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 7

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

11 CHARLENE JIMERSON,
 12
 13 Plaintiff,

14 v.

15 CITY OF HAYWARD, a municipal
 Corporation; RUSSELL SHARROCK,
 16 individually and in his official capacity as a
 police officer for the City of Hayward;
 17 RAYMOND EAKIN, individually and in his
 official capacity as a community service officer
 18 for the City of Hayward; JOHNATHAN
 COLTON, individually and in his official
 19 capacity as a community service officer for the
 City of Hayward; EUGENE JIMERSON, SR.,
 20 father of the decedent
 21

22 Defendants.
 23

Case No. 16-cv-03176 (YGR)

**[PROPOSED] STIPULATED PROTECTIVE
 ORDER**

AS MODIFIED BY THE COURT

Date: October 17, 2016
 Time: 2:00pm
 Courtroom: 1, 4th Floor
 1301 Clay Street, Oakland, Ca 94612
 Assigned to the Honorable Yvonne Gonzalez Rogers

Complaint filed: June 10, 2016

24 Plaintiff Charlene Jimerson, and Defendants City of Hayward, Officer Russell Sharrock,
 25 Community Service Officer Raymond Eakin, and Community Service Officer Johnathan Colton (herein,
 26 after referred to as “Defendants”), through their respective attorneys of record, stipulate to the following
 27 order:
 28

1 **1. PURPOSES AND LIMITATIONS**

2 Disclosure and discovery activity in this action are likely to involve production of confidential,
3 proprietary, or private information for which special protection from public disclosure and from use for
4 any purpose other than prosecuting this litigation may be warranted. Accordingly, the parties hereby
5 stipulate to and petition the Court to enter the following Stipulated Protective Order. The parties
6 acknowledge that this Order does not confer blanket protections on all disclosures or responses to
7 discovery and that the protection it affords from public disclosure and use extends only to the limited
8 information or items that are entitled to confidential treatment under the applicable legal principles. The
9 parties further acknowledge, as set forth in Section 12.3, below, that this Stipulated Protective Order
10 does not entitle them to file confidential information under seal; Civil Local Rule 79-5 sets forth the
11 procedures that must be followed and the standards that will be applied when a party seeks permission
12 from the Court to file material under seal.

13 **2. DEFINITIONS**

14 2.1 Challenging Party: a Party or Non-Party that challenges the designation of information or
15 items under this Order.

16 2.2 “CONFIDENTIAL” Information or Items: information (regardless of how it is
17 generated, stored or maintained) or tangible things that qualify for protection under Federal Rule of Civil
18 Procedure 26(c). This material includes, but is not limited to, the following categories of document:
19 documents relating to Hayward Police Department (“HPD”) policies and training, excluding documents
20 the City deems to be public records, all personnel documents relating to any officer of the HPD including
21 Officer Sharrock, Officer Eakin, and CSO Colton, all private information relating to any Officer’s addresses,
22 personal data, medical history, finances, relatives, or information which qualifies for protection under California
23 Penal Code sections 832.5, 832.7, and 832.8.

24 2.3 Counsel (without qualifier): Outside Counsel of Record and House Counsel (as well as
25 their support staff).

26 2.4 Designating Party: a Party or Non-Party that designates information or items that it
27 produces in disclosures or in responses to discovery as “CONFIDENTIAL.”

28 2.5 Disclosure or Discovery Material: all items or information, regardless of the medium or

1 manner in which it is generated, stored, or maintained (including, among other things, testimony,
2 transcripts, and tangible things), that are produced or generated in disclosures or responses to discovery
3 in this matter.

4 2.6 Expert: a person with specialized knowledge or experience in a matter pertinent to the
5 litigation who has been retained by a Party or its counsel to serve as an expert witness or as a consultant
6 in this action and who is not a past or a current employee of a Party or of a competitor of a Party and
7 who, at the time of retention, is not anticipated to become an employee of a Party or a competitor of a
8 Party. This definition includes a professional jury or trial consultant retained in connection with this
9 litigation.

10 2.7 House Counsel: attorneys who are employees of a party to this action. House Counsel
11 does not include Outside Counsel of Record or any other outside counsel.

12 2.8 Non-Party: any natural person, partnership, corporation, association, or other legal entity
13 not named as a Party to this action.

14 2.9 Outside Counsel of Record: attorneys who are not employees of a party to this action but
15 are retained to represent or advise a party to this action and have appeared in this action on behalf of that
16 party or are affiliated with a law firm which has appeared on behalf of that party.

17 2.10 Party: any party to this action, including all of its officers, directors, employees,
18 consultants, retained experts, and Outside Counsel of Record (and their support staffs).

19 2.11 Producing Party: a Party or Non-Party that produces Disclosure or Discovery Material in
20 this action.

21 2.12 Professional Vendors: persons or entities that provide litigation support services (e.g.,
22 photocopying, videotaping, translating, preparing exhibits or demonstrations, and organizing, storing, or
23 retrieving data in any form or medium) and their employees and subcontractors.

24 2.13 Protected Material: any Disclosure or Discovery Material that is designated as
25 “CONFIDENTIAL.”

26 2.14 Receiving Party: a Party that receives Disclosure or Discovery Material from a
27 Producing Party.

1 **3. SCOPE**

2 The protections conferred by this Stipulation and Order cover not only Protected Material (as
3 defined above), but also (1) any information copied or extracted from Protected Material; (2) all copies,
4 excerpts, summaries, or compilations of Protected Material; and (3) any testimony, conversations, or
5 presentations by Parties or their Counsel that might reveal Protected Material. However, the protections
6 conferred by this Stipulation and Order do not cover the following information: (a) any information that
7 is in the public domain at the time of disclosure to a Receiving Party or becomes part of the public
8 domain after its disclosure to a Receiving Party as a result of publication not involving a violation of this
9 Order, including becoming part of the public record through trial or otherwise; and (b) any information
10 known to the Receiving Party prior to the disclosure or obtained by the Receiving Party after the
11 disclosure from a source who obtained the information lawfully and under no obligation of
12 confidentiality to the Designating Party. Any use of Protected Material at trial shall be governed by a
13 separate agreement or order.

14 **4. DURATION**

15 Even after final disposition of this litigation, the confidentiality obligations imposed by this
16 Order shall remain in effect until a Designating Party agrees otherwise in writing or a Court order
17 otherwise directs. Final disposition shall be deemed to be the later of (1) dismissal of all claims and
18 defenses in this action, with or without prejudice; and (2) final judgment herein after the completion and
19 exhaustion of all appeals, rehearings, remands, trials, or reviews of this action, including the time limits
20 for filing any motions or applications for extension of time pursuant to applicable law.

21 **5. DESIGNATING PROTECTED MATERIAL**

22 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each Party or Non-
23 Party that designates information or items for protection under this Order must take care to limit any
24 such designation to specific material that qualifies under the appropriate standards. The Designating
25 Party must designate for protection only those parts of material, documents, items, or oral or written
26 communications that qualify – so that other portions of the material, documents, items, or
27 communications for which protection is not warranted are not swept unjustifiably within the ambit of
28 this Order.

1 Mass, indiscriminate, or routinized designations are prohibited. Designations that are shown to
2 be clearly unjustified or that have been made for an improper purpose (e.g., to unnecessarily encumber
3 or retard the case development process or to impose unnecessary expenses and burdens on other parties)
4 expose the Designating Party to sanctions.

5 If it comes to a Designating Party's attention that information or items that it designated for protection
6 do not qualify for protection, that Designating Party must promptly notify all other Parties that it is
7 withdrawing the mistaken designation.

8 5.2 Manner and Timing of Designations. Except as otherwise provided in this Order (see,
9 e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered, Disclosure or
10 Discovery Material that qualifies for protection under this Order must be clearly so designated before the
11 material is disclosed or produced.

12 Designation in conformity with this Order requires:

13 (a) for information in documentary form (e.g., paper or electronic documents, but excluding
14 transcripts of depositions or other pretrial or trial proceedings), that the Producing Party affix the legend
15 "CONFIDENTIAL" to each page that contains protected material. If only a portion or portions of the
16 material on a page qualifies for protection, the Producing Party also must clearly identify the protected
17 portion(s) (e.g., by making appropriate markings in the margins and must specify, for each portion, the
18 level of protection being asserted ("CONFIDENTIAL")).

19 A Party or Non-Party that makes original documents or materials available for inspection need
20 not designate them for protection until after the inspecting Party has indicated which material it would
21 like copied and produced. During the inspection and before the designation, all of the material made
22 available for inspection shall be deemed "CONFIDENTIAL." After the inspecting Party has identified
23 the documents it wants copied and produced, the Producing Party must determine which documents, or
24 portions thereof, qualify for protection under this Order. Then, before producing the specified
25 documents, the Producing Party must affix the appropriate legend ("CONFIDENTIAL") to each page
26 that contains Protected Material. If only a portion or portions of the material on a page qualifies for
27 protection, the Producing Party also must clearly identify the protected portion(s) (e.g., by making
28 appropriate markings in the margins).

1 (b) for testimony given in deposition or in other pretrial or trial proceedings, that the
2 Designating Party identify on the record, before the close of the deposition, hearing, or other proceeding,
3 all protected testimony,

4 (c) for information produced in some form other than documentary and for any other
5 tangible items, that the Producing Party affix in a prominent place on the exterior of the container or
6 containers in which the information or item is stored the legend “**CONFIDENTIAL.**” If only a portion or
7 portions of the information or item warrant protection, the Producing Party, to the extent practicable,
8 shall identify the protected portion(s).

9 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to designate
10 qualified information or items does not, standing alone, waive the Designating Party’s right to secure
11 protection under this Order for such material. Upon timely correction of a designation, the Receiving
12 Party must make reasonable efforts to assure that the material is treated in accordance with the
13 provisions of this Order.

14 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

15 6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation of
16 confidentiality at any time. Unless a prompt challenge to a Designating Party’s confidentiality
17 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic burdens, or
18 a significant disruption or delay of the litigation, a Party does not waive its right to challenge a
19 confidentiality designation by electing not to mount a challenge promptly after the original designation
20 is disclosed.

21 6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution process by
22 providing written notice of each designation it is challenging and describing the basis for each challenge.
23 To avoid ambiguity as to whether a challenge has been made, the written notice must recite that the
24 challenge to confidentiality is being made in accordance with this specific paragraph of the Protective
25 Order. The parties shall attempt to resolve each challenge in good faith and must begin the process by
26 conferring directly (in voice to voice dialogue; other forms of communication are not sufficient) within
27 14 days of the date of service of notice. In conferring, the Challenging Party must explain the basis for
28 its belief that the confidentiality designation was not proper and must give the Designating Party an

1 opportunity to review the designated material, to reconsider the circumstances, and, if no change in
2 designation is offered, to explain the basis for the chosen designation. A Challenging Party may proceed
3 to the next stage of the challenge process only if it has engaged in this meet and confer process first or
4 establishes that the Designating Party is unwilling to participate in the meet and confer process in a
5 timely manner.

6 6.3 Judicial Intervention. If the Parties cannot resolve a challenge without court
7 intervention, the parties shall follow the Court’s Standing Order in Civil Cases regarding
8 Discovery and Discovery Motions. The parties may file a joint letter brief regarding retaining
9 confidentiality within 21 days of the initial notice of challenge or within 14 days of the parties
10 agreeing that the meet and confer process will not resolve their dispute, whichever is earlier.
11 Failure by a Designating Party to file such discovery dispute letter within the applicable 21 or 14
12 day period (set forth above) with the Court shall automatically waive the confidentiality
13 designation for each challenged designation. If, after submitting a joint letter brief, the Court
14 allows that a motion may be filed, any such motion must be accompanied by a competent
15 declaration affirming that the movant has complied with the meet and confer requirements
16 imposed in the preceding paragraph. The Court, in its discretion, may elect to transfer the
17 discovery matter to a Magistrate Judge.

18 In addition, the parties may file a joint letter brief regarding a challenge to a confidentiality
19 designation at any time if there is good cause for doing so, including a challenge to the designation
20 of a deposition transcript or any portions thereof. If, after submitting a joint letter brief, the Court
21 allows that a motion may be filed, any motion brought pursuant to this provision must be
22 accompanied by a competent declaration affirming that the movant has complied with the meet
23 and confer requirements imposed by the preceding paragraph. The Court, in its discretion, may
24 elect to refer the discovery matter to a Magistrate Judge.

25 The burden of persuasion in any such challenge proceeding shall be on the Designating
26 Party. Frivolous challenges, and those made for an improper purpose (e.g., to harass or impose
27 unnecessary expenses and burdens on other parties) may expose the Challenging Party to
28 sanctions. Unless the Designating Party has waived the confidentiality designation by failing to file

1 a letter brief to retain confidentiality as described above, all parties shall continue to afford the
2 material in question the level of protection to which it is entitled under the Producing Party's
3 designation until the court rules on the challenge.

4 **7. ACCESS TO AND USE OF PROTECTED MATERIAL**

5 7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed or
6 produced by another Party or by a Non-Party in connection with this case only for prosecuting,
7 defending, or attempting to settle this litigation. Such Protected Material may be disclosed only to the
8 categories of persons and under the conditions described in this Order. When the litigation has been
9 terminated, a Receiving Party must comply with the provisions of section 13 below (FINAL
10 DISPOSITION).

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

13 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise ordered by the
14 Court or permitted in writing by the Designating Party, a Receiving Party may disclose any information
15 or item designated "CONFIDENTIAL" only to:

16 (a) the Receiving Party's Outside Counsel of Record in this action, as well as employees of
17 said Outside Counsel of Record to whom it is reasonably necessary to disclose the information for this
18 litigation and who have signed the "Acknowledgment and Agreement to Be Bound" that is attached
19 hereto as Exhibit A;

20 (b) the officers, directors, and employees (including House Counsel) of the Receiving Party
21 to whom disclosure is reasonably necessary for this litigation and who have signed the
22 "Acknowledgment and Agreement to Be Bound" (Exhibit A);

23 (c) Experts (as defined in this Order) of the Receiving Party to whom disclosure is
24 reasonably necessary for this litigation and who have signed the "Acknowledgment and Agreement to
25 Be Bound" (Exhibit A);

26 (d) the Court and its personnel;

27 (e) Court reporters and their staff, professional jury or trial consultants, mock jurors, and
28 Professional Vendors to whom disclosure is reasonably necessary for this litigation and who have signed

1 the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

2 (f) during their depositions, witnesses in the action to whom disclosure is reasonably
3 necessary and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A), unless
4 otherwise agreed by the Designating Party or ordered by the Court. Pages of transcribed deposition
5 testimony or exhibits to depositions that reveal Protected Material must be separately bound by the court
6 reporter and may not be disclosed to anyone except as permitted under this Stipulated Protective Order.
7 In the event the parties cannot agree upon whether disclosure is “reasonable necessary” said parties shall
8 meet and confer on the matter and if there is no resolution may seek relief from the Court.

9 (g) the author or recipient of a document or the original source of the information and who
10 have signed the “Agreement to Be Bound by Protective Order” (Exhibit A).

11 **8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER**
12 **LITIGATION**

13 If a Party is served with a subpoena or a court order issued in other litigation that compels
14 disclosure of any information or items designated in this action as “CONFIDENTIAL” that Party must:

15 (a) promptly notify in writing the Designating Party. Such notification shall include a copy
16 of the subpoena or court order;

17 (b) promptly notify in writing the party who caused the subpoena or order to issue in the
18 other litigation that some or all of the material covered by the subpoena or order is subject to this
19 Protective Order. Such notification shall include a copy of this Stipulated Protective Order; and

20 (c) cooperate with respect to all reasonable procedures sought to be pursued by the
21 Designating Party whose Protected Material may be affected.

22 If the Designating Party timely seeks a protective order, the Party served with the subpoena or
23 court order shall not produce any information designated in this action as “CONFIDENTIAL” before a
24 determination by the Court from which the subpoena or order issued, unless the Party has obtained the
25 Designating Party’s permission. The Designating Party shall bear the burden and expense of seeking
26 protection in that Court of its confidential material – and nothing in these provisions should be construed
27 as authorizing or encouraging a Receiving Party in this action to disobey a lawful directive from another
28 court.

1 **9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN THIS**
2 **LITIGATION**

3 (a) The terms of this Order are applicable to information produced by a Non-Party in this
4 action and designated as “CONFIDENTIAL.” Such information produced by Non-Parties in connection
5 with this litigation is protected by the remedies and relief provided by this Order. Nothing in these
6 provisions should be construed as prohibiting a Non-Party from seeking additional protections.

7 (b) In the event that a Party is required, by a valid discovery request, to produce a Non-
8 Party’s confidential information in its possession, and the Party is subject to an agreement with the Non-
9 Party not to produce the Non-Party’s confidential information, then the Party shall:

10 (1) promptly notify in writing the Requesting Party and the Non-Party that some or all of
11 the information requested is subject to a confidentiality agreement with a Non-Party;

12 (2) promptly provide the Non-Party with a copy of the Stipulated Protective Order in this
13 litigation, the relevant discovery request(s), and a reasonably specific description of the information
14 requested; and

15 (3) make the information requested available for inspection by the Non-Party.

16 (c) If the Non-Party fails to object or seek a protective order from this Court within 14 days
17 of receiving the notice and accompanying information, the Receiving Party may produce the Non-
18 Party’s confidential information responsive to the discovery request. If the Non-Party timely seeks a
19 protective order, the Receiving Party shall not produce any information in its possession or control that
20 is subject to the confidentiality agreement with the Non-Party before a determination by the Court.
21 Absent a court order to the contrary, the Non-Party shall bear the burden and expense of seeking
22 protection in this Court of its Protected Material.

23 **10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

24 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected Material
25 to any person or in any circumstance not authorized under this Stipulated Protective Order, the
26 Receiving Party must immediately (a) notify in writing the Designating Party of the unauthorized
27 disclosures, (b) use its best efforts to retrieve all unauthorized copies of the Protected Material, (c)
28 inform the person or persons to whom unauthorized disclosures were made of all the terms of this Order,

1 and (d) request such person or persons to execute the “Acknowledgment and Agreement to Be Bound”
2 that is attached hereto as Exhibit A. Nothing in this section is meant to relieve a disclosing party from
3 any legal repercussions from an unpermitted disclosure of protected material, nor does an unpermitted
4 disclosure waive any claim of privilege of the disclosed material.

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7 **11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED**
8 **MATERIAL**

9 When a Producing Party gives notice to Receiving Parties that certain inadvertently produced
10 material is subject to a claim of privilege or other protection, the obligations of the Receiving Parties are
11 those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify
12 whatever procedure may be established in an e-discovery order that provides for production without
13 prior privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar as the parties reach
14 an agreement on the effect of disclosure of a communication or information covered by the attorney-
15 client privilege or work product protection, the parties may incorporate their agreement in the stipulated
16 protective order submitted to the Court.

17 **12. MISCELLANEOUS**

18 12.1 Right to Further Relief. Nothing in this Order abridges the right of any person to seek its
19 modification by the Court in the future.

20 12.2 Right to Assert Other Objections. By stipulating to the entry of this Protective Order no
21 Party waives any right it otherwise would have to object to disclosing or producing any information or
22 item on any ground not addressed in this Stipulated Protective Order. Similarly, no Party waives any
23 right to object on any ground to use in evidence of any of the material covered by this Protective Order.

24 12.3 Filing Protected Material. Without written permission from the Designating Party or a
25 court order secured after appropriate notice to all interested persons, a Party may not file in the public
26 record in this action any Protected Material. A Party that seeks to file under seal any Protected Material
27 must comply with Civil Local Rule 79-5. Protected Material may only be filed under seal pursuant to a
28 court order authorizing the sealing of the specific Protected Material at issue. Pursuant to Civil Local

1 Rule 79-5, a sealing order will issue only upon a request establishing that the Protected Material at issue
2 is privileged, protectable as a trade secret, or otherwise entitled to protection under the law. If a
3 Receiving Party's request to file Protected Material under seal pursuant to Civil Local Rule 79-5(d) is
4 denied by the Court, then the Receiving Party may file the information in the public record pursuant to
5 Civil Local Rule 79-5(e) unless otherwise instructed by the Court.

6
7 **13. FINAL DISPOSITION**

8 Within 60 days after the final disposition of this action, as defined in paragraph 4, each
9 Receiving Party must return all Protected Material to the Producing Party or destroy such material. As
10 used in this subdivision, "all Protected Material" includes all copies, abstracts, compilations, summaries,
11 and any other format reproducing or capturing any of the Protected Material. Whether the Protected
12 Material is returned or destroyed, the Receiving Party must submit a written certification to the
13 Producing Party (and, if not the same person or entity, to the Designating Party) by the 60 day deadline
14 that (1) identifies (by category, where appropriate) all the Protected Material that was returned or
15 destroyed and (2) affirms that the Receiving Party has not retained any copies, abstracts, compilations,
16 summaries or any other format reproducing or capturing any of the Protected Material. Notwithstanding
17 this provision, Counsel are entitled to retain an archival copy of all pleadings, motion papers, trial,
18 deposition, and hearing transcripts, legal memoranda, correspondence, deposition and trial exhibits,
19 expert reports, attorney work product, and consultant and expert work product, even if such materials
20 contain Protected Material. Any such archival copies that contain or constitute Protected Material
21 remain subject to this Protective Order as set forth in Section 4 (DURATION).

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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 District Court for the Northern District of California on _____ in the case of *Charlene Jimerson v. City of Hayward, et al.*, case number C16-03176 (YGR). I agree to comply with and to 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 Court 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: _____

1 City and State where sworn and signed: _____

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3 Printed name: _____

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5 Signature: _____

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