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16 DAVID MORSE

17 **UNITED STATES DISTRICT COURT**  
18 **NORTHERN DISTRICT OF CALIFORNIA**

19 DAVID MORSE,

20 Plaintiff,

21 vs.

22 REGENTS OF THE UNIVERSITY OF  
23 CALIFORNIA, BERKELEY; UNIVERSITY  
24 OF CALIFORNIA AT BERKELEY POLICE  
25 DEPARTMENT; UNIVERSITY OF  
26 CALIFORNIA AT BERKELEY POLICE  
27 CHIEF MITCHELL J. CELAYA III;  
28 UNIVERSITY OF CALIFORNIA AT  
BERKELEY POLICE DETECTIVE NICOLE  
MILLER; UNIVERSITY OF CALIFORNIA  
AT BERKELEY POLICE OFFICER REICH;  
UNIVERSITY OF CALIFORNIA AT  
BERKELEY POLICE OFFICER SERGEANT  
HARRIS; UNIVERSITY OF CALIFORNIA  
AT BERKELEY POLICE OFFICER  
WYCOFF; UNIVERSITY OF CALIFORNIA  
AT BERKELEY POLICE OFFICER  
MANCHESTER; CITY OF BERKELEY

Case No.: CV 10 5594 YGR

**STIPULATION AND ~~PROPOSED~~  
PROTECTIVE ORDER AS MODIFIED  
BY THE COURT**

POLICE DEPARTMENT; CITY OF  
BERKELEY POLICE CHIEF MICHAEL K.  
MEEHAN; COUNTY OF ALAMEDA;  
ALAMEDA SHERIFF'S DEPARTMENT;  
ALAMEDA COUNTY SHERIFF GREGORY  
J. AHERN; and DOES 1-25

Defendants.

The parties to the above captioned litigation hereby stipulate by and through their undersigned attorneys of record as follows:

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 protection it affords extends only to the limited information or items that are entitled under the applicable legal principles to treatment as confidential. The Parties further acknowledge, as set forth in Section 10, below, that this Stipulated Protective Order creates no entitlement to file confidential information under seal; Civil Local Rule 79-5 and General Order 62 set forth the procedures that must be followed and reflects the standards that will be applied when a party seeks permission from the court to file material under seal.

2. DEFINITIONS

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

2.2 Disclosure or Discovery Material: all items or information, regardless of the medium or manner generated, stored, or maintained (including, among other things, documents, correspondence, emails, computer files, testimony, transcripts, and/or tangible things) that are

1 produced or generated in disclosures or responses to discovery (including without limitation  
2 deposition questioning) in this matter.

3       2.3     Confidential Documents and Information: for purposes of this Agreement, the  
4 term “Confidential Documents and Information” shall be deemed to refer solely to: (1) all  
5 documents in the possession, custody or control of the parties regarding and/or comprising  
6 confidential personnel and/or internal affairs matters regarding the defendants, and/or any other  
7 employee and/or agent of THE REGENTS OF THE UNIVERSITY OF CALIFORNIA (“THE  
8 REGENTS”) and matters subject to the official information;(2) any and all information in the  
9 possession, custody or control of the parties regarding and/or comprising confidential personnel  
10 and/or internal affairs matters regarding the defendants and/or any other employee and/or agent  
11 of THE REGENTS and/or matters subject to the official information privilege; and (3) any  
12 documents or information designated as “Confidential” by any party, provided the documents or  
13 information so designated fall into one of the following categories: (a) unpublished journalistic  
14 work product; (b) personal financial information; (c) personal employment information; or (d)  
15 health or medical records.

16       2.4     Designation of Documents or Information as “Confidential Documents and  
17 Information”: The designation of documents or information as “Confidential Documents and  
18 Information,” as defined above, shall be made, whenever possible prior to production, by placing  
19 or affixing on each page of such material in a manner that will not interfere with its legibility the  
20 word “Confidential,” by designating categories of documents as “Confidential,” or by  
21 designating information or testimony as “Confidential” on the record at a deposition. With  
22 respect to documents, if such designation is not possible prior to production, the designation  
23 must be made by the producing party within twenty (20) days after disclosure. The information  
24 shall be treated as Confidential Documents and Information until the twenty (2) days has  
25 elapsed. Within such twenty (20) day period, the disclosing party must notify all parties in  
26 writing of the precise information sought to be designated as Confidential. In the event that a  
27 mistake or inadvertent disclosure is discovered post-production, a subsequent designation of  
28 “Confidential” shall be deemed effective as of the date of the notice.

1           3.     SCOPE

2           The protections conferred by this Stipulation and Order cover not only Confidential  
3 Documents and Information (as defined above), but also any information copied or extracted  
4 therefrom, as well as all copies, excerpts, summaries, and/or compilations thereof, plus  
5 testimony, conversations, communications, or presentations by parties or counsel to or in court or  
6 in any other settings that might reveal Confidential Documents and Information and/or any  
7 portion thereof.

8           4.     DURATION

9           Even after the termination of this litigation, the confidentiality obligations imposed by  
10 this Order shall remain in effect.

11          5.     CHALLENGING CONFIDENTIALITY DESIGNATIONS

12          5.1    Object in Writing. Any party may object in writing to the designation of a  
13 document or information as Confidential. If the parties are unable to resolve an objection within  
14 fourteen court days of making the objection, the party making the objection may submit the issue  
15 to the Court for resolution by way of a joint letter brief pursuant to the Court’s Standing Order at  
16 Section 8 regarding discovery disputes. Until the Court resolves the issue, the material shall be  
17 treated as confidential. The failure of a party to challenge the confidentiality of a document or  
18 information will not constitute an admission that the document or information is or is not  
19 confidential. Nor will such failure constitute an admission that the document or information is or  
20 is not admissible.

21          6.     ACCESS TO AND USE OF CONFIDENTIAL MATERIAL.

22          6.1    Provisions. Except as indicated in subsection 6.2 below, the following provisions  
23 shall govern the use of a “Confidential Documents and Information” by any person to whom  
24 such document or information is produced, whether in response to discovery or otherwise or  
25 disclosed in the course of this litigation:

26               (a) All Confidential Documents and Information produced in this action (and all copies,  
27 excerpts, digests, summaries, and indices of such documents and information) may be disclosed  
28 only to the following persons:

- 1           i.       Parties and counsel of record;
- 2           ii.       Paralegal, stenographic, clerical and secretarial personnel employed by
- 3 counsel of record;
- 4           iii.       The Court, court personnel, stenographic reporters, and videographers
- 5 engaged in such proceedings that are incidental to preparation for the trial in this action;
- 6           iv.       Any outside expert or consultant retained by the parties for purposes of
- 7 this litigation, and;
- 8           v.       Witnesses in this matter, provided that the witness shall be informed of
- 9 and shall agree to be bound by the terms of this order.

10       (b) Any Confidential Document and Information (and any copy, excerpt, digest,

11 summary, or index thereof) and all information contained therein will be used only for the

12 purpose of preparation and trial of the above-captioned lawsuit, except to the extent The Regents,

13 its counsel, employees and/or agents are defendants in other lawsuits in which the disclosure or

14 production of any Confidential Documents and Information produced by the Regents is

15 necessary, The Regents are not restricted by this Order from disclosing or producing in other

16 litigation said Confidential Documents and Information that the Regents produced in this

17 litigation to the extent said Confidential Documents and Information are the subject of a

18 Protective Order substantially similar to the instant Protective Order.

19       (c) All Confidential Documents produced in this action shall be returned to counsel for

20 the parties who produced the documents or shall be destroyed at the conclusion of this lawsuit.

21       (d) In the event that questions asked at depositions require disclosure of any Confidential

22 Documents and Information, counsel for the producing parties may request on the record that the

23 pertinent pages of the deposition transcripts be sealed and be utilized only as permitted by this

24 Agreement. When Confidential Documents and Information are contained or incorporated in a

25 deposition transcript, arrangements shall be made with the reporter to bind the Confidential

26 portions of the transcript separately and label it “Confidential Information Subject to Protective

27 Order.”

28

1 (e) In the event that any Confidential Document or any and Confidential Information  
2 (and any copy, excerpt, digest, summary, or index thereof) is presented, quoted, or referred to in  
3 any pleading or memorandum or other submission filed with the Court, the filing party shall  
4 comply with Civil Local Rule 79-5 with respect to such Confidential Document or Confidential  
5 Information.

6 (f) Any use of Confidential Material or Confidential Information at trial shall be  
7 governed by a separate agreement or order.

8 (g) At the conclusion of this lawsuit, all documents, transcripts, answers to  
9 interrogatories, exhibits or portions thereof that have been designated as Confidential, that have  
10 been obtained as a result of discovery in this action, and that are in the possession of counsel, a  
11 party, expert, or consultant shall be returned to the party who produced the documents or  
12 destroyed upon request.

13 (h) All provisions herein regarding confidentiality and non-disclosure of any document  
14 and the information contained therein shall continue to be in force after the conclusion of this  
15 lawsuit or the return of any document.

16 6.2 Revision of Privacy Protection Act Training Bulletin and letter to plaintiff's  
17 counsel regarding training.

18 The parties agree that the University of California at Berkeley Police Department revised  
19 Training Bulletin #2011-01 shall not be disclosed to the plaintiff and is a confidential document  
20 within the meaning of this Stipulation and Order. The Revised Training Bulletin will be marked,  
21 "CONFIDENTIAL - FOR ATTORNEYS' EYES ONLY- SUBJECT TO PROTECTIVE  
22 ORDER." The parties also agree that the letter directed to plaintiff's counsel regarding the  
23 Revised Training Bulletin and associated training conducted by University of California at  
24 Berkeley Police Department regarding shall not be disclosed to plaintiff and is deemed  
25 confidential. The letter will also be marked "CONFIDENTIAL - FOR ATTORNEYS' EYES  
26 ONLY- SUBJECT TO PROTECTIVE ORDER"

27 7. CONFIDENTIAL MATERIAL SUBPOENAED OR ORDERED PRODUCED  
28 IN OTHER LITIGATION.

1 If any Party is served with a subpoena or an order issued in other litigation that would  
 2 compel disclosure of the information or items designated in this action as "Confidential", that  
 3 Party must promptly notify the other Parties to this litigation through their respective counsel, in  
 4 writing (by fax or e-mail if possible) after receiving the subpoena or order. Such notification  
 5 must include a copy of the subpoena or court order.

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

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

18 8. UNAUTHORIZED DISCLOSURE OF CONFIDENTIAL MATERIAL

19 If a Subpoenaed Party learns that, by inadvertence or otherwise, it has disclosed  
 20 Confidential Documents or information contained in them or Confidential Information to any  
 21 person or in any circumstance not authorized under this Stipulated Protective Order, the  
 22 Subpoenaed Party must immediately (a) notify in writing the other Party of the unauthorized  
 23 disclosures, (b) use its best efforts to retrieve all copies of the Confidential Documents or  
 24 information contained in them, (c) inform the person or persons to whom unauthorized  
 25 disclosures were made of all the terms of this Order, and (d) request such person or persons to  
 26 execute the "Acknowledgment and Agreement to Be Bound" that is attached hereto as Exhibit A.

27 9. FILING CONFIDENTIAL MATERIAL. Without written permission from the  
 28 parties to this stipulation or a court order secured after appropriate notice to all interested



1 persons, a Party may not file in the public record in this action any Confidential Documents or  
2 information contained in them or the substance of any Confidential Information. A Party that  
3 seeks to file under seal any Confidential Documents or Information must comply with Civil  
4 Local Rule 79-5 and General Order 62.

5 10. ANY OTHER CONFIDENTIAL DOCUMENTS.

6 If through the course of further discovery, it is learned that other Confidential Documents  
7 and/or Confidential Information within the possession, custody or control of the Parties may be  
8 reasonably calculated to lead to the discovery of admissible evidence, it is the intent of the  
9 Parties to extend this STIPULATED PROTECTIVE ORDER to these other Confidential  
10 Documents and Confidential Information.

11 WHEREFORE, all Parties agree that any and all additional documents or Confidential  
12 Information released by the parties that bear the label, "Confidential" shall be subject to all of the  
13 terms and conditions outlined in this STIPULATED PROTECTIVE ORDER.

14 11. MISCELLANEOUS

15 11.1 Right to Further Relief. Nothing in this Order abridges the right of any person to  
16 seek its modification by the Court in the future.

17 11.2 Right to Assert Other Objections. By stipulating to the entry of this Protective  
18 Order no Party waives any right it otherwise would have to object to disclosing or producing any  
19 information or item on any ground not addressed in this Stipulated Protective Order. Similarly,  
20 no Party waives any right to object on any ground to the use in evidence of any of the material  
21 covered by this Protective Order.

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27 **IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.**  
28

1 Dated: June 18, 2012

**STUBBS & LEONE**

2 \_\_\_\_\_/S/\_\_\_\_\_

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4 CLAUDIA LEED, ESQ.  
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13 POLICE SERGEANT LEE HARRIS;  
14 UNIVERSITY OF CALIFORNIA AT BERKELEY  
15 POLICE OFFICER MICHAEL WYCKOFF; and  
16 UNIVERSITY OF CALIFORNIA AT BERKELEY  
17 POLICE OFFICER CRISTA MANCHESTER

18 Dated: June 18, 2012

**SCHIFF HARDIN LLP**

19 \_\_\_\_\_/S/\_\_\_\_\_

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UNIVERSITY OF CALIFORNIA AT BERKELEY  
POLICE OFFICER CRISTA MANCHESTER

Dated: June 18, 2012

**GROSS BELSKY ALONSO LLP**

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\_\_\_\_\_/S/\_\_\_\_\_  
TERRY GROSS, ESQ  
Attorneys for Plaintiff

Dated: June 18, 2012

**THE FIRST AMENDMENT PROJECT**

\_\_\_\_\_/S/\_\_\_\_\_  
JAMES WHEATON, ESQ  
Attorneys for Plaintiff

Dated: June 18, 2012

**BRYAN CAVE**

\_\_\_\_\_/S/\_\_\_\_\_  
DAVID GREENE, ESQ  
Attorneys for Plaintiff

**ORDER**

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

Dated: June 26, 2012

  
\_\_\_\_\_  
YVONNE GONZALEZ ROGERS  
UNITED STATES DISTRICT COURT JUDGE