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5 Attorneys for Defendants
City of Morgan Hill; City of
6 Morgan Hill Police Department;
Chief of Police Bruce Cumming;
7 Officer Brookman; Officer Max
Cervantez; Officer Joseph
8 Burdick; Officer Jerry Neumayer;
Officer Jeffrey Brandon; Det.
9 Brandon Richards

10 UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT OF CALIFORNIA

12 Maria Jesus Balaszquez, Rudy
Martinez and Rudy Balaszquez
13 Martinez, Jr.,

14 Plaintiffs,

15 v.

16 City of Morgan Hill in its
official and Municipal Capacity,
17 City of Morgan Hill Police
Department in its corporate
18 capacity, Chief of Police Bruce
Cumming in his official and
19 individual capacity, Officers
Brookman in his official and
20 individual capacity, Max
Cervantez in his official and
21 individual capacity, Joseph
Burdick in his official and
22 individual capacity, Jerry
Neumeyer in his official and
23 individual capacity, Jeffrey
Brandon in his official and
24 individual capacity, Det.
Brandon Richards, in his
25 official and individual capacity
and Does 1-25, inclusive,

26 Defendants.

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28 / / /

CASE NO. CV 10 05206 LHK

**ORDER RE STIPULATION REGARDING
CONFIDENTIALITY AND FOR
PROTECTIVE ORDER
AS MODIFIED BY THE COURT**

1 **IT IS HEREBY STIPULATED** by and between plaintiffs Maria
2 Jesus Balasquez, Rudy Martinez and Rudy Balasquez Martinez, Jr.,
3 and defendants City of Morgan Hill (erroneously sued herein as
4 City of Morgan Hill Police Department), Chief Of Police Bruce
5 Cumming, Officer Brookman, Officer Max Cervantez, Officer Joseph
6 Burdick, Officer Jerry Neumayer, Jeffrey Brandon and Det. Brandon
7 Richards, through their respective counsel of record, as follows:

8 1. Information and Matters Subject to this **ORDER**. This
9 stipulation and order (hereafter "**ORDER**") shall govern all
10 "**CONFIDENTIAL INFORMATION**" (as defined hereafter) and all
11 information derived therefrom, including, but not limited to, all
12 copies, excerpts or summaries thereof. All references herein to
13 "**PARTIES**" shall include plaintiffs Maria Jesus Balasquez, Rudy
14 Martinez and Rudy Balasquez Martinez, and defendants City of
15 Morgan Hill (erroneously sued herein as City of Morgan Hill
16 Police Department), Chief Of Police Bruce Cumming, Officer
17 Brookman, Officer Max Cervantez, Officer Joseph Burdick, Officer
18 Jerry Neumayer, Jeffrey Brandon and Det. Brandon Richards and
19 their respective counsel of record in the above-entitled action.

20 2. Definitions. The following definitions shall apply in
21 the construction and application of this **ORDER**.

22 a. The term "**INFORMATION**" means any materials, as defined
23 by Federal Rule of Evidence 1001, or materials produced by the
24 **PARTIES** or any person or entity subject to their employ or
25 control in conjunction with this proceeding, including, but not
26 limited to, (1) documents produced pursuant to requests under
27 Federal Rule of Civil Procedure 34, (2) documents produced
28 pursuant to subpoena, (3) documents produced voluntarily or in

1 response to informal request, and (4) answers to deposition
2 questions set forth in deposition transcripts.

3 b. The term "**CONFIDENTIAL**" means any **INFORMATION** designated
4 as **CONFIDENTIAL** by the **PARTIES**. Only the following **INFORMATION**
5 may be so designated: pursuant to Fed. R. Civ. P. 26(c).

6 (1) All **INFORMATION** regarding medical records, personnel
7 records, employment files, performance evaluations,
8 physical/mental evaluations, disciplinary action, citizen
9 complaints, internal affairs investigations, and all other
10 employment-related writings regarding any employee of the City of
11 Morgan Hill produced in this action;

12 (2) All **INFORMATION** regarding policies, procedures,
13 manuals, and other documents regarding personnel practices of the
14 City of Morgan Hill produced in this action; and

15 (3) Any other **INFORMATION** stipulated to by the **PARTIES**.

16 C. The term "**QUALIFIED PERSONS**" means (1) the Presiding
17 Judge and any of his or her staff, (2) any referee appointed by a
18 judge in this matter to preside over any hearings in this matter
19 and any of his or her staff, (3) a jury empanelled for trial, (4)
20 stenographic reporters engaged in these proceedings as are
21 necessarily incident to the preparation for trial and/or trial of
22 this action, (5) counsel for the **PARTIES** in this litigation, (6)
23 paralegal, stenographic, clerical, and secretarial personnel
24 employed by counsel for the **PARTIES**, (7) the **PARTIES** to these
25 proceedings, including their officers, directors, agents, and
26 employees, and (8) any person employed by counsel for the **PARTIES**
27 in this proceeding to assist such counsel in this proceeding,
28 such as experts or other consultants.

1 d. The term "**DISCLOSE**" or any version thereof means to
2 show, give, make available, or communicate in any fashion to any
3 person any **CONFIDENTIAL INFORMATION**, information concerning the
4 existence or content of any **CONFIDENTIAL INFORMATION**, or any
5 copy, portion, version, or summary of any **CONFIDENTIAL**
6 **INFORMATION**.

7 3. Use of **CONFIDENTIAL INFORMATION**. **CONFIDENTIAL**
8 **INFORMATION** shall be used solely in connection with, and only as
9 necessary to, this action and the preparation and trial of this
10 action, or any related proceeding, including, but not limited to,
11 appeal or writ, and not for any other purpose, including, without
12 limitation, any civil, criminal, administrative, or personal
13 purpose or function. **CONFIDENTIAL INFORMATION** shall not be
14 **DISCLOSED** to anyone other than **QUALIFIED PERSONS** and shall not be
15 **DISCLOSED** except in accordance with this **ORDER**. Control and
16 distribution of all **CONFIDENTIAL INFORMATION** shall be the
17 responsibility of the attorneys of record and the **PARTIES**. The
18 provisions of this **ORDER**, insofar as they restrict the
19 communication and use of **CONFIDENTIAL INFORMATION** produced
20 hereunder, copies of summaries thereof, or information obtained
21 therefrom, shall continue to be binding after the conclusion of
22 this action.

23 4. Designation of **INFORMATION** as **CONFIDENTIAL**. In the
24 preparation for any trial of this proceeding, and any appeal or
25 writ taken herein, **CONFIDENTIAL INFORMATION** shall be designated
26 in the following manner:

27 a. **INFORMATION** shall be designated as **CONFIDENTIAL** only
28 after a bona fide and good faith determination by the producing

The producing party shall exercise restraint and care in designating information for protection in conformity with N.D. Cal. Model Protective Order Section 5.1.

1 party that the material contains **CONFIDENTIAL INFORMATION** as
2 defined herein, the **DISCLOSURE** and use of which would be
3 detrimental to or invade the privacy of the producing party.

4 b. Any information sought to be protected is properly
5 subject to protection under FRCP Rule 26(c), and **PARTIES** and
6 counsel shall not designate any discovery material **CONFIDENTIAL**
7 without first making a good faith determination that protection
8 is warranted.

9 c. Any party seeking protection under FRCP Rule 26(c) has
10 the burden of proof to show that such protection is warranted.

11 d. The designation of **INFORMATION** as **CONFIDENTIAL** shall be
12 made, whenever possible prior to production, by placing or
13 affixing on each page of such material in a manner that will not
14 interfere with its legibility the words "**CONFIDENTIAL**," or by the
15 designation of categories of documents as "**CONFIDENTIAL**." If
16 such designation is not possible prior to production, the
17 designation must be made by the producing party within twenty
18 (20) days after disclosure. The **INFORMATION** shall be treated as
19 **CONFIDENTIAL** until the twenty (20) days has elapsed. Within such
20 twenty (20)-day period, the disclosing party must notify all
21 **PARTIES** in writing of the precise **INFORMATION** sought to be
22 designated as **CONFIDENTIAL**. Absent such notice, the **INFORMATION**
23 cannot be treated as **CONFIDENTIAL**.

24 **5. DISCLOSURE of CONFIDENTIAL INFORMATION.** Each counsel
25 whose law firm are actual signatories to this **ORDER**, to whom
26 **CONFIDENTIAL INFORMATION** is furnished, shown, or **DISCLOSED**,
27 shall, prior to the time s/he receives access to such materials,
28 be provided by counsel furnishing her/him such material a copy of

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1 this **ORDER** and agree to be bound by its terms, and shall certify
2 that s/he has carefully read the **ORDER** and fully understands its
3 terms. Such person must also consent to be subject to the
4 personal jurisdiction of the United States District Court,
5 Northern District of California, with respect to any proceeding
6 relating to enforcement of this **ORDER**, including any proceeding
7 relating to contempt of court. The certificate shall be in the
8 form attached hereto. Counsel making **DISCLOSURE** to any person as
9 described herein shall retain the original executed copy of such
10 certificate until final termination of this case.

11 a. **DISCLOSURE During Depositions.** In the event that
12 **CONFIDENTIAL INFORMATION** is **DISCLOSED**, revealed, utilized,
13 examined or referred to during depositions, then only **QUALIFIED**
14 **PERSONS**, the deponent, and the court reporter shall be present.
15 If **CONFIDENTIAL INFORMATION** is made exhibits to, or if
16 **CONFIDENTIAL INFORMATION** is the subject of examination during, a
17 deposition, then arrangements will be made with the court
18 reporter to separately bind those exhibits and those portions of
19 the transcript containing **CONFIDENTIAL INFORMATION**, and each page
20 on which such **CONFIDENTIAL INFORMATION** appears shall be stamped
21 with the word "**CONFIDENTIAL.**" Those exhibits and transcript
22 portions shall be placed in a sealed envelope or other
23 appropriate sealed container on which shall be endorsed
24 "Balasquez, et. al. v. City of Morgan Hill, et al., Confidential
25 Pursuant to Order in Case No. CV 10 05206 LHK," and a statement
26 substantially in the following form:

27 "THIS ENVELOPE IS SEALED PURSUANT TO STIPULATED PROTECTIVE
28 ORDER OF COURT, IN "Balasquez, et. al. v. City of Morgan Hill, et

1 al., UNITED STATES DISTRICT COURT, NORTHERN DISTRICT OF
2 CALIFORNIA, CASE NO. CV 10 05206 LHK, AND CONTAINS CONFIDENTIAL
3 DOCUMENTS PRODUCED OR GENERATED BY PARTIES TO THE PROCEEDING. IT
4 IS NOT TO BE OPENED, OR THE CONTENTS THEREOF TO BE DISCLOSED,
5 EXCEPT TO QUALIFIED PERSONS AS DEFINED BY SAID ORDER."

6 Each court reporter participating in any deposition
7 involving **CONFIDENTIAL INFORMATION** shall be informed of and
8 provided with a copy of this **ORDER** and exhibit hereto and shall
9 be requested to sign a copy of said exhibit. Furthermore, each
10 court reporter participating in any deposition involving
11 **CONFIDENTIAL INFORMATION** shall show a copy of this **ORDER** to any
12 other person participating in the preparation of any deposition
13 transcript and shall have such person sign a copy of said
14 exhibit.

15 b. Papers Filed in Court. Counsel for plaintiffs and
16 counsel for defendants are directed to place any documents to be
17 filed under seal with the clerk of the court, pursuant to this
18 **ORDER**, in an envelope containing the title of the document,
19 marked "SEALED" and labeled:

20 "THIS ENVELOPE IS SEALED PURSUANT TO STIPULATED PROTECTIVE
21 ORDER OF COURT, IN "Balasquez, et. al. v. City of Morgan Hill, et
22 al., UNITED STATES DISTRICT COURT, NORTHERN DISTRICT OF
23 CALIFORNIA, CASE NO. CV 10 05206 LHK, AND CONTAINS CONFIDENTIAL
24 DOCUMENTS. IT IS NOT TO BE OPENED, OR THE CONTENTS THEREOF TO BE
25 DISCLOSED, ABSENT FURTHER ORDER OF THE COURT."

26 Documents to be filed under seal are to be filed directly
27 with the supervisor of the filing window. Upon failure of the
28 filing party to so file a document under seal, the producing

1 party may do so.

2 c. DISCLOSURE to Experts. In case of any **DISCLOSURE** to an
3 expert, consultant, or other **QUALIFIED PERSON** under paragraph
4 2(c) above, counsel for the disclosing party shall make
5 reasonable efforts to ensure that the **CONFIDENTIAL INFORMATION**
6 **DISCLOSED** is not disseminated in any form to anyone by such
7 expert, consultant, or other **QUALIFIED PERSON** and that said
8 **CONFIDENTIAL INFORMATION** and any copies or summaries thereof are
9 returned in their entirety to the disclosing party after they are
10 no longer needed in this action.

11 6. DISCLOSURE of CONFIDENTIAL INFORMATION to Other Than
12 QUALIFIED PERSONS. In the event that any party desires
13 **CONFIDENTIAL INFORMATION** to be **DISCLOSED**, discussed, or made
14 available to any person other than a **QUALIFIED PERSON**, such party
15 shall submit to the opposing **PARTY** a written statement
16 specifically identifying the **CONFIDENTIAL INFORMATION** to be
17 **DISCLOSED** and the name, title, and business relationship of the
18 persons with whom they wish to communicate. The opposing **PARTY**
19 shall have fifteen (15) calendar days from the date notice was
20 served to object to the **DISCLOSURE** to any person identified in
21 the notice. If the **PARTIES** are unable to agree on the terms and
22 conditions of the requested **DISCLOSURE**, it may be made only on
23 such terms as the Court may provide. The **PARTY** seeking
24 disclosure may file with the Court and personally serve on
25 opposing **PARTY** a written motion for authority to make such
26 **DISCLOSURE**. Ten (10) days shall be allowed to oppose or
27 otherwise answer any such motion.

28 a. Unless opposing **PARTY** responds timely in writing to the

1 fifteen (15)-day notification provided for above, the persons
2 named in the notice shall, subject to the terms and conditions of
3 this **ORDER**, be entitled to receive only that **CONFIDENTIAL**
4 **INFORMATION** specified in this notice.

5 7. DISCLOSURE to Author or Addressee. Nothing in this
6 **ORDER** shall preclude the **DISCLOSURE** of **CONFIDENTIAL INFORMATION**
7 to any person who authored, prepared, was an addressee of,
8 received a copy of, or participated in the preparation of such
9 **CONFIDENTIAL INFORMATION**.

The parties shall attempt to resolve each challenge in good faith and must begin the process by conferring directly, in conformity with N.D. Cal. Model Protective Order Section 6.2.

10 8 Objections To Designation. Should any party to whom
11 **CONFIDENTIAL INFORMATION** is disclosed object to classification of
12 such materials, and should the **PARTIES** be unable to resolve the
13 objection informally, then the objecting party ("the moving
14 party") shall have the burden of moving forward and may move, at
15 any time upon proper notice, for an order determining whether or
16 not the materials are properly designated. Until a motion is
17 filed and resolved by the Court, all materials designated
18 **CONFIDENTIAL INFORMATION** shall be treated as **CONFIDENTIAL**. In
19 the event such a motion is made, the party opposing the motion
20 (the "opposing party") shall have the burden of providing and
21 establishing that the **INFORMATION** is protected as privileged
22 within the meaning of and under applicable federal laws and the
23 laws of the State of California. This burden, imposed on the
24 opposing party, shall include, but shall not be limited to, the
25 burden imposed on any party seeking a protective **ORDER**.

26 9. Objections To Production. Nothing in this **ORDER** shall
27 be deemed to limit or waive any right of any party to object to
28 discovery with respect to any **INFORMATION** which may be claimed to

1 be outside the scope of discovery for any reason, privileged, or
2 otherwise protected or protectable under applicable federal laws
3 and the laws of the State of California

4 10. Further Protection. Nothing contained in this **ORDER**
5 shall be deemed to preclude any party at any time (a) from
6 seeking and obtaining from the opposing party or the Court, on
7 appropriate showing, a further protective **ORDER** relating to
8 **CONFIDENTIAL INFORMATION** or relating to any discovery in this
9 case, (b) to apply to the Court for an **ORDER** requiring the
10 removal of the **CONFIDENTIAL** designation from any document
11 pursuant to Paragraph 4 above; and (c) to apply to the Court for
12 any relief from a provision of this Stipulation and **ORDER**, upon
13 good cause shown. Nothing in this **ORDER** shall be construed as
14 preventing any party from making application to the Court for
15 revision of the terms of this **ORDER**.

16 11. Contempt. Any violation of the provisions set forth in
17 this **ORDER** ~~is~~ may be punishable as contempt of this Court.

18 12. General Provisions.

19 a. This **ORDER** is the result of negotiations by attorneys
20 for the **PARTIES** and shall not be construed against any party or
21 signatory to this **ORDER** because that **PARTY** or their counsel may
22 have drafted this **ORDER** in whole or in part. This **ORDER** shall be
23 construed and interpreted fairly in accordance with its purpose
24 and plain meaning.

25 b. This **ORDER** shall continue to be binding after the
26 conclusion of this litigation, except that a party may seek
27 written permission from the opposing **PARTIES** or further **ORDER** of
28 the Court with respect to dissolution or modification of this

1 **ORDER.**

2 c. Within thirty (30) days after the conclusion of this
3 case, any and all original, copy, portion, version, or summary of
4 any **CONFIDENTIAL INFORMATION** materials in the possession, , other than the Court
and court staff,
5 control, and/or custody of any **QUALIFIED PERSON** shall be
6 returned. Counsel of record for a **PARTY** returning **CONFIDENTIAL**
7 **INFORMATION** shall verify by declaration under oath that all such
8 **INFORMATION** has been returned and that it has not retained any
9 such **INFORMATION** or derivatives therefrom. Counsel may retain
10 copies of briefs filed with the Court and work product so long as
11 it is maintained in accordance with this **ORDER.**

12 d. Disclosure of **CONFIDENTIAL INFORMATION** shall not
13 constitute a waiver of the attorney-client privilege, work-
14 product doctrine, or any other applicable rights or privilege.

15 e. Notices pursuant to this **ORDER** shall be sent to the
16 attorneys for the **PARTIES** listed on the signature page of this
17 **ORDER** unless notified in writing of a change.

18 f. This **ORDER** shall not be admissible at the time of trial
19 and shall not constitute an admission by any of the **PARTIES** that
20 **INFORMATION** identified as **CONFIDENTIAL** is in fact confidential or
21 the subject of entitlement thereto. This **ORDER** is entered into
22 solely to expedite discovery and meet the respective concerns of
23 the **PARTIES**. This **ORDER** shall not be made known to any trier of
24 fact, nor shall it be considered an admission of validity to any
25 claim of confidentiality hereunder except as is necessary to
26 enforce the terms of the **ORDER** as provided herein.

27 g. The Court's jurisdiction to enforce the terms of this
28 order shall extend until six months after the final termination

1 of this action.

2 The above is stipulated to by counsel for plaintiffs Maria
3 Jesus Balasquez, Rudy Martinez and Rudy Balasquez Martinez, Jr.,
4 and by counsel for defendants City of Morgan Hill (erroneously
5 sued herein as City of Morgan Hill Police Department); Chief Of
6 Police Bruce Cumming; Officer Brookman; Officer Max Cervantez;
7 Officer Joseph Burdick; Officer Jerry Neumayer; Jeffrey Brandon;
8 and Det. Brandon Richards as follows:

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DATED: August 23, 2011 LAW OFFICE OF RONALD Z. BERKI

By: /s/ Ronald Z. Berki
RONALD Z. BERKI
Attorneys for Plaintiffs

DATED: August 23, 2011 SELMAN BREITMAN LLP

By: /s/ Danielle K. Lewis
GREGG A. THORNTON
DANIELLE K. LEWIS
Attorneys for Defendants
City of Morgan Hill (erroneously
sued herein as City of Morgan
Hill Police Department); Chief Of
Police Bruce Cumming; Officer
Brookman; Officer Max Cervantez;
Officer Joseph Burdick; Officer
Jerry Neumayer; Jeffrey Brandon;
Det. Brandon Richards

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ORDER

IT IS SO ORDERED.

Dated: 9/28/2011

By: Paul S. Grewal
Hon. Paul S. Grewal
United States Magistrate Judge
Northern District of California