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9 **L.S., by and through his Guardian Ad Litem**
10 **Laurian Studesville**

11 **UNITED STATES DISTRICT COURT**
12 **NORTHERN DISTRICT OF CALIFORNIA**

13 **L.S., by and through his Guardian Ad Litem**
14 **Laurian Studesville**

CASE NO.: C09-03004 CW

15 **Plaintiff,**

STIPULATION AND [PROPOSED]
PROTECTIVE ORDER

16 **vs.**

17 **CITY OF OAKLAND, a municipal**
18 **corporation; WAYNE TUCKER, in his**
19 **official capacity as Chief of Police for the**
20 **CITY OF OAKLAND; ALAN LEAL,**
21 **individually, and in his capacity as a police**
22 **officer for the CITY OF OAKLAND; and,**
23 **City of Oakland police officers DOES 1-25,**
24 **inclusive,**

25 **Defendants.**

26 Plaintiff L.S. by and through his attorney ADANTE D. POINTER individually and on
behalf of THE LAW OFFICES OF JOHN L. BURRIS; Defendant ALAN LEAL by and
through his attorney JOHN J. VERBER individually and on behalf of the law offices of
BURNHAM & BROWN; and Defendants CITY OF OAKLAND and WAYNE TUCKER, by

1 and through their attorney, GEOFFREY BEATY, individually and on behalf the CITY OF
2 OAKLAND, hereby stipulate to the following protective order:

3
4 1. DEFINITIONS

5 1.1 Party: any party to this action, including all of its officers, directors,
6 employees, consultants, retained experts, and outside counsel (and their support staff).

7 1.2 Disclosure or Discovery Material: all items or information, regardless of
8 the medium or manner generated, stored, or maintained (including, among other things;

9 1.3 "Confidential" Information or Items: information (regardless of how
10 generated, stored or maintained) or tangible things qualify for protection under standards
11 developed under F.R.Civ. P. 26(c). **The material subject to this stipulation are the**
12 **personnel records of Officers TIM MARTIN and ALAN LEAL for the time period of**
13 **July 3, 2002, up to and including the date the aforementioned documents are**
14 **produced; Internal Affairs files pertaining to Officers TIM MARTIN and ALAN LEAL**
15 **for the time period of July 3, 2002, up to and including the date the aforementioned**
16 **documents are produced and the Internal Affairs file pertaining to the incident**
17 **which is the subject of plaintiff's complaint.**

18
19 1.4 Receiving Party: a Party that receives Disclosure or Discovery
20 Material from a Producing Party.

21
22 1.5 Producing Party: a Party or non-party that produces Disclosure or
23 Discovery Material in this action.

24 1.6. Designating Party: a Party or non-party that designates information
25 or items that it produces in disclosures or in responses to discovery as "Confidential" or
26

1 "Highly Confidential-Attorneys' Eyes Only."

2 1.7. Protected Material: any Disclosure or Discovery Material that is
3 designated as "Confidential" or as "Highly Confidential-Attorneys' Eyes Only."

4 1.8. Outside Counsel: attorneys who are not employees of a Party but
5 who are retained to represent or advise a Party in this action.

6 1.9. House Counsel: attorneys who are employees of a Party.

7 1.10. Counsel (without qualifier): Outside Counsel and House Counsel (as
8 well as their support staffs).

9 1.11. Expert: a person with specialized knowledge or experience in a
10 matter pertinent to the litigation who has been retained by a Party or its counsel to serve
11 as an expert witness or as a consultant in this action and who is not a past or a current
12 employee of a Party and who, at the time of retention, is not anticipated to become an
13 employee of a Party. This definition includes a professional jury or trial consultant
14 retained in connection with this litigation.

15 1.12. Professional Vendors: person or entities that provide litigation
16 support services (e.g., photocopying; videotaping; translating; preparing exhibits or
17 demonstrations; organizing, storing, retrieving data in any form or medium; etc.) and their
18 employees and subcontractors.

19 1.13 HIGHLY CONFIDENTIAL-ATTORNEYS' EYES ONLY: information or
20 items extremely sensitive whose disclosure to another party or non-party would create a
21 substantial risk of serious injury that could not be avoided by less restrictive means.

22 2. SCOPE

23 The protections conferred by this Stipulation and Order cover not only
24 Protected Material (as defined above), but also any information copied or extracted
25 therefrom, as well as all copies, excerpts, summaries, or compilations thereof, plus
26 testimony, conversations, or presentations by parties or counsel to or in court or in other

1 settings that might reveal Protected Material.

2 3. DURATION

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

6 4. DESIGNATING PROTECTED MATERIAL

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

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

15 Designation in conformity with this Order requires:

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

20 (b) for testimony given in deposition or in other pretrial or trial proceedings,
21 that the Party or non-party offering or sponsoring the testimony identify on the record,
22 before the close of the deposition, hearing, or other proceeding. Only those portions of
23 the testimony that are appropriately designated for protection within the 20 days shall be
24 covered by the provisions of this Stipulated Protective Order.

25 Transcript pages containing Protected Material must be separately bound by
26 the court reporter, who must affix to the top of each such page the legend

1 "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" as
2 instructed by the Party or non-party offering or sponsoring the witness or presenting the
3 testimony.

4 When it is impractical to identify separately each portion of testimony that is
5 entitled to protection, the Party or non-party that sponsors, offers, or gives the testimony
6 may invoke on the record (before the deposition or proceedings is concluded) a right to
7 have up to 20 days to identify and specify the level of the protection asserted
8 ("CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY")

9 (c) for information produced in some form other than documentary, and for
10 any other tangible items, that the Producing Party affix in a prominent place on the exterior
11 of the container or containers in which the information or item is stored the legend
12 "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL-ATTORNEYS' EYES ONLY."

13 4.3. Inadvertent Failures to Designate. If timely corrected, an inadvertent
14 failure to designate qualified information or items as "Confidential" does not, standing
15 alone, waive the Designating Party's right to secure protection under this Order for such
16 material. If material is appropriately designated as "Confidential" after the material was
17 initially produced, the Receiving Party, on timely notification of the designation, must make
18 reasonable efforts to assure that the material is treated in accordance with the provisions
19 of the Order.

20 5. CHALLENGING CONFIDENTIALITY DESIGNATIONS

21 5.1 Timing of Challenges. Unless a proper challenge to a Designating
22 Party's confidentiality designation is necessary to avoid foreseeable substantial unfairness,
23 unnecessary economic burden, or a later significant disruption or delay of the litigation, a
24 Party does not waive its right to challenge a confidentiality designation by electing not to
25 mount a challenge promptly after the original designation is disclosed.

26 5.2 Meet and Confer. A Party that elects to initiate a challenge to a

1 Designating Party's confidentiality designation must do so in good faith and must begin the
2 process by conferring directly (in voice to voice dialogue; other forms of communication are
3 not sufficient) with counsel for the Designating Party. In conferring, the challenging Party
4 must explain the basis for its belief that the confidentiality designation was not proper and
5 must give the Designating Party an opportunity to review the designated material, to
6 reconsider the circumstances, and, if no change in designation is offered, to explain the
7 basis for the chose designation. A challenging Party may proceed to the next stage of the
8 challenge process only if it has engaged in this meet and confer process first.

9 5.3 Judicial Intervention. A Party that elects to press a challenge to a
10 confidentiality designation after considering the justification offered by the Designating
11 Party may file and serve a motion under Civil Rule 7 (and in compliance with Civil Local
12 Rule 79-5, if applicable) that identifies the challenged material and sets forth in detail the
13 basis for the challenge. Each such motion must be accompanied by a competent
14 declaration that affirms that the movant has complied with the meet and confer
15 requirements imposed in the preceding paragraph and that sets forth with specificity the
16 justification for the confidentiality designation that was given by the Designating Party in
17 the meet and confer dialogue.

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

22 6. ACCESS TO AND USE OF PROTECTED MATERIAL

23 6.1 Basic Principles. A Receiving Party may use Protected Material that is
24 disclosed or produced by another Party or by a non-party in connection with this case only
25 for prosecuting, defending, or attempting to settle this litigation. Such Protected material
26 may be disclosed only to the categories of persons and under the conditions described in

1 this Order. When the litigation has terminated, a Receiving Party must comply with the
2 provisions of section 10, below (FINAL DISPOSITION).

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

6 6.2 Disclosure of "CONFIDENTIAL: Information or Items.

7 Unless otherwise ordered by the court or permitted in writing by the Designating
8 Party, a Receiving Party may disclose any information or item designated CONFIDENTIAL
9 only to:

10 (a) employees of the Receiving Party to whom disclosure is reasonably
11 necessary for this litigation and who have signed the "Agreement to Be Bound by
12 Protective Order" (Exhibit A);

13 (b) experts (as defined in this Order) of the Receiving Party to whom
14 disclosure is reasonably necessary for this litigation and who have signed the "Agreement
15 to Be Bound by Protective Order" (Exhibit A);

16 (c) the Court and its personnel;

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

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

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

26 6.3 Disclosure of HIGHLY CONFIDENTIAL-ATTORNEY'S EYES ONLY

1 information or Items.

2 Unless otherwise ordered by the Court or permitted in writing by the Designating
3 Party, Receiving Party may disclose any information or item designated HIGHLY
4 CONFIDENTIAL-ATTORNEYS' EYES ONLY only to:

- 5 (a) Experts (as defined in this Order) (1) to whom disclosure is
6 reasonably necessary for this litigation, who have signed the
7 "Agreement to be Bound By Protective Order" (Exhibit A);
- 8 (b) The Court and its personnel;
- 9 (c) Court reporters, their staffs, and professional vendors to who
10 disclosure is reasonably necessary for this litigation and who have
11 signed the "Agreement to Be Bound by Protective Order" (Exhibit A);
- 12 (d) The author of the document or the original source of the information

13
14 7. PROTECTED MATERIAL SUBPOENAED OR ORDERED
15 PRODUCED IN OTHER LITIGATION

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

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

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

8 8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

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

17 9. FILING PROTECTED MATERIAL. Without written permission from the
18 Designating Party or a court order secured after appropriate notice to all interested
19 persons, a Party may not in the public record in this action any Protected material. A
20 Party that seeks to file under seal any Protected Material must comply with Civil Local
21 Rule 79-5. In addition to placing the documents in a sealed envelope with instructions
22 that the envelope is not to be opened absent further order of the court, the envelope
23 should be labeled to identify title of the case, the case number, and the title of the
24 document.

25 10. FINAL DISPOSITION. Unless otherwise ordered or agreed in writing by
26 the Producing Party, within sixty days after the final termination of this action, each

1 Receiving Party must return all Protected Material to the Producing Party, as used in this
2 subdivision, "all Protected Material" includes all copies, abstracts compilations, summaries
3 or any other form of reproducing or capturing any of the Protected Material. With
4 permission in writing from the Designating Party, the Receiving Party may destroy some or
5 all of the Protected Material instead of returning it. Whether the Protected Material is
6 returned or destroyed, the Receiving Party must submit a written certification to the
7 Producing Party (and, if not the same person or entity, to the Designating Party) by the
8 sixty day deadline that identifies (by category, where appropriate) all the Protected
9 Material that was returned or destroyed and that affirms that the Receiving Party has not
10 retained any copies, abstracts, compilations, summaries or other forms of reproducing or
11 capturing any of the Protected Material. Notwithstanding this provision, Counsel are
12 entitled to retain an archival copy of all pleadings, motion papers, transcripts, legal
13 memoranda, correspondence or attorney work product, even if such materials contain
14 Protected Material. Any such archival copies that contain or constitute Protected Material
15 remain subject to this Protective Order as set forth in Section 4 (DURATION), above.

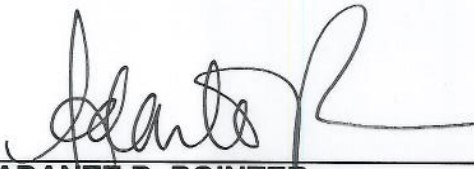
16 **11. MISCELLANEOUS**

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

19 **12. JURISDICTION.** The Court shall retain jurisdiction over any matter
20 covered by this Stipulation and Order for 24 months after the final termination of this
21 action.

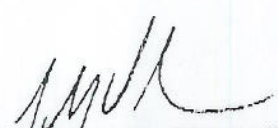
22 **IT IS SO STIPULATED.**

23
24 Dated:



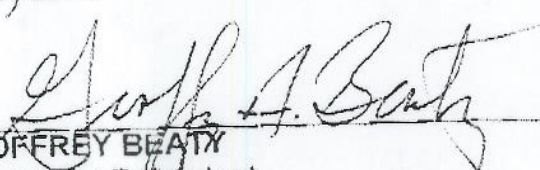
ADANTE D. POINTER
Attorney for Plaintiff

1 Dated: April 6, 2010



JOHN J. VERBER
Attorney for Defendant
ALAN LEAL

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5 Dated: April 9, 2010



GEOFFREY BEATY
Attorney for Defendant
CITY OF OAKLAND

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10 PURSUANT TO STIPULATION, IT IS SO ORDERED.

11
12 DATED: 4/21/2010

13
14 

CLAUDIA WILKINS
United States District Court Judge

1 EXHIBIT A

2 ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

3 I, _____ [print or type full name], of
4 _____ [print or type full address], declare under penalty
5 of perjury that I have read in its entirety and understand the Stipulated Protective Order
6 that was issued by the United States Court for the Northern District of California on
7 _____ [date] in the case of L.S. by and through his Guardian Ad
8 Litem LAURIAN STUDESVILLE v. CITY OF OAKLAND, et al. USDC No. C09-03004
9 CW. I agree to comply with and be bound by all the terms of this Stipulated Protective
10 Order and I understand and acknowledge that failure to so comply could expose me to
11 sanctions and punishment in the nature of contempt. I solemnly promise that I will not
12 disclose in any manner any information or item that is subject to this Stipulated
13 Protective Order to any person or entity except in strict compliance with the provisions of
14 this Order.
15

16 I further agree to submit to the jurisdiction of the United States District for the
17 Northern District of California for the purpose of enforcing the terms of this Stipulated
18 Protective Order, even if such enforcement proceedings occur after termination of this
19 action.
20

21 I hereby appoint _____ [print or type full name] of
22 _____ [print or type full address and
23 telephone number] as my California agent for service of process in connection with this
24 action or any proceedings related to enforcement of this Stipulated Protective Order.
25
26

1 Date: _____
2 City and State where sworn and signed: _____
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4 Printed name: _____ -
5 [printed name]
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7 Signature: _____
8 [signature]
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