

1 SHEPPARD, MULLIN, RICHTER & HAMPTON LLP
A Limited Liability Partnership
2 Including Professional Corporations
GUYLYN R. CUMMINS, Cal. Bar No. 122445
3 501 West Broadway, 19th Floor
San Diego, California 92101-3598
4 Telephone: 619.338.6500
Facsimile: 619.234.3815

5 Attorneys for VOICE OF SAN DIEGO,
6 KPBS, KGTV 10 News, THE SAN
DIEGO UNION-TRIBUNE and
7 *inewsourc*e (collectively the Media)

8
9 UNITED STATES DISTRICT COURT
10 SOUTHERN DISTRICT OF CALIFORNIA

11
12 S.R. NEHAD, an individual, K.R.
NEHAD, an individual, ESTATE OF
13 FRIDOON RAWSHAN NEHAD,

14 Plaintiffs,

15 v.

16 NEAL N. BROWDER, an individual,
CITY OF SAN DIEGO, a municipality,
17 and DOES 1 through 10, inclusive,

18 Defendants.

Case No. 15-cv-1386-WQH (NLS)

NO ORAL ARGUMENT WILL BE
HAD UNLESS REQUESTED BY THE
COURT

**NOTICE OF MOTION AND
MOTION OF THE MEDIA FOR
PERMISSIVE INTERVENTION
FOR ACCESS TO VIDEOTAPE OF
POLICE SHOOTING AND
STATEMENT OF OFFICER NEAL
N. BROWDER REGARDING THE
SHOOTING**

REQUEST FOR HEARING;

Date: September 21, 2015

Judge: Hon. William Q. Hayes

1 **TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:**

2 The Media seeks emergency intervention pursuant to Rule 24(b) of the
3 Federal Rules of Civil Procedure to assert public and press access rights to review
4 and copy the security camera Video of the police shooting of FRIDOOON
5 RAWSHAN NEHAD, and the official statement of Officer Neal N. Browder in this
6 case forthwith. This relief is sought pursuant to Federal Rule of Civil Procedure 24
7 and 26, and the common law, as informed by the First Amendment to the United
8 States Constitution. Based on the legal authorities set forth in the accompanying
9 memorandum of points and authorities, the media seek the access requested to these
10 items forthwith.

11 This motion is based upon this Notice of Motion and Motion, the
12 Memorandum of Points and Authorities filed herewith, the declaration of Guylyn R.
13 Cummins, all records and pleadings filed in this case, and any evidence or argument
14 proffered at any hearing.

15 Dated: August 18, 2015

16 SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

17
18 By /s/ Guylyn R. Cummins
19 GUYLYN R. CUMMINS
20 Attorneys for the MEDIA
21 gcummins@sheppardmullin.com
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18 and DOES 1 through 10, inclusive,

19 Defendants.

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Case No. 15-cv-1386-WQH (NLS)

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**MEMORANDUM OF POINTS AND
AUTHORITIES OF NON-PARTY
MEDIA IN SUPPORT OF MOTION
FOR PERMISSIVE
INTERVENTION TO OBTAIN
ACCESS TO SECURITY CAMERA
VIDEO OF POLICE SHOOTING
OF FRIDOON RAWSHAN NEHAD
AND STATEMENT OF OFFICER
NEAL N. BROWDER REGARDING
THE SHOOTING**

**HEARING REQUESTED BY THE
MEDIA**

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Date: September 21, 2015

Judge: Hon. William Q. Hayes

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1 **I. SUMMARY OF RELIEF REQUESTED AND REQUEST FOR**
 2 **HEARING**

3 The Media seek emergency intervention pursuant to Federal Rules of Civil
 4 Procedure 24(b) (**FRCP 24(b)**) to assert public and press access rights to the
 5 security camera video of the police shooting of Fridoon Rawshan Nehad (**Fridoon**)
 6 by Defendant Neal N. Browder (**Browder**), a police officer for the San Diego Police
 7 Department (**SDPD**), as well as Officer Browder’s Statement about the killing. The
 8 Video was taken by a security camera mounted outside of KECO, Inc. (**KECO**), a
 9 public business located on a public thoroughfare where the killing took place. The
 10 Media are informed and believe that, but for the Protective Order, the Plaintiffs
 11 would be willing to provide the press with copies of the Video and Officer
 12 Browder’s Statement, and to discuss the evidence with them.

13 Relief is sought pursuant to the Federal Rule of Civil Procedure 26(c) (**FRCP**
 14 **26(c)**), the common law right of access to public records, and the First Amendment
 15 to the U.S. Constitution. (*See San Jose Mercury News, Inc. v. U.S. Dist. Ct. (San*
 16 *Jose)*, 187 F.3d 1096, 1102 (1999) [leaving First Amendment right of access issue
 17 open]; *Kleindienst v. Mandel*, 408 U.S. 753, 762 (1972) [acknowledging a First
 18 Amendment right to “receive information and ideas” and that freedom of speech
 19 “necessarily protects the right to receive”]; *Humbolt Baykeeper v. Union Pac. R.R.*
 20 *Co.*, 244 F.R.D. 560, 566-67 (N.D. CA 2007) [denying protective order forbidding
 21 plaintiffs from disclosing results of testing contaminated site in light of plaintiffs’
 22 First Amendment rights and the significant public interest in monitoring government
 23 compliance with EPA].) The Media request to be heard on this Motion at the
 24 earliest possible opportunity.

25 **II. THE MEDIA SEEK TO INTERVENE IN THIS IMPORTANT CASE**
 26 **FOR PUBLIC ACCESS PURPOSES**

27 **A. Background Facts**

28 Plaintiffs filed this case for deprivation of civil rights (42 U.S.C. §1983)
 under the Fourth and Fourteenth Amendments to the U.S. Constitution and

1 California Civil Code section 52.1, as well as assault and battery, negligence, and
 2 wrongful death, arising from Officer Browder’s shooting of Fridoon. (*See* First
 3 Amended Complt., *passim; inc.* ¶¶1-7, 28-32, ex. A.) Fridoon, an unarmed
 4 individual who suffered from mental illness, was killed by Browder acting in his
 5 capacity as a San Diego police officer, on April 30, 2015. (*Ibid.*) Video from a
 6 security camera mounted outside of KECO captured the shooting, which occurred in
 7 public. (*Ibid.*) Based on accounts of individuals who have seen the Video, the
 8 killing was “shocking” and unjustified. (*Ibid.*) The Video, as well as Officer
 9 Browder’s Statement about the killing, are the subject of this public access Motion.

10 Plaintiffs were given copies of both items pursuant to civil discovery laws in
 11 this litigation, but only upon the condition that they file this lawsuit and agree to a
 12 protective order. (Complt. ¶7; *see also* the July 28, 2015, Protective Order signed
 13 by the Honorable Nita L. Stormes.) The joint Protective Order agreed to by the
 14 parties, and signed as modified by the Court, allowed Plaintiffs to obtain an
 15 immediate copy of the Video, as well as all “documents and items contained in the
 16 SDPD homicide investigation binder,” but prohibits them from conveying,
 17 transferring, copying, publishing, showing, or distributing the Video or Browder’s
 18 Statement to any third party, including the press and the public, “without court
 19 approval.” (See Protective Order, ¶¶1-4.) The Protective Order makes *no findings*
 20 of good cause to shield any of the items it covers. (*Id., passim.*) Notably, the
 21 Protective Order also provides:

22 9. The terms of this Protective Order shall not prevent
 23 any party to this action from seeking a modification of this
 24 Protective Order, and *the Court may modify the*
 25 *Protective Order for good cause, or in the interest of*
 26 *justice, or for public policy reasons,* upon motion of a
 27 party to this action or on its own order at any time during
 28 the proceedings. (*Id.* at ¶9 [emphasis added].)

26 The Media wishes to review the Video and Browder’s Statement in order to
 27 publicly report on the killing and how it occurred, and is informed and believes that
 28 Plaintiffs are willing to provide copies and discuss them with the Media. (Cummins

1 decl. ¶2.) This issue is of immense public concern in America, including San
2 Diego, as other news stories involving the killing of unarmed individuals, some of
3 whom have mental illness, have recently shown, including in Ferguson, Missouri,
4 New York, Ohio, Maryland, and elsewhere.

5 Notably, Officer Browder is a public official whose conduct is subject to
6 public scrutiny. (*See, e.g., Gomes v. Fried*, 136 Cal. App. 3d 924, 933-34 (1982);
7 *Garrison v. Louisiana*, 379 U.S. 64, 77 (1964) [recognizing “there is a paramount
8 public interest in a free flow of information to the people concerning public
9 officials.”]; *Long Beach Police Officers Assoc. v. City of Long Beach (Long Beach)*,
10 59 Cal.4th 59, 66-67 (2014) [requiring disclosure of names of officers involved in
11 shootings, and finding that constitutional and statutory presumptions favoring public
12 access do not permit any “blanket rules” of secrecy for even the identities of public
13 employees in connection with factual information about their performance of their
14 official duties; public employees must instead make a “particularized showing” of
15 harm, *i.e.*, an unwarranted invasion of an interest sufficient to clearly outweigh the
16 public interest in disclosure; police officers “hold one of the most powerful positions
17 in our society; our dependence on them is high and the potential for abuse of power
18 is far from insignificant.”]) Therefore, the public interests in favor of public
19 scrutiny of the Video and Officer Browder’s Statement could not be more
20 compelling.

21 **B. Permissive Intervention And Standing**

22 The Media, all of whom are entities dedicated to the gathering and
23 disseminating news on a local, state, national and international level, seek to
24 intervene in this case pursuant to FRCP 24(b) to rescind or modify the Protect Order
25 to allow public access to the Video and Officer Browder’s Statement. (Cummins
26 decl. ¶2.) It is “well-established that the fruits of pretrial discovery are, in the
27 absence of a court order to the contrary, presumptively public.” (*San Jose*, 187 F.3d
28 at 1102-03 [citations omitted]; *HumboltBaykeeper*, 224 F.R.D. at 563 [FRCP 26

1 creates “a presumption in favor of freedom of dissemination. Placed by the law on
2 the scales before the trial court begins any “balancing,” this presumption *preweights*
3 *the scales against restricting* a party’s lawful use of dissemination of discovered
4 information.” This “is rooted, in part, in the First Amendment” and thus “disclosure
5 must work a clearly defined and serious injury” shown “with specificity.”) FRCP
6 26(c) allows a district court to enter a protective order only where “good cause” is
7 shown.” (*Ibid.*) A protective order cannot withstand scrutiny unless it is (1)
8 supported *by an important or substantial governmental interest unrelated to the*
9 *suppression of expression*, and (2) *no greater than necessary to protect the*
10 *particular interest* involved. (*Humbolt Baykeeper*, 244 F.R.D. at 561-62
11 [“proponent of order must demonstrate that the order would reduce a real risk of
12 significant harm to an interest that is entitled to protection under the law and that it
13 is independent of the proponent’s (or the court’s) desire simply to keep the
14 discovered information out of the public view”])

15 A stipulated protective order is “inherently subject to challenge and
16 modification, as the party resisting disclosure generally has not made a
17 particularized showing of good cause with respect to any individual document.”
18 (*San Jose*, 187 F.3d at 1102-03.) “This [Ninth] circuit has held that a nonparty may
19 seek permissive intervention in order to test whether the “good cause” requirements
20 of Rule 26(c) have been met with respect to a particular item of discovery.” (*San*
21 *Jose*, 187 F.3d at 1102-03.)

22 Here, the Media has standing to challenge the Protective Order on the ground
23 that it violates FRCP 26(c), because the Media is aware of no “good cause,” much
24 less any “important or substantial governmental interest unrelated to the suppression
25 of expression,” that exists to keep to the Video or Office Browder’s Statement about
26 the killing secret. Moreover, the press and public, as well as Plaintiffs, have strong
27 interests in disclosure of the Video and Officer Browder’s Statement, including First
28 Amendment rights of newsgathering and free speech.

1 Journalists also have a derivative First Amendment right to receive
 2 information, at least where there is a willing speaker, as Plaintiffs have indicated
 3 they are willing to engage in here. (Cummins decl. ¶2; *Va. State Bd. of Pharmacy v.*
 4 *Va. Citizens Consumer Council, Inc.*, 425 U.S. 748, 756 (1976) [“Freedom of
 5 speech presupposes a willing speaker. But where a speaker exists ... the protection
 6 afforded is to the communication, to its source and to its recipients both.”];
 7 *Kleindienst v. Mandel*, 408 U.S. 753, 762 (1972) [acknowledging a First
 8 Amendment right to “receive information and ideas” and that freedom of speech
 9 “necessarily protects the right to receive”].) Media challenges have therefore been
 10 allowed to gag orders where the orders interfere with the right to receive
 11 information from parties and their attorneys who wish to disseminate it. (*E.g., CBS,*
 12 *Inc. v. Young*, 522 F.2d 234, 237-38 (6th Cir. 1975).) Accordingly, the Media has
 13 standing to intervene and challenge the Protective Order under the First Amendment
 14 as well. (*Humbolt Baykeeper*, 244 F.R.D. at 561-67 [same].) The same relief is
 15 afforded under the parallel California Constitutional provisions, enshrined in article
 16 I, sections 2 and 3 of California’s Constitution. Accordingly, the interests of the
 17 press and public, as well as Plaintiffs, in disclosure and free speech at issue in this
 18 Motion are of constitutional stature.

19 **III. FRCP 26(c), THE COMMON LAW, AND THE FIRST AMENDMENT**
 20 **REQUIRE THAT PUBLIC ACCESS TO THE VIDEO AND OFFICER**
 21 **BROWDER’S STATEMENT BE AFFORDED**

22 **A. Federal Courts Have Long Recognized Journalists’ Rights To**
 23 **Challenge Protective Orders**

24 Courts have long recognized that third parties, including journalists, can
 25 challenge a protective order under Rules 26(c) for good cause, even where the order
 26 covers non-judicial records that fall outside of the public’s common law right of
 27 access. (*San Jose*, 187 F.3d at 1102-03 [citations omitted]; *Public Citizen v. Liggett*
 28 *Group, Inc.*, 858 F.2d 775, 787-88 (11th Cir. 1987) [public interest group had
 standing to demand good cause under Rule 26(c) to maintain a protective order
 covering discovery]; *In re Alexander Grant & Co. Litigation*, 820 F.2d 352, 354-56

1 (11th Cir. 1987) (per curiam) [journalists had standing to bring a Rule 26(c)
 2 challenge to a protect over even though they had no First Amendment right of
 3 access to discovery documents]; *Grove Fresh Distribs., Inc. v. Everfresh Juice Co.*,
 4 24 F.3d 893, 898 (7th Cir. 1994) [the press has standing to challenge a protective
 5 order for abuse or impropriety; a third party may claim that a litigant is exploiting a
 6 court’s confidentiality order to insulate embarrassing documents that present no
 7 “good cause” for secrecy with the meaning of Rule 26(c).] The United States
 8 Supreme Court has expressly recognized that there is a common law right to
 9 “inspect and copy public records and documents, including judicial records and
 10 documents.” (*Nixon v. Warner Commuications*, 435 U.S. 589, 597 (1978).) That
 11 right of access applies to the Video and Officer Browder’s Statement here.

12 The Media also has the power to challenge the Protective Order under the
 13 First Amendment as Plaintiffs are willing to provide the Video and Officer
 14 Browder’s Statement to the public for public scrutiny, and to discuss them in the
 15 context of the shooting. (*Va. State Bd. of Pharmacy*, 425 U.S. at 756; *Kleindienst*,
 16 408 U.S. at 762.) Accordingly, at a minimum, “good cause” must support the
 17 Protective Order shielding these items to keep them secret, of which none exists.
 18 These First Amendment interests of the press, public and Plaintiffs also strongly
 19 favor public access here.

20 **B. Security Camera Video From A Public Business On A Public**
 21 **Thoroughfare Of A Police Officer Killing Does Not Involve Privacy**
Or Any Other Confidential Rights Subject To Protection

22 Importantly, the burden of showing good cause is on the party seeking to keep
 23 documents sealed. (*Kamakana v. City and Cty. of Honolulu*, 447 F.3d 1172, 1176
 24 (9th Cir. 2006).) That burden requires evidence showing “articulable facts” as to
 25 why continued secrecy must be had. (*Foltz v. State Farm Mut. Auto Ins. Co.*, 331
 26 F.3d 1122, 1136 (9th Cir. 2003).) That means, the moving party

27 must present a factual showing of a particular and specific
 28 need for the protective order. “A demonstration of good
 cause embodies a showing (1) that the documents in

1 question truly are confidential and (2) that disclosure of
 2 the documents would cause a ‘clearly defined and very
 3 serious injury.’” “[T]he harm must be significant, not a
 4 mere trifle.” “Broad allegations of harm unsubstantiated
 5 by specific examples or articulated reasoning, do not
 6 satisfy the Rule 26(c) test.” Mere embarrassment by the
 7 release of information is insufficient to constitute serious
 8 harm. “An applicant for a protective order whose chief
 9 concern is embarrassment must demonstrate the
 10 embarrassment will be particularly serious.

11 (*Welsh v. City and Cty of San Francisco*, 887 F. Supp. 1293, 1297 (N.D. Cal.
 12 1995).) Furthermore, it is clear that a “showing of Rule 26(c) good cause requires a
 13 balancing of the interest of the parties competing to open or close the civil discovery
 14 process to the public, and access is particularly appropriate when the subject matter
 15 of the litigation is of especial public interest” (*Welsh*, 887 F.Supp. at 1297.)
 16 Because the public at large “pays for the courts and therefore has an interest in what
 17 goes on at all stages of a judicial proceeding, an order that authorized documents to
 18 be designated as “confidential” in discovery and thereafter to be filed with the
 19 district court under seal is “improper” as a “delegation” of a “virtual carte blanche”
 20 to the parties. (*Citizens First Nat’l Bank v. Cincinnati, Ins. Co.*, 178 F.3d 943, 944-
 21 45 (7th Cir. 1999).) The district judge “is the primary representative of the public
 22 interest in the judicial process and is duty bound therefore to review any request to
 23 seal the record (or part of it.)” (*Ibid.*)

24 Notably, here the Court also expressly reserved the right to modify the
 25 protective order “in the interests of justice[,]” “**or for public policy reasons,**” as
 26 well as for good cause, all of which exist here. Moreover, the Protective Order
 27 contains no findings to the contrary to support secrecy. (Order, *passim.*)

28 Courts have also held that reliance on a protective order agreed to by the
 parties is unreasonable and not a “compelling reason” to support secrecy. (*Foltz*,
 331 F.3d at 1138.) Rather, an order must contain “good cause” findings for each
 document sealed. (*Ibid.*) Good cause is necessarily a case by case, or document by
 document, determination. (*E.g., Joy v. North*, 692 F.2d 880, 894 (2d Cir. 1982).) A

1 failure to meet the burden means the default posture of public access prevails.
2 (*Kamakana*, 447 F.3d at 1182.)

3 Here, the burden to maintain secrecy as to the Video of the public killing
4 cannot be met by any of the Defendants. First, given that the Protective Order does
5 not contain any “good cause” findings, for this reason alone must fail. (*Foltz*, 331
6 F.3d at 1138.)

7 Second, the Protective Order shows no basis for, much less “*an important or*
8 *substantial governmental interest unrelated to the suppression of expression,*” to
9 support it. (*Humbolt Baykeeper*, 244 F.R.D. at 561-62.) As set forth above, the
10 Video sought was taken by a security camera mounted on a public business, which
11 directly recorded an officer-involved killing of an unarmed, mentally ill young man
12 on a public thoroughfare. There is nothing confidential about a Video showing why
13 and how an officer killed a person on a public thoroughfare, and no known rationale
14 for possible secrecy therefore exists. There are no privacy interests that exist as the
15 Video is of the public shooting of the deceased victim, and his parents willingness to
16 publicly disclose and discuss it confirm this point. The Protective Order is therefore
17 not premised on any “good cause shown” for any legitimate privacy reason to the
18 victim or his family.

19 As a public official engaged in his public duties under color of law, Officer
20 Browder also has no privacy interests in shielding the Video. As California’s
21 Supreme Court stated in *Long Beach*:

22 On the disclosure side of the scale, *the public has a clear*
23 *interest in learning about officer-involved shootings in*
24 *order to help it understand and investigate the facts* of a
25 specific incident involving the discharge of a firearm
26 *It would be virtually impossible to understand the events*
27 *surrounding such an incident without knowing who did*
28 *what, and why.* Moreover, *learning the details of the*
incident could shed light on overall department policies
and procedures involving the use of deadly force.

1 (59 Cal.4th at pp. 59, 67 [emphasis added].) The Court held that public employees
2 must be identified and their performance scrutinized absent a “*particularized*
3 *showing*” of harm, i.e., an unwarranted invasion of privacy that is sufficient to
4 clearly outweigh the public interest in disclosure. (*Long Beach*, 59 Cal.4th at
5 pp. 59, 67 [rejecting, “vague safety concerns that apply to all officers involved in
6 shootings [as] insufficient to tip the balance against disclosure of officer names. As
7 we have said in the past, ‘[a] mere assertion of possible endangerment does not
8 ‘clearly outweigh’ the public interest in access to ... records.’”])

9 The same is true in spades here. No reason, much less any “good cause,”
10 exists to continue to shroud the Video in secrecy. The Protective Order seems
11 instead premised on restricting the First Amendment rights of Plaintiffs and the
12 press and public. It therefore violates FRCP 26, and cannot withstand legal scrutiny.

13 Finally, Defendants cannot show the Video will be used for any improper
14 purpose, and certainly cannot make this argument based on the press and Plaintiffs’
15 free speech and dissemination of information rights. Those rights are expressly
16 protected by the First Amendment, and therefore not “*unrelated to the suppression*
17 *of expression*” as FRCP 26 requires. The Protective Order cannot pass legal muster
18 for this reason as well.

19 Given that no interest supporting the Protective Order exists, the Court does
20 not even get to the balancing stage, where the public, press and Plaintiffs’ First
21 Amendment rights will far outweigh any lesser (non-constitutional) interests.
22 Accordingly, the Protective Order should be modified and the Video made public
23 forthwith.

24 **C. Officer Browder’s Statement About The Killing Also Does Not**
25 **Involve Privacy Or Any Other Confidential Rights Subject To**
26 **Protection**

27 For the same reasons, Officer Browder’s Statement about his version of the
28 events that led up to the killing should not be shielded by the Protective Order. The
victim is deceased and his parents are willing to share Officer Browder’s Statement

1 with the press, so no privacy rights exist as to Plaintiffs. As a public official,
 2 Officer Browder's Statement about actions he took under color of law are simply
 3 not private anyway. Rather, it is the Officer's Statement about why the killing of an
 4 unarmed, mentally ill, young man occurred in the first place, *i.e.*, a first-hand
 5 account of the event itself by a public official engaged in the conduct. The Media is
 6 thus unaware of any reason for secrecy. Accordingly, no "good cause" exists to
 7 shield Officer Browder's Statement, and it should be made public forthwith, too.

8 **IV. FIRST AMENDMENT INTERESTS OF THE PRESS AND PUBLIC**
 9 **REQUIRE THE SAME RESULT**

10 As set forth above, the First Amendment provides protection to a willing
 11 speaker and willing recipient of information, including Plaintiffs and the Media
 12 here. The same is true as to the application of Rule 26(c), as well as the common
 13 law right of access, which must necessarily be informed by the First Amendment
 14 itself. (*U.S. v. Microsoft*, 165 F.3d 952, 959-60 (D.C. Cir. 1999) [the "good cause
 15 standard of Rule 26(c) comports with the first amendment not fortuitously but
 16 precisely because it takes into account all relevant interests, including those
 17 protected by the first amendment."]; *Public Citizen*, 858 F.2d at 788 [recognizing
 18 "the first amendment as a relevant consideration ... in the framework of Rule 26(c)'s
 19 requirement of good cause"]; *Anderson v. Cryovac, Inc.*, 805 F.2d 1, 7 (1st Cir.
 20 1986) ["first amendment considerations cannot be ignored in reviewing discovery
 21 protective orders."]; *Brown & Williamson Tobacco Corp. v. FTC*, 710 F.2d 1165,
 22 1177 (6th Cir. 1983) ["the First Amendment ... limits judicial discretion" in
 23 entering protective orders and making access determinations."].)

24 This Motion must thus be squared with the First Amendment interests of the
 25 press and public and Plaintiffs as well. (*Humbolt Baykeeper*, 244 F.R.D. at 561-67.)
 26 Since no "good cause" exists to shield the Video or Officer Browder's Statement,
 27 and the First Amendment interests of the press and the public in understanding why
 28

1 SHEPPARD, MULLIN, RICHTER & HAMPTON LLP
A Limited Liability Partnership
2 Including Professional Corporations
GUYLYN R. CUMMINS, Cal. Bar No. 122445
3 501 West Broadway, 19th Floor
San Diego, California 92101-3598
4 Telephone: 619.338.6500
Facsimile: 619.234.3815

5 Attorneys for VOICE OF SAN DIEGO,
6 KPBS, KGTV 10 News, THE SAN
DIEGO UNION-TRIBUNE and
7 *inewsourc*e (collectively the MEDIA)

8
9 UNITED STATES DISTRICT COURT
10 SOUTHERN DISTRICT OF CALIFORNIA

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12 S.R. NEHAD, an individual, K.R.
NEHAD, an individual, ESTATE OF
13 FRIDOON RAWSHAN NEHAD,

14 Plaintiffs,

15 v.

16 NEAL N. BROWDER, an individual,
CITY OF SAN DIEGO, a municipality,
17 and DOES 1 through 10, inclusive,

18 Defendants.

Case No. 15-cv-1386-WQH (NLS)

**DECLARATION OF GUYLYN R.
CUMMINS IN SUPPORT OF
MEDIA MOTION FOR
PERMISSIVE INTERVENTION
FOR ACCESS TO VIDEOTAPE OF
POLICE SHOOTING OF FRIDOON
RAWSHAN NEHAD AND
STATEMENT OF OFFICER NEAL
N. BROWDER REGARDING
SHOOTING**

Date: September 21, 2015

Judge: Hon. William Q. Hayes

1 I, Guylyn R. Cummins, declare:

2 1. I am an attorney with Sheppard, Mullin, Richter & Hampton LLP , and
3 am licensed to practice law before this Court. I was retained to represent the media
4 entities listed in the above-captioned matter before this Court. Unless otherwise
5 indicated, I have personal knowledge of the following matters, and if called as a
6 witness would so testify in a court of law.

7 2. The news entities listed in the above-captioned matter are dedicated to
8 the gathering and disseminating news on a local, state, national and international
9 level, including this news story about the officer-involved shooting of FRIDOON
10 RAWSHAN NEHAD by Defendant Neal N. Browder. The Media are informed and
11 believe that Plaintiffs are willing to provide copies of the Video and Officer
12 Browder's Statement to the press if the protective order is modified by the Court.

13 3. Voice of San Diego attempted to obtain a copy of the Video that is the
14 subject of this Motion from the San Diego Police Department pursuant to the
15 California Public Records Act, but was denied access. The video is also not
16 available from KECO, Inc. without a subpoena according to its attorney.

17 I declare under penalty of perjury under the laws of California and the United
18 States of America that the foregoing is true and correct. Executed this 18 day of
19 August, 2015, at San Diego, California.

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/s/ Guylyn R. Cummins
GUYLYN R. CUMMINS
Attorney for the Media
gcummins@sheppardmullin.com

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A Limited Liability Partnership
2 Including Professional Corporations
GUYLYN R. CUMMINS, Cal. Bar No. 122445
3 501 West Broadway, 19th Floor
San Diego, California 92101-3598
4 Telephone: 619.338.6500
Facsimile: 619.234.3815

5 Attorneys for VOICE OF SAN DIEGO,
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9 UNITED STATES DISTRICT COURT
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Case No. 15-cv-1386-WQH (NLS)

CERTIFICATE OF SERVICE

Date: September 21, 2015

Judge: Hon. William Q. Hayes

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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF SAN DIEGO

At the time of service, I was over 18 years of age and **not a party to this action**. I am employed in the County of San Diego, State of California. My business address is 501 West Broadway, 19th Floor, San Diego, CA 92101-3598.

On August 19, 2015, I served true copies of the following document(s) described as

1. NOTICE OF MOTION AND MOTION OF THE MEDIA FOR PERMISSIVE INTERVENTION FOR ACCESS TO VIDEOTAPE OF POLICE SHOOTING AND STATEMENT OF OFFICER NEAL N. BROWDER REGARDING THE SHOOTING

2. MEMORANDUM OF POINTS AND AUTHORITIES OF NON-PARTY MEDIA IN SUPPORT OF MOTION FOR PERMISSIVE INTERVENTION TO OBTAIN ACCESS TO SECURITY CAMERA VIDEO OF POLICE SHOOTING OF FRIDOOON RAWSHAN NEHAD AND STATEMENT OF OFFICER NEAL N. BROWDER REGARDING THE SHOOTING

3. DECLARATION OF GUYLYN R. CUMMINS IN SUPPORT OF MEDIA MOTION FOR PERMISSIVE INTERVENTION FOR ACCESS TO VIDEOTAPE OF POLICE SHOOTING OF FRIDOOON RAWSHAN NEHAD AND STATEMENT OF OFFICER NEAL N. BROWDER REGARDING SHOOTING

on the interested parties in this action as follows:

Louis R. Miller
Scott J. Street
Miller Barondess, LLP
1999 Avenue of the Stars, Suite 1000
Los Angeles, CA 90067
T: 310-552-4400 / F: 310-552-8400
smiller@millerbarondess.com
street@millerbarondess.com
Attorneys for Plaintiffs

Brian E. Watkins
Brian E. Watkins & Associates
925 B Street, Suite 402
San Diego, CA 92101
T: 619-255-5930 / F: 619-255-5639
bwatkins@brianwatkinslaw.com
Attorneys for Plaintiffs

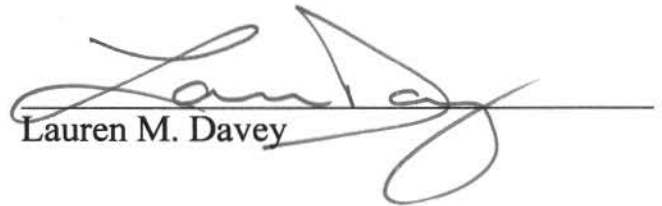
Jan I. Goldsmith
Daniel F. Bamberg
Timothy C. Stutler
Office of the City Attorney
1200 Third Ave., Suite 1100
San Diego, CA 92101
T: 619-533-5800 / F: 619-533-5856
Attorneys for Defendants

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BY CM/ECF NOTICE OF ELECTRONIC FILING: I electronically filed the document(s) with the Clerk of the Court by using the CM/ECF system. Participants in the case who are registered CM/ECF users will be served by the CM/ECF system. Participants in the case who are not registered CM/ECF users will be served by mail or by other means permitted by the court rules.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct and that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

Executed on August 19, 2015, at San Diego, California.



Lauren M. Davey