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FILED

JAN 24 2013

RICHARD W. WIEKING
 CLERK, U.S. DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA
 SAN JOSE DIVISION

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

15 N.R., a Minor,

16 Plaintiff(s),

17 v.

18 SCOTT HARRIS, a San Jose police officer;
 19 SERGEANT DAVIS, a San Jose police
 20 officer; SERGEANT GRANT, a San Jose
 21 police officer; LIEUTENANT WEGER, a San
 22 Jose police officer; ROBERT DAVIS,
 23 individually and in his capacity as Chief of
 24 Police for the City of San Jose; CHRIS
 25 MOORE, individually and in his capacity as
 26 Chief of Police for the City of San Jose; JOHN
 27 DOE and RICHARD ROE, individually and in
 28 their capacities as San Jose police officers, the
 true names and exact numbers of whom are
 unknown at this time; CITY OF SAN JOSE, a
 municipal corporation,

Defendant(s).

Case Number: CV 12-04322 EJD

STIPULATED PROTECTIVE ORDER

(RE: DOCKET NO. 23)

MODIFIED BY THE COURT

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 may be warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated Protective Order. The parties

1 acknowledge that this Order does not confer blanket protections on all disclosures or responses to
2 discovery and that the protection it affords from public disclosure and use extends only to the limited
3 information or items that are entitled to confidential treatment under the applicable legal principles. The
4 parties further acknowledge, as set forth in Section 12.3, below, that this Stipulated Protective Order
5 does not entitle them to file confidential information under seal; Civil Local Rule 79-5 and General
6 Order 62 set forth the procedures that must be followed and the standards that will be applied when a
7 party seeks permission from the court to file material under seal.

8 **2. DEFINITIONS**

9 2.1 Challenging Party: a Party or Non-Party that challenges the designation of
10 information or items under this Order.

11 2.2 "CONFIDENTIAL" Information or Items: information (regardless of how it
12 is generated, stored or maintained) or tangible things that qualify for protection under Federal Rule
13 of Civil Procedure 26(c).

14 2.3 Counsel (without qualifier): Outside Counsel of Record and House Counsel
15 (as well as their support staff).

16 2.4 Designating Party: a Party or Non-Party that designates information or items
17 that it produces in disclosures or in responses to discovery as "CONFIDENTIAL."

18 2.5 Disclosure or Discovery Material: all items or information, regardless of the
19 medium or manner in which it is generated, stored, or maintained (including, among other things,
20 testimony, transcripts, and tangible things), that are produced or generated in disclosures or
21 responses to discovery in this matter.

22 2.6 Expert: a person with specialized knowledge or experience in a matter
23 pertinent to the litigation who has been retained by a Party or its counsel to serve as an expert
24 witness or as a consultant in this action.

25 2.7 House Counsel: attorneys who are employees of a party to this action. House
26 Counsel does not include Outside Counsel of Record or any other outside counsel.

27 2.8 Non-Party: any natural person, partnership, corporation, association, or other
28 legal entity not named as a Party to this action.

1 2.9 Outside Counsel of Record: attorneys who are not employees of a party to
2 this action but are retained to represent or advise a party to this action and have appeared in this
3 action on behalf of that party or are affiliated with a law firm which has appeared on behalf of that
4 party.

5 2.10 Party: any party to this action, including all of its officers, directors,
6 employees, consultants, retained experts, and Outside Counsel of Record (and their support staffs).

7 2.11 Producing Party: a Party or Non-Party that produces Disclosure or Discovery
8 Material in this action.

9 2.12 Professional Vendors: persons or entities that provide litigation support
10 services (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations, and
11 organizing, storing, or retrieving data in any form or medium) and their employees and
12 subcontractors.

13 2.13 Protected Material: any Disclosure or Discovery Material that is designated as
14 "CONFIDENTIAL."

15 2.14 Receiving Party: a Party that receives Disclosure or Discovery Material from
16 a Producing Party.

17 3. SCOPE

18 The protections conferred by this Stipulation and Order cover not only Protected Material (as
19 defined above), but also (1) any information copied or extracted from Protected Material; (2) all copies,
20 excerpts, summaries, or compilations of Protected Material; and (3) any testimony, conversations, or
21 presentations by Parties or their Counsel that might reveal Protected Material. However, the protections
22 conferred by this Stipulation and Order do not cover the following information: (a) any information that
23 is in the public domain at the time of disclosure to a Receiving Party or becomes part of the public
24 domain after its disclosure to a Receiving Party as a result of publication not involving a violation of
25 this Order, including becoming part of the public record through trial or otherwise; and (b) any
26 information known to the Receiving Party prior to the disclosure or obtained by the Receiving Party
27 after the disclosure from a source who obtained the information lawfully and under no obligation of
28

1 confidentiality to the Designating Party. Any use of Protected Material at trial shall be governed by a
2 separate agreement or order.

3 **4. DURATION**

4 Even after final disposition of this litigation, the confidentiality obligations imposed by this
5 Order shall remain in effect until a Designating Party agrees otherwise in writing or a court order
6 otherwise directs. Final disposition shall be deemed to be the later of (1) dismissal of all claims and
7 defenses in this action, with or without prejudice; and (2) final judgment herein after the completion
8 and exhaustion of all appeals, rehearings, remands, trials, or reviews of this action, including the time
9 limits for filing any motions or applications for extension of time pursuant to applicable law. *FOR A PERIOD*

10 *OF SIX MONTHS AFTER FINAL DISPOSITION OF THIS LITIGATION, THE COURT WILL RETAIN*
11 **5. DESIGNATING PROTECTED MATERIAL** *JURISDICTION TO ENFORCE THE TERMS*
OF THIS ORDER.

12 **5.1 Exercise of Restraint and Care in Designating Material for Protection.** Each
13 Party or Non-Party that designates information or items for protection under this Order must take care
14 to limit any such designation to specific material that qualifies under the appropriate standards. The
15 Designating Party must designate for protection only those parts of material, documents, items, or oral
16 or written communications that qualify – so that other portions of the material, documents, items, or
17 communications for which protection is not warranted are not swept unjustifiably within the ambit of
18 this Order.

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

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

26 **5.2 Manner and Timing of Designations.** Except as otherwise provided in this
27 Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered,
28 Disclosure or Discovery Material that qualifies for protection under this Order must be clearly so
designated before the material is disclosed or produced.

1 Designation in conformity with this Order requires:

2 (a) for information in documentary form (e.g., paper or electronic documents, but
3 excluding transcripts of depositions or other pretrial or trial proceedings), that the Producing Party
4 affix the legend "CONFIDENTIAL" to each page that contains protected material. If only a portion or
5 portions of the material on a page qualifies for protection, the Producing Party also must clearly
6 identify the protected portion(s) (e.g., by making appropriate markings in the margins).

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 indicated which
9 material it would like copied and produced. During the inspection and before the designation, all of the
10 material made available for inspection shall be deemed "CONFIDENTIAL." After the inspecting Party
11 has identified the documents it wants copied and produced, the Producing Party must determine which
12 documents, or portions thereof, qualify for protection under this Order. Then, before producing the
13 specified documents, the Producing Party must affix the "CONFIDENTIAL" legend to each page that
14 contains Protected Material. If only a portion or portions of the material on a page qualifies for
15 protection, the Producing Party also must clearly identify the protected portion(s) (e.g., by making
16 appropriate markings in the margins).

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

20 (c) for information produced in some form other than documentary and for any other
21 tangible items, that the Producing Party affix in a prominent place on the exterior of the container or
22 containers in which the information or item is stored the legend "CONFIDENTIAL." If only a portion
23 or portions of the information or item warrant protection, the Producing Party, to the extent
24 practicable, shall identify the protected portion(s).

25 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
26 designate qualified information or items does not, standing alone, waive the Designating Party's right
27 to secure protection under this Order for such material. Upon timely correction of a designation, the
28

1 Receiving Party must make reasonable efforts to assure that the material is treated in accordance with
2 the provisions of this Order.

3 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

4 6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation of
5 confidentiality at any time. Unless a prompt challenge to a Designating Party's confidentiality
6 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic burdens, or
7 a significant disruption or delay of the litigation, a Party does not waive its right to challenge a
8 confidentiality designation by electing not to mount a challenge promptly after the original designation
9 is disclosed.

10 6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution
11 process by providing written notice of each designation it is challenging and describing the basis for
12 each challenge. To avoid ambiguity as to whether a challenge has been made, the written notice must
13 recite that the challenge to confidentiality is being made in accordance with this specific paragraph of
14 the Protective Order. The parties shall attempt to resolve each challenge in good faith and must begin
15 the process by conferring directly (in voice to voice dialogue; other forms of communication are not
16 sufficient) within 14 days of the date of service of notice. In conferring, the Challenging Party must
17 explain the basis for its belief that the confidentiality designation was not proper and must give the
18 Designating Party an opportunity to review the designated material, to reconsider the circumstances,
19 and, if no change in designation is offered, to explain the basis for the chosen designation. A
20 Challenging Party may proceed to the next stage of the challenge process only if it has engaged in this
21 meet and confer process first or establishes that the Designating Party is unwilling to participate in the
22 meet and confer process in a timely manner.

23 6.3 Judicial Intervention. If the Parties cannot resolve a challenge without court
24 intervention, ~~the Designating Party shall file and serve a motion to retain confidentiality under Civil~~
25 ~~Local Rule 7 (and in compliance with Civil Local Rule 79-5 and General Order 62, if applicable)~~
26 within 21 days of the initial notice of challenge or within 14 days of the parties agreeing that the meet
27 and confer process will not resolve their dispute, whichever is earlier. Each ~~such motion~~ **DISCOVERY DISPUTE JOINT REPORT (DDJR)** must be
28 **MUST ATTEST THAT** ~~accompanied by a competent declaration affirming that the movant has complied with the meet and~~

HAVE BEEN SATISFIED.

1 confer requirements imposed in the preceding paragraph. Failure by the Designating Party to ~~make~~
2 ~~such a motion including the required declaration~~ ^{SEEK RELIEF} within 21 days (or 14 days, if applicable) shall
3 automatically waive the confidentiality designation for each challenged designation. In addition, the
4 Challenging Party may ~~file a motion challenging~~ ^{SEEK RELIEF WITH RESPECT TO A} a confidentiality designation at any time if there is
5 good cause for doing so, including a challenge to the designation of a deposition transcript or any
6 portions thereof. Any ~~motion~~ ^{DDJR} brought pursuant to this provision must be ~~accompanied by a competent~~ ^{ATTEST THAT}
7 ~~declaration affirming that the movant has complied with~~ the meet and confer requirements imposed by
8 the preceding paragraph. HAVE BEEN SATISFIED.

9 The burden of persuasion in any such challenge proceeding shall be on the Designating Party.
10 Frivolous challenges, and those made for an improper purpose (e.g., to harass or impose unnecessary
11 expenses and burdens on other parties) may expose the Challenging Party to sanctions. Unless the
12 Designating Party has waived the confidentiality designation by failing to ~~file a motion to retain~~ ^{SEEK RELIEF}
13 ~~confidentiality~~ as described above, all parties shall continue to afford the material in question the level
14 of protection to which it is entitled under the Producing Party's designation until the court rules on the
15 challenge.

16 7. ACCESS TO AND USE OF PROTECTED MATERIAL

17 7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed
18 or produced by another Party or by a Non-Party in connection with this case only for prosecuting,
19 defending, or attempting to settle this litigation. Such Protected Material may be disclosed only to the
20 categories of persons and under the conditions described in this Order. When the litigation has been
21 terminated, a Receiving Party must comply with the provisions of section 13 below (FINAL
22 DISPOSITION). Protected Material must be stored and maintained by a Receiving Party at a location
23 and in a secure manner that ensures that access is limited to the persons authorized under this Order.

24 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise
25 ordered by the court or permitted in writing by the Designating Party, a Receiving Party may disclose
26 any information or item designated "CONFIDENTIAL" only to:

27 (a) the Receiving Party's Outside Counsel of Record in this action, as well as
28 employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose the

1 information for this litigation and who have signed the "Acknowledgment and Agreement to Be
2 Bound" that is attached hereto as Exhibit A;

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

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

9 (d) the court and its personnel;

10 (e) court reporters and their staff, professional jury or trial consultants, mock jurors,
11 and Professional Vendors to whom disclosure is reasonably necessary for this litigation and who have
12 signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A);

13 (f) during their depositions, witnesses in the action to whom disclosure is reasonably
14 necessary and who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A),
15 unless otherwise agreed by the Designating Party or ordered by the court. Pages of transcribed
16 deposition testimony or exhibits to depositions that reveal Protected Material must be separately bound
17 by the court reporter and may not be disclosed to anyone except as permitted under this Stipulated
18 Protective Order.

19 (g) the author or recipient of a document containing the information or a custodian or
20 other person who otherwise possessed or knew the information.

21 **8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN**
22 **OTHER LITIGATION**

23
24 If a Party is served with a subpoena or a court order issued in other litigation that compels
25 disclosure of any information or items designated in this action as "CONFIDENTIAL," that Party
26 must:

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

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

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

If the Designating Party timely seeks a protective order, the Party served with the subpoena or court order shall not produce any information designated in this action as "CONFIDENTIAL" before a determination by the court from which the subpoena or order issued, unless the Party has obtained the Designating Party's permission. The Designating Party shall bear the burden and expense 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.

9. A NON-PARTY'S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN THIS LITIGATION

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

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

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

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

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

1 (c) If the Non-Party fails to object or seek a protective order from this court within
2 14 days of receiving the notice and accompanying information, the Receiving Party may produce the
3 Non-Party's confidential information responsive to the discovery request. If the Non-Party timely
4 seeks a protective order, the Receiving Party shall not produce any information in its possession or
5 control that is subject to the confidentiality agreement with the Non-Party before a determination by
6 the court.¹ Absent a court order to the contrary, the Non-Party shall bear the burden and expense of
7 seeking protection in this court of its Protected Material.

ALL DISCLOSURE AND DISCOVERY DISPUTES
ARE SUBJECT TO THE UNDERSIGNED'S STANDING ORDER RE CIVIL DISCOVERY DISPUTES.

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

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

16 **11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE**
17 **PROTECTED MATERIAL**

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

26 **12. MISCELLANEOUS**

27
28 ¹ The purpose of this provision is to alert the interested parties to the existence of confidentiality rights of
a Non-Party and to afford the Non-Party an opportunity to protect its confidentiality interests in this court.

1 12.1 Right to Further Relief. Nothing in this Order abridges the right of any person
2 to seek its modification by the court in the future.

3 12.2 Right to Assert Other Objections. By stipulating to the entry of this Protective
4 Order no Party waives any right it otherwise would have to object to disclosing or producing any
5 information or item on any ground not addressed in this Stipulated Protective Order. Similarly, no
6 Party waives any right to object on any ground to use in evidence of any of the material covered by this
7 Protective Order.

8 12.3 Filing Protected Material. Without written permission from the Designating
9 Party or a court order secured after appropriate notice to all interested persons, a Party may not file in
10 the public record in this action any Protected Material. A Party that seeks to file under seal any
11 Protected Material must comply with Civil Local Rule 79-5 and General Order 62. Protected Material
12 may only be filed under seal pursuant to a court order authorizing the sealing of the specific Protected
13 Material at issue. Pursuant to Civil Local Rule 79-5 and General Order 62, a sealing order will issue
14 only upon a request establishing that the Protected Material at issue is privileged, protectable as a trade
15 secret, or otherwise entitled to protection under the law. If a Receiving Party's request to file Protected
16 Material under seal pursuant to Civil Local Rule 79-5(d) and General Order 62 is denied by the court,
17 then the Receiving Party may file the information in the public record pursuant to Civil Local Rule 79-
18 5(e) unless otherwise instructed by the court.

19 **13. FINAL DISPOSITION**

20 Within 60 days after the final disposition of this action, as defined in paragraph 4, each
21 Receiving Party must return all Protected Material to the Producing Party or destroy such material. As
22 used in this subdivision, "all Protected Material" includes all copies, abstracts, compilations,
23 summaries, and any other format reproducing or capturing any of the Protected Material. Whether the
24 Protected Material is returned or destroyed, the Receiving Party must submit a written certification to
25 the Producing Party (and, if not the same person or entity, to the Designating Party) by the 60 day
26 deadline that (1) identifies (by category, where appropriate) all the Protected Material that was returned
27 or destroyed and (2) affirms that the Receiving Party has not retained any copies, abstracts,
28 compilations, summaries or any other format reproducing or capturing any of the Protected Material.

1 Notwithstanding this provision, Counsel are entitled to retain an archival copy of all pleadings, motion
2 papers, trial, deposition, and hearing transcripts, legal memoranda, correspondence, deposition and
3 trial exhibits, expert reports, attorney work product, and consultant and expert work product, even if
4 such materials contain Protected Material. Any such archival copies that contain or constitute
5 Protected Material remain subject to this Protective Order as set forth in Section 4 (DURATION).

6 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

7
8 Dated: January 23, 2013

RICHARD DOYLE, City Attorney

9 By: /s/
10 CLIFFORD S. GREENBERG
11 Sr. Deputy City Attorney
Attorneys for Defendant CITY OF SAN JOSE

12 Dated: January 23, 2013

LAW OFFICES OF ANTHONY BOSKOVICH

13
14 By: /s/
15 ANTHONY BOSKOVICH
Attorney for Plaintiffs, N.R., et al.

16 I affirm that Plaintiff's counsel has consented to the electronic filing of this document on
17 plaintiff's behalf.

18
19 Dated: January 23, 2013

Respectfully submitted,

20 RICHARD DOYLE, City Attorney

21
22 By: /s/
23 CLIFFORD S. GREENBERG
24 Sr. Deputy City Attorney
Attorneys for Defendant CITY OF SAN JOSE

25 AS MODIFIED BY THE COURT,
26 PURSUANT TO STIPULATION, IT IS SO ORDERED

27 Dated: 1/24/13

28 UNITED STATES DISTRICT JUDGE

HOWARD R. LLOYD
MAGISTRATE

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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]

Signature: _____
[signature]