  
17 pretrial or trial proceedings), that the Producing Party affix the legend "CONFIDENTIAL" or  
18 "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" at the top of each page that  
19 contains protected material. If only a portion or portions of the material on a page qualifies for  
20 protection, the Producing Party also must clearly identify the protected portions(s) (e.g., by making  
21 appropriate markings in the margins) and must specify, for each portion, the level of protection  
22 being asserted (either "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS'  
23 EYES ONLY").  
24  
25

26 A Party or non-party that makes original documents or materials available for inspection  
27 need not designate them for protection until after the inspecting Party has indicated which material  
28 it would like copied and produced. During the inspection and before the designation, all of the

1 material made available for inspection shall be deemed “HIGHLY CONFIDENTIAL –  
2 ATTORNEYS’ EYES ONLY.” After the inspecting Party has identified the documents it wants  
3 copied and produced, the Producing Party must determine which documents, or portions thereof,  
4 qualify for protection under this Order, then, before producing the specified documents, the  
5 Producing Party must affix the appropriate legend (“CONFIDENTIAL” or HIGHLY  
6 CONFIDENTIAL – ATTORNEYS’ EYES ONLY”) at the top of each page that contains  
7 Protected Material. If only a portion or portions of the material on a page qualifies for protection,  
8 the Producing Party also must clearly identify the protected portion(s) (e.g., by making appropriate  
9 markings in the margins) and must specify, for each portion, the level of protection being asserted  
10 (either “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”)  
11

12 (b) for testimony given in deposition or in other pretrial or trial proceedings, that the  
13 Party or non-party offering or sponsoring the testimony identify on the record, before the close of  
14 the deposition, hearing, or other proceeding, all protected testimony, and further specify any  
15 portions of the testimony that qualify as “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES  
16 ONLY.” When it is impractical to identify separately each portion of testimony that is entitled to  
17 protection, and when it appears that substantial portions of the testimony may qualify for  
18 protection, the Party or non-party that sponsors, offers, or gives the testimony may invoke on the  
19 record (before the deposition or proceeding is concluded) a right to have up to 20 days to identify  
20 the specific portions of the testimony as to which protection is sought and to specify the level of  
21 protection being asserted (“CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS  
22 EYES ONLY”). Only those portions of the testimony that are appropriately designated for  
23 protection within the 20 days shall be covered by the provisions of this Stipulated Protective  
24 Order.  
25  
26  
27

28 Transcript pages containing Protected Material must be separately bound by the court

1 reporter, who must affix to the top of each such page the legend “CONFIDENTIAL or ‘HIGHLY  
2 CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” as instructed by the Party or non-party  
3 offering or sponsoring the witness or presenting the testimony.

4 (c) for information produced in some form other than documentary, and for any other  
5 tangible items, that the Producing Party affix in a prominent place on the exterior of the container  
6 or containers in which the information or items is stored the legend ‘CONFIDENTIAL” or  
7 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” If only portions of the  
8 information or item warrant protection, the Producing Party, to the extent practicable, shall  
9 identify the protected portions, specifying whether they qualify as “Confidential” or as “Highly  
10 Confidential – Attorneys’ Eyes Only.”

11  
12  
13 5.3 Inadvertent Failures to Designate If timely corrected, an inadvertent failure to  
14 designate qualified information or items as “Confidential” or “Highly Confidential – Attorneys’  
15 Eyes Only” does not, standing alone, waive the Designating Party’s right to secure protection  
16 under this Order for such material. If material is appropriately designated as “Confidential” or  
17 “Highly Confidential – Attorneys’ Eyes Only” after the material was initially produced, the  
18 Receiving Party, on timely notification of the designation, must make reasonable efforts to assure  
19 that the material is treated in accordance with the provisions of this Order.

## 20 21 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

22 6.1 Timing of Challenges. Unless a prompt challenge to a Designating Party’s  
23 confidentiality designation is necessary to avoid foreseeable substantial unfairness, unnecessary  
24 economic burdens, or a later significant disruption or delay of the litigation, a Party does not waive  
25 its right to challenge a confidentiality designation by electing not to mount a challenge promptly  
26 after the original designation is disclosed.

27  
28 6.2 Meet and Confer. A Party that elects to initiate a challenge to a Designating Party’s

1 confidentiality designation must do so in good faith and must begin the process by conferring  
2 directly (in voice to voice dialogue; other forms of communication are not sufficient) with counsel  
3 for the Designating Party. In conferring, the challenging Party must explain the basis for its belief  
4 that the confidentiality designation was not proper and must give the Designating Party an  
5 opportunity to review the designated material, to reconsider the circumstances, and, if no change in  
6 designation is offered, to explain the basis for the chosen designation. A challenging Party may  
7 proceed to the next stage of the challenge process only if it has engaged in this meet and confer  
8 process first.

10           6.3     Judicial Intervention. A Party that elects to press a challenge to a confidentiality  
11 designation after considering the justification offered by the Designating Party may file and serve a  
12 motion under Civil Local Rule 7 (and in compliance with Civil Local Rule 79-5, if applicable) that  
13 identifies the challenged material and sets forth in detail the basis for the challenge. Each such  
14 motion must be accompanied by a competent declaration that affirms that the movant has  
15 complied with the meet and confer requirements imposed in the preceding paragraph and that sets  
16 forth with specificity the justification for the confidentiality designation that was given by the  
17 Designating Party in the meet and confer dialogue.

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

## 23           7.     ACCESS TO AND USE OF PROTECTED MATERIAL

24           7.1     Basic Principles.     A Receiving Party may use Protected Material that is  
25 disclosed or produced by another Party or by a non-party in connection with this case only for  
26 prosecuting, defending, or attempting to settle this litigation. Such Protected Material may be  
27 disclosed only to the categories of persons and under the conditions described in this Order. When  
28



1 the litigation has been terminated, a Receiving Party must comply with the provisions of section  
2 11, below (FINAL DISPOSITION).

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

5  
6 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise  
7 ordered by the court or permitted in writing by the Designating Party, a Receiving Party may  
8 disclose any information or item designated CONFIDENTIAL only to:

9 (a) the Receiving Party's Outside Counsel of record in this action, as well as  
10 employees of said Counsel to whom it is reasonably necessary to disclose the information for this  
11 litigation and who have signed the "Agreement to Be Bound by Protective Order" that is attached  
12 hereto as Exhibit A;

13  
14 (b) the officers, directors, and employees (including House Counsel) of the Receiving  
15 Party to whom disclosure is reasonably necessary for this litigation and who have signed the  
16 "Agreement to Be Bound by Protective Order" (Exhibit A);

17  
18 (c) experts (as defined in this Order) of the Receiving Party to whom disclosure is  
19 reasonably necessary for this litigation and who have signed the "Agreement to Be Bound by  
20 Protective Order" (Exhibit A);

21 (d) the Court and its personnel;

22 (e) court reporter's, their staffs, and professional vendors to whom disclosure is  
23 reasonably necessary for this litigation and who have signed the "Agreement to Be Bound by  
24 Protective Order" (Exhibit A);

25  
26 (f) during their depositions, witnesses in this action to whom disclosure is reasonably  
27 necessary and who have signed the "Agreement to Be Bound by Protective Order" (Exhibit A).

28 Pages of transcribed deposition testimony or exhibits to depositions that reveal Protected Material

1 must be separately bound by the court reporter and may not be disclosed to anyone except as  
2 remitted under this Stipulated Protective Order.

3 (g) the author of the document or the original source of the information.

4 7.3 Disclosure of "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY"

5 Information or Items. Unless otherwise ordered by the court or permitted in writing by the  
6 Designating Party, a Receiving Party may disclose any information or item designated "HIGHLY  
7 CONFIDENTIAL – ATTORNEYS' EYES ONLY" only to:

8 (a) the Receiving Party's Outside Counsel of record in this action, as well as  
9 employees of said Counsel to whom it is reasonably necessary to disclose the information for this  
10 litigation and who have signed the "Agreement to Be Bound by Protective Order" that is attached  
11 hereto as Exhibit A;

12 (b) House Counsel of a Receiving Party or the City Attorney (1) to whom disclosures  
13 is reasonably necessary for this litigation, and (2) who has signed the "Agreement to Be Bound by  
14 Protective Order" (Exhibit A);

15 (c) Experts (as defined in this Order) (1) to whom disclosure is reasonably necessary  
16 for this litigation, (2) who have signed the "Agreement to Be Bound by Protective Order" (Exhibit  
17 A), [*Optional*: and (3) as to whom the procedures set forth in paragraph 7.4, below, have been  
18 followed]; the Court and its personnel;

19 (d) court reporters, their staffs, and professional vendors to whom disclosure is  
20 reasonably necessary for this litigation and who have signed the "Agreement to Be Bound by  
21 Protective Order" (Exhibit A); and

22 (e) the author of the document or the original source of the information.

23 24 25 26 27 28 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN  
OTHER LITIGATION.

1 If a Receiving Party is served with a subpoena or an order issued in other  
2 litigation that would compel disclosure of any information or items designated in this action as  
3 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” the  
4 Receiving Party must so notify the Designating Party, in writing (by fax, if possible) immediately  
5 and in no event more than three court days after receiving the subpoena or order. Such notification  
6 must include a copy of the subpoena or court order.  
7

8 The Receiving Party also must immediately inform in writing the Party who caused the  
9 subpoena or order to issue in the other litigation that some or all the material covered by the  
10 subpoena or order is the subject of this Protective Order. In addition, the Receiving Party must  
11 deliver a copy of this Stipulated Protective Order promptly to the Party in the other action that  
12 caused the subpoena or order to issue.  
13

14 The purpose of imposing these duties is to alert the interested parties to the existence of  
15 this Protective Order and to afford the Designating Party in this case an opportunity to try to  
16 protect its confidentiality interests in the court from which the subpoena or order issued. The  
17 Designating Party shall bear the burdens and the expenses of seeking protection in that court of its  
18 confidential material – and nothing in these provisions should be construed as authorizing or  
19 encouraging a Receiving Party in this action to disobey a lawful directive from another court.  
20

21 9. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

22 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed  
23 Protected Material to any person or in any circumstance not authorized under this Stipulated  
24 Protective Order, the Receiving Party must immediately (a) notify in writing the Designating Party  
25 of the unauthorized disclosures, (b) use its best efforts to retrieve all copies of the Protected  
26 Material, (c) inform the person or persons to whom unauthorized disclosures were made of all the  
27 terms of this Order, and (d) request such person or persons to execute the “Acknowledgement and  
28

1 Agreement to Be Bound” that is attached hereto as Exhibit A.

2 10. FILING PROTECTED MATERIAL.

3 Without written permission from the Designating Party or a court order secured after  
4 appropriate notice to all interested persons, a Party may not file in the public record in this action  
5 any Protected Material. A Party that seeks to file under seal any Protected Material must comply  
6 with Civil Local Rule 79-5.  
7

8 11. FINAL DISPOSITION.

9 Unless otherwise ordered or agreed in writing by the Producing Party, within sixty days  
10 after the final termination of this action, each Receiving Party must return all Protected Material to  
11 the Producing Party. As used in this subdivision, “all Protected Material” includes all copies,  
12 abstracts, compilations, summaries or any other form of reproducing or capturing any of the  
13 Protected Material. With permission in writing from the Designating Party, the Receiving Party  
14 may destroy some or all of the Protected Material instead of returning it. Whether the Protected  
15 Material is returned or destroyed, the Receiving Party must submit a written certification to the  
16 Producing Party (and, if not the same person or entity, to the Designating Party) by the sixty day  
17 deadline that identifies (by category, where appropriate) all the Protected Material that was  
18 returned or destroyed and that affirms that the Receiving Party has not retained any copies,  
19 abstracts, compilations, summaries or other forms of reproducing or capturing any of the Protected  
20 Material. Notwithstanding this provision, Counsel are entitled to retain an archival copy of all  
21 pleadings, motion papers, transcripts, legal memoranda, correspondence or attorney work product,  
22 even if such materials contain Protected Material. Any such archival copies that contain or  
23 constitute Protected Material remain subject to this Protective Order as set forth in Section 4  
24 (DURATION), above.  
25  
26  
27

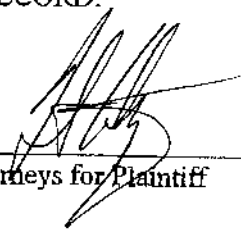
28 12. MISCELLANEOUS

1           12.1 Right to Further Relief. Nothing in this Order abridges the right of any person to  
2 seek its modification by the Court in the future.

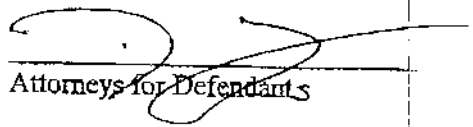
3           12.2 Right to Assert Other Objections. By stipulating to the entry of this Protective  
4 Order no Party waives any right it otherwise would have to object to disclosing or producing any  
5 information or item on any ground not addressed in this Stipulated Protective Order. Similarly, no  
6 Party waives any right to object on any ground to use in use in evidence of any of the material  
7 covered by this Protective Order.  
8

9  
10 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

11  
12 DATED: 2/5/09


  
Attorneys for Plaintiff

13  
14  
15 DATED: 2-4-09

  
Attorneys for Defendants

16  
17  
18 PURSUANT TO STIPULATION, IT IS SO ORDERED.

19  
20 DATED: February 17, 2009

  
Hon. Jeffrey S. White  
United States District Judge

21  
22  
23  
24  
25  
26  
27  
28

EXHIBIT A

ACKNOWLEDGEMENT AND AGREEMENT TO BE BOUND

1  
2  
3  
4 I, \_\_\_\_\_ [print or type full name], of  
5 \_\_\_\_\_ [print or type full address], declare under penalty of perjury that I have  
6 read in its entirety and understand the Stipulated Protective Order that was issued by the United  
7 States Court for Northern District of California on \_\_\_\_\_ in the case of RICHARDSON,  
8 ET AL. v. CITY OF ANTIOCH, ET AL. I agree to comply with and to be bound by all the terms  
9 of this Stipulated Protective Order and I understand and acknowledge that failure to so comply  
10 could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I  
11 will not disclose in any manner any information or item that is subject to this Stipulated Protective  
12 Order to any person or entity except in strict compliance with the provisions of this Order.  
13

14 I further agree to submit to the jurisdiction of the United States District Court for the  
15 Northern District of California for the purpose of enforcing the terms of this Stipulated Protective  
16 Order, even if such enforcement proceedings occur after termination of this action.  
17

18 I hereby appoint \_\_\_\_\_ [print or type full name] of  
19 \_\_\_\_\_ [print or type full address and telephone number] as my  
20 California agent for service of process in connection with this action or any proceedings related to  
21 enforcement of this Stipulated Protective Order.  
22

23 Date: \_\_\_\_\_

24 City and State where sworn and signed: \_\_\_\_\_ -

25 Printed name: \_\_\_\_\_  
26 [printed name]

27 Signature: \_\_\_\_\_  
28