

DENNIS J. HERRERA, State Bar #139669
 City Attorney
 JOANNE HOEPER, State Bar #114961
 Chief Trial Deputy
 ROBERT A. BONTA, State Bar #202668
 Deputy City Attorney
 Fox Plaza
 1390 Market Street, Sixth Floor
 San Francisco, California 94102-5408
 Telephone: (415) 554-4268
 Facsimile: (415) 554-3837
 E-Mail: robert.bonta@sfgov.org

Attorneys for Defendants
 CITY AND COUNTY OF SAN FRANCISCO,
 SAN FRANCISCO POLICE CHIEF HEATHER FONG
 (IN HER OFFICIAL CAPACITY ONLY),
 DEFENDANT OFFICER DENNES, SGT. DAVID ELLIOT

UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA

MARK GOINGS,

Plaintiff,

vs.

SGT. ELLIOT, San Francisco Police
 Officer & Individually, DENNES, San
 Francisco Police Officer & Individually,
 HEATHER FONG, As Chief Of The San
 Francisco Police Department, CITY OF
 SAN FRANCISCO, and SAN
 FRANCISCO POLICE DEPARTMENT

Defendants.

Case No. 08-CV-02544-PJH

STIPULATED PROTECTIVE ORDER
 AS MODIFIED BY THE COURT

Trial Date: Not Set

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

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

1 1. CONFIDENTIAL INFORMATION, within the meaning of this PROTECTIVE
2 ORDER, shall include all documents containing peace officer personnel records, official information
3 and any other such documents that a party in good faith has determined to be confidential. A Party
4 shall attempt to stamp "Confidential" on all such documents prior to production. In the event that any
5 CONFIDENTIAL INFORMATION is inadvertently not stamped as "Confidential" by the producing
6 Party, the party who notices this oversight shall nonetheless treat such documents as
7 CONFIDENTIAL INFORMATION. Such party shall also immediately make the labeling oversight
8 known to the other parties and the documents shall immediately be stamped as "Confidential" and
9 treated as such, as per this order.

10 2. The CONFIDENTIAL INFORMATION shall not be exhibited, displayed or otherwise
11 disclosed by any Party's Counsel (or authorized persons described in Section 7) to other persons
12 except as specifically provided herein (the limitations on use of CONFIDENTIAL INFORMATION
13 set forth herein are meant to apply only to a party's, party's counsel's, or party's retained expert,
14 investigator or consultant's use of the CONFIDENTIAL INFORMATION designated by counsel for
15 the opposing party and not to limit in any way a party or party's counsel's use of his own
16 CONFIDENTIAL INFORMATION).

17 3. All documents, including, but not limited to, audiotapes, videotapes, photographs,
18 transcripts, etc., related to any criminal investigation incidental to the event forming the basis of this
19 lawsuit shall be also be deemed CONFIDENTIAL INFORMATION, within the meaning of this
20 stipulation.

21 4. A Party may challenge another party's designation of a particular document as
22 CONFIDENTIAL INFORMATION by filing an appropriate motion, ~~under seal~~, with the Court. that complies
23 with all local rule requirements.

24 5. Unless disclosure is ordered by the Court, attorneys for the party designating the
25 CONFIDENTIAL INFORMATION shall have the sole authority to determine that documents
26 subject to the PROTECTIVE ORDER are no longer considered CONFIDENTIAL INFORMATION
27 and will advise opposing counsel in writing if this determination is made.

28 6. Any CONFIDENTIAL INFORMATION that is disclosed or produced by any party or
non party in connection with this case may be used by the opposing party only for prosecuting,

defending, or attempting to settle this litigation. CONFIDENTIAL INFORMATION may be disclosed only to the categories of persons and under the conditions described in this Order. When the litigation has been terminated, all parties or non parties that have received CONFIDENTIAL INFORMATION must comply with the provisions of Section 13, below.

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

7. Party's Counsel may exhibit, discuss, and/or disclose CONFIDENTIAL INFORMATION designated by the other party only to the following categories of person and no other unless authorized by order of the Court:

a. The Party and Party's Counsel;

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

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

"This envelope contains documents that are filed in this case pursuant to a Protective Order and are not to be opened nor the contents thereof to be displayed or revealed except by further order

1 of the Court or written consent of the party designating this information as confidential pursuant to
2 Protective Order."

3 9. In the event any person desires to exhibit documents or disclose CONFIDENTIAL
4 INFORMATION covered under this stipulation during trial or pretrial proceedings, such person shall
5 meet and confer with counsel for the party designating the CONFIDENTIAL INFORMATION to
6 reach an agreement, in accordance with the Court's rules and procedures, on an appropriate method
7 for disclosure, and if the party designating the CONFIDENTIAL INFORMATION does not agree to
8 such disclosure, the party seeking to disclose the CONFIDENTIAL INFORMATION ^{may} ~~shall~~ move the
9 Court for an Order as to the relevance and materiality of the CONFIDENTIAL INFORMATION and
10 as to whether the CONFIDENTIAL INFORMATION may be disclosed. Unless otherwise agreed, or instructed
11 transcripts and exhibits that incorporate or reference CONFIDENTIAL INFORMATION covered ^{by the court,}
12 under this stipulation shall be treated as CONFIDENTIAL INFORMATION that is subject to the
13 provisions of this PROTECTIVE ORDER. The Court Reporter shall mark as "Confidential" any
14 deposition or hearing transcript that contains any CONFIDENTIAL INFORMATION or any
15 reference to CONFIDENTIAL INFORMATION.

16 10. If a party who has received CONFIDENTIAL INFORMATION learns that, by
17 inadvertence or otherwise, it has disclosed CONFIDENTIAL INFORMATION to any person or in
18 any circumstance not authorized under this PROTECTIVE ORDER, the party must immediately (a)
19 notify the other party's attorney in writing of the unauthorized disclosures, (b) use its best efforts to
20 retrieve all copies of the CONFIDENTIAL INFORMATION, (c) inform the person or persons to
21 whom unauthorized disclosures were made of all the terms of this Order, and (d) request such person
22 or persons to execute the document that is attached hereto as Exhibit A.

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

26 12. All documents covered by this PROTECTIVE ORDER and copies thereof (including
27 those in the possession of experts, consultants, investigators, etc.) designated by opposing counsel
28 will be returned to opposing counsel at the termination of this litigation, through final judgment,

1 appeal, or by whatever means resolved. On final disposition of this case, counsel for the parties, and
2 all other persons subject to this Order (including experts, consultants, and investigators), shall within
3 30 days after the final disposition of this case, without request or further order of this Court, return all
4 CONFIDENTIAL INFORMATION designated by opposing counsel to opposing counsel. The
5 provisions of this PROTECTIVE ORDER shall, without further order of the Court, continue to be
6 binding after the conclusion of the action, and this Court will have jurisdiction to enforce the terms of
7 this PROTECTIVE ORDER.

8 13. Should any party fail to comply with this PROTECTIVE ORDER, that party and that
9 party's counsel shall be liable for all costs associated with enforcing this agreement, including but
10 not limited to all attorney fees in amounts to be determined by the Court. The Party and Party's
11 counsel may also be subject to additional sanctions or remedial measures, such as contempt,
12 evidentiary or terminating sanctions.

13 IT IS SO STIPULATED.

14 Dated: October 1, 2009

DENNIS J. HERRERA
City Attorney
JOANNE HOEPER
Chief Trial Deputy
ROBERT A. BONTA
Deputy City Attorney

18 /s/
19 By: _____
ROBERT A. BONTA

20 Attorneys for Defendants

21 CITY AND COUNTY OF SAN FRANCISCO,
22 SAN FRANCISCO POLICE CHIEF HEATHER FONG
23 (IN HER OFFICIAL CAPACITY ONLY),
24 DEFENDANT OFFICER DENNES, SGT. DAVID
ELLIOT

25 Dated: October 1, 2009

THE LAW FIRM OF KALLIS, APC

26
27 By: _____ /s/
JEFFERY M. KALLIS
28 Attorney for Plaintiff

ORDER

Pursuant to this stipulation, IT IS SO ORDERED

Dated: 10/15/09

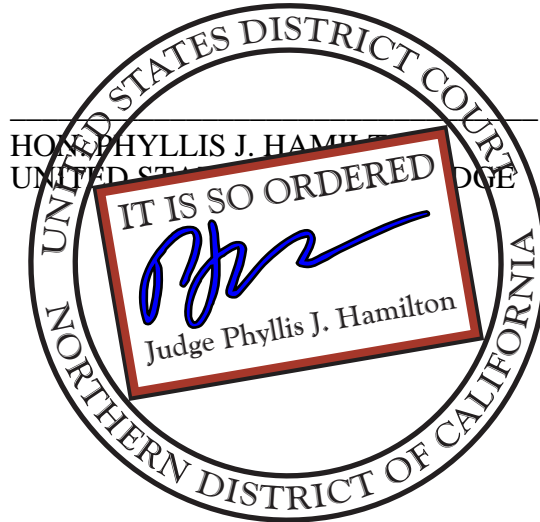


EXHIBIT A

AGREEMENT TO COMPLY WITH STIPULATED PROTECTIVE
ORDER FOR CONFIDENTIAL INFORMATION

I, _____, have read and understand the Court's Protective Order for
CONFIDENTIAL INFORMATION. I agree to abide by all terms of the Order. In addition, I
specifically understand and agree to the following:

1. I will not disclose the CONFIDENTIAL INFORMATION to any other person.
2. I understand that I have no power to authorize any other person to review the
CONFIDENTIAL INFORMATION.
3. I agree not to make copies of the CONFIDENTIAL INFORMATION.
4. I agree to return the CONFIDENTIAL INFORMATION to the counsel for the party
that produced it, at or before the conclusion of this litigation.
5. I understand that if I violate any of the terms of the Protective Order, then the party
who provided me with the CONFIDENTIAL INFORMATION, that party's Counsel, and I may be
subject to sanctions or possible contempt.

AGREED:

DATE:

SIGNATURE

PRINT NAME