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5 Attorneys for Defendants,  
 CITY OF OAKLAND and ANTHONY BATTS

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 8 **UNITED STATES DISTRICT COURT**  
 9 **NORTHERN DISTRICT OF CALIFORNIA**  
 10 **OAKLAND DIVISION**  
 11

12 KAZEEM UPSHAW,

13 Plaintiff,

14 vs.

15 CITY OF OAKLAND, a municipal  
 corporation; OAKLAND POLICE  
 16 DEPARTMENT, a municipal corporation;  
 ANTHONY BATTS in his capacity as  
 17 POLICE CHIEF for CITY OF OAKLAND  
 POLICE DEPARTMENT; DOES 1 to 100,  
 18 inclusive; individually and in their capacities as  
 POLICE OFFICERS for CITY OF OAKLAND  
 19 POLICE DEPARTMENT,

20 Defendants.

Case No. C11-05044 DMR

**AMENDED STIPULATED  
 PROTECTIVE ORDER**

21  
 22 Plaintiff KAZEEM UPSHAW through the LAW OFFICES OF JOHN L. BURRIS, and  
 23 Defendants CITY OF OAKLAND and ANTHONY BATTS, by and through their attorneys, the  
 24 OFFICE OF THE CITY ATTORNEY OF OAKLAND, hereby stipulate to the following protective  
 25 order:

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1. DEFINITIONS

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

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

1.3 “Confidential” Information or Items: Information (regardless of how generated, stored or maintained) or tangible things qualify for protection under standards developed under F.R.Civ.P. 26(c). This material includes:

- a) Information from personnel files of any sworn member of the Oakland Police Department.
- b) Information from Internal Affairs files pertaining to any sworn member of the Oakland Police Department.

1.4 “Highly Confidential-Attorneys’ Eyes Only” Information or Items: Extremely sensitive “Confidential Information or Items” whose disclosure to another Party or non-party would create a substantial risk of serious injury that could not be avoided by less restrictive means.

This material includes:

- a) Information from medical and/or psycho-therapeutic records of any party to this action.

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

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

1.7 Designating Party: a Party or non-party that designates information or items that it produces in disclosures or in responses to discovery as “Confidential” or “Highly

1 Confidential-Attorneys Eyes Only.”

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

4 1.9 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 1.10 House Counsel: attorneys who are employees of a Party.

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

9 1.12 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 as an expert  
11 witness or as a consultant in this action and who is not a past or a current employee of a Party and  
12 who, at the time of retention, is not anticipated to become an employee of a Party. This definition  
13 includes a professional jury or trial consultant 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 demonstrations;  
16 organizing, storing, retrieving data in any form or medium; etc.) and their employees and  
17 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 therefrom, as  
21 well as all copies, excerpts, summaries, or compilations thereof, plus testimony, conversations, or  
22 presentations by parties or counsel to or in court or in other settings that might reveal Protected  
23 Material.

24 3. DURATION

25 Even after the termination of this litigation, the confidentiality obligations  
26 imposed by this Order shall remain in effect until a Designating Party agrees otherwise in writing or

1 court order otherwise directs.

2 4. DESIGNATING PROTECTED MATERIAL

3 4.1 F.R.Civ. P. 26(c). The information sought to be protected must be  
4 properly qualified for protection under F.R.Civ. P. 26(c). Counsel shall not designate any discovery  
5 material “CONFIDENTIAL” without first making a good faith determination that protection is  
6 warranted.

7 4.2 Manner and Timing of Designations. Except as otherwise provided in  
8 this Order (see, e.g., second paragraph of section 4.2(a), below), or as otherwise stipulated or  
9 ordered, material that qualified for protection under the Order must be clearly so designated before  
10 the material is disclosed or produced.

11 Designation in conformity with this Order requires:

12 (a) for information in documentary form (apart from transcripts of  
13 depositions or other pretrial or trial proceedings), that the Producing Party affix the legend  
14 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL-ATTORNEYS’ EYES ONLY” at the top of  
15 each page that contains protected material.

16 A Party or non-party that makes original documents or materials available for  
17 inspection need not designate them for protection until after the inspecting Party has indicated  
18 which material it would like copied and produced. During the inspection and before the  
19 designation, all of the material made available for inspection shall be deemed “HIGHLY  
20 CONFIDENTIAL—ATTORNEYS’ EYES ONLY.” After the inspecting Party has identified the  
21 documents it wants copied and produced, the Producing Party must determine which documents, or  
22 portions thereof, qualify for protection under this Order, then, before producing the specified  
23 documents, the Producing Party must affix the appropriate legend (“CONFIDENTIAL” or  
24 “HIGHLY CONFIDENTIAL-ATTORNEYS’ EYES ONLY”) at the top of each page that contains  
25 Protected Material. If only a portion or portions of the material on a page qualifies for protection,  
26 the Producing Party also must clearly identify the protected portion(s) (e.g., by making appropriate

1 markings in the margins) and must specify, for each portion, the level of protection being asserted  
2 (either “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL—ATTORNEYS’ EYES ONLY”).

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

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

18 (c) for information produced in some form other than documentary, and for  
19 any other tangible items, that the Producing Party affix in a prominent place on the exterior of the  
20 container or containers in which the information or item is stored the legend “CONFIDENTIAL” or  
21 “HIGHLY CONFIDENTIAL—ATTORNEYS’ EYES ONLY.”

22 4.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent  
23 failure to designate qualified information or items as “Confidential” or “Highly Confidential—  
24 Attorneys’ Eyes Only” does not, standing alone, waive the Designating Party’s right to secure  
25 protection under this Order for such material. If material is appropriately designated as  
26 “Confidential” or “Highly Confidential—Attorneys’ Eyes Only” after the material was initially

1 produced, the Receiving Party, on timely notification of the designation, must make reasonable  
2 efforts to assure that the material is treated in accordance with the provisions of the Order. If  
3 Receiving Party serves a written objection to the propriety of a “Confidential” or “Highly  
4 Confidential” designation under this section, the parties must make reasonable attempts to meet and  
5 confer in person or by telephone to resolve the disputed designation(s). If such attempts fail, the  
6 parties shall file a joint letter with the Court no later than five (5) business days after the meet and  
7 confer session. Lead trial counsel for both parties must sign the letter, which must comply with the  
8 Court’s Standing Order regarding civil discovery disputes.

## 9 5. CHALLENGING CONFIDENTIALITY DESIGNATIONS

10 5.1 Timing of Challenges. Unless a proper challenge to a Designating  
11 Party’s confidentiality designation is necessary to avoid foreseeable substantial unfairness,  
12 unnecessary economic burden, or a later significant disruption or delay of the litigation, a Party does  
13 not waive its right to challenge a confidentiality designation by electing not to mount a challenge  
14 promptly after the original designation is disclosed.

15 5.2 Meet and Confer. A Party that elects to initiate a challenge to a  
16 Designating Party’s confidentiality designation must do so in good faith and must begin the process  
17 by conferring directly (in voice to voice dialogue; other forms of communication are not sufficient)  
18 with counsel for the Designating Party. In conferring, the challenging Party must explain the basis  
19 for its belief that the confidentiality designation was not proper and must give the Designating Party  
20 an opportunity to review the designated material, to reconsider the circumstances, and, if no change  
21 in designation is offered, to explain the basis for the chose designation. A challenging Party may  
22 proceed to the next stage of the challenge process only if it has engaged in this meet and confer  
23 process first.

24 5.3 Judicial Intervention. A Party that elects to press a challenge to a  
25 confidentiality designation after considering the justification offered by the Designating Party must  
26 first meet and confer with opposing counsel in person or by letter as set forth in subsection 4.3

1 *supra* and pursuant to and in compliance with the Court’s Standing Order regarding civil discovery  
2 disputes.

3                   The burden of persuasion in any such challenge proceeding shall be on the  
4 Designating Party. Until the Court rules on the challenge, all parties shall continue to afford the  
5 material in question the level of protection to which it is entitled under the Producing Party’s  
6 designation.

7                   6. ACCESS TO AND USE OF PROTECTED MATERIAL

8                   6.1 Basic Principles. A Receiving Party may use Protected Material that is  
9 disclosed or produced by another Party or by a non-party in connection with this case only for  
10 prosecuting, defending, or attempting to settle this litigation. Such Protected material may be  
11 disclosed only to the categories of persons and under the conditions described in this Order. When  
12 the litigation has terminated, a Receiving Party must comply with the provisions of section 10,  
13 below (FINAL DISPOSITION).

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

17                   6.2 Disclosure of “CONFIDENTIAL: Information or Items. Unless  
18 otherwise ordered by the court or permitted in writing by the Designating Party, a Receiving Party  
19 may disclose any information or item designated CONFIDENTIAL only to:

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

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

26                   (c) the Court and its personnel;

1 (d) court reporters, their staffs, and professional vendors to whom disclosure  
2 is reasonably necessary for this litigation;

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

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

9 6.3 Disclosure of “HIGHLY CONFIDENTIAL—ATTORNEYS’ EYES  
10 ONLY” Information or Items. Unless otherwise ordered by the court or permitted in writing by  
11 the Designating Party, Receiving Party may disclose any information or item designated “HIGHLY  
12 CONFIDENTIAL—ATTORNEYS’ EYES ONLY” only to:

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

16 (b) the Court and its personnel;

17 (c) court reporters and their staffs; and

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

19 7. PROTECTED MATERIAL SUBPOENAED OR ORDERED  
20 PRODUCED IN OTHER LITIGATION

21 If a Receiving Party is served with a subpoena or an order issued in  
22 other litigation that would compel disclosure of any information or items designated in this action  
23 as “CONFIDENTIAL” or HIGHLY CONFIDENTIAL—ATTORNEYS’ EYES ONLY,” the  
24 Receiving Party must so notify the Designating Party, in writing (by fax, if possible) immediately  
25 and in no event more than three court days after receiving the subpoena or order. Such notification  
26 must include a copy of the subpoena or court order.



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

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

12                           8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

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

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

1                   10. FINAL DISPOSITION. Unless otherwise ordered or agreed in writing by  
2 the Producing Party, within sixty days after the final termination of this action, each Receiving Party  
3 must return all Protected Material to the Producing Party, as used in this subdivision, “all Protected  
4 Material” includes all copies, abstracts compilations, summaries or any other form of reproducing  
5 or capturing any of the Protected Material. With permission in writing from the Designating Party,  
6 the Receiving Party may destroy some or all of the Protected Material instead of returning it.  
7 Whether the Protected Material is returned or destroyed, the Receiving Party must submit a written  
8 certification to the Producing Party (and, if not the same person or entity, to the Designating Party)  
9 by the sixty day deadline that identifies (by category, where appropriate) all the Protected Material  
10 that was returned or destroyed and that affirms that the Receiving Party has not retained any copies,  
11 abstracts, compilations, summaries or other forms of reproducing or capturing any of the Protected  
12 Material.

13                   11. MISCELLANEOUS

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

16                   12. JURISDICTION. The Court shall retain jurisdiction over any matter

17 covered by this Stipulation and Order for 24 months after the final termination of this action.

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19                   **THE PARTIES HEREBY STIPULATE TO THE TERMS OF THE PROTECTIVE**  
20 **ORDER AS SET FORTH ABOVE.**

21 Dated: September 21, 2012

LAW OFFICES OF JOHN L. BURRIS

By: /s/ Adante Pointer  
Attorneys for Plaintiff, Kazeem Upshaw  
OFFICE OF THE CITY ATTORNEY

23 Dated: September 21, 2012

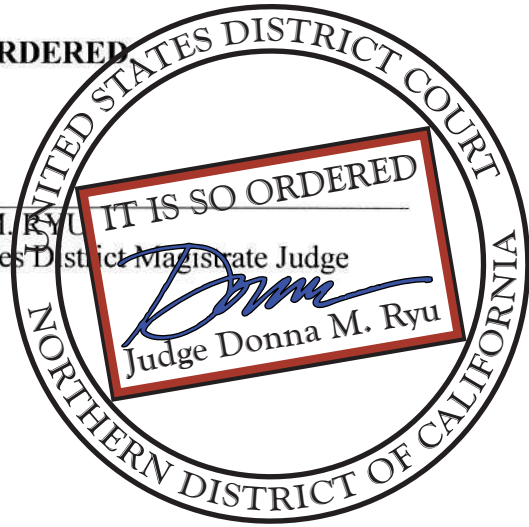
By: /s/ Arlene M. Rosen  
Attorneys for Defendants  
CITY OF OAKLAND and ANTHONY BATTIS

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**PURSUANT TO STIPULATION, IT IS SO ORDERED**

Dated: Sept. 24, 2012

DONNA M. RYU  
United States District Magistrate Judge



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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 Kazeem Upshaw v. City of Oakland, et al., Case No. C11-05044 DMR, 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.

Date: \_\_\_\_\_

City and State where sworn and signed: \_\_\_\_\_

Printed name: \_\_\_\_\_  
[printed name]

Signature: \_\_\_\_\_  
[signature]