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7 Attorney for Plaintiffs

10 **UNITED STATES DISTRICT COURT**

11 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

United States District Court  
Northern District of California

13 C.E.W., a minor, individually and as  
 14 successor-in-interest for Decedent  
 15 MOHAMMED SHAH, by and through his  
 16 guardian ad litem VALERIE WEAVER; and  
 17 JANIFER SHAH, individually and as the  
 18 successor in interest to deceased plaintiff  
 19 MOHAMMED SHAH

18 Plaintiffs,

19 v.

20 CITY OF HAYWARD, a municipal  
 21 corporation; ALLEN NEULA, individually;  
 22 and DOES 1-49, inclusive; individually and in  
 23 their official capacities as Police Officers for  
 24 the CITY OF HAYWARD,

24 Defendants.

CASE NO.: CV 13-4516 (LB)

**[PROPOSED] STIPULATED PROTECTIVE ORDER**

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1. PURPOSES AND LIMITATIONS

Disclosure and discovery activity in this action are likely to involve production of confidential, proprietary, or private information for which special protection from public disclosure and from use for any purpose other than prosecuting this litigation may be warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated Protective Order. The parties acknowledge that this Order does not confer blanket protections on all disclosures or responses to discovery and that the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles. The parties further acknowledge, as set forth in Section 12.3, below, that this Stipulated Protective Order does not entitle them to file confidential information under seal; Civil Local Rule 79-5 sets forth the procedures that must be followed and the standards that will be applied when a party seeks permission from the court to file material under seal.

2. DEFINITIONS

2.1 Challenging Party: a Party or Non-Party that challenges the designation of information or items under this Order.

2.2 “CONFIDENTIAL” Information or Items: information (regardless of how it is generated, stored or maintained) or tangible things that qualify for protection under Federal Rule of Civil Procedure 26(c).

2.3 Counsel (without qualifier): Outside Counsel of Record and House Counsel (as well as their support staff).

2.4 Designating Party: a Party or Non-Party that designates information or items that it produces in disclosures or in responses to discovery as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” information in this matter.

2.5 Disclosure or Discovery Material: all items or information, regardless of the medium or manner in which it is generated, stored, or maintained (including, among other things, testimony, transcripts, and tangible things), that are produced or generated in disclosures or responses to discovery in this matter.

1           2.6     Expert: a person with specialized knowledge or experience in a matter pertinent to  
2 the litigation who has been retained by a Party or its counsel to serve as an expert witness or as a  
3 consultant in this action.

4           2.7     “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” Information or Items:  
5 extremely sensitive “Confidential Information or Items,” disclosure of which to another Party or Non-Party  
6 would create a substantial risk of serious harm that could not be avoided by less restrictive means.

7           2.8     House Counsel: attorneys who are employees of a party to this action. House  
8 Counsel does not include Outside Counsel of Record or any other outside counsel.

9           2.9     Non-Party: any natural person, partnership, corporation, association, or other legal  
10 entity not named as a Party to this action.

11          2.10    Outside Counsel of Record: attorneys who are not employees of a party to this action  
12 but are retained to represent or advise a party to this action and have appeared in this action on behalf  
13 of that party or are affiliated with a law firm which has appeared on behalf of that party.

14          2.11    Party: any party to this action, including all of its officers, directors, employees,  
15 consultants, retained experts, and Outside Counsel of Record (and their support staffs).

16          2.12    Producing Party: a Party or Non-Party that produces Disclosure or Discovery  
17 Material in this action.

18          2.13    Professional Vendors: persons or entities that provide litigation support services  
19 (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations, and organizing,  
20 storing, or retrieving data in any form or medium) and their employees and subcontractors.

21          2.14    Protected Material: any Disclosure or Discovery Material that is designated as  
22 “CONFIDENTIAL,” or as “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

23          2.15    Receiving Party: a Party that receives Disclosure or Discovery Material from a  
24 Producing Party.

25    3.     SCOPE

26           The protections conferred by this Stipulation and Order cover not only Protected Material (as  
27 defined above), but also (1) any information copied or extracted from Protected Material; (2) all  
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1 copies, excerpts, summaries, or compilations of Protected Material; and (3) any testimony,  
2 conversations, or presentations by Parties or their Counsel that might reveal Protected Material.  
3 However, the protections conferred by this Stipulation and Order do not cover the following  
4 information: (a) any information that is in the public domain at the time of disclosure to a Receiving  
5 Party or becomes part of the public domain after its disclosure to a Receiving Party as a result of  
6 publication not involving a violation of this Order, including becoming part of the public record  
7 through trial or otherwise; and (b) any information known to the Receiving Party prior to the  
8 disclosure or obtained by the Receiving Party after the disclosure from a source who obtained the  
9 information lawfully and under no obligation of confidentiality to the Designating Party. Any use of  
10 Protected Material at trial shall be governed by a separate agreement or order.

11 4. DURATION

12 Even after final disposition of this litigation, the confidentiality obligations imposed by this  
13 Order shall remain in effect until a Designating Party agrees otherwise in writing or a court order  
14 otherwise directs. Final disposition shall be deemed to be the later of (1) dismissal of all claims and  
15 defenses in this action, with or without prejudice; and (2) final judgment herein after the completion  
16 and exhaustion of all appeals, rehearings, remands, trials, or reviews of this action, including the time  
17 limits for filing any motions or applications for extension of time pursuant to applicable law.

18 5. DESIGNATING PROTECTED MATERIAL

19 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each Party or  
20 Non-Party that designates information or items for protection under this Order must take care to limit  
21 any such designation to specific material that qualifies under the appropriate standards. The  
22 Designating Party must designate for protection only those parts of material, documents, items, or  
23 oral or written communications that qualify – so that other portions of the material, documents, items,  
24 or communications for which protection is not warranted are not swept unjustifiably within the ambit  
25 of this Order.

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

3 If it comes to a Designating Party's attention that information or items that it designated for  
4 protection do not qualify for protection, that Designating Party must promptly notify all other Parties  
5 that it is withdrawing the mistaken designation.

6 5.2 Manner and Timing of Designations. Except as otherwise provided in this Order  
7 (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered, Disclosure  
8 or Discovery Material that qualifies for protection under this Order must be clearly so designated  
9 before the material is disclosed or produced.

10 Designation in conformity with this Order requires:

11 (a) for information in documentary form (e.g., paper or electronic documents, but  
12 excluding transcripts of depositions or other pretrial or trial proceedings), that the Producing Party  
13 affix the legend "CONFIDENTIAL" or as "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES  
14 ONLY" to each page that contains protected material. If only a portion or portions of the material on  
15 a page qualifies for protection, the Producing Party also must clearly identify the protected portion(s)  
16 (e.g., by making appropriate markings in the margins).

17 A Party or Non-Party that makes original documents or materials available for inspection  
18 need not designate them for protection until after the inspecting Party has indicated which material it  
19 would like copied and produced. During the inspection and before the designation, all of the material  
20 made available for inspection shall be deemed "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES  
21 ONLY." After the inspecting Party has identified the documents it wants copied and produced, the  
22 Producing Party must determine which documents, or portions thereof, qualify for protection under  
23 this Order. Then, before producing the specified documents, the Producing Party must affix the  
24 appropriate legend ( "CONFIDENTIAL" or as "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES  
25 ONLY") to each page that contains Protected Material. If only a portion or portions of the material on  
26 a page qualifies for protection, the Producing Party also must clearly identify the protected portion(s)  
27 (e.g., by making appropriate markings in the margins).

1 (b) for testimony given in deposition or in other pretrial or trial proceedings, that the  
2 Designating Party identify on the record, before the close of the deposition, hearing, or other  
3 proceeding, all protected testimony. When it is impractical to identify separately each portion of  
4 testimony that is entitled to protection and it appears that substantial portions of the testimony may qualify  
5 for protection, the Designating Party may invoke on the record (before the deposition, hearing, or other  
6 proceeding is concluded) a right to have up to 21 days from receipt of the transcript to identify the specific  
7 portions of the testimony as to which protection is sought and to specify the level of protection being  
8 asserted. Only those portions of the testimony that are appropriately designated for protection within the 21  
9 days shall be covered by the provisions of this Stipulated Protective Order. Alternatively, a Designating  
10 Party may specify, at the deposition or up to 21 days afterwards if that period is properly invoked, that the  
11 entire transcript shall be treated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’  
12 EYES ONLY.”

13 Parties shall give the other parties notice if they reasonably expect a deposition, hearing or other  
14 proceeding to include Protected Material so that the other parties can ensure that only authorized  
15 individuals who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A) are present  
16 at those proceedings. The use of a document as an exhibit at a deposition shall not in any way affect its  
17 designation as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

18 Transcripts containing Protected Material shall have an obvious legend on the title page that the  
19 transcript contains Protected Material, and the title page shall be followed by a list of all pages (including  
20 line numbers as appropriate) that have been designated as Protected Material and the level of protection  
21 being asserted by the Designating Party. The Designating Party shall inform the court reporter of these  
22 requirements. Any transcript that is prepared before the expiration of a 21-day period for designation shall  
23 be treated during that period as if it had been designated “HIGHLY CONFIDENTIAL – ATTORNEYS’  
24 EYES ONLY” in its entirety unless otherwise agreed. After the expiration of that period, the transcript  
25 shall be treated only as actually designated.

26 (c) for information produced in some form other than documentary and for any other  
27 tangible items, that the Producing Party affix in a prominent place on the exterior of the container or  
28 containers in which the information or item is stored the legend “CONFIDENTIAL” or “HIGHLY

1 CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” If only a portion or portions of the information or  
2 item warrant protection, the Producing Party, to the extent practicable, shall identify the protected  
3 portion(s).

4 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to  
5 designate qualified information or items does not, standing alone, waive the Designating Party’s right  
6 to secure protection under this Order for such material. Upon timely correction of a designation, the  
7 Receiving Party must make reasonable efforts to assure that the material is treated in accordance with  
8 the provisions of this Order.

9 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

10 6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation of  
11 confidentiality at any time. Unless a prompt challenge to a Designating Party’s confidentiality  
12 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic burdens,  
13 or a significant disruption or delay of the litigation, a Party does not waive its right to challenge a  
14 confidentiality designation by electing not to mount a challenge promptly after the original  
15 designation is disclosed.

16 6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution process  
17 by providing written notice of each designation it is challenging and describing the basis for each  
18 challenge. To avoid ambiguity as to whether a challenge has been made, the written notice must recite  
19 that the challenge to confidentiality is being made in accordance with this specific paragraph of the  
20 Protective Order. The parties shall attempt to resolve each challenge in good faith and must begin the  
21 process by conferring directly (in voice to voice dialogue; other forms of communication are not  
22 sufficient) within 14 days of the date of service of notice. In conferring, the Challenging Party must  
23 explain the basis for its belief that the confidentiality designation was not proper and must give the  
24 Designating Party an opportunity to review the designated material, to reconsider the circumstances,  
25 and, if no change in designation is offered, to explain the basis for the chosen designation. A  
26 Challenging Party may proceed to the next stage of the challenge process only if it has engaged in  
27 this meet and confer process first or establishes that the Designating Party is unwilling to participate  
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1 in the meet and confer process in a timely manner.

2           6.3     Judicial Intervention. If the Parties cannot resolve a challenge without court  
3 intervention, the Designating Party shall file and serve a motion to retain confidentiality under Civil  
4 Local Rule 7 (and in compliance with Civil Local Rule 79-5, if applicable) within 21 days of the  
5 initial notice of challenge or within 14 days of the parties agreeing that the meet and confer process  
6 will not resolve their dispute, whichever is earlier. Each such motion must be accompanied by a  
7 competent declaration affirming that the movant has complied with the meet and confer requirements  
8 imposed in the preceding paragraph. Failure by the Designating Party to make such a motion  
9 including the required declaration within 21 days (or 14 days, if applicable) shall automatically waive  
10 the confidentiality designation for each challenged designation. In addition, the Challenging Party  
11 may file a motion challenging a confidentiality designation at any time if there is good cause for  
12 doing so, including a challenge to the designation of a deposition transcript or any portions thereof.  
13 Any motion brought pursuant to this provision must be accompanied by a competent declaration  
14 affirming that the movant has complied with the meet and confer requirements imposed by the  
15 preceding paragraph.

16           The burden of persuasion in any such challenge proceeding shall be on the Designating Party.  
17 Frivolous challenges, and those made for an improper purpose (e.g., to harass or impose unnecessary  
18 expenses and burdens on other parties) may expose the Challenging Party to sanctions. Unless the  
19 Designating Party has waived the confidentiality designation by failing to file a motion to retain  
20 confidentiality as described above, all parties shall continue to afford the material in question the  
21 level of protection to which it is entitled under the Producing Party's designation until the court rules  
22 on the challenge.

23     7.       ACCESS TO AND USE OF PROTECTED MATERIAL

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



1 terminated, a Receiving Party must comply with the provisions of section 13 below (FINAL  
2 DISPOSITION).

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

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

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

12 (b) the officers, directors, and employees (including House Counsel) of the Receiving  
13 Party to whom disclosure is reasonably necessary for this litigation and who have signed the  
14 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

15 (c) Experts (as defined in this Order) of the Receiving Party to whom disclosure is  
16 reasonably necessary for this litigation and who have signed the “Acknowledgment and Agreement to  
17 Be Bound” (Exhibit A);

18 (d) the court and its personnel;

19 (e) court reporters and their staff, professional jury or trial consultants, mock jurors, and  
20 Professional Vendors to whom disclosure is reasonably necessary for this litigation and who have  
21 signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

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

1 (g) the author or recipient of a document containing the information or a custodian or  
2 other person who otherwise possessed or knew the information.

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

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

12 (b) Experts of the Receiving Party (1) to whom disclosure is reasonably necessary for this  
13 litigation, (2) who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A), and (3) as  
14 to whom the procedures set forth in paragraph 7.4(a)(2), below, have been followed];

15 (c) the court and its personnel;

16 (d) court reporters and their staff, professional jury or trial consultants and Professional Vendors to  
17 whom disclosure is reasonably necessary for this litigation and who have signed the “Acknowledgment and  
18 Agreement to Be Bound” (Exhibit A); and

19 (e) the author or recipient of a document containing the information or a custodian or other person  
20 who otherwise possessed or knew the information.

21  
22 7.4 Procedures for Approving or Objecting to Disclosure of “HIGHLY CONFIDENTIAL –  
23 ATTORNEYS’ EYES ONLY” Information or Items to Experts.

24 (a) Unless otherwise ordered by the court or agreed to in writing by the Designating Party, a Party  
25 that seeks to disclose to an Expert (as defined in this Order) any information or item that has been  
26 designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” pursuant to paragraph 7.3(b)  
27

1 first must make a written request to the Designating Party that (1) identifies the general categories of  
2 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” information that the Receiving Party seeks  
3 permission to disclose to the Expert, (2) sets forth the full name of the Expert and the city and state of his or  
4 her primary residence, (3) attaches a copy of the Expert’s current resume, (4) identifies the Expert’s current  
5 employer(s), (5) identifies each person or entity from whom the Expert has received compensation or  
6 funding for work in his or her areas of expertise or to whom the expert has provided professional services,  
7 including in connection with a litigation, at any time during the preceding five years,<sup>1</sup> and (6) identifies (by  
8 name and number of the case, filing date, and location of court) any litigation in connection with which the  
9 Expert has offered expert testimony, including through a declaration, report, or testimony at a deposition or  
10 trial, during the preceding five years.<sup>2</sup>

11 (b) A Party that makes a request and provides the information specified in the preceding respective  
12 paragraphs may disclose the subject Protected Material to the identified Expert unless, within 14 days of  
13 delivering the request, the Party receives a written objection from the Designating Party. Any such  
14 objection must set forth in detail the grounds on which it is based.

15 (c) A Party that receives a timely written objection must meet and confer with the Designating  
16 Party (through direct voice to voice dialogue) to try to resolve the matter by agreement within seven days  
17 of the written objection. If no agreement is reached, the Party seeking to make the disclosure to the Expert  
18 may file a motion as provided in Civil Local Rule 7 (and in compliance with Civil Local Rule 79-5, if  
19 applicable) seeking permission from the court to do so. Any such motion must describe the circumstances  
20 with specificity, set forth in detail the reasons why the disclosure to the Expert is reasonably necessary,  
21 assess the risk of harm that the disclosure would entail, and suggest any additional means that could be  
22 used to reduce that risk. In addition, any such motion must be accompanied by a competent declaration  
23

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24 <sup>1</sup> If the Expert believes any of this information is subject to a confidentiality obligation to a third-  
25 party, then the Expert should provide whatever information the Expert believes can be disclosed  
26 without violating any confidentiality agreements, and the Party seeking to disclose to the Expert  
27 shall be available to meet and confer with the Designating Party regarding any such engagement.

28 <sup>2</sup> It may be appropriate in certain circumstances to restrict the Expert from undertaking certain  
limited work prior to the termination of the litigation that could foreseeably result in an improper  
use of the Designating Party’s “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”  
information.

1 describing the parties' efforts to resolve the matter by agreement (i.e., the extent and the content of the meet  
2 and confer discussions) and setting forth the reasons advanced by the Designating Party for its refusal to  
3 approve the disclosure.

4 In any such proceeding, the Party opposing disclosure to the Expert shall bear the burden of  
5 proving that the risk of harm that the disclosure would entail (under the safeguards proposed) outweighs the  
6 Receiving Party's need to disclose the Protected Material to its Expert.

7  
8 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER  
9 LITIGATION

10 If a Party is served with a subpoena or a court order issued in other litigation that compels  
11 disclosure of any information or items designated in this action as "CONFIDENTIAL" or "HIGHLY  
12 CONFIDENTIAL – ATTORNEYS' EYES ONLY" that Party must:

13 (a) promptly notify in writing the Designating Party. Such notification shall include a  
14 copy of the subpoena or court order;

15 (b) promptly notify in writing the party who caused the subpoena or order to issue in the  
16 other litigation that some or all of the material covered by the subpoena or order is subject to this  
17 Protective Order. Such notification shall include a copy of this Stipulated Protective Order; and

18 (c) cooperate with respect to all reasonable procedures sought to be pursued by the  
19 Designating Party whose Protected Material may be affected.

20 If the Designating Party timely seeks a protective order, the Party served with the subpoena or  
21 court order shall not produce any information designated in this action as "CONFIDENTIAL" or  
22 "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" before a determination by the court from  
23 which the subpoena or order issued, unless the Party has obtained the Designating Party's permission.  
24 The Designating Party shall bear the burden and expense of seeking protection in that court of its  
25 confidential material – and nothing in these provisions should be construed as authorizing or  
26 encouraging a Receiving Party in this action to disobey a lawful directive from another court.  
27

1 9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN THIS  
2 LITIGATION

3 (a) The terms of this Order are applicable to information produced by a Non-Party in this  
4 action and designated as “CONFIDENTIAL” ” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES  
5 ONLY.” Such information produced by Non-Parties in connection with this litigation is protected by  
6 the remedies and relief provided by this Order. Nothing in these provisions should be construed as  
7 prohibiting a Non-Party from seeking additional protections.

8 (b) In the event that a Party is required, by a valid discovery request, to produce a Non-  
9 Party’s confidential information in its possession, and the Party is subject to an agreement with the  
10 Non-Party not to produce the Non-Party’s confidential information, then the Party shall:

11 (1) promptly notify in writing the Requesting Party and the Non-Party that some or all  
12 of the information requested is subject to a confidentiality agreement with a Non-Party;

13 (2) promptly provide the Non-Party with a copy of the Stipulated Protective Order in  
14 this litigation, the relevant discovery request(s), and a reasonably specific description of the  
15 information requested; and

16 (3) make the information requested available for inspection by the Non-Party.

17 (c) If the Non-Party fails to object or seek a protective order from this court within 14  
18 days of receiving the notice and accompanying information, the Receiving Party may produce the  
19 Non-Party’s confidential information responsive to the discovery request. If the Non-Party timely  
20 seeks a protective order, the Receiving Party shall not produce any information in its possession or  
21 control that is subject to the confidentiality agreement with the Non-Party before a determination by  
22 the court. Absent a court order to the contrary, the Non-Party shall bear the burden and expense of  
23 seeking protection in this court of its Protected Material.

24 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

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

5 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED  
6 MATERIAL

7 When a Producing Party gives notice to Receiving Parties that certain inadvertently produced  
8 material is subject to a claim of privilege or other protection, the obligations of the Receiving Parties  
9 are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to  
10 modify whatever procedure may be established in an e-discovery order that provides for production  
11 without prior privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar as the  
12 parties reach an agreement on the effect of disclosure of a communication or information covered by  
13 the attorney-client privilege or work product protection, the parties may incorporate their agreement  
14 in the stipulated protective order submitted to the court.

15 12. MISCELLANEOUS

16 12.1 Right to Further Relief. Nothing in this Order abridges the right of any person to seek  
17 its modification by the court in the future.

18 12.2 Right to Assert Other Objections. By stipulating to the entry of this Protective Order  
19 no Party waives any right it otherwise would have to object to disclosing or producing any  
20 information or item on any ground not addressed in this Stipulated Protective Order. Similarly, no  
21 Party waives any right to object on any ground to use in evidence of any of the material covered by  
22 this Protective Order.

23 12.3 Filing Protected Material. Without written permission from the Designating Party or a  
24 court order secured after appropriate notice to all interested persons, a Party may not file in the public  
25 record in this action any Protected Material. A Party that seeks to file under seal any Protected  
26 Material must comply with Civil Local Rule 79-5. Protected Material may only be filed under seal  
27 pursuant to a court order authorizing the sealing of the specific Protected Material at issue. Pursuant  
28

1 to Civil Local Rule 79-5, a sealing order will issue only upon a request establishing that the Protected  
2 Material at issue is privileged, protectable as a trade secret, or otherwise entitled to protection under  
3 the law. If a Receiving Party's request to file Protected Material under seal pursuant to Civil Local  
4 Rule 79-5(d) is denied by the court, then the Receiving Party may file the information in the public  
5 record pursuant to Civil Local Rule 79-5(e) unless otherwise instructed by the court.

6 13. FINAL DISPOSITION

7 Within 60 days after the final disposition of this action, as defined in paragraph 4, each  
8 Receiving Party must return all Protected Material to the Producing Party or destroy such material.  
9 As used in this subdivision, "all Protected Material" includes all copies, abstracts, compilations,  
10 summaries, and any other format reproducing or capturing any of the Protected Material. Whether the  
11 Protected Material is returned or destroyed, the Receiving Party must submit a written certification to  
12 the Producing Party (and, if not the same person or entity, to the Designating Party) by the 60 day  
13 deadline that (1) identifies (by category, where appropriate) all the Protected Material that was  
14 returned or destroyed and (2) affirms that the Receiving Party has not retained any copies, abstracts,  
15 compilations, summaries or any other format reproducing or capturing any of the Protected Material.  
16 Notwithstanding this provision, Counsel are entitled to retain an archival copy of all pleadings,  
17 motion papers, trial, deposition, and hearing transcripts, legal memoranda, correspondence,  
18 deposition and trial exhibits, expert reports, attorney work product, and consultant and expert work  
19 product, even if such materials contain Protected Material. Any such archival copies that contain or  
20 constitute Protected Material remain subject to this Protective Order as set forth in Section 4  
21 (DURATION).

1 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

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3 DATED: March 5, 2015

\_\_\_\_\_/s/\_\_\_\_\_  
Adanté D. Pointer, Esq.  
Attorney for Plaintiff

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7 DATED: March 5, 2015

\_\_\_\_\_/s/\_\_\_\_\_  
Rafael E. Alvarado, Esq.  
Attorney for Defendants

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PURSUANT TO STIPULATION, IT IS SO ORDERED.

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DATED: March 9, 2015

  
\_\_\_\_\_  
Honorable Laurel Beeler  
United States District 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 understand the Stipulated Protective Order that was issued by the United States District Court for the Northern District of California on \_\_\_\_\_ in the case of *C.E.W., et al. v. City of Hayward, CV 13-4516 (LB)*. 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: \_\_\_\_\_