

1 JOHN A. RUSSO, City Attorney - State Bar #129729
 RANDOLPH W. HALL, Chief Assistant City Attorney - State Bar #080142
 2 WILLIAM E. SIMMONS, Supervising Trial Attorney - State Bar #121266
 ARLENE M. ROSEN, Senior Deputy City Attorney - State Bar #100160
 3 One Frank H. Ogawa Plaza, 6th Floor
 Oakland, California 94612
 4 Telephone: (510) 238-6392 Fax: (510) 238-6500
 26357/595135

5 Attorneys for Defendants
 6 CITY OF OAKLAND, et al.

7
 8
 9 **UNITED STATES DISTRICT COURT**
 10 **NORTHERN DISTRICT OF CALIFORNIA**

11 DARRELL CURRY,
 12 Plaintiff,
 13 vs.

Case No. C-08-03695-SBA
**AMENDED STIPULATED
 PROTECTIVE ORDER**

14 CITY OF OAKLAND, a municipal corporation;
 WAYNE TUCKER, in his official capacity as
 15 Chief of Police for the CITY OF OAKLAND; and,
 WAYNE TUCKER, M. VALLE, S. BARRE,
 16 DOES 3-25, inclusive,
 17 Defendants.

18
 19 Plaintiff DARRELL CURRY ("Plaintiff", individually and by and through the
 20 LAW OFFICES OF JOHN L. BURRIS and DEFENDANTS CITY OF OAKLAND, WAYNE
 21 TUCKER, MICHAEL VALLE and SEAN BARRE ("Defendants"), by and through their
 22 attorneys, the OFFICE OF THE CITY ATTORNEY OF OAKLAND, hereby stipulate to the
 23 following protective order:

24 1. DEFINITIONS

25 1.1 Party: any party to this action, including all of its officers, directors,
 26 employees, consultants, retained experts, and outside counsel (and their support staff).

1 1.2 Disclosure or Discovery Material: all items or information, regardless of
2 the medium or manner generated, stored, or maintained (including, among other things;

3 1.3 "Confidential" Information or Items: information (regardless of how
4 generated, stored or maintained) or tangible things qualify for protection under standards
5 developed under F.R.Civ. P. 26(c). This material includes, but is not limited to:

6 a) Copies of certain personnel files for MICHAEL VALLE and
7 SEAN BARRE for a period covering the dates of their employment with the Oakland
8 Police Department from August 10, 2002 through August 10, 2007.

9 b) Copies of certain Internal Affairs files pertaining to complaints
10 to the Oakland Police Department regarding performance of duty and/or excessive force
11 for MICHAEL VALLE and SEAN BARRE for a period from August 10, 2002 through
12 August 10, 2007.

13 c) Any Internal Affairs files pertaining to the incident which is
14 alleged in the Second Amended Complaint on file in this action.

15 1.4 "Highly Confidential-Attorneys' Eyes Only" Information or Items:
16 extremely sensitive "Confidential Information or Items" whose disclosure to another Party
17 or non-party would create a substantial risk of serious injury that could not be avoided by
18 less restrictive means.

19 1.5 Receiving Party: a Party that receives Disclosure or Discovery
20 Material from a Producing Party.

21 1.6 Producing Party: a Party or non-party that produces Disclosure or
22 Discovery Material in this action.

23 1.7 Designating Party: a Party or non-party that designates information
24 or items that it produces in disclosures or in responses to discovery as "Confidential" or
25 "Highly Confidential-Attorneys Eyes Only."

26 ///

1 1.8 Protected Material: any Disclosure or Discovery Material that is
2 designated as “Confidential” or as “Highly Confidential-Attorneys’ Eyes Only.”

3 1.9 Outside Counsel: attorneys who are not employees of a Party but
4 who are retained to represent or advise a Party in this action.

5 1.10 House Counsel: attorneys who are employees of a Party.

6 1.11 Counsel (without qualifier): Outside Counsel and House Counsel (as
7 well as their support staffs).

8 1.12 Expert: a person with specialized knowledge or experience in a
9 matter pertinent to the litigation who has been retained by a Party or its counsel to serve
10 as an expert witness or as an consultant n this action and who is not a past or a current
11 employee of a Party and who, at the time of retention, is not anticipated to become an
12 employee of a Party. This definition includes a professional jury or trial consultant
13 retained in connection with this litigation.

14 1.13 Professional Vendors: person or entities that provide litigation
15 support services (e.g., photocopying; videotaping; translating; preparing exhibits or
16 demonstrations; organizing, storing, retrieving data in any form or medium; etc.) and their
17 employees and subcontractors.

18 2. SCOPE

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

24 ///

25 ///

26 ///

1 3. DURATION

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

5 4. DESIGNATING PROTECTED MATERIAL

6 4.1 F.R.Civ. P. 26(c). The information sought to be protected must be
7 properly qualified for protection under F.R.Civ. P. 26(c). Counsel shall not designate any
8 discovery material "CONFIDENTIAL" without first making a good faith determination that
9 protection is warranted.

10 4.2 Manner and Timing of Designations. Except as otherwise provided in
11 this Order (see, e.g., second paragraph of section 4.2(a), below), or as otherwise
12 stipulated or ordered, material that qualified for protection under the Order must be clearly
13 so designated before the material is disclosed or produced.

14 Designation in conformity with this Order requires:

15 (a) for information in documentary form (apart from transcripts of depositions
16 or other pretrial or trial proceedings), that the Producing Party affix the legend
17 "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL-ATTORNEYS' EYES ONLY" at the top of
18 each page that contains protected material.

19 A Party or non-party that makes original documents or materials available for
20 inspection need not designate them for protection until after the inspecting Party has
21 indicated which material it would like copied and produced. During the inspection and
22 before the designation, all of the material made available for inspection shall be deemed
23 "HIGHLY CONFIDENTIAL—ATTORNEYS' EYES ONLY." After the inspecting Party has
24 identified the documents it wants copied and produced, the Producing Party must
25 determine which documents, or portions thereof, qualify for protection under this Order,
26 then, before producing the specified documents, the Producing Party must affix the

1 appropriate legend (“CONFIDENTIAL” or “HIGHLY CONFIDENTIAL-ATTORNEYS’ EYES
2 ONLY”) at the top of each page that contains Protected Material. If only a portion or
3 portions of the material on a page qualifies for protection, the Producing Party also must
4 clearly identify the protected portion(s) (e.g., by making appropriate markings in the
5 margins) and must specify, for each portion, the level of protection being asserted (either
6 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL—ATTORNEYS’ EYES ONLY”).

7 (b) for testimony given in deposition or in other pretrial or trial proceedings,
8 that the Party or non-party offering or sponsoring the testimony identify on the record,
9 before the close of the deposition, hearing, or other proceeding, all protected testimony,
10 and further specify any portions of the testimony that qualify as “HIGHLY
11 CONFIDENTIAL—ATTORNEYS’ ONLY.” When it is impractical to identify separately each
12 portion of testimony that is entitled to protection, the Party or non-party that sponsors,
13 offers, or gives the testimony may invoke on the record (before the deposition or
14 proceeding ins concluded) a right to have up to 20 days to identify the specify the level of
15 protection being asserted (“CONFIDENTIAL” or “HIGHLY CONFIDENTIAL—
16 ATTORNEYS’ EYES ONLY”). Only those portions of the testimony that are appropriately
17 designated for protection within the 20 days shall be covered by the provisions of this
18 Stipulated Protective Order.

19 Transcript pages containing Protected Material must be separately bound by
20 the court reporter, who must affix to the top of each such page the legend
21 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL—ATTORNEYS’ EYES ONLY,” as
22 instructed by the Party or non-party offering or sponsoring the witness or presenting the
23 testimony.

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

1 "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL—ATTORNEYS' EYES ONLY."

2 4.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
3 failure to designate qualified information or items as "Confidential" or "Highly
4 Confidential—Attorneys' Eyes Only" does not, standing alone, waive the Designating
5 Party's right to secure protection under this Order for such material. If material is
6 appropriately designated as "Confidential" or "Highly Confidential—Attorneys' Eyes Only"
7 after the material was initially produced, the Receiving Party, on timely notification of the
8 designation, must make reasonable efforts to assure that the material is treated in
9 accordance with the provisions of the Order.

10 5. CHALLENGING CONFIDENTIALITY DESIGNATIONS

11 5.1 Timing of Challenges. Unless a proper challenge to a Designating
12 Party's confidentiality designation is necessary to avoid foreseeable substantial unfairness,
13 unnecessary economic burden, or a later significant disruption or delay of the litigation, a
14 Party does not waive its right to challenge a confidentiality designation by electing not to
15 mount a challenge promptly after the original designation is disclosed.

16 5.2 Meet and Confer. A Party that elects to initiate a challenge to a
17 Designating Party's confidentiality designation must do so in good faith and must begin the
18 process by conferring directly (in voice to voice dialogue; other forms of communication are
19 not sufficient) with counsel for the Designating Party. In conferring, the challenging Party
20 must explain the basis for its belief that the confidentiality designation was not proper and
21 must give the Designating Party an opportunity to review the designated material, to
22 reconsider the circumstances, and, if no change in designation is offered, to explain the
23 basis for the chose designation. A challenging Party may proceed to the next stage of the
24 challenge process only if it has engaged in this meet and confer process first.

25 5.3 Judicial Intervention. A Party that elects to press a challenge to a
26 confidentiality designation after considering the justification offered by the Designating

1 Party may file and serve a motion under Civil Rule 7 (and in compliance with Civil Local
2 Rule 79-5, if applicable) that identifies the challenged material and sets forth in detail the
3 basis for the challenge. Each such motion must be accompanied by a competent
4 declaration that affirms that the movant has complied with the meet and confer
5 requirements imposed in the preceding paragraph and that sets forth with specificity the
6 justification for the confidentiality designation that was given by the Designating Party in
7 the meet and confer dialogue.

8 The burden of persuasion in any such challenge proceeding shall be on the
9 Designating Party. Until the court rules on the challenge, all parties shall continue to afford
10 the material in question the level of protection to which it is entitled under the Producing
11 Party's designation.

12 6. ACCESS TO AND USE OF PROTECTED MATERIAL

13 6.1 Basic Principles. A Receiving Party may use Protected Material that is
14 disclosed or produced by another Party or by a non-party in connection with this case only
15 for prosecuting, defending, or attempting to settle this litigation. Such Protected material
16 may be disclosed only to the categories of persons and under the conditions described in
17 this Order. When the litigation has terminated, a Receiving Party must comply with the
18 provisions of section 10, below (FINAL DISPOSITION).

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

22 6.2 Disclosure of "CONFIDENTIAL: Information or Items. Unless
23 otherwise ordered by the court or permitted in writing by the Designating Party, a Receiving
24 Party may disclose any information or item designated CONFIDENTIAL only to:

25 ///

26 ///

1 (a) employees of the Receiving Party to whom disclosure is reasonably
2 necessary for this litigation and who have signed the “Agreement to Be Bound by
3 Protective Order” (Exhibit A);

4 (b) experts (as defined in this Order) of the Receiving Party to whom
5 disclosure is reasonably necessary for this litigation and who have signed the “Agreement
6 to Be Bound by Protective Order” (Exhibit A);

7 (c) the Court and its personnel;

8 (d) court reporters, their staffs, and professional vendors to whom disclosure
9 is reasonably necessary for this litigation and who have signed the “Agreement to Be
10 Bound by Protective Order” (Exhibit A);

11 (e) during their deposition, witnesses in the action to whom disclosure is
12 reasonably necessary and who have signed the “Agreement to Be Bound by Protective
13 Order” (Exhibit A). Pages of transcribed deposition testimony or exhibits to depositions
14 that reveal Protected Material must be separately bound by the court reporter and may not
15 be disclosed to anyone except as permitted under this Stipulated Protective Order.

16 (f) the author the document or the original source of the information.

17 6.3 Disclosure of “HIGHLY CONFIDENTIAL—ATTORNEYS’ EYES
18 ONLY” Information or Items. Unless otherwise ordered by the court or permitted in writing
19 by the Designating Party, Receiving Party may disclose any information or item designated
20 “HIGHLY CONFIDENTIAL—ATTORNEYS’ EYES ONLY” only to:

21 (a) Experts (as defined in this Order) (1) to whom disclosure is
22 reasonably necessary for this litigation, who have signed the “Agreement to Be Bound by
23 Protective Order” (Exhibit A);

24 (b) the Court and it’s personnel;

25 ///

26 ///

1 (c) court reporters, their staffs, and professional vendors to whom
2 disclosure is reasonably necessary for this litigation and who have signed the "Agreement
3 to Be Bound by Protective Order" (Exhibit A); and

4 (d) the author of the document or the original source of the
5 information.

6 7. PROTECTED MATERIAL SUBPOENAED OR ORDERED
7 PRODUCED IN OTHER LITIGATION

8 If a Receiving Party is served with a subpoena or an order issued in other
9 litigation that would compel disclosure of any information or items designated in this action
10 as "CONFIDENTIAL" or HIGHLY CONFIDENTIAL—ATTORNEYS' EYES ONLY," the
11 Receiving Party must so notify the Designating Party, in writing (by fax, if possible)
12 immediately and in no event more than three court days after receiving the subpoena or
13 order. Such notification must include a copy of the subpoena or court order.

14 The Receiving Party also must immediately inform in writing the Party who
15 caused the subpoena or order to issue in the other litigation that some or all the material
16 covered by the subpoena or order is the subject of this Protective Order. In addition, the
17 Receiving Party must deliver a copy of this Stipulated Protective Order promptly to the
18 Party in the other action that caused the subpoena or order to issue.

19 The purpose of imposing these duties is to alert the interested parties to the
20 existence of this Protective Order and to afford the Designation Party in this case an
21 opportunity to try to protect its confidentiality interests in the court from which the
22 subpoena or order issued. The Designating Party shall bear the burdens and the
23 expenses of seeking protection in that court of its confidential material—and nothing in
24 these provisions should be construed as authorizing or encouraging a Receiving Party in
25 this action to disobey a lawful directive from another court.
26

1 8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

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

10 9. FILING PROTECTED MATERIAL. Without written permission from the

11 Designating Party or a court order secured after appropriate notice to all interested
12 persons, a Party may not in the public record in this action any Protected material. A
13 Party that seeks to file under seal any Protected Material must comply with Civil Local
14 Rule 79-5. In addition to placing the documents in a sealed envelope with instructions
15 that the envelope is not to be opened absent further order of the court, the envelope
16 should be labeled to identify title of the case, the case number, and the title of the
17 document.

18 10. FINAL DISPOSITION. Unless otherwise ordered or agreed in writing by

19 the Producing Party, within sixty days after the final termination of this action, each
20 Receiving Party must return all Protected Material to the Producing Party, as used in this
21 subdivision, "all Protected Material" includes all copies, abstracts compilations, summaries
22 or any other form of reproducing or capturing any of the Protected Material. With
23 permission in writing from the Designating Party, the Receiving Party may destroy some or
24 all of the Protected Material instead of returning it. Whether the Protected Material is
25 returned or destroyed, the Receiving Party must submit a written certification to the
26 Producing Party (and, if not the same person or entity, to the Designating Party) by the

1 sixty day deadline that identifies (by category, where appropriate) all the Protected
2 Material that was returned or destroyed and that affirms that the Receiving Party has not
3 retained any copies, abstracts, compilations, summaries or other forms of reproducing or
4 capturing any of the Protected Material. Notwithstanding this provision, Counsel are
5 entitled to retain an archival copy of all pleadings, motion papers, transcripts, legal
6 memoranda, correspondence or attorney work product, even if such materials contain
7 Protected Material. Any such archival copies that contain or constitute Protected Material
8 remain subject to this Protective Order as set forth in Section 4 (DURATION), above.

9 **11. MISCELLANEOUS**

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

12 **12. JURISDICTION.** Any matter covered by this Stipulation and Order shall
13 be referred to and/or overseen by a United States Magistrate Judge for 24 months after
14 the final termination of this action.

15 **THE PARTIES HEREBY STIPULATE TO THE TERMS OF THE**
16 **PROTECTIVE ORDER AS SET FORTH ABOVE.**

17 DATED: October 7, 2009 LAW OFFICES OF JOHN L. BURRIS

18 By: //s//BENJAMIN NISENBAUM
19 BENJAMIN NISENBAUM

20 Attorneys for Plaintiff
21 Darrell Curry

22 DATED: October 7, 2009 OFFICE OF THE CITY ATTORNEY

23 By: //s//ARLENE M. ROSEN
24 ARLENE M. ROSEN

25 Attorneys for Defendants
26 City of Oakland, et al.

1 PURSUANT TO STIPULATION, IT IS SO ORDERED.

2 DATED: October 19, 2009

3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26



SAUNDRA E. ARMSTRONG
~~United States District Judge~~
Bernard Zimmerman
United States
Magistrate Judge

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

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 Court for the Northern District of California on
_____ [date] in the case of Darrell Curry v. City of Oakland, et al.
Case No. C-08-03695-SBA. I agree to comply with and 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 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.

1 Date: _____
2 City and State where sworn and signed: _____
3 Printed name: _____
4 [printed name]
5
6 Signature: _____
7 [signature]
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26