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6 Attorneys for Defendants
 City of Antioch, Antioch Police Department, James Hyde,
 7 Officer Adrian Gonzalez, Officer Aureliano Mendes, Officer
 James Stenger, Officer Rick Smith

8 UNITED STATES DISTRICT COURT
 9 NORTHERN DISTRICT OF CALIFORNIA

10
 11 JESSE JOHNSON and TIM HORTON,

Case No. C09-03153 JSW

12 Plaintiffs,

**STIPULATED PROTECTIVE ORDER
 REGARDING PRODUCTION OF
 CONFIDENTIAL RECORDS**

13 vs.

14 CITY OF ANTIOCH, ANTIOCH POLICE
 15 DEPARTMENT, JAMES HYDE, Chief of
 Police, Antioch Police Department, in his
 16 individual and official capacities;
 OFFICER ADRIAN GONZALEZ (#4336),
 17 OFFICER AURELIANO MENDES (DOE
 1) (#4111), OFFICER JAMES STENGER
 18 (DOE 2) (#3604), OFFICER RICK SMITH
 (DOE 3) (#2310), DOES 4 THROUGH 5,
 19 in their individual and official capacities,

20 Defendant.

21
 22 The parties, by and through their respective attorneys of record, hereby stipulated to the
 23 following protective order being issued in this matter:

24 1. PURPOSES AND LIMITATIONS

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

28 Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated

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

8 2. DEFINITIONS

9 2.1 Party: any party to this action, including all of its officers, directors,
10 employees, consultants, retained experts, and outside counsel (and their support staff).

11 2.2 Disclosure or Discovery Material: all items or information, regardless of
12 the medium or manner generated, stored or maintained (including, among other things, testimony,
13 transcripts, or tangible things) that are produced or generated in disclosures or responses to
14 discovery by any Party in this matter.

15 2.3 “Confidential” Information or Items: information (regardless of how
16 generated, stored or maintained) or tangible things that qualify for protection under standards
17 developed under F.R.Civ.P. 26(c). This material includes, but is not limited to, officer personnel
18 records, Plaintiff Johnson’s medical records obtained from Lifelong Medical Care pursuant to the
19 records subpoena served by Defendant City of Antioch, and other similar confidential records
20 designated as such, including the existence of such records and/or information. The material
21 obtained pursuant to the subpoena served on Lifelong Medical Care shall be treated as
22 confidential regardless of whether such documents are individually and separately designated as
23 “Confidential” by the producing party.

24 2.4 “Highly Confidential – Attorneys’ Eyes Only” Information or Items:
25 extremely sensitive “Confidential Information or Items” whose disclosure to another Party or
26 non-party would create a substantial risk of serious injury that could not be avoided by less
27 restrictive means. This material includes but is not limited to officer personnel records, juvenile
28 records, information on witnesses identified in each parties initial disclosures and other highly

1 confidential records designated as such, including the existence of such records and/or
2 information.

3 2.5 Receiving Party: a Party that receives Disclosure or Discovery Material
4 from a Producing Party.

5 2.6 Producing Party: a Party or non-party that produces Disclosure or
6 Discovery Material in this action.

7 2.7 Designating Party: a Party or non-party that designates information or
8 items that it produces in disclosures or in responses to discovery as “Confidential” or “Highly
9 Confidential – Attorneys’ Eyes Only.”

10 2.8 Protected Material: any Disclosure or Discovery Material that is
11 designated as “Confidential” or as “Highly Confidential – Attorneys’ Eyes Only.”

12 2.9 Outside Counsel: attorneys who are not employees of a Party but who are
13 retained to represent or advise a Party in this action.

14 2.10 House Counsel: attorneys who are employees of a Party.

15 2.11 Counsel (without qualifier): Outside Counsel and House Counsel (as well
16 as their support staffs).

17 2.12 Expert: a person with specialized knowledge or experience in a matter
18 pertinent to the litigation who has been retained by a Party or its counsel to serve as an expert
19 witness or as a consultant in this action and who is not a past or a current employee of a Party or
20 of a competitor of a Party’s and who, at the time of retention, is not anticipated to become an
21 employee of a Party or a competitor of a Party’s.

22 2.13 Professional Vendors: persons or entities that provide litigation support
23 services (e.g., photocopying; videotaping; translating; preparing exhibits or demonstrations;
24 organizing, storing, retrieving data in any form or medium; etc.) and their employees and
25 subcontractors.

26 3. SCOPE

27 The protections conferred by this Stipulation and Order cover not only Protected Material
28 (as defined above), but also any information copied or extracted therefrom, as well as all copies,

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1 excerpts, summaries, or compilations thereof, plus testimony, conversations, or presentations by
2 parties or counsel to or in court or in other settings that might reveal Protected Material.

3 4. DURATION

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

7 5. DESIGNATING PROTECTED MATERIAL

8 5.1 Exercise of Restraint and Care in Designating Material for Protection.

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

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

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

23 5.2 Manner and Timing of Designations. Except as otherwise provided in this
24 Order (see, e.g., second paragraph of section 5.2(a), below), or as otherwise stipulated or ordered,
25 material that qualifies for protection under this Order must be clearly so designated before the
26 material is disclosed or produced.

27 Designation in conformity with this Order requires:

- 28 (a) for information in documentary form (apart from transcripts of

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1 depositions or other pretrial or trial proceedings), that the Producing Party affix the legend
2 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” at the top
3 of each page that contains protected materials except as otherwise provided in Section 2.3 above.
4 If only a portion or portions of the material on a page qualifies for protection, the Producing Party
5 also must clearly identify the protected portion(s) (e.g., by making appropriate markings in the
6 margins) and must specify, for each portion, the level of protection being asserted (either
7 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”).

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

21 (b) for testimony given in deposition or in other pretrial or trial
22 proceedings, that the Party or non-party offering or sponsoring the testimony identify on the
23 record, before the close of the deposition, hearing, or other proceeding, all protected testimony,
24 and further specify any portions of the testimony that qualify as “HIGHLY CONFIDENTIAL –
25 ATTORNEYS’ EYES ONLY.” When it is impractical to identify separately each portion of
26 testimony that is entitled to protection, and when it appears that substantial portions of the
27 testimony may qualify for protection, the Party or non-party that sponsors, offers, or gives the
28 testimony may invoke on the record (before the deposition or proceeding is concluded) a right to

1 have up to twenty (20) days to identify the specific portions of the testimony as to which
 2 protection is sought and to specify the level of protection being asserted (“CONFIDENTIAL” or
 3 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”). Only those portions of the
 4 testimony that are appropriately designated for protection within the 20 days shall be covered by
 5 the provisions of this Stipulated Protective Order.

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

10 (c) for information produced in some form other than documentary,
 11 and for any other tangible items, that the Producing Party affix in a prominent place on the
 12 exterior of the container or containers in which the information or item is stored the legend
 13 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” If only
 14 portions of the information or item warrant protection, the Producing Party, to the extent
 15 practicable, shall identify the protected portions, specifying whether they qualify as
 16 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

17 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
 18 failure to designate qualified information or items as “CONFIDENTIAL” or “HIGHLY
 19 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” does not, standing alone, waive the
 20 Designating Party’s right to secure protection under this Order for such material. If material is
 21 appropriately designated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –
 22 ATTORNEYS’ EYES ONLY” after the material was initially produced, the Receiving Party, on
 23 timely notification of the designation, must make reasonable efforts to assure that the material is
 24 treated in accordance with this Order.

25 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

26 6.1 Timing of Challenges. Unless a prompt challenge to a Designating Party’s
 27 confidentiality designation is necessary to avoid foreseeable substantial unfairness, unnecessary
 28 economic burdens, or a later significant disruption or delay of the litigation, a Party does not

1 waive its right to challenge a confidentiality designation by electing not to mount a challenge
2 promptly after the original designation is disclosed.

3 6.2 Meet and Confer. A Party that elects to initiate a challenge to a
4 Designating Party's confidentiality designation must do so in good faith and must begin the
5 process by conferring directly (in voice-to-voice dialogue; other forms of communication are not
6 sufficient) with counsel for the Designating Party. In conferring, the challenging Party must
7 explain the basis for its belief that the confidentiality designation was not proper and must give
8 the Designating Party an opportunity to review the designated material, to reconsider the
9 circumstances, and, if no change in designation is offered, to explain the basis for the chosen
10 designation. A challenging Party may proceed to the next stage of the challenge process only if it
11 has engaged in this meet and confer process first.

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

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

24 7. ACCESS TO AND USE OF PROTECTED MATERIAL

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

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

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

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
10 well as employees of said Counsel to whom it is reasonably necessary to disclose the information
11 for this litigation and who have signed the "Agreement to Be Bound by Protective Order" that is
12 attached hereto as Exhibit A;

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

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

19 (d) the Court and its personnel;

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

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

28 (g) the author of the document or the original source of the

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1 information.

2 7.3 Disclosure of HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
3 ONLY” Information or Items. Unless otherwise ordered by the court or permitted in writing by
4 the Designating Party, a Receiving Party may disclose any information or item designated
5 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” only to:

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

10 (b) House Counsel of a Receiving Party (1) to whom disclosure is
11 reasonably necessary for this litigation, and (2) who has signed the “Agreement to Be Bound by
12 Protective Order” (Exhibit A);

13 (c) Experts (as defined in this Order) (1) to whom disclosure is
14 reasonably necessary for this litigation, and (2) who have signed the “Agreement to Be Bound by
15 Protective Order” (Exhibit A);

16 (d) the Court and its personnel;

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

20 (f) during their depositions, witnesses in the action to whom disclosure
21 is reasonably necessary and who have signed the “Agreement to be Bound by Protective Order”.

22 Pages of transcribed deposition testimony or exhibits to depositions that reveal Protected Material
23 must be separately bound by the court reporter and may not be disclosed to anyone except as
24 permitted under this Stipulated Protective Order. In the event the parties cannot agree upon
25 whether disclosure is “reasonably necessary” said parties shall meet and confer on the matter and
26 if there is no resolution may seek relief from the Court.

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

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

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

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

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 9. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

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

28 ///

1 10. FILING PROTECTED MATERIAL

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

6 11. FINAL DISPOSITION

7 Unless otherwise ordered or agreed in writing by the Producing Party, within sixty (60)
 8 days after the final termination of this action, defined as the dismissal or entry of judgment by the
 9 district court, or if an appeal is filed, the disposition of the appeal, each Receiving Party must
 10 return all Protected Material to the Producing Party. As used in this subdivision, "all Protected
 11 Material" includes all copies, abstracts, compilations, summaries or any other form of
 12 reproducing or capturing any of the Protected Material. With permission in writing from the
 13 Designating Party, the Receiving Party may destroy some or all of the Protected Material instead
 14 of returning it. Whether the Protected Material is returned or destroyed, the Receiving Party must
 15 submit a written certification to the Producing Party (and, if not the same person or entity, to the
 16 Designating Party) by the sixty day deadline that identifies (by category, where appropriate) all
 17 the Protected Material that was returned or destroyed and that affirms that the Receiving Party has
 18 not retained any copies, abstracts, compilations, summaries or other forms of reproducing or
 19 capturing any of the Protected material. Notwithstanding this provision, Counsel are entitled to
 20 retain an archival copy of all pleadings, motion papers, transcripts, legal memoranda,
 21 correspondence or attorney work product, even if such materials contain Protected Material. Any
 22 such archival copies that contain or constitute Protected Material remain subject to this Protective
 23 Order as set forth in Section 4 (DURATION), above.

24 12. MISCELLANEOUS

25 12.1 Right to Further Relief. Nothing in this Order abridges the right of any
 26 person to seek its modification by the Court in the future.

27 12.2 Right to Assert Other Objections. By stipulating to the entry of this
 28 Protective Order no Party waives any right it otherwise would have to object to disclosing or

1 producing any information or item on any ground not addressed in this Stipulated Protective
2 Order. Similarly, no Party waives any right to object on any ground to use in evidence any of the
3 material covered by this Protective Order.

4 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

5 Dated: February 22, 2010

6 MCNAMARA, DODGE, NEY, BEATTY, SLATTERY,
7 PFALZER, BORGES & BROTHERS LLP

8 By: _____

9 James V. Fitzgerald, III
10 Noah G. Blechman
11 Attorneys for Defendants
12 City of Antioch, Antioch Police Department, James
13 Hyde, Officer Adrian Gonzalez, Officer Aureliano
14 Mendes, Officer James Stenger, Officer Rick Smith

15 Dated: February 18, 2010

16 LAW OFFICE OF JIVAKA CANDAPPA

17 /s/ Jivaka Candappa

18 By: _____

19 Jivaka Candappa, Esq.
20 Attorney for Plaintiffs Jesse Johnson and Tim Horton

21 **PURSUANT TO STIPULATION, IT IS SO ORDERED.**

22 DATED: February 23, 2010

23 
24 _____
25 Hon. Jeffrey S. White
26 United States District Court Judge

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EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name]
of _____

_____ [print or type full address], declare under penalty of perjury that I have read in its entirety and understood the Stipulated Protective Order that was issued by the United States District Court for the Northern District of California on _____ [date] in the case of *Jesse Johnson/Tim Horton v. City of Antioch et al.*, Case No. 09-03153 JSW. I agree to comply with and to be bound by all the terms of this Stipulated Protective Order and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any information or item that is subject to this Stipulated Protective Order to any person or entity except in strict compliance with the provisions of this Order.

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

I hereby appoint _____ [print or type full name]
of _____

_____ [print or type full address and telephone number] as my California agent for service of process in connection with this action or any proceedings related to enforcement of this Stipulated Protective Order.

Date: _____

City and State where sworn and signed:

Printed name: _____

Signature: _____

McNAMARA, DODGE, NEY, BEATTY, SLATTERY, PFALZER, BORGES & BROTHERS LLP
ATTORNEYS AT LAW
P.O. BOX 5288, WALNUT CREEK, CA 94596
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