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 12 JOSE CHIEF OF POLICE ROBERT DAVIS; POLICE  
 13 OFFICER RODRIGUEZ #2360

14 UNITED STATES DISTRICT COURT  
 15 NORTHERN DISTRICT OF CALIFORNIA  
 16 SAN JOSE DIVISION

17 MARC L. PINCKNEY,

18 Plaintiff(s),

19 v.

20 CITY OF SAN JOSE; CITY OF SAN  
 21 JOSE CHIEF OF POLICE ROBERT  
 22 DAVIS in his individual capacity and  
 23 official capacity as Chief of Police for the  
 24 CITY OF SAN JOSE; POLICE OFFICER  
 25 RODRIGUEZ #2360, and DOES 1-20,  
 26 inclusive,

27 Defendant(s).

Case Number: C08-04485 RMW

**STIPULATED PROTECTIVE ORDER**

28 **1. PURPOSES AND LIMITATIONS**

Disclosure and discovery activity in this action are likely to involve production of confidential, proprietary, or private information for which special protection from public disclosure and from use for any purpose other than prosecuting this litigation would be warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated Protective Order. The parties acknowledge that this Order does not confer blanket protections on all disclosures or responses to discovery and that the

1 protection it affords extends only to the limited information or items that are entitled under  
2 the applicable legal principles to treatment as confidential. The parties further  
3 acknowledge, as set forth in Section 10, below, that this Stipulated Protective Order  
4 creates no entitlement to file confidential information under seal; Civil Local Rule 79-5 sets  
5 forth the procedures that must be followed and reflects the standards that will be applied  
6 when a party seeks permission from the court to file material under seal.

## 7 **2. DEFINITIONS**

8 **2.1 Party:** any party to this action, including all of its officers, directors,  
9 employees, consultants, retained experts, and outside counsel (and their support staff).

10 **2.2 Disclosure or Discovery Material:** all items or information, regardless of  
11 the medium or manner generated, stored, or maintained (including, among other things,  
12 testimony, transcripts, or tangible things) that are produced or generated in disclosures or  
13 responses to discovery in this matter.

14 **2.3 "Confidential" Information or Items:** information (regardless of how  
15 generated, stored or maintained) or tangible things that qualify for protection under  
16 standards developed under F.R.Civ.P. 26(c).

17 **2.4 "Highly Confidential – Attorneys' Eyes Only" Information or Items:**  
18 extremely sensitive "Confidential Information or Items" whose disclosure to another Party  
19 or nonparty would create a substantial risk of serious injury that could not be avoided by  
20 less restrictive means.

21 **2.5 Receiving Party:** a Party that receives Disclosure or Discovery Material  
22 from a Producing Party.

23 **2.6 Producing Party:** a Party or non-party that produces Disclosure or  
24 Discovery Material in this action.

25 **2.7. Designating Party:** a Party or non-party that designates information or  
26 items that it produces in disclosures or in responses to discovery as "Confidential" or  
27 "Highly Confidential — Attorneys' Eyes Only."



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

4 **5. DESIGNATING PROTECTED MATERIAL**

5 **5.1 Exercise of Restraint and Care in Designating Material for Protection.**

6 Each Party or non-party that designates information or items for protection under this  
7 Order must take care to limit any such designation to specific material that qualifies under  
8 the appropriate standards. A Designating Party must take care to designate for protection  
9 only those parts of material, documents, items, or oral or written communications that  
10 qualify – so that other portions of the material, documents, items, or communications for  
11 which protection is not warranted are not swept unjustifiably within the ambit of this Order.

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

17 If it comes to a Party's or a non-party's attention that information or items that it  
18 designated for protection do not qualify for protection at all, or do not qualify for the level of  
19 protection initially asserted, that Party or non-party must promptly notify all other parties  
20 that it is withdrawing the mistaken designation.

21 **5.2 Manner and Timing of Designations.** Except as otherwise provided in this  
22 Order (see, e.g., second paragraph of section 5.2(a), below), or as otherwise stipulated or  
23 ordered, material that qualifies for protection under this Order must be clearly so  
24 designated before the material is disclosed or produced.

25 Designation in conformity with this Order requires:

26 (a) for information in documentary form (apart from transcripts of  
27 depositions or other pretrial or trial proceedings), that the Producing Party affix the legend

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

7           A Party or non-party that makes original documents or materials available for  
8 inspection need not designate them for protection until after the inspecting Party has  
9 indicated which material it would like copied and produced. During the inspection and  
10 before the designation, all of the material made available for inspection shall be deemed  
11 "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY." After the inspecting Party has  
12 identified the documents it wants copied and produced, the Producing Party must  
13 determine which documents, or portions thereof, qualify for protection under this Order,  
14 then, before producing the specified documents, the Producing Party must affix the  
15 appropriate legend ("CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS'  
16 EYES ONLY") at the top of each page that contains Protected Material. If only a portion or  
17 portions of the material on a page qualifies for protection, the Producing Party also must  
18 clearly identify the protected portion(s) (e.g., by making appropriate markings in the  
19 margins) and must specify, for each portion, the level of protection being asserted (either  
20 "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY").

21           (b) for testimony given in deposition or in other pretrial or trial  
22 proceedings, that the Party or non-party offering or sponsoring the testimony identify on  
23 the record, before the close of the deposition, hearing, or other proceeding, all protected  
24 testimony, and further specify any portions of the testimony that qualify as "HIGHLY  
25 CONFIDENTIAL – ATTORNEYS' EYES ONLY." When it is impractical to identify  
26 separately each portion of testimony that is entitled to protection, and when it appears that  
27 substantial portions of the testimony may qualify for protection, the Party or non-party that

1 sponsors, offers, or gives the testimony may invoke on the record (before the deposition or  
2 proceeding is concluded) a right to have up to 20 days to identify the specific portions of  
3 the testimony as to which protection is sought and to specify the level of protection being  
4 asserted ("CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY").

5           Only those portions of the testimony that are appropriately designated for  
6 protection within the 20 days shall be covered by the provisions of this Stipulated  
7 Protective Order.

8           Transcript pages containing Protected Material must be separately bound by  
9 the court reporter, who must affix to the top of each such page the legend  
10 "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY," as  
11 instructed by the Party or nonparty offering or sponsoring the witness or presenting the  
12 testimony.

13           (c) for information produced in some form other than documentary, and  
14 for any other tangible items, that the Producing Party affix in a prominent place on the  
15 exterior of the container or containers in which the information or item is stored the legend  
16 "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY." If only  
17 portions of the information or item warrant protection, the Producing Party, to the extent  
18 practicable, shall identify the protected portions, specifying whether they qualify as  
19 "Confidential" or as "Highly Confidential – Attorneys' Eyes Only."

20           **5.3 Inadvertent Failures to Designate.** If timely corrected, an inadvertent  
21 failure to designate qualified information or items as "Confidential" or "Highly Confidential –  
22 Attorneys' Eyes Only" does not, standing alone, waive the Designating Party's right to  
23 secure protection under this Order for such material. If material is appropriately designated  
24 as "Confidential" or "Highly Confidential – Attorneys' Eyes Only" after the material was  
25 initially produced, the Receiving Party, on timely notification of the designation, must make  
26 reasonable efforts to assure that the material is treated in accordance with the provisions  
27 of this Order.

1 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

2 **6.1 Timing of Challenges.** Unless a prompt challenge to a Designating Party's  
3 confidentiality designation is necessary to avoid foreseeable substantial unfairness,  
4 unnecessary economic burdens, or a later significant disruption or delay of the litigation, a  
5 Party does not waive its right to challenge a confidentiality designation by electing not to  
6 mount a challenge promptly after the original designation is disclosed.

7 **6.2 Meet and Confer.** A Party that elects to initiate a challenge to a Designating  
8 Party's confidentiality designation must do so in good faith and must begin the process by  
9 conferring directly (in voice to voice dialogue; other forms of communication are not  
10 sufficient) with counsel for the Designating Party. In conferring, the challenging Party must  
11 explain the basis for its belief that the confidentiality designation was not proper and must  
12 give the Designating Party an opportunity to review the designated material, to reconsider  
13 the circumstances, and, if no change in designation is offered, to explain the basis for the  
14 chosen designation. A challenging Party may proceed to the next stage of the challenge  
15 process only if it has engaged in this meet and confer process first.

16 **6.3 Judicial Intervention.** A Party that elects to press a challenge to a  
17 confidentiality designation after considering the justification offered by the Designating  
18 Party may file and serve a motion under Civil Local Rule 7 (and in compliance with Civil  
19 Local Rule 79-5, if applicable) that identifies the challenged material and sets forth in  
20 detail the basis for the challenge. Each such motion must be accompanied by a  
21 competent declaration that affirms that the movant has complied with the meet and confer  
22 requirements imposed in the preceding paragraph and that sets forth with specificity the  
23 justification for the confidentiality designation that was given by the Designating Party in  
24 the meet and confer dialogue.

25 The burden of persuasion in any such challenge proceeding shall be on the  
26 Designating Party. Until the court rules on the challenge, all parties shall continue to afford  
27

1 the material in question the level of protection to which it is entitled under the Producing  
2 Party's designation.

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

4 **7.1 Basic Principles.** A Receiving Party may use Protected Material that is  
5 disclosed or produced by another Party or by a non-party in connection with this case only  
6 for prosecuting, defending, or attempting to settle this litigation. Such Protected Material  
7 may be disclosed only to the categories of persons and under the conditions described in  
8 this Order. When the litigation has been terminated, a Receiving Party must comply with  
9 the provisions of section 11, below (FINAL DISPOSITION).

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

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

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

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

23 (c) 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  
25 to Be Bound by Protective Order" (Exhibit A);

26 (d) the Court and its personnel;



1 (e) 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);

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

9 (g) the author of the document or the original source of the information.

10 **7.3 Disclosure of "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY"**  
11 **Information or Items.** Unless otherwise ordered by the court or permitted in writing by  
12 the Designating Party, a Receiving Party may disclose any information or item designated  
13 "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" only to:

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

18 (c) Experts (as defined in this Order) (1) to whom disclosure is  
19 reasonably necessary for this litigation, (2) who have signed the "Agreement to Be Bound  
20 by Protective Order" (Exhibit A), [Optional: and (3) as to whom the procedures set forth in  
21 paragraph 7.4, below, have been followed];

22 (d) the Court and its personnel;

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

26 (f) the author of the document or the original source of the information.  
27

1 **8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER**  
2 **LITIGATION.**

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

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

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

21 **9. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

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

1 disclosures were made of all the terms of this Order, and (d) request such person or  
2 persons to execute the "Acknowledgment and Agreement to Be Bound" that is attached  
3 hereto as Exhibit A.

4 **10. FILING PROTECTED MATERIAL.**

5 Without written permission from the Designating Party or a court order secured  
6 after appropriate notice to all interested persons, a Party may not file in the public record  
7 in this action any Protected Material. A Party that seeks to file under seal any Protected  
8 Material must comply with Civil Local Rule 79-5.

9 **11. FINAL DISPOSITION.**

10 Unless otherwise ordered or agreed in writing by the Producing Party, within sixty  
11 days after the final termination of this action, each Receiving Party must return all  
12 Protected Material to the Producing Party. As used in this subdivision, "all Protected  
13 Material" includes all copies, abstracts, compilations, summaries or any other form of  
14 reproducing or capturing any of the Protected Material. With permission in writing from the  
15 Designating Party, the Receiving Party may destroy some or all of the Protected Material  
16 instead of returning it. Whether the Protected Material is returned or destroyed, the  
17 Receiving Party must submit a written certification to the Producing Party (and, if not the  
18 same person or entity, to the Designating Party) by the sixty day deadline that identifies  
19 (by category, where appropriate) all the Protected Material that was returned or destroyed  
20 and that affirms that the Receiving Party has not retained any copies, abstracts,  
21 compilations, summaries or other forms of reproducing or capturing any of the Protected  
22 Material.

23 Notwithstanding this provision, Counsel are entitled to retain an archival copy of all  
24 pleadings, motion papers, transcripts, legal memoranda, correspondence or attorney work  
25 product, even if such materials contain Protected Material. Any such archival copies that  
26

1 contain or constitute Protected Material remain subject to this Protective Order as set forth  
2 in Section 4 (DURATION), above.

3 **12. MISCELLANEOUS**

4 **12.1 Right to Further Relief.** Nothing in this Order abridges the right of any  
5 person to seek its modification by the Court in the future.

6 **12.2 Right to Assert Other Objections.** By stipulating to the entry of this  
7 Protective Order no Party waives any right it otherwise would have to object to disclosing  
8 or producing any information or item on any ground not addressed in this Stipulated  
9 Protective Order. Similarly, no Party waives any right to object on any ground to use in  
10 evidence of any of the material covered by this Protective Order.

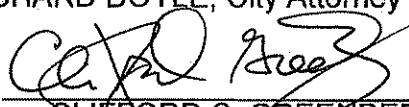
11 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

12  
13 DATED: APRIL 30, 2009

  
\_\_\_\_\_  
MARC PINCKNEY  
Plaintiff in Pro Per

14  
15  
16 DATED: <sup>May</sup> APRIL 1, 2009

RICHARD DOYLE, City Attorney

17  
18 By   
\_\_\_\_\_  
CLIFFORD S. GREENBERG  
Senior Deputy City Attorney

19  
20 Attorneys for Defendant  
CITY OF SAN JOSE, et al.

21  
22 **PURSUANT TO STIPULATION, IT IS SO ORDERED.**

23  
24 DATED: <sup>MAY</sup> APRIL 5, 2009

  
\_\_\_\_\_  
MAGISTRATE JUDGE PATRICIA V. TRUMBULL  
UNITED STATES DISTRICT COURT

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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 [date] in the case  
of \_\_\_\_\_ [insert formal name of the case and the number and initials assigned to it  
by the court]. 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: \_\_\_\_\_

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

Printed name: \_\_\_\_\_

[printed name]