EXHIBIT I

THE CITY OF NEW YORK
LAW DEPARTMENT
100 CHURCH STREET
NEW YORK, NY 10007

MICHAEL A. CARDOZO
Corporation Counsel

SUZANNA PUBLICKER
phone: (212) 788-1103
fax: (212) 788-9776
email: spublick@law.nyc.gov

October 26, 2012

BY FAX (212) 805-7925
Honorable Robert W. Sweet
United States District Judge
Southern District of New York
500 Pearl Street
New York, New York 10007

Re: Schoolcraft v. The City of New York, et al.
10-CV-6005 (RWS)

Your Honor:

I am the Assistant Corporation Counsel in the office of Michael A. Cardozo, Corporation Counsel of the City of New York, assigned to represent the City Defendants in the above-referenced matter. City Defendants write in opposition to plaintiff's October 18, 2012 motion seeking to modify the so-ordered Attorneys' Eyes Only Stipulation and allow plaintiff access to the documents produced by City Defendants pursuant to that Stipulation.

City Defendants Never Agreed to a Temporary Designation

Plaintiff's October 18th motion alleges that the designation of certain materials as Attorneys' Eyes Only under the Attorneys' Eyes Only Stipulation, endorsed by the Court on October 5, 2012, was a temporary one. Plaintiff is wrong. The parties never discussed, nor did City Defendants ever agree to, any such temporal limitation of the Stipulation. According to generally accepted principles of contract law, absent ambiguity, the parties' intentions must be discerned from the four corners of the document, and extrinsic evidence should not be considered. The plain language of the Attorneys' Eyes Only Stipulation and Order states that it shall be in place "[u]ntil such time as the Court orders otherwise," *not* until the City Defendants receive an affidavit from plaintiff. However, even if extrinsic evidence *could* be considered, plaintiff has not, and cannot, point to any such evidence that would support his position.

Regardless of the foregoing, plaintiff's application is premature as the protective order explicitly provides a means to address plaintiff's concerns. Pursuant to the Attorneys' Eyes Only Stipulation, "[i]f plaintiff objects to the designation of *particular* documents as "Confidential Materials – Attorneys' Eyes Only" plaintiff shall state such objection in writing to the defendants within 60 days of receipt[.]" (emphasis added). Accordingly, counsel for plaintiff should review the documents produced under the Attorneys' Eyes Only Confidentiality Order and identify, with particularity, which documents they believe plaintiff is entitled to and/or

which documents require plaintiff's input in order to litigate his case, before proceeding further with the instant application.

Plaintiff Has Not Met The Burden Required to Modify a Protective Order

Though he has not phrased it as such, plaintiff is moving for a modification of the so-ordered Attorneys' Eyes Only Confidentiality Stipulation, however, he has not met the burden required to do so. According to the Second Circuit, "a district court should not modify a protective order. . . 'absent a showing of improvidence in the grant of [the] order or some extraordinary circumstance or compelling need.'" Securities and Exchange Commission v. TheStreet.com, 273 F.3d 222, 229 (2d Cir. 2001); see also Martindell v. International Telephone and Telegraph Corporation, 594 F.2d 291, 296-97 (2d Cir. 1979). Moreover, there is "a general and strong presumption against access to documents sealed under protective order when there was reasonable reliance upon such an order." SEC, supra at 231.

As an initial matter, prior to its execution and endorsement, all counsel had an opportunity to review and object to the terms of the Attorneys' Eyes Only Stipulation. In fact, there were several drafts exchanged amongst the parties and it took nearly six months to agree on the final language. In the end, all counsel, including plaintiff's, consented to the language of the Stipulation. Thereafter, the Court reviewed it and "so ordered" it without modification on October 5, 2012. In light of the negotiations between the parties concerning the Stipulation, and the Court's subsequent review and endorsement of the proposed Order, plaintiff has failed to show any improvidence in the granting of the Protective Order.

Further, plaintiff has failed to demonstrate a compelling need for access to any materials produced pursuant to the protective order at issue. In Savage & Assocs. P.C. v. K&L Gates LLP (In re Teligent, Inc.), 640 F.3d 53, 59 (2d Cir. 2011), the Court implied that a party seeking to modify a protective order based on "compelling need" is required to make such a showing for each particular document it seeks to have disclosed. Plaintiff has stated that he needs to view the documents to "meaningfully assist counsel in preparing for depositions and formulating further document requests." However, as explained in more detail below, a significant number of documents designated Attorneys' Eyes Only are wholly unrelated to plaintiff's allegations, and instead, reflect sensitive information concerning both parties and non-parties to this action. Plaintiff has not mentioned a *single* particular document that he believes was incorrectly designated as Attorneys' Eyes Only, nor has he made an attempt to explain why he has a compelling need for any *spe cific* doc ument. In light of the fact that plaintiff is represented by two separate law firms which should be more than able to represent his interests, his contention that he needs unfettered access to all of the documents produced by City Defendants is unavailing.

Finally, plaintiff's application should be denied because City Defendants reasonably relied upon the protections afforded by the Attorney's Eyes Only Confidentiality Stipulation and Order in producing the subject documents. This Court has held that reliance may be presumed where information is disclosed pursuant to protective order. Ionosphere Club. Inc. v. Ameriacn National Bank and Trust Company of Chicago, 156 B.R. 414, 434 (S.D.N.Y. 1993) (Sweet, J.), aff'd, 17 F.2d 600 (2d Cir. 1994) ("Absent a showing of improvidence in the grant of a ... protective order or some extraordinary circumstance or compelling need... a witness should be entitled to rely upon the enforceability of a protective order"); see also SEC, 273 F.3d at 229-

30 ("if previously entered protective orders have no presumptive entitlement to remain in force, parties would resort less often to the judicial system for fear that such orders would be readily set aside in the future"); AT&T Corporation v. Sprint Corporation, 407 F.3d 560, 562 (2d Cir. 2005) ("It is 'presumptively unfair for courts to modify protective orders which assure confidentiality and upon which the parties have reasonably relied"). The documents at issue were produced four days after the Court so-ordered the Stipulation, thus, it is clear that City Defendants' relied upon the Protective Order in producing the documents.

Due to the nature of the documents designated "Attorney's Eyes Only", it was reasonable for City Defendants to produce them as such. City Defendants note for the Court's information, that we have not blindly designated all documents produced as Attorneys' Eyes Only. In fact, City Defendants have produced over 2,000 pages of non-confidential documents and approximately 3,000 pages of confidential documents not containing the Attorneys' Eyes Only designation, in total, around 5,000 pages of documents which may be shared with plaintiff. However, the records deemed Attorneys' Eyes Only confidential in this matter involve employment records subject to protection under Public Officers Law Section 87(2)(g), documents that are part of ongoing investigations,[1] and documents that are protected under the deliberative process privilege. Also produced pursuant to the Attorneys' Eyes Only Stipulation were criminal and financial background checks into non-parties to the litigation. City Defendants believe these extremely personal files should not be made available to plaintiff or any individual party to this litigation.

Additionally, many Attorneys' Eyes Only documents do not involve Schoolcraft's allegations regarding October 31, 2009, as was implied by counsel in their motion. The Brooklyn North Investigations Unit ("BNIU") and the Internal Affairs Bureau ("IAB") investigated a number of plaintiff's allegations. In conducting those investigations, BNIU and IAB have interviewed dozens of individuals, many of whom were not present at, and were not questioned on, Adrian Schoolcraft's allegations of retaliation or the incident occurring on October 31, 2009. In fact, the only reference many of the recordings make to Adrian Schoolcraft are a couple introductory questions pertaining to whether the interviewee knew plaintiff. Additionally, while investigating claims of crime complaint manipulation, IAB investigated specific individuals who were arrested by non-party officers to this litigation. These arrestees have no information relevant to plaintiff's claims in this matter, and their security and privacy rights should not be jeopardized by unnecessarily removing the Attorneys' Eyes Only designations.

Good cause existed for the Attorney's Eyes Only designations at the time they were made, and continues to exist for the confidentiality designations now. Plaintiff cannot demonstrate that the Attorneys' Eyes Only Stipulation was improvidently granted, that City Defendants did not rely on that so-ordered Stipulation when producing documents on October 9, 2012, nor that plaintiff has a compelling need for access to any specific documents. Therefore, plaintiff's request to modify the Stipulation should be denied.

---

[1] The IAB investigation into plaintiff's suspension, his claims of retaliation, and the incident occurring on October 31, 2009, is ongoing. In most litigations, City Defendants would not have produced a single page of these documents or would have sought a stay of the case pending the closing of the investigation. However, in a good faith effort to move this litigation along, City Defendants produced the documents subject to the applicable confidentiality designations.

Confidential Discovery Documents Were Produced to the Village Voice

Though many, if not all, of the documents would have been designated Attorneys' Eyes Only regardless of the particular circumstances of the case, the existence of a leak to the media in this matter makes the continued existence of an Attorneys' Eyes Only Stipulation essential. As the Court may recall, in a Village Voice article dated March 7, 2012, reporter Graham Rayman indicated that he was in possession of a 95-page Quality Assurance Division ("QAD") Report. Furthermore, only two days later on March 9, 2012, a New York Times article reporting on the Village Voice article stated that "[u]sing the state's Freedom of Information Law, Mr. Rayman of The Village Voice sought the report, which was completed in June 2010. The police denied his request. He appealed. They denied it again. He finally obtained a copy through *back channels* and published an article this week."[2],[3] (emphasis added). The QAD Report remained confidential within NYPD custody for nearly two years, however, only months after its disclosure during discovery, it was published.[4] During a conference on or about March 28, 2012, Your Honor granted City Defendants' application to conduct discovery on the source of leak. To date, the issue has not been resolved.

Plaintiff contends that because he has denied leaking the documents both in an affidavit and during his deposition, that is proof positive that he did not provide the media with the documents.[5] City Defendants are not assured by either. Despite plaintiff's contentions, he is the only party in this ligation with an apparent prior relationship with Graham Rayman. In any event, City Defendants respectfully submit that in order to decrease the likelihood of future leaks of confidential information, the field of individuals with access to such documents should remain limited to the attorneys handling this matter. In light of plaintiff's inability to demonstrate any compelling need for any specific document, there does not appear to be any reason to modify the protective order.

---

[2] Telling the Truth Like Crazy, N.Y. Times, Jim Dwyer, March 9, 2012, available at http://www.nytimes.com/2012/03/09/nyregion/officer-sues-claiming-police-retaliation-for-truth-telling.html?_r=2&ref=nyregion.

[3] The NYPD has confirmed that Graham Rayman made two FOIL requests related to the Schoolcraft matter and that no records were provided to Mr. Rayman pursuant to these requests.

[4] City defendants note that two years ago, Adrian Schoolcraft provided Rayman the digital audio recordings referenced in the instant lawsuit, and spoke with him at length regarding the allegations.

[5] Plaintiff further alleges that because City Defendants have been unable to uncover evidence that Adrian Schoolcraft was involved in the QAD leak, plaintiff should be given access to Attorneys' Eyes Only confidential information. However, to the extent that plaintiff was involved, plaintiff and Graham Rayman are the only individuals that would have direct evidence of the leak. Graham Rayman is protected from subpoena power of this Court by the journalist's privilege, leaving plaintiff as the only other potential source of information. Plaintiff has refused to provide City Defendants with any documents that he is in possession of that would reflect his communications with the media in this matter. Indeed, in response to discovery demands for documents reflecting any communications with any media outlet regarding the allegations of the instant lawsuit, plaintiff responded that it was "vague, ambiguous, overbroad and unduly burdensome, to the extent that it seeks documents that are more readily obtained from another source." Plaintiff cannot use his silence as both a sword and a shield, by denying that City Defendants have any evidence, but also refusing to provide responses to Document Requests that might reveal relevant evidence.

Plaintiff Cannot Guarantee the Privacy of Documents Provided to Him

During his deposition, when asked about the leaked documents, plaintiff stated that his counsel had given him a copy of the QAD Report on a CD, which plaintiff has kept in the house that he shares with his father. When asked whether plaintiff's father had access to the CD, plaintiff claimed that his father was "technically insufficient when it comes to computers." However, according to at least one internet source, plaintiff's father has sent emails to journalists since as early as November 13, 2009, thus, demonstrating that plaintiff's father is not as technically inept as plaintiff claims.[6] Simply stated, moving forward, City Defendants have no good faith basis to believe that documents given to plaintiff would be protected from further disclosure.

Conclusion

The Protective Order to which all parties stipulated before its entry represents a practical and efficient solution to the many knotty and time-consuming disputes that the parties' confidentiality concerns spawn in complex litigation such as this. That Order was not entered by the Court "improvidently" and there are no "extraordinary circumstances" warranting its modification now. The Court had "good cause" to enter that Order on October 5, 2012 and "good cause" supports that Order today. Therefore, for the reasons stated herein, City Defendants respectfully request that the Court deny plaintiff's request to modify the so-ordered Attorneys' Eyes Only Stipulation, allowing plaintiff access to the documents produced subject to it.

City Defendants thank the Court for its consideration.

Respectfully submitted,

Suzanna Publicker
Assistant Corporation Counsel

cc: Jon L. Norinsberg (By Fax 212-406-6890)
Attorney for Plaintiff
225 Broadway, Suite 2700
New York, New York 10007

Cohen & Fitch, LLP (By Fax 212-406-6890)
Gerald Cohen
Joshua Fitch
Attorneys for Plaintiff
233 Broadway, Suite 1800
New York, New York 10279

[6] Adrian Schoolcraft: Now It's Getting Serious, NYPD Confidential, Leonard Levitt, January 31, 2011, available at http://nypdconfidential.com/columns/2011/110131.html.

Gregory John Radomisli (By Fax 212-949-7054)
MARTIN CLEARWATER & BELL LLP
Attorneys for Jamaica Hospital Medical Center
220 East 42nd Street 13th Floor
New York, NY 10017

Brian Lee (By Fax 516-352-4952)
IVONE, DEVINE & JENSEN, LLP
Attorneys for Dr. Isak Isakov
2001 Marcus Avenue, Suite N100
Lake Success, New York 11042

Bruce M. Brady (By Fax 212-248-6815)
CALLAN, KOSTER, BRADY & BRENNAN, LLP
Attorneys for Lillian Aldana-Bernier
1 Whitehall Street
New York, New York 10004

Walter Aoysius Kretz , Jr. (By Fax 212-371-6883)
SEIFF KRETZ & ABERCROMBIE
Attorney for Defendant Mauriello
444 Madison Avenue, 30th Floor
New York, NY 10022