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17 CITY OF OAKLAND and RAMON ALCANTAR

18
19 **UNITED STATES DISTRICT COURT**
20 **NORTHERN DISTRICT OF CALIFORNIA**

21 LORENZO HALL,

22 Plaintiff,

23 v.

24 CITY OF OAKLAND, a municipal corporation;
25 RAMON ALCANTAR, individually, and in his
26 capacity as a police officer for the CITY OF
OAKLAND; and, Oakland police officers DOES
1-25, inclusive,

Defendants.

Case No. C-09-01047-MMC

**STIPULATED
PROTECTIVE ORDER**

Plaintiff LORENZO HALL ("Plaintiff", individually and by and through the LAW
OFFICES OF JOHN L. BURRIS and DEFENDANTS CITY OF OAKLAND, AND RAMON
ALCANTAR ("Defendants"), by and through their respective attorneys, the OFFICE OF

1 THE CITY ATTORNEY OF OAKLAND, and BURNHAM BROWN hereby stipulate to the
2 following protective order:

3
4 1. DEFINITIONS

5 1.1 Party: any party to this action, including all of its officers, directors,
6 employees, consultants, retained experts, and outside counsel (and their support staff).

7 1.2 Disclosure or Discovery Material: all items or information, regardless of
8 the medium or manner generated, stored, or maintained (including, among other things;

9 1.3 "Confidential" Information or Items: information (regardless of how
10 generated, stored or maintained) or tangible things qualify for protection under standards
11 developed under F.R.Civ. P. 26(c). This material includes, but is not limited to:

12 a) Copies of certain personnel files for RAMON ALCANTAR for a
13 period covering the dates of his employment with the Oakland Police Department from
14 June 23, 2001 through June 23, 2006.

15 b) Copies of certain Internal Affairs files pertaining to complaints
16 to the Oakland Police Department regarding performance of duty and/or false arrest for
17 RAMON ALCANTAR for a period from June 23, 2001 through June 23, 2006.

18 c) Any Internal Affairs files pertaining to the incident which is
19 alleged in the Second Amended Complaint on file in this action.

20 1.4 "Highly Confidential-Attorneys' Eyes Only" Information or Items:
21 extremely sensitive "Confidential Information or Items" whose disclosure to another Party
22 or non-party would create a substantial risk of serious injury that could not be avoided by
23 less restrictive means.
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1 1.5 Receiving Party: a Party that receives Disclosure or Discovery
2 Material from a Producing Party.

3 1.6 Producing Party: a Party or non-party that produces Disclosure or
4 Discovery Material in this action.

5 1.7 Designating Party: a Party or non-party that designates information or
6 items that it produces in disclosures or in responses to discovery as “Confidential” or
7 “Highly Confidential-Attorneys Eyes Only.”
8

9 1.8 Protected Material: any Disclosure or Discovery Material that is
10 designated as “Confidential” or as “Highly Confidential-Attorneys’ Eyes Only.”

11 1.9 Outside Counsel: attorneys who are not employees of a Party but
12 who are retained to represent or advise a Party in this action.

13 1.10 House Counsel: attorneys who are employees of a Party.

14 1.11 Counsel (without qualifier): Outside Counsel and House Counsel (as
15 well as their support staffs).
16

17 1.12 Expert: a person with specialized knowledge or experience in a
18 matter pertinent to the litigation who has been retained by a Party or its counsel to serve
19 as an expert witness or as an consultant n this action and who is not a past or a current
20 employee of a Party and who, at the time of retention, is not anticipated to become an
21 employee of a Party. This definition includes a professional jury or trial consultant retained
22 in connection with this litigation.

23 1.13 Professional Vendors: person or entities that provide litigation support
24 services (e.g., photocopying; videotaping; translating; preparing exhibits or
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1 demonstrations; organizing, storing, retrieving data in any form or medium; etc.) and their
2 employees and subcontractors.

3 2. SCOPE

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

10 3. DURATION

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

14 4. DESIGNATING PROTECTED MATERIAL

15
16 4.1 F.R.Civ. P. 26(c). The information sought to be protected must be
17 properly qualified for protection under F.R.Civ. P. 26(c). Counsel shall not designate any
18 discovery material "CONFIDENTIAL" without first making a good faith determination that
19 protection is warranted.

20 4.2 Manner and Timing of Designations. Except as otherwise provided in
21 this Order (see, e.g., second paragraph of section 4.2(a), below), or as otherwise
22 stipulated or ordered, material that qualified for protection under the Order must be clearly
23 so designated before the material is disclosed or produced.

24 Designation in conformity with this Order requires:
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1 (a) for information in documentary form (apart from transcripts of depositions
2 or other pretrial or trial proceedings), that the Producing Party affix the legend
3 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL-ATTORNEYS’ EYES ONLY” at the top of
4 each page that contains protected material.

5 A Party or non-party that makes original documents or materials available for
6 inspection need not designate them for protection until after the inspecting Party has
7 indicated which material it would like copied and produced. During the inspection and
8 before the designation, all of the material made available for inspection shall be deemed
9 “HIGHLY CONFIDENTIAL—ATTORNEYS’ EYES ONLY.” After the inspecting Party has
10 identified the documents it wants copied and produced, the Producing Party must
11 determine which documents, or portions thereof, qualify for protection under this Order,
12 then, before producing the specified documents, the Producing Party must affix the
13 appropriate legend (“CONFIDENTIAL” or “HIGHLY CONFIDENTIAL-ATTORNEYS’ EYES
14 ONLY”) at the top of each page that contains Protected Material. If only a portion or
15 portions of the material on a page qualifies for protection, the Producing Party also must
16 clearly identify the protected portion(s) (e.g., by making appropriate markings in the
17 margins) and must specify, for each portion, the level of protection being asserted (either
18 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL—ATTORNEYS’ EYES ONLY”).

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

6
7 Transcript pages containing Protected Material must be separately bound by
8 the court reporter, who must affix to the top of each such page the legend
9 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL—ATTORNEYS’ EYES ONLY,” as
10 instructed by the Party or non-party offering or sponsoring the witness or presenting the
11 testimony.

12 (c) for information produced in some form other than documentary, and for
13 any other tangible items, that the Producing Party affix in a prominent place on the exterior
14 of the container or containers in which the information or item is stored the legend
15 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL—ATTORNEYS’ EYES ONLY.”

16 4.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
17 failure to designate qualified information or items as “Confidential” or “Highly Confidential—
18 Attorneys’ Eyes Only” does not, standing alone, waive the Designating Party’s right to
19 secure protection under this Order for such material. If material is appropriately designated
20 as “Confidential” or “Highly Confidential—Attorneys’ Eyes Only” after the material was
21 initially produced, the Receiving Party, on timely notification of the designation, must make
22 reasonable efforts to assure that the material is treated in accordance with the provisions of
23 the Order.

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1 5. CHALLENGING CONFIDENTIALITY DESIGNATIONS

2 5.1 Timing of Challenges. Unless a proper challenge to a Designating
3 Party's confidentiality designation is necessary to avoid foreseeable substantial unfairness,
4 unnecessary economic burden, or a later significant disruption or delay of the litigation, a
5 Party does not waive its right to challenge a confidentiality designation by electing not to
6 mount a challenge promptly after the original designation is disclosed.
7

8 5.2 Meet and Confer. A Party that elects to initiate a challenge to a
9 Designating Party's confidentiality designation must do so in good faith and must begin the
10 process by conferring directly (in voice to voice dialogue; other forms of communication are
11 not sufficient) with counsel for the Designating Party. In conferring, the challenging Party
12 must explain the basis for its belief that the confidentiality designation was not proper and
13 must give the Designating Party an opportunity to review the designated material, to
14 reconsider the circumstances, and, if no change in designation is offered, to explain the
15 basis for the chose designation. A challenging Party may proceed to the next stage of the
16 challenge process only if it has engaged in this meet and confer process first.

17 5.3 Judicial Intervention. A Party that elects to press a challenge to a
18 confidentiality designation after considering the justification offered by the Designating
19 Party may file and serve a motion under Civil Rule 7 (and in compliance with Civil Local
20 Rule 79-5, if applicable) that identifies the challenged material and sets forth in detail the
21 basis for the challenge. Each such motion must be accompanied by a competent
22 declaration that affirms that the movant has complied with the meet and confer
23 requirements imposed in the preceding paragraph and that sets forth with specificity the
24 justification for the confidentiality designation that was given by the Designating Party in the
25 meet and confer dialogue.
26

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

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6 6. ACCESS TO AND USE OF PROTECTED MATERIAL

7 6.1 Basic Principles. A Receiving Party may use Protected Material that is
8 disclosed or produced by another Party or by a non-party in connection with this case only
9 for prosecuting, defending, or attempting to settle this litigation. Such Protected material
10 may be disclosed only to the categories of persons and under the conditions described in
11 this Order. When the litigation has terminated, a Receiving Party must comply with the
12 provisions of section 10, below (FINAL DISPOSITION).

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

16 6.2 Disclosure of "CONFIDENTIAL: Information or Items. Unless
17 otherwise ordered by the court or permitted in writing by the Designating Party, a Receiving
18 Party may disclose any information or item designated CONFIDENTIAL only to:

19 (a) employees of the Receiving Party to whom disclosure is reasonably
20 necessary for this litigation and who have signed the "Agreement to Be Bound by
21 Protective Order" (Exhibit A);

22 (b) experts (as defined in this Order) of the Receiving Party to whom
23 disclosure is reasonably necessary for this litigation and who have signed the "Agreement
24 to Be Bound by Protective Order" (Exhibit A);

25 (c) the Court and its personnel;
26

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

4 (e) during their deposition, witnesses in the action to whom disclosure is
5 reasonably necessary and who have signed the "Agreement to Be Bound by Protective
6 Order" (Exhibit A). Pages of transcribed deposition testimony or exhibits to depositions that
7 reveal Protected Material must be separately bound by the court reporter and may not be
8 disclosed to anyone except as permitted under this Stipulated Protective Order.

9 (f) the author the document or the original source of the information.

10 6.3 Disclosure of "HIGHLY CONFIDENTIAL—ATTORNEYS' EYES
11 ONLY" Information or Items. Unless otherwise ordered by the court or permitted in writing
12 by the Designating Party, Receiving Party may disclose any information or item designated
13 "HIGHLY CONFIDENTIAL—ATTORNEYS' EYES ONLY" only to:

14 (a) Experts (as defined in this Order) (1) to whom disclosure is
15 reasonably necessary for this litigation, who have signed the "Agreement to Be Bound by
16 Protective Order" (Exhibit A);

17 (b) the Court and it's personnel;

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

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

1 7. PROTECTED MATERIAL SUBPOENAED OR ORDERED
2 PRODUCED IN OTHER LITIGATION

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

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

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

22 8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

23
24 If a Receiving Party learns that, by inadvertence or otherwise, it has
25 disclosed Protected Material to any person or in any circumstance not authorized under
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1 this Stipulated Protective Order, the Receiving Party must immediately (a) notify in writing
2 the Designating Party of the unauthorized disclosures, (b) use its best efforts to retrieve all
3 copies of the Protected Material, (c) inform the person or persons to whom unauthorized
4 disclosures were made of all of the terms of this Order, and (d) request such person or
5 persons to execute the "Acknowledgment and Agreement to Be Bound" that is attached
6 hereto as Exhibit A.
7

8 9. FILING PROTECTED MATERIAL. Without written permission from the
9 Designating Party or a court order secured after appropriate notice to all interested
10 persons, a Party may not in the public record in this action any Protected material. A
11 Party that seeks to file under seal any Protected Material must comply with Civil Local
12 Rule 79-5. In addition to placing the documents in a sealed envelope with instructions that
13 the envelope is not to be opened absent further order of the court, the envelope should be
14 labeled to identify title of the case, the case number, and the title of the document.

15 10. FINAL DISPOSITION. Unless otherwise ordered or agreed in writing by the
16 Producing Party, within sixty days after the final termination of this action, each Receiving
17 Party must return all Protected Material to the Producing Party, as used in this subdivision,
18 "all Protected Material" includes all copies, abstracts compilations, summaries or any other
19 form of reproducing or capturing any of the Protected Material. With permission in writing
20 from the Designating Party, the Receiving Party may destroy some or all of the Protected
21 Material instead of returning it. Whether the Protected Material is returned or destroyed,
22 the Receiving Party must submit a written certification to the Producing Party (and, if not
23 the same person or entity, to the Designating Party) by the sixty day deadline that
24 identifies (by category, where appropriate) all the Protected Material that was returned or
25 destroyed and that affirms that the Receiving Party has not retained any copies, abstracts,
26 compilations, summaries or other forms of reproducing or capturing any of the Protected

1 Material. Notwithstanding this provision, Counsel are entitled to retain an archival copy of
2 all pleadings, motion papers, transcripts, legal memoranda, correspondence or attorney
3 work product, even if such materials contain Protected Material. Any such archival copies
4 that contain or constitute Protected Material remain subject to this Protective Order as set
5 forth in Section 4 (DURATION), above.

6
7 11. MISCELLANEOUS

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

10 12. JURISDICTION. Any matter covered by this Stipulation and Order shall be
11 referred to and/or overseen by a United States Magistrate Judge for 24 months after the
12 final termination of this action.

13 **THE PARTIES HEREBY STIPULATE TO THE TERMS OF THE PROTECTIVE ORDER**
14 **AS SET FORTH ABOVE.**

15 DATED: February 3, 2010

LAW OFFICES OF JOHN L. BURRIS

16 By: //s//BENJAMIN NISENBAUM
17 BENJAMIN NISENBAUM
18 Attorneys for Plaintiff
19 Lorenzo Hall

20 DATED: February 3, 2010

OFFICE OF THE CITY ATTORNEY

21
22 By: //s// ARLENE M. ROSEN
23 ARLENE M. ROSEN
24 Attorneys for Defendant
25 City of Oakland
26

1 DATED: February 3, 2010

BURNHAM BROWN

2

3

By: //s// JOHN J. VERBER

4

JOHN J. VERBER
Attorneys for Defendant
Ramon Alcantar

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PURSUANT TO STIPULATION, IT IS SO ORDERED.

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DATED: February 8, 2010

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~~SATINER A. B. ARMSTRONG~~
United States District Judge

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MAXINE M. CHESNEY

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1 EXHIBIT A

2 ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

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4 I, _____ [print or type full name], of
5 _____ [print or type full address], declare under penalty
6 of perjury that I have read in its entirety and understand the Stipulated Protective Order
7 that was issued by the United States Court for the Northern District of California on
8 _____ [date] in the case of Lorenzo Hall v. City of Oakland, et al.
9 Case No. C-09-01047 MMC. I agree to comply with and be bound by all the terms of this
10 Stipulated Protective Order and I understand and acknowledge that failure to so comply
11 could expose me to sanctions and punishment in the nature of contempt. I solemnly
12 promise that I will not disclose in any manner any information or item that is subject to this
13 Stipulated Protective Order to any person or entity except in strict compliance with the
14 provisions of this Order.
15

16 I further agree to submit to the jurisdiction of the United States District for the
17 Northern District of California for the purpose of enforcing the terms of this Stipulated
18 Protective Order, even if such enforcement proceedings occur after termination of this
19 action.
20

21 I hereby appoint _____ [print or type full
22 name] of _____ [print or type full address
23 and telephone number] as my California agent for service of process in connection with
24 this action or any proceedings related to enforcement of this Stipulated Protective Order.
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1 Date: _____
2 City and State where sworn and signed: _____
3 Printed name: _____
4 [printed name]
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6 Signature: _____
7 [signature]
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