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 CITY AND COUNTY OF SAN FRANCISCO  
 8 and OFFICER RONALD M. CHOY

9 UNITED STATES DISTRICT COURT  
 10 NORTHERN DISTRICT OF CALIFORNIA

11 LEOPOLDO PAZ-HERRERA,  
 12 Plaintiff,  
 13 vs.  
 14 CITY AND COUNTY OF SAN  
 15 FRANCISCO; RONALD M. CHOY and  
 16 DOES 1-30,  
 17 Defendants.

Case No. C09-4795 MMC

**STIPULATED ~~PROPOSED~~ PROTECTIVE ORDER**

Trial Date: January 31, 2011

18  
 19 Pursuant to Federal Rule of Civil Procedure 26(c) the parties have met and conferred and agree  
 20 that the discovery of CONFIDENTIAL INFORMATION in this matter be made pursuant to the terms  
 21 of this PROTECTIVE ORDER.  
 22

23  
 24 GOOD CAUSE APPEARING, the parties stipulate, though their attorneys of record, to the  
 25 entry of an order as follows:

- 26 1. CONFIDENTIAL INFORMATION, within the meaning of this PROTECTIVE  
 27 ORDER, shall include all documents containing peace officer personnel records, official information  
 28 and any other such documents that defendants in good faith have determined to be confidential.

1 Defendants shall attempt to stamp "Confidential" on all such documents prior to production. In the  
2 event that any CONFIDENTIAL INFORMATION is inadvertently not stamped as "Confidential" by  
3 defendants, the party who notices this oversight shall nonetheless treat such documents as  
4 CONFIDENTIAL INFORMATION. Such party shall also immediately make the labeling oversight  
5 known to the other parties and the documents shall immediately be stamped as "Confidential" and  
6 treated as such, as per this order.

7 2. All documents, including, but not limited to, audiotapes, videotapes, photographs,  
8 transcripts, etc., related to the criminal investigation incidental to the event forming the basis of this  
9 lawsuit shall be also be deemed CONFIDENTIAL INFORMATION, within the meaning of this  
10 stipulation.

11 3. Plaintiff may challenge defendants' designation of a particular document as  
12 CONFIDENTIAL INFORMATION by filing an appropriate motion, under seal, with the Court. The  
13 parties agree that the prevailing party in a motion to remove the confidential designation shall waive  
14 any entitlement to monetary sanctions, including attorney's fees.

15 4. Unless disclosure is ordered by the Court, attorneys for defendants shall have the sole  
16 authority to determine that documents subject to the PROTECTIVE ORDER are no longer considered  
17 CONFIDENTIAL INFORMATION and will advise counsel for plaintiff in writing if this  
18 determination is made.

19 5. Any CONFIDENTIAL INFORMATION that is disclosed or produced by any party or  
20 non party in connection with this case may be used only for prosecuting, defending, or attempting to  
21 settle this litigation. CONFIDENTIAL INFORMATION may be disclosed only to the categories of  
22 persons and under the conditions described in this Order. When the litigation has been terminated, all  
23 parties or non parties that have received CONFIDENTIAL INFORMATION must comply with the  
24 provisions of section 12, below.

25 All parties or non parties that have received CONFIDENTIAL INFORMATION must  
26 store and maintain it in a secure manner that ensures that access is limited to the persons authorized  
27 under this Order.

1           6.     Plaintiff's Counsel may exhibit, discuss, and/or disclose CONFIDENTIAL  
2 INFORMATION only to the following categories of person and no other unless authorized by order of  
3 the Court:

- 4           a.     Plaintiff's Counsel and Plaintiff, as specified in Section 7, below;
- 5           b.     Experts, investigators or consultants retained by Plaintiff's Counsel to assist in  
6 the evaluation, preparation, or trial of this case; however, before any expert, investigator, or consultant  
7 is permitted to review the CONFIDENTIAL INFORMATION, such individual must agree to comply  
8 with the terms of this PROTECTIVE ORDER by executing the document attached as Exhibit A.  
9 Plaintiff's counsel shall file and serve that document upon its execution; however, Plaintiff's counsel  
10 shall not be required to file any Agreement to Comply any earlier than the date that Expert Disclosures  
11 are required to be made. Experts, investigators, and consultants shall not have any power to authorize  
12 further disclosure of CONFIDENTIAL INFORMATION to any other person.

13           7.     Counsel for Plaintiff may not provide originals or copies of the CONFIDENTIAL  
14 INFORMATION to any plaintiff absent the written agreement of counsel for the City or a court order.  
15 However, plaintiff's counsel may show plaintiff CONFIDENTIAL INFORMATION and discuss such  
16 CONFIDENTIAL INFORMATION with plaintiff.

17           8.     Unless otherwise stipulated to by defendants, any use of CONFIDENTIAL  
18 INFORMATION or comment on the substance of any CONFIDENTIAL INFORMATION in any  
19 papers or pleadings filed with the Court, shall be filed under seal pursuant to the Court's rules and  
20 procedures (see Northern District of California Civil Local Rule 79-5). The sealed envelopes shall be  
21 endorsed with the caption of this litigation, and an indication of the nature of the contents of the  
22 envelopes and a statement substantially in the following form:

23                    "This envelope contains documents that are filed in this case pursuant to a  
24                    Protective Order and are not to be opened nor the contents thereof to be  
25                    displayed or revealed except by further order of the Court or written consent of  
26                    the City and County of San Francisco."

27           9.     In the event any person desires to exhibit documents or disclose CONFIDENTIAL  
28 INFORMATION covered under this stipulation during trial or pretrial proceedings, such person shall  
meet and confer with counsel for defendants to reach an agreement, in accordance with the Court's

1 rules and procedures, on an appropriate method for disclosure, and if defendants do not agree to such  
2 disclosure, such CONFIDENTIAL INFORMATION shall not be disclosed unless authorized by order  
3 of the Court. Unless otherwise agreed, transcripts and exhibits that incorporate or reference  
4 CONFIDENTIAL INFORMATION covered under this stipulation shall be treated as  
5 CONFIDENTIAL INFORMATION that is subject to the provisions of this PROTECTIVE ORDER.  
6 The Court Reporter shall mark as "Confidential" any deposition or hearing transcript that contains any  
7 CONFIDENTIAL INFORMATION or any reference to CONFIDENTIAL INFORMATION.

8 10. If a party who has received CONFIDENTIAL INFORMATION learns that, by  
9 inadvertence or otherwise, it has disclosed CONFIDENTIAL INFORMATION to any person or in any  
10 circumstance not authorized under this PROTECTIVE ORDER, the party must immediately (a) notify  
11 the San Francisco City Attorney's Office in writing of the unauthorized disclosures, (b) use its best  
12 efforts to retrieve all copies of the CONFIDENTIAL INFORMATION, (c) inform the person or  
13 persons to whom unauthorized disclosures were made of all the terms of this Order, and (d) request  
14 such person or persons to execute the document that is attached hereto as Exhibit A.

15 11. Any inadvertent disclosure made in violation of this PROTECTIVE ORDER does not  
16 constitute a waiver of the terms of this PROTECTIVE ORDER, except by written agreement of the  
17 parties, or further order of this Court.

18 12. All documents covered by this PROTECTIVE ORDER and copies thereof (including  
19 those in the possession of experts, consultants, etc.) will be returned to the San Francisco City  
20 Attorney's Office at the termination of this litigation. On final disposition of this case, plaintiff's  
21 counsel shall within 30 days after the final disposition of this case, without request or further order of  
22 this Court, return all CONFIDENTIAL INFORMATION to the Deputy City Attorney of record in this  
23 matter. The provisions of this PROTECTIVE ORDER shall, without further order of the Court,  
24 continue to be binding after the conclusion of the action, and this Court will have jurisdiction to  
25 enforce the terms of this PROTECTIVE ORDER.


26 13. Should plaintiff's counsel or plaintiff unreasonably fail to comply with this  
27 PROTECTIVE ORDER, plaintiff's counsel and plaintiff shall be liable for all costs associated with  
28 enforcing this agreement, including but not limited to all attorney fees in amounts to be determined by

1 the Court. Plaintiff and plaintiff's counsel may also be subject to additional sanctions or remedial  
2 measures, such as contempt, evidentiary or terminating sanctions.

3 IT IS SO STIPULATED.

4  
5 Dated: May 3, 2010

6 DENNIS J. HERRERA  
7 City Attorney  
8 JOANNE HOEPER  
9 Chief Trial Deputy  
10 BLAKE P. LOEBS  
11 ANDREW M. GSCHWIND  
12 Deputy City Attorneys

13  
14 By:   
15 ANDREW M. GSCHWIND  
16 Attorneys for Defendants

17  
18 Dated: May 3, 2010

19 PAOLI & GEERHARTLLP

20  
21 By: \_\_\_\_\_ /s/\_\_\_\_\_  
22 CHARLES GEERHART  
23 Attorneys for Plaintiff  
24 \*Pursuant to GO 45, the electronic signatory has  
25 obtained approval from this signatory.

26  
27 **ORDER**

28 Based on the foregoing stipulation and good cause appearing, IT IS SO ORDERED. No document or  
portion thereof will be filed under seal, however, unless the designating party establishes, pursuant to Civil  
Local Rule 79-5, that the document or portion thereof is privileged, protectable as a trade secret, or  
otherwise entitled to protection under the law.

Dated: May 6, 2010 \_\_\_\_\_

  
HON. MAXINE M. CHESNEY  
UNITED STATES DISTRICT JUDGE