

E-FILED 09-09-2010

1 RICHARD DOYLE, City Attorney (88625)
 2 NORA FRIMANN, Assistant City Attorney (93249)
 3 MICHAEL R. GROVES, Sr. Deputy City Attorney (85620)
 4 RICHARD D. NORTH, Deputy City Attorney (225617)
 5 Office of the City Attorney
 6 200 East Santa Clara Street, 16th Floor
 7 San José, California 95113-1905
 8 Telephone Number: (408) 535-1900
 9 Facsimile Number: (408) 998-3131
 10 E-Mail Address: cao.main@sanjoseca.gov

11 Attorneys for CITY OF SAN JOSE;
 12 OFFICER BRIAN PETTIS

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

16 JOHN BENSON,
 17 Plaintiff,
 18 v.
 19 CITY OF SAN JOSE, a public entity,
 20 OFFICER BRIAN PETTIS, an individual,
 21 and DOES 1-100, inclusive,
 22 Defendants.

Case Number: C09-05772 LHK

STIPULATED PROTECTIVE ORDER

(MODIFIED BY THE COURT)

1. PURPOSES AND LIMITATIONS

23 Defendants in this action will produce records generated by the San Jose Police
 24 Internal Affairs Department ("IA Records") containing confidential and private information
 25 for which special protection from public disclosure and from use for any purpose other than
 26 prosecuting this litigation is warranted. Accordingly, the parties hereby stipulate to and
 27 petition the Court to enter the following Stipulated Protective Order.

2. DEFINITIONS

2.1 Receiving Party: John Benson.

2.2 Producing Party / Designating Party: the City of San Jose and Officer
 28 Brian Pettis.

1 **2.3 Protected Material:** the IA Records.

2 **2.4 Outside Counsel:** attorneys who are not employees of a Party but who are
3 retained to represent or advise a Party in this action.

4 **2.5 Expert:** a person with specialized knowledge or experience in a matter
5 pertinent to the litigation who has been retained by a Party or its counsel to serve as an
6 expert witness or as a consultant in this action and who is not a past or a current employee
7 of a Party or of a competitor of a Party's and who, at the time of retention, is not
8 anticipated to become an employee of a Party or a competitor of a Party's. This definition
9 includes a professional jury or trial consultant retained in connection with this litigation.

10 **3. SCOPE**

11 The protections conferred by this Stipulated Protective Order covers the Protected
12 Material (as defined above) as well as any information copied or extracted therefrom, as
13 well as all copies, excerpts, summaries, or compilations thereof, plus testimony,
14 conversations, or presentations by parties or counsel to or in court or in other settings that
15 might reveal Protected Material.

16 **4. DURATION**

17 Even after the termination of this litigation, the obligations imposed by this Order
18 shall remain in effect until the Designating Party agrees otherwise in writing or a court
19 order otherwise directs. **For a period of six months after the final termination of this action, this
20 court will retain jurisdiction to enforce the terms of this order.**

21 **5. DESIGNATING PROTECTED MATERIAL**

22 **5.2 Manner and Timing of Designations.**

23 (a) The Producing Party shall clearly designate the Protected Material as subject
24 to this Stipulated Protective Order by marking the Protected Material with the designation
25 "Confidential" before the material is disclosed or produced.

26 (b) Where the Protected Material is offered into evidence in deposition or in
27 other pretrial proceedings, the Party sponsoring the evidence shall identify on the record
28 that the Protected Material is confidential and subject to this Stipulated Protective Order.
Transcript pages containing Protected Material must be separately bound by the court

1 reporter, who must affix to the top of each such page the legend “Confidential”, as
2 instructed by the Party sponsoring the evidence.

3 **5.3 Inadvertent Failures to Designate.** If timely corrected, an inadvertent
4 failure to designate Protected Material as “Confidential” does not, standing alone, waive
5 the Designating Party’s right to secure protection under this Order for such material. If
6 Protected Material is appropriately designated as “Confidential” after the material was
7 initially produced, the Receiving Party, on timely notification of the designation, must make
8 reasonable efforts to assure that the material is treated in accordance with the provisions
9 of this Stipulated Protective Order.

10 **6. ACCESS TO AND USE OF PROTECTED MATERIAL**

11 **6.1 Basic Principles.** Receiving Party may use the Protected Material only for
12 prosecuting or attempting to settle this litigation. The Protected Material may be disclosed
13 only to the categories of persons and under the conditions described in this Stipulated
14 Protective Order. When the litigation has been terminated, Receiving Party must comply
15 with the provisions of section 11, below (FINAL DISPOSITION).

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

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

22 (a) Receiving Party’s Outside Counsel of record in this action, as well as
23 employees of said Outside Counsel to whom it is reasonably necessary to disclose the
24 information for this litigation and who have signed the “Agreement to Be Bound by
25 Protective Order” that is attached hereto as Exhibit A;

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

- (c) the Court and its personnel, including court reporters;
- (d) the author of the document or the original source of the information.

7. SUBPOENA OF PROTECTED MATERIAL.

If a Receiving Party is served with a subpoena or an order issued in other litigation that would compel disclosure of any documents or information designated in this action as “Confidential”, the Receiving Party must so notify the Designating Party, in writing (by email or fax, if possible) immediately and in no event more than three court days after receiving the subpoena or order. Such notification must include a copy of the subpoena or court order.

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

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

8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

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

1 persons to execute the “Acknowledgment and Agreement to Be Bound” that is attached
2 hereto as Exhibit A.

3 **9. FILING PROTECTED MATERIAL.**

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

8 **10. FINAL DISPOSITION.**

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

21 Notwithstanding this provision, Counsel are entitled to retain an archival copy of all
22 pleadings, motion papers, transcripts, legal memoranda, correspondence or attorney work
23 product, even if such materials contain Protected Material. Any such archival copies that
24 contain or constitute Protected Material remain subject to this Stipulated Protective Order
25 as set forth in Section 4 (DURATION), above.

26 **11. MISCELLANEOUS**

27 **11.1 Right to Further Relief.** Nothing in this Order abridges the right of any
28 person to seek its modification by the Court in the future.

1 I affirm that Plaintiff's counsel has consented to the electronic filing of this
2 document on Plaintiff's behalf.

3 DATED: September 7, 2010


RICHARD DOYLE, City Attorney

4 By /s/ Richard D. North
5 RICHARD D. NORTH
6 Deputy City Attorney

7 Attorneys for Defendants CITY OF SAN JOSÉ and
8 OFFICER BRIAN PETTIS

9 **AS MODIFIED BY THE COURT,
10 PURSUANT TO STIPULATION, IT IS SO ORDERED.**

11 DATED: September 9, 2010

12 
13 ~~THE HONORABLE LEON E. KOH~~ HOWARD R. LLOYD
14 ~~UNITED STATES DISTRICT COURT~~
15 MAGISTRATE JUDGE

1 EXHIBIT A

2 ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

3
4 I, _____ [print or type full name], of
5 _____ [print or type full address], declare under penalty of perjury that I
6 have read in its entirety and understand the Stipulated Protective Order that was issued by
7 the United States District Court for the Northern District of California on _____
8 [date] in the case of *Benson v. City of San Jose, et al.* (C09-05772 LHK). I agree to
9 comply with and to be bound by all the terms of this Stipulated Protective Order and I
10 understand and acknowledge that failure to so comply could expose me to sanctions and
11 punishment in the nature of contempt. I solemnly promise that I will not disclose in any
12 manner any information or item that is subject to this Stipulated Protective Order to any
13 person or entity except in strict compliance with the provisions of this Order.

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

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

22 Date: _____

23 City and State where sworn and signed: _____

24 Printed name: _____

25 Signature: _____