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 9 Attorneys for Defendants  
 10 CITY AND COUNTY OF SAN FRANCISCO  
 AND CHIEF HEATHER FONG

11  
 12 UNITED STATES DISTRICT COURT  
 13 NORTHERN DISTRICT OF CALIFORNIA

14 ERIC JONES,  
 15  
 16 Plaintiff,

17 vs.

18 CITY AND COUNTY OF SAN  
 FRANCISCO, a municipal corporation;  
 19 HEATHER FONG, in her capacity as  
 Chief of Police for the CITY AND  
 COUNTY OF SAN FRANCISCO;  
 20 GREGORY BUHAGIAR, individually  
 and in his official capacity as a police  
 21 officer for the CITY AND COUNTY OF  
 SAN FRANCISCO; ARSHAD RAZZAK,  
 22 individually and in his official capacity as  
 a police officer for the CITY AND  
 23 COUNTY OF SAN FRANCISCO, and  
 San Francisco police officers DOES 3-25,  
 24 inclusive,

25 Defendants.

Case No. C08-00373 CW

**STIPULATION AND PROTECTIVE  
 ORDER**

Trial Date: May 18, 2008

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

4 GOOD CAUSE APPEARING, the parties stipulate, though their attorneys of record, to the  
5 entry of an order as follows:

- 6 1. CONFIDENTIAL INFORMATION, within the meaning of this  
7 PROTECTIVE ORDER, shall include all documents containing peace officer  
8 personnel records, official information and any other such documents that  
9 defendants in good faith have determined to be confidential. Defendants shall  
10 attempt to stamp "Confidential" on all such documents prior to production. In  
11 the event that any CONFIDENTIAL INFORMATION is inadvertently not  
12 stamped as "Confidential" by defendants, the party who notices this oversight  
13 shall immediately make it known to the other parties and the documents shall  
14 immediately be stamped as "Confidential" and treated as such, as per this  
15 order.
- 16 2. Plaintiff may challenge defendants' designation of a particular document as  
17 CONFIDENTIAL INFORMATION by filing an appropriate motion, under  
18 seal, with the Court. The parties agree that the prevailing party in a motion to  
19 remove the confidential designation shall waive any entitlement to monetary  
20 sanctions, including attorney's fees.
- 21 3. Unless disclosure is ordered by the Court, attorneys for defendants shall have  
22 the sole authority to determine that documents subject to the PROTECTIVE  
23 ORDER are no longer considered CONFIDENTIAL INFORMATION and will  
24 advise counsel for plaintiff in writing if this determination is made.
- 25 4. Plaintiff's Counsel may exhibit, discuss, and/or disclose CONFIDENTIAL  
26 INFORMATION only to the following categories of person and no other  
27 unless authorized by order of the Court:

- 28 a. Plaintiff's Counsel;

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

9           5.       Counsel for Plaintiff may not provide originals or copies of the  
10 CONFIDENTIAL INFORMATION to any plaintiff absent the written  
11 agreement of counsel for the City or a court order, subject to the following:

12                   a.       For purposes of evaluating the settlement value or potential jury  
13 verdict, counsel for Plaintiff may discuss the general nature of the  
14 CONFIDENTIAL INFORMATION with plaintiffs without disclosing any  
15 identifying details about a specific incident or any documents. Plaintiffs'  
16 counsel may also review with a plaintiff any statement or interview given by  
17 that plaintiff.

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

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

- 1           7.           In the event any person desires to exhibit documents or disclose  
2                   CONFIDENTIAL INFORMATION covered under this stipulation during trial  
3                   or pretrial proceedings, such person shall meet and confer with counsel for  
4                   defendants to reach an agreement, in accordance with the Court’s rules and  
5                   procedures, on an appropriate method for disclosure, and if defendants do not  
6                   agree to such disclosure, such CONFIDENTIAL INFORMATION shall not be  
7                   disclosed unless authorized by order of the Court. Unless otherwise agreed,  
8                   transcripts and exhibits that incorporate or reference CONFIDENTIAL  
9                   INFORMATION covered under this stipulation shall be treated as  
10                  CONFIDENTIAL INFORMATION that is subject to the provisions of this  
11                  PROTECTIVE ORDER. The Court Reporter shall mark as “Confidential” any  
12                  deposition or hearing transcript that contains any CONFIDENTIAL  
13                  INFORMATION or any reference to CONFIDENTIAL INFORMATION.
- 14           8.           Any inadvertent disclosure made in violation of this PROTECTIVE ORDER  
15                   shall be immediately corrected by the offending party and does not constitute a  
16                   waiver of the terms of this PROTECTIVE ORDER, except by written  
17                   agreement of the parties, or further order of this Court.
- 18           9.           All documents covered by this PROTECTIVE ORDER and copies thereof  
19                   (including those in the possession of experts, consultants, *etc.*) will be returned  
20                   to the San Francisco City Attorney's Office at the termination of this litigation.  
21                   On final disposition of this case, plaintiff’s counsel shall within 30 days after  
22                   the final disposition of this case, without request or further order of this Court,  
23                   return all CONFIDENTIAL INFORMATION to the Deputy City Attorney of  
24                   record in this matter. The provisions of this PROTECTIVE ORDER shall,  
25                   without further order of the Court, continue to be binding after the conclusion  
26                   of the action, and this Court will have jurisdiction to enforce the terms of this  
27                   PROTECTIVE ORDER.
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1 10. Should plaintiff fail to comply with this PROTECTIVE ORDER, plaintiff and  
2 plaintiffs' counsel shall be liable for all costs associated with enforcing this  
3 agreement, including but not limited to all attorney fees in amounts to be  
4 determined by the Court. Plaintiff and plaintiff's counsel may also be subject  
5 to additional sanctions or remedial measures, such as contempt, evidentiary or  
6 terminating sanctions.  
7

8 IT IS SO STIPULATED.  
9

10 Dated: September, 2008  
11 DENNIS J. HERRERA  
12 City Attorney  
13 JOANNE HOEPER  
14 Chief Trial Attorney  
15 ROBERT BONTA  
16 Deputy City Attorney  
17 MEREDITH B. OSBORN  
18 Deputy City Attorney

15 By: \_\_\_\_\_  
16 MEREDITH B. OSBORN  
17 Attorneys for Defendants CITY AND COUNTY OF  
18 SAN FRANCISCO AND CHIEF HEATHER FONG

19 Dated: September, 2008  
20 By: \_\_\_\_\_  
21 BENJAMIN NISENBAUM  
22 Attorney for Plaintiff  
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**ORDER**

Pursuant to this stipulation, IT IS SO ORDERED



Dated: \_\_\_10/31/08\_\_\_\_\_

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HON. CLAUDIA WILKEN  
UNITED STATES DISTRICT JUDGE

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