

1 DENNIS J. HERRERA, State Bar #139669
 City Attorney
 2 JOANNE HOEPER, State Bar #114961
 Chief Trial Deputy
 3 SEAN F. CONNOLLY, State Bar #152235
 Deputy City Attorney
 4 Fox Plaza
 1390 Market Street, 6th Floor
 5 San Francisco, California 94102-5408
 Telephone: (415) 554-3863
 6 Facsimile: (415) 554-3837
 E-Mail: sean.connolly@sfgov.org

7
 8 Attorneys for Defendants
 CITY AND COUNTY OF SAN FRANCISCO, ET AL.

9
 10 BENJAMIN NISENBAUM, State Bar # 222173
 LAW OFFICES OF JOHN L. BURRIS
 Airport Corporate Centre
 11 7677 Oakport Street, Suite 1120
 Telephone: (510) 839-5200
 12 Facsimile: (510) 839-3882
 E-Mail: bnisenbaum@gmail.com

13
 14 Attorneys for Plaintiff
 CHARLES HAYNES

15
 16 UNITED STATES DISTRICT COURT
 17 NORTHERN DISTRICT OF CALIFORNIA

18 CHARLES HAYNES,
 19 Plaintiff,
 20 vs.

Case No. C09-00174 PJH

**STIPULATION AND [PROPOSED]
 PROTECTIVE ORDER AS MODIFIED BY THE COURT**

21 CITY AND COUNTY OF SAN
 FRANCISCO, a municipal corporation;
 22 HEATHER FONG, in her capacity as Chief of
 Police for the CITY AND COUNTY OF SAN
 FRANCISCO; PAULO MORGADO,
 23 individually, and in his capacity as a police
 officer for the CITY AND COUNTY OF SAN
 24 FRANCISCO; and, San Francisco police
 officers DOES 1-25, inclusive,
 25
 26 Defendants.

Trial Date: November 1, 2010

1 **STIPULATED PROTECTIVE ORDER**

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

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

7 1. CONFIDENTIAL INFORMATION, within the meaning of this PROTECTIVE
8 ORDER, shall include all documents containing official information privileged materials, criminal
9 investigation materials and any other such documents that defendants in good faith have determined
10 to be confidential. Defendants shall attempt to stamp "Confidential" on all such documents prior to
11 production. In the event that any CONFIDENTIAL INFORMATION is inadvertently not stamped as
12 "Confidential" by defendants, the party who notices this oversight shall immediately make it known
13 to the other parties and the documents shall immediately be stamped as "Confidential" and treated as
14 such, as per this order.

15 2. All documents, including, but not limited to, audiotapes, videotapes, photographs,
16 transcripts, etc., related to the criminal investigation incidental to the event forming the basis of this
17 lawsuit shall be deemed CONFIDENTIAL INFORMATION, within the meaning of this stipulation.

18 ~~3. Plaintiff may challenge defendants' designation of a particular document as
19 CONFIDENTIAL INFORMATION by filing an appropriate motion, under seal, with the Court. The
20 parties agree that the prevailing party in a motion to remove the confidential designation shall waive
21 any entitlement to monetary sanctions, including attorney's fees.~~

22 4. Unless disclosure is ordered by the Court, attorneys for defendants shall have the sole
23 authority to determine that documents subject to the PROTECTIVE ORDER are no longer
24 considered CONFIDENTIAL INFORMATION and will advise counsel for plaintiff in writing if this
25 determination is made.

26 5. Any CONFIDENTIAL INFORMATION that is disclosed or produced by any party or
27 non party in connection with this case may be used only for prosecuting, defending, or attempting to
28 settle this litigation. CONFIDENTIAL INFORMATION may be disclosed only to the categories of

1 persons and under the conditions described in this Order. When the litigation has been terminated, all
2 parties or non parties that have received CONFIDENTIAL INFORMATION must comply with the
3 provisions of section 12, below. All parties or non parties that have received CONFIDENTIAL
4 INFORMATION must store and maintain it in a secure manner that ensures that access is limited to
5 the persons authorized under this Order.

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

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

18 7. Counsel for Plaintiff may not provide originals or copies of the CONFIDENTIAL
19 INFORMATION to any plaintiff absent the written agreement of counsel for the City or a court
20 order, subject to the following:

21 a. For purposes of evaluating the settlement value or potential jury verdict,
22 counsel for Plaintiff may discuss the general nature of the CONFIDENTIAL INFORMATION with
23 plaintiffs without disclosing any identifying details about a specific witness or any documents.
24 Plaintiffs' counsel may also review with a plaintiff any statement or interview given by that plaintiff.

25 8. Unless otherwise stipulated to by defendants, any use of CONFIDENTIAL
26 INFORMATION or comment on the substance of any CONFIDENTIAL INFORMATION in any
27 papers or pleadings filed with the Court, shall be filed under seal pursuant to the Court's rules and
28 procedures (see Northern District of California Civil Local Rule 79-5). The sealed envelopes shall

1 be endorsed with the caption of this litigation, and an indication of the nature of the contents of the
2 envelopes and a statement substantially in the following form:

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

7 9. In the event any person desires to exhibit documents or disclose CONFIDENTIAL
8 INFORMATION covered under this stipulation during trial or pretrial proceedings, such person shall
9 meet and confer with counsel for defendants to reach an agreement, in accordance with the Court's
10 rules and procedures, on an appropriate method for disclosure, and if defendants do not agree to such
11 disclosure, such CONFIDENTIAL INFORMATION shall not be disclosed unless authorized by
12 order of the Court. Unless otherwise agreed, transcripts and exhibits that incorporate or reference
13 CONFIDENTIAL INFORMATION covered under this stipulation shall be treated as
14 CONFIDENTIAL INFORMATION that is subject to the provisions of this PROTECTIVE ORDER.
15 The Court Reporter shall mark as "Confidential" any deposition or hearing transcript that contains
16 any CONFIDENTIAL INFORMATION or any reference to CONFIDENTIAL INFORMATION.

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

24 11. Any inadvertent disclosure made in violation of this PROTECTIVE ORDER shall be
25 immediately corrected by the offending party and does not constitute a waiver of the terms of this
26 PROTECTIVE ORDER, except by written agreement of the parties, or further order of this Court.

27 12. All documents covered by this PROTECTIVE ORDER and copies thereof (including
28 those in the possession of experts, consultants, etc.) will be returned to the San Francisco City
Attorney's Office at the termination of this litigation. On final disposition of this case, plaintiff's

1 counsel shall within 30 days after the final disposition of this case, without request or further order of
2 this Court, return all CONFIDENTIAL INFORMATION to the Deputy City Attorney of record in
3 this matter. The provisions of this PROTECTIVE ORDER shall, without further order of the Court,
4 continue to be binding after the conclusion of the action, and this Court will have jurisdiction to
5 enforce the terms of this PROTECTIVE ORDER.

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

11 IT IS SO STIPULATED.

12
13 Dated: August 12, 2009

14 DENNIS J. HERRERA
15 City Attorney
16 JOANNE HOEPER
17 Chief Trial Deputy
18 SEAN F. CONNOLLY
19 Deputy City Attorney

20 By: s/Sean F. Connolly
21 SEAN F. CONNOLLY
22 Attorneys for Defendant
23 CITY AND COUNTY OF SAN FRANCISCO

24 LAW OFFICES OF JOHN L. BURRIS

25 Dated: August 12, 2009

26 By: s/Benjamin Nisenbaum
27 BENJAMIN NISENBAUM, ESQ.
28 Attorneys for Plaintiff
CHARLES HAYNES

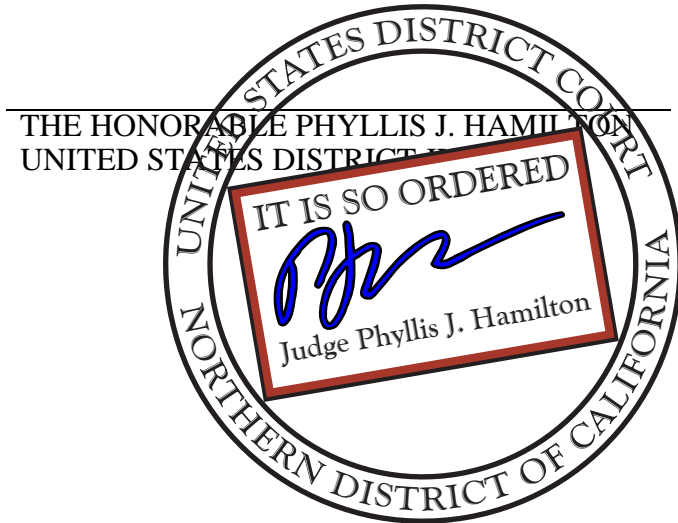
EXHIBIT A

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
27
28

ORDER

BASED ON THE ABOVE ENTERED STIPULATION, IT IS SO ORDERED

Dated: 8/20/09



AS THE COURT DECLINES TO INDEPENDENTLY RESOLVE CHALLENGES TO THE PARTIES' CONFIDENTIALITY DESIGNATIONS WITH RESPECT TO PARTICULAR DOCUMENTS, EXCEPT INsofar AS SUCH RESOLUTION IS REQUIRED IN CONNECTION WITH DETERMINATION OF MOTIONS TO SEAL FILED TOGETHER WITH PAPERS OR PLEADINGS BEFORE THE COURT (PURSUANT TO LOCAL RULE 79-5), PARAGRAPH 3 OF THE STIPULATED PROTECTIVE ORDER IS STRICKEN.