

1 DENNIS J. HERRERA, State Bar #139669  
2 City Attorney  
3 JOANNE HOEPER, State Bar #114961  
4 Chief Trial Deputy  
5 ROBERT A. BONTA, State Bar #202668  
6 Deputy City Attorney  
7 Fox Plaza  
8 1390 Market Street, Sixth Floor  
9 San Francisco, California 94102-5408  
10 Telephone: (415) 554-4268  
11 Facsimile: (415) 554-3837  
12 E-Mail: robert.bonta@sfgov.org

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

18 UNITED STATES DISTRICT COURT

19 NORTHERN DISTRICT OF CALIFORNIA

20 MARK GOINGS,

21 Plaintiff,

22 vs.

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

27 Defendants.

28 Case No. 08-CV-02544-PJH

STIPULATED PROTECTIVE ORDER  
AS MODIFIED BY THE COURT

Trial Date: Not Set

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

27 GOOD CAUSE APPEARING, the parties stipulate, though their attorneys of record, to the  
28 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  
and will advise opposing counsel in writing if this determination is made.

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

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

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

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

11 a. The Party and Party's Counsel;

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

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

27 "This envelope contains documents that are filed in this case pursuant to a Protective Order  
28 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 ~~shall~~<sup>may</sup> 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 by the court,  
12 transcripts and exhibits that incorporate or reference CONFIDENTIAL INFORMATION covered  
13 under this stipulation shall be treated as CONFIDENTIAL INFORMATION that is subject to the  
14 provisions of this PROTECTIVE ORDER. The Court Reporter shall mark as "Confidential" any  
15 deposition or hearing transcript that contains any CONFIDENTIAL INFORMATION or any  
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  
(IN HER OFFICIAL CAPACITY ONLY),  
23 DEFENDANT OFFICER DENNES, SGT. DAVID  
ELLIOT

25 Dated: October 1, 2009

26 THE LAW FIRM OF KALLIS, APC

27 By: \_\_\_\_\_ /s/  
JEFFERY M. KALLIS  
28 Attorney for Plaintiff

1 ORDER  
2  
3 Pursuant to this stipulation, IT IS SO ORDERED  
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5 Dated: 10/15/09  
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1 EXHIBIT A

2 AGREEMENT TO COMPLY WITH STIPULATED PROTECTIVE  
3 ORDER FOR CONFIDENTIAL INFORMATION

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

7 1. I will not disclose the CONFIDENTIAL INFORMATION to any other person.

8 2. I understand that I have no power to authorize any other person to review the  
9 CONFIDENTIAL INFORMATION.

10 3. I agree not to make copies of the CONFIDENTIAL INFORMATION.

11 4. I agree to return the CONFIDENTIAL INFORMATION to the counsel for the party  
12 that produced it, at or before the conclusion of this litigation.

13 5. I understand that if I violate any of the terms of the Protective Order, then the party  
14 who provided me with the CONFIDENTIAL INFORMATION, that party's Counsel, and I may be  
15 subject to sanctions or possible contempt.

16 AGREED:

17 \_\_\_\_\_  
18 DATE:  
19 \_\_\_\_\_

21 SIGNATURE  
22 \_\_\_\_\_

23 PRINT NAME  
24 \_\_\_\_\_  
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