

McNAMARA, NEY, BEATTY, SLATTERY, BORGES & AMBACHER LLP
ATTORNEYS AT LAW
P.O. BOX 5288, WALNUT CREEK, CA 94596
TELEPHONE: (925) 939-5330

1 JAMES V. FITZGERALD, III (State Bar No. 55632)
NOAH G. BLECHMAN (State Bar No. 197167)
2 McNAMARA, NEY, BEATTY, SLATTERY,
BORGES & AMBACHER LLP
3 1211 Newell Avenue
Post Office Box 5288
4 Walnut Creek, CA 94596
Telephone: (925) 939-5330
5 Facsimile: (925) 939-0203
6 Attorneys for Defendant
CITY OF CLAYTON; DAN LAWRENCE CHIEF OF POLICE
7 OF THE CITY OF CLAYTON; CLAYTON POLICE OFFICER
R. ENEA
8

9 UNITED STATES DISTRICT COURT
10 NORTHERN DISTRICT OF CALIFORNIA

12 FRED DOYLE HARDEN,
13 Plaintiff,
14 vs.
15 CITY OF CLAYTON; DAN LAWRENCE,
CHIEF OF POLICE OF THE CITY OF
16 CLAYTON; CLAYTON POLICE
OFFICER R. ENEA; CLAYTON POLICE
17 SERGEANT CRAIN; CLAYTON POLICE
SERGEANTS DOES ONE THROUGH
18 TEN; CLAYTON POLICE OFFICERS
DOES ELEVEN THROUGH TWENTY;
19 TERRY ELM; STATE OF CALIFORNIA
DEPARTMENT OF JUSTICE
20 EMPLOYEES DOES TWENTY ONE
THROUGH THIRTY;,
21 Defendant.
22

Case No. C10-04155 MEJ

**STIPULATION AND ~~PROPOSED~~
ORDER TO RELEASE RECORDS AND
INFORMATION SEALED PURSUANT TO
CALIFORNIA PENAL CODE SECTION
851.8**

Judge: Hon. Maria Elena James

23 The parties, by and through their respective attorneys of record, hereby stipulate as
24 follows:

25 WHEREAS Plaintiff Fred Doyle Harden, ("Plaintiff") was arrested by an officer(s) of the
26 City of Clayton on or about September 21, 2008.

27 WHEREAS pursuant to California Penal Code Section 851.8(k), the parties hereby agree
28 and stipulate to the release of any and all records and information related to the arrest of Plaintiff

1 on September 21, 2008, and his subsequent prosecution. The records and information sought
2 were subsequently sealed pursuant to California Penal Code Section 851.8.

3 WHEREAS California Penal Code Section 851.8(k) states “No records shall be destroyed
4 pursuant to subdivision (a), (b), (c), (d), or (e) if the arrestee or a codefendant has filed a civil
5 action against the peace officers or law enforcement jurisdiction which made the arrest or
6 instituted the prosecution and if the agency which is the custodian of the records has received a
7 certified copy of the complaint in the civil action, until the civil action has been resolved. Any
8 records sealed pursuant to this section by the court in the civil actions, upon a showing of good
9 cause, may be opened and submitted into evidence. The records shall be confidential and shall be
10 available for inspection only by the court, jury, parties, counsel for the parties, and any other
11 person authorized by the court. Immediately following the final resolution of the civil action,
12 records subject to subdivision (a), (b), (c), (d), or (e) shall be sealed and destroyed pursuant to
13 subdivision (a), (b), (c), (d), or (e).” Cal. Pen. Code § 851.8(k).

14 WHEREAS the records and information are necessary for the prosecution, defense and
15 evaluation of this pending civil lawsuit.

16 WHEREAS the parties intend this order to be applicable to the Clayton Police
17 Department, the Contra Costa County District Attorney’s office, the Department of Justice and
18 any other police or other local, state or federal agency that may have records or information
19 related to the above referenced arrest and prosecution.

20 WHEREAS the parties further stipulate that this order extend to any and all relevant
21 documentation, reports or information arising from conduct related to the above arrest and
22 prosecution, including but not limited to any reports related to Plaintiff’s 1997 arrest and
23 prosecution, if any such records are so sealed or otherwise unobtainable without a court order.

24 WHEREAS the parties further stipulate that any and all information and/or documentation
25 obtained pursuant to this order will be treated as CONFIDENTIAL pursuant to Cal. Pen. Code §
26 851.8(k) and are to be disclosed only to counsel of record for the parties and to any other persons,
27 including but not limited to lay or expert witnesses, for whom review of the records is necessary
28 to prepare for trial or other aspects of this litigation.

1 WHEREAS the parties further stipulate that pursuant to Cal. Pen. Code § 851.8(k),
2 immediately following the final resolution of the civil action, including any and all appeals
3 related to this civil case, records subject to subdivision (a), (b), (c), (d), or (e) shall be returned to
4 counsel for the Plaintiff in this matter so that Plaintiffs' counsel can ensure that the records are
5 sealed and destroyed pursuant to subdivision (a), (b), (c), (d), or (e) of Cal. Pen. Code § 851.8(k).

6
7 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

8 Dated: June 23, 2011

MCNAMARA, NEY, BEATTY, SLATTERY,
BORGES & AMBACHER LLP

9
10 By: /s/ Noah G. Blechman

James V. Fitzgerald, III
Noah G. Blechman
Attorneys for Defendant
CITY OF CLAYTON; DAN LAWRENCE CHIEF OF
POLICE OF THE CITY OF CLAYTON; CLAYTON
POLICE OFFICER R. ENEA

11
12
13
14 Dated: June ____, 2011

LAW OFFICE OF J. MICHAEL BROWN

15 By: _____

J. Michael Brown
Attorney for Plaintiff
FRED DOYLE HARDEN

16
17
18 Dated: June 23, 2011

CALIFORNIA ATTORNEY GENERAL'S OFFICE

19 By: /s/ Wil Fong

Wil Fong
Attorney for Defendant
TERRY ELM

20
21
22 **ORDER**

23
24 **PURSUANT TO STIPULATION, IT IS SO ORDERED.**

25 **As such, any and all records and information related to the arrest of Fred Doyle**
26 **Harden, ("Plaintiff") on September 21, 2008, and his subsequent prosecution are hereafter**
27 **ordered unsealed pursuant to California Penal Code Section 851.8(k) and ordered disclosed**
28 **to the attorneys of record in this matter, solely for the purposes of this pending civil matter**

McNAMARA, NEY, BEATTY, SLATTERY, BORGES & AMBACHER LLP
ATTORNEYS AT LAW
P.O. BOX 5288, WALNUT CREEK, CA 94596
TELEPHONE: (925) 939-5330

1 WHEREAS the parties further stipulate that pursuant to Cal. Pen. Code § 851.8(k).
2 immediately following the final resolution of the civil action, including any and all appeals
3 related to this civil case, records subject to subdivision (a), (b), (c), (d), or (e) shall be returned to
4 counsel for the Plaintiff in this matter so that Plaintiffs' counsel can ensure that the records are
5 sealed and destroyed pursuant to subdivision (a), (b), (c), (d), or (e) of Cal. Pen. Code § 851.8(k).

6
7 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

8 Dated: June ____, 2011 McNAMARA, NEY, BEATTY, SLATTERY,
9 BORGES & AMBACHER LLP
10 By: _____
11 James V. Fitzgerald, III
12 Noah G. Blechman
13 Attorneys for Defendant
14 CITY OF CLAYTON; DAN LAWRENCE CHIEF OF
15 POLICE OF THE CITY OF CLAYTON; CLAYTON
16 POLICE OFFICER R. ENEA

14 Dated: June 22, 2011 LAW OFFICE OF J. MICHAEL BROWN
15 By: _____
16 J. Michael Brown
17 Attorney for Plaintiff
18 FRED DOYLE HARDEN

18 Dated: June ____, 2011 CALIFORNIA ATTORNEY GENERAL'S OFFICE
19 By: _____
20 Wil Fong
21 Attorney for Defendant
22 TERRY ELM

23 **ORDER**

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

25 **As such, any and all records and information related to the arrest of Fred Doyle**
26 **Harden, ("Plaintiff") on September 21, 2008, and his subsequent prosecution are hereafter**
27 **ordered unsealed pursuant to California Penal Code Section 851.8(k) and ordered disclosed**
28 **to the attorneys of record in this matter, solely for the purposes of this pending civil matter**

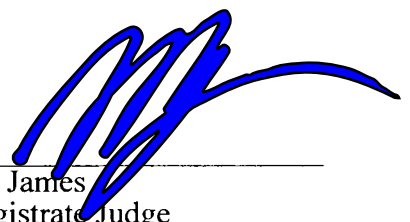
McNAMARA, NEY, BEATTY, SLATTERY, BORGES & AMBACHER LLP
ATTORNEYS AT LAW
P.O. BOX 5288, WALNUT CREEK, CA 94596
TELEPHONE: (925) 939-5330

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

regarding the circumstances surrounding that 2008 arrest, and are deemed "Confidential" per the above listed parameters agreed to by the parties and per California Penal Code Section 851.8(k). This order is also applicable to any records sealed or unobtainable other than by Court order related to the facts and circumstances surrounding Plaintiff's 1997 arrest and prosecution, if necessary.

IT IS SO ORDERED.

Dated: June 23, 2011

By: 
Hon. Maria Elena James
United States Magistrate Judge