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 15 ESTATE OF AMILCAR PEREZ LOPEZ, JUAN PEREZ,  
 MARGARITA LOPEZ PEREZ

16 UNITED STATES DISTRICT COURT  
 17 NORTHERN DISTRICT OF CALIFORNIA

18 ESTATE OF AMILCAR PEREZ LOPEZ, by  
 19 and through successors in interest, Juan Perez  
 and Margarita Lopez Perez; JUAN PEREZ,  
 20 individually; MARGARITA LOPEZ PEREZ,  
 individually,

Case No. CV15-01846-HSG

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

21 Plaintiffs,

22 vs.

23 CHIEF OF POLICE GREG SUHR; CITY  
 24 AND COUNTY OF SAN FRANCISCO; SAN  
 FRANCISCO POLICE DEPARTMENT;  
 25 OFFICER CRAIG TIFFE (Badge No. 1312);  
 OFFICER ERIC REBOLI (Badge No. 1651),  
 26 and DOES 1 to 10,

27 Defendants.

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1 The parties, by and through their respective attorneys of record, hereby stipulate to the  
2 following protective order being issued in this matter:

3 1. PURPOSES AND LIMITATIONS

4 Disclosure and discovery activity in this action are likely to involve production of confidential  
5 or private information for which special protection from public disclosure and from use for any  
6 purpose other than prosecuting this litigation would be warranted. Accordingly, the parties hereby  
7 stipulate to and petition the court to enter the following Stipulated Protective Order. The parties  
8 acknowledge that this Order does not confer blanket protections on all disclosures or responses to  
9 discovery and that the protection it affords extends only to the limited information or items that are  
10 entitled under the applicable legal principles to treatment as confidential. The parties further  
11 acknowledge, as set forth in Section 10, below, that this Stipulated Protective Order creates no  
12 entitlement to file confidential information under seal; Civil Local Rule 79-5 sets forth the procedures  
13 that must be followed and reflects the standards that will be applied when a party seeks permission  
14 from the court to file material under seal.

15 2. DEFINITIONS

16 2.1 Party: any party to this action, including all of its officers, directors, employees,  
17 consultants, retained experts, and outside counsel (and their support staff).

18 2.2 Disclosure or Discovery Material: all items or information, regardless of the medium or  
19 manner generated, stored or maintained (including, among other things, testimony, transcripts, or  
20 tangible things) that are produced or generated in disclosures or responses to discovery by any Party in  
21 this matter.

22 2.3 “Confidential” Information or Items: information (regardless of how generated, stored  
23 or maintained) or tangible things that qualify for protection under standards developed under Federal  
24 Rule of Civil Procedure 26(c). This material may include, but is not limited to, medical records of the  
25 parties, personnel information of San Francisco Police Department (hereinafter “SFPD”) employees,  
26 materials involving other incidents contained in the personnel files of SFPD employees, and  
27 photographs of a graphic nature marked "CONFIDENTIAL."  
28

1           2.4    Receiving Party: a Party that receives Disclosure or Discovery Material from a  
2 Producing Party.

3           2.5    Producing Party: a Party or non-party that produces Disclosure or Discovery Material  
4 in this action.

5           2.6    Designating Party: a Party or non-party that designates information or items that it  
6 produces in disclosures or in responses to discovery as “Confidential.”

7           2.7    Protected Material: any Disclosure or Discovery Material that is designated as  
8 “Confidential.”

9           2.8    Outside Counsel: attorneys who are not employees of a Party but who are retained to  
10 represent or advise a Party in this action.

11          2.9    House Counsel: attorneys who are employees of a Party.

12          2.10   Counsel (without qualifier): Outside Counsel and House Counsel (as well as their  
13 support staffs).

14          2.11   Expert: a person with specialized knowledge or experience in a matter pertinent to the  
15 litigation who has been retained by a Party or its counsel to serve as an expert witness or as a  
16 consultant in this action and who is not a past or a current employee of a Party or of a competitor of a  
17 Party’s and who, at the time of retention, is not anticipated to become an employee of a Party or a  
18 competitor of a Party’s.

19          2.12   Professional Vendors: persons or entities that provide litigation support services (e.g.,  
20 photocopying; videotaping; translating; preparing exhibits or demonstrations; organizing, storing,  
21 retrieving data in any form or medium; etc.) and their employees and subcontractors.

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

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

4           5.     DESIGNATING PROTECTED MATERIAL

5           5.1    Exercise of Restraint and Care in Designating Material for Protection. Each Party or  
6 non-party that designates information or items for protection under this Order must take care to limit  
7 any such designation to specific material that qualifies under the appropriate standards. A Designating  
8 Party must take care to designate for protection only those parts of material, documents, items, or oral  
9 or written communications that qualify – so that other portions of the material, documents, items or  
10 communications for which protection is not warranted are not swept unjustifiably within the ambit of  
11 this Order. Mass, indiscriminate, or routine designations are prohibited. Designations that are shown  
12 to be clearly unjustified, or that have been made for an improper purpose (e.g., to unnecessarily  
13 encumber or retard the case development process, or to impose unnecessary expenses and burdens on  
14 other parties), expose the Designating Party to sanctions. If it comes to a Party’s or a non-party’s  
15 attention that information or items that it designated for protection do not qualify for protection at all,  
16 that Party or non-party must promptly notify all other parties that it is withdrawing the mistaken  
17 designation.

18           5.2    Manner and Timing of Designations. Except as otherwise provided in this Order (see,  
19 e.g., second paragraph of section 5.2(a), below), or as otherwise stipulated or ordered, material that  
20 qualifies for protection under this Order must be clearly so designated before the material is disclosed  
21 or produced. Designation in conformity with this Order requires:

22                   (a)     for information in documentary form (apart from transcripts of depositions or  
23 other pretrial or trial proceedings), that the Producing Party affix the legend “CONFIDENTIAL” at the  
24 top of each page that contains protected material and/or the first page of stapled/clipped materials if it  
25 is a group of related documents. If only a portion or portions of the material on a page qualifies for  
26 protection, the Producing Party also must clearly identify the protected portion(s) (e.g., by making  
27 appropriate markings in the margins) and must specify, for each portion that it is “CONFIDENTIAL.”  
28 A Party or non-party that makes original documents or materials available for inspection need not

1 designate them for protection until after the inspecting Party has indicated which material it would like  
2 copied and produced. After the inspecting Party has identified the documents it wants copied and  
3 produced, the Producing Party must determine which documents, or portions thereof, qualify for  
4 protection under this Order, then, before producing the specified documents, the Producing Party must  
5 affix the designation “CONFIDENTIAL” on each page that contains Protected Material. If only a  
6 portion or portions of the material on a page qualifies for protection, the Producing Party must clearly  
7 identify the protected portion(s) (e.g., by making appropriate markings in the margins) and must  
8 specify that the material is “CONFIDENTIAL.”

9 (b) for testimony given in deposition or in other pretrial or trial proceedings, that  
10 the Party or non-party offering or sponsoring the testimony identify on the record, before the close of  
11 the deposition, hearing, or other proceeding, all protected testimony, and further specify any portions  
12 of the testimony that qualify as “CONFIDENTIAL.” When it is impractical to identify separately each  
13 portion of testimony that is entitled to protection, and when it appears that substantial portions of the  
14 testimony may qualify for protection, the Party or non-party that sponsors, offers, or gives the  
15 testimony may invoke on the record (before the deposition or proceeding is concluded) a right to have  
16 up to twenty (20) days to identify the specific portions of the testimony as “CONFIDENTIAL.” Only  
17 those portions of the testimony that are appropriately designated for protection within the 20 days shall  
18 be covered by the provisions of this Stipulated Protective Order. Transcript pages containing Protected  
19 Material must be separately bound by the court reporter, who must affix to the top of each such page  
20 the legend “CONFIDENTIAL,” as instructed by the Party or non-party offering or sponsoring the  
21 witness or presenting the testimony.

22 (c) for information produced in some form other than documentary, and for any  
23 other tangible items, that the Producing Party affix in a prominent place on the exterior of the  
24 container or containers in which the information or item is stored the legend “CONFIDENTIAL.” If  
25 only portions of the information or item warrant protection, the Producing Party, to the extent  
26 practicable, shall identify the protected portions, specifying the material as “CONFIDENTIAL.”

27 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to  
28 designate qualified information or items as “CONFIDENTIAL” does not, standing alone, waive the

1 Designating Party’s right to secure protection under this Order for such material. If material is  
2 appropriately designated as “CONFIDENTIAL” after the material was initially produced, the  
3 Receiving Party, on timely notification of the designation, must make reasonable efforts to assure that  
4 the material is treated in accordance with this Order.

5       5.4       Privilege Logs. If a party withholds information that is responsive to a discovery  
6 request by claiming that it is privileged or otherwise protected from discovery, that party shall  
7 promptly prepare and provide a privilege log that is sufficiently detailed and informative for the  
8 opposing party to assess whether a document’s designation as privileged is justified. See Fed.R.Civ.P.  
9 26(b)(5). Communications among counsel or between counsel and client or client employees that  
10 post-date the filing of the complaint, or that are protected under Rule 26(b)(4), need not be placed on a  
11 privilege log. The privilege log shall set forth the privilege relied upon and specify separately for each  
12 document or for each category of similarly situated documents:

- 13       (a) the title and description of the document;
- 14       (b) the subject matter addressed in the document;
- 15       (c) the identity and position of its author(s);
- 16       (d) for a document claimed to be privileged or protected as a communication, the identity and  
17 position of the primary addressees and recipients;
- 18       (e) the date the document was prepared; and for a document claimed to be privileged or  
19 protected as a communication, the date on which it was sent to or shared with persons other than its  
20 author(s), if different from the date the document was prepared.
- 21       (f) the specific basis for the claim that the document is privileged and protected.

## 22       6.       CHALLENGING CONFIDENTIALITY DESIGNATIONS

23       6.1       Timing of Challenges. Unless a prompt challenge to a Designating Party’s  
24 confidentiality designation is necessary to avoid foreseeable substantial unfairness, unnecessary  
25 economic burdens, or a later significant disruption or delay of the litigation, a Party does not waive its  
26 right to challenge a confidentiality designation by electing not to mount a challenge promptly after the  
27 original designation is disclosed.

1           6.2    Meet and Confer. A Party that elects to initiate a challenge to a Designating Party’s  
2 confidentiality designation must do so in good faith and must begin the process by conferring directly  
3 either in person or by telephone, and may not meet and confer by letter, e-mail or fax, with counsel for  
4 the Designating Party. In conferring, the challenging Party must explain the basis for its belief that the  
5 confidentiality designation was not proper and must give the Designating Party an opportunity to  
6 review the designated material, to reconsider the circumstances, and, if no change in designation is  
7 offered, to explain the basis for the chosen designation. A challenging Party may proceed to the next  
8 stage of the challenge process only if it has engaged in this meet and confer process first.

9           6.3    Judicial Intervention. If disagreements remain regarding a designation, the parties shall  
10 follow the procedures in the Court’s standing order for resolving discovery disputes. Those  
11 procedures are now at paragraphs 12 and 13 of the Court’s Civil Standing Order (rev. 2/6/15). The  
12 burden of persuasion in any such challenge proceeding shall be on the Designating Party. Until the  
13 Court rules on the challenge, all parties shall continue to treat the material in question as  
14 “CONFIDENTIAL.”

15           7.        ACCESS TO AND USE OF PROTECTED MATERIAL

16           7.1    Basic Principles. A Receiving Party may use Protected Material that is disclosed or  
17 produced by another Party or by a non-party in connection with this case only for prosecuting,  
18 defending, or attempting to settle this litigation. Such Protected Material may be disclosed only to the  
19 categories of persons and under the conditions described in this Order. When the litigation has been  
20 terminated, a Receiving Party must comply with the provisions of section 11, below (FINAL  
21 DISPOSITION).

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

24           7.2    Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise ordered by  
25 the court or permitted in writing by the Designating Party, a Receiving Party may disclose any  
26 information or item designated CONFIDENTIAL only to:

27                   (a)    the Receiving Party’s counsel of record in this action, as well as employees of  
28 said Counsel to whom it is reasonably necessary to disclose the information for this litigation;

1 (b) the officers, directors, and employees (including House Counsel) of the  
2 Receiving Party to whom disclosure is reasonably necessary for this litigation;

3 (c) experts (as defined in this Order) of the Receiving Party to whom disclosure is  
4 reasonably necessary for this litigation;

5 (d) the Court and its personnel;

6 (e) court reporters, their staffs, and professional vendors to whom disclosure is  
7 reasonably necessary for this litigation;

8 (f) during their depositions, witnesses in the action to whom disclosure is  
9 reasonably necessary. Pages of transcribed deposition testimony or exhibits to depositions that reveal  
10 Protected Material must be separately bound by the court reporter and may not be disclosed to anyone  
11 except as permitted under this Stipulated Protective Order.

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

13 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER  
14 LITIGATION. If a Receiving Party is served with a subpoena or an order issued in other litigation  
15 that would compel disclosure of any information or items designated in this action as  
16 “CONFIDENTIAL,” the Receiving Party must so notify the Designating Party, in writing (by fax  
17 and/or e-mail) immediately and in no event more than three court days after receiving the subpoena or  
18 order. Such notification must include a copy of the subpoena or court order. The Receiving Party also  
19 must immediately inform in writing the Party who caused the subpoena or order to issue in the other  
20 litigation that some or all of the material covered by the subpoena or order is the subject of this  
21 Protective Order. In addition, the Receiving Party must deliver a copy of this Stipulated Protective  
22 Order promptly to the Party in the other action that caused the subpoena or order to issue. The purpose  
23 of imposing these duties is to alert the interested parties to the existence of this Protective Order and to  
24 afford the Designating Party in this case an opportunity to try to protect its confidentiality interests in  
25 the court from which the subpoena or order issued. The Designating Party shall bear the burdens and  
26 the expenses of seeking protection in that court of its confidential material – and nothing in these  
27 provisions should be construed as authorizing or encouraging a Receiving Party in this action to  
28 disobey a lawful directive from another court.

1           9.       A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN  
2 THIS LITIGATION. The terms of this Order are applicable to information produced by a Non-Party  
3 in this action and designated as “CONFIDENTIAL.” Such information produced by Non-Parties in  
4 connection with this litigation is protected by the remedies and relief provided by this Order. Nothing  
5 in these provisions should be construed as prohibiting a Non-Party from seeking additional  
6 protections. In the event that a Party is required, by a valid discovery request, to produce a Non-  
7 Party’s confidential information in its possession, and the Party is subject to an agreement with the  
8 Non-Party not to produce the Non-Party’s confidential information, then the Party shall:

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

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

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

22           10.       UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL If a Receiving  
23 Party learns that, by inadvertence or otherwise, it has disclosed Protected Material to any person or in  
24 any circumstance not authorized under this Stipulated Protective Order, the Receiving Party must  
25 immediately: (a) notify in writing the Designating Party of the unauthorized disclosures, (b) use its  
26 best efforts to retrieve all copies of the Protected Material, (c) inform the person or persons to whom  
27 unauthorized disclosures were made of all the terms of this Order, and (d) request such person or  
28 persons to be bound by the Stipulated Protective Order.

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

5           12.     USE OF PROTECTED MATERIAL AT TRIAL. In the event the Receiving Party  
6 desires to exhibit documents or disclose Protected Material at trial, the Receiving Party shall provide  
7 notice to the Designating Party of its intent to do so by following the Court’s procedures for meeting  
8 and conferring and providing notice concerning evidence the parties intend to use at trial; except that  
9 the meet and confer and notice requirements shall apply to all Protected Material intended to be used  
10 at trial, even if it is offered solely for impeachment or rebuttal. Any remaining disputes regarding  
11 exhibiting or disclosure of Protected Material at trial should be resolved by following the Court’s  
12 procedures for motions in limine. The Court’s pretrial procedures are currently contained in in the  
13 Court’s Civil Pretrial and Trial Standing Order (rev. 2/19/15).

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

1 constitute Protected Material remain subject to this Protective Order as set forth in Section 4  
2 (DURATION), above.

3 14. MISCELLANEOUS

4 14.1 Right to Further Relief. Nothing in this Order abridges the right of any person to seek  
5 its modification by the Court in the future.

6 14.2 Right to Assert Other Objections. By stipulating to the entry of this Protective Order no  
7 Party waives any right it otherwise would have to object to disclosing or producing any information or  
8 item on any ground not addressed in this Stipulated Protective Order. Similarly, no Party waives any  
9 right to object on any ground to use in evidence any of the material covered by this Protective Order.

10 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

11 Dated: January 11, 2016

12 DENNIS J. HERRERA  
13 City Attorney  
14 CHERYL ADAMS  
15 Chief Trial Deputy  
16 PETER J. KEITH  
17 Deputy City Attorney

18 By: /s/ Peter J. Keith  
19 PETER J. KEITH

20 Attorneys for Defendants  
21 CITY AND COUNTY OF SAN FRANCISCO (including  
22 SAN FRANCISCO POLICE DEPARTMENT),  
23 GREG SUHR, CRAIG TIFFE, and ERIC REBOLI

24 Dated: January 11, 2016

25 CASILLAS & ASSOCIATES

26 By: /s/ Denisse O. Gastélum  
27 ARNOLDO CASILLAS, ESQ.  
28 DENISSE O. GASTÉLUM, ESQ.

Attorneys for Plaintiffs

ESTATE OF AMILCAR PEREZ LOPEZ, by and  
through successors in interest, Juan Perez and Margarita  
Lopez Perez; JUAN PEREZ, individually;  
MARGARITA LOPEZ PEREZ, individually

**ORDER**

GOOD CAUSE APPEARING AND PURSUANT TO STIPULATION,  
IT IS SO ORDERED.

Dated: 1/12/2016

  
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THE HONORABLE HAYWOOD S. WILLIAM JR.  
UNITED STATES DISTRICT JUDGE

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