

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,

Plaintiff,

-and-

**SECOND AMENDED
PROTECTIVE ORDER**

VULCAN SOCIETY, INC., for itself and on behalf of its members, JAMES NICHOLSON and RUSEBELL WILSON, Individually and on behalf of a subclass of all other victims similarly situated seeking classwide injunctive relief; and ROGER GREGG, MARCUS HAYWOOD, and KEVIN WALKER, individually and on behalf of a subclass of all other non-hire victims similarly situated; and CANDIDO NUNEZ and KEVIN SIMPKINS, individually and on behalf of a subclass of all other delayed-hire victims similarly situated,

07 CV 2067
(NGG)(RLM)

Plaintiffs-Intervenors,

-against-

CITY OF NEW YORK, et al.

Defendants.
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Plaintiff United States of America ("Plaintiff") and Plaintiffs-Intervenors Vulcan Society, Inc., Marcus Haywood, Candido Nunez, Roger Gregg, James Nicholson, Rusebell Wilson, Kevin Walker and Kevin Simpkins, (Plaintiffs-Intervenors") and Defendant City of New York ("City") through and by their respective counsel, have consulted and agreed to entry of this Second Amended Protective Order to supplement prior protective orders entered in this action, including but not limited to, Docket Nos. 36, 199, 1242, 1415, 1559 and 1650. Nothing contained herein is intended to or shall be construed to limit in any way or abrogate the

protective orders previously entered in this action. Therefore, pursuant to Rule 26(c) of the Federal Rules of Civil Procedure,

It is hereby ORDERED that:

1. Confidential Material

A. Any individual or organization that receives from any of the parties or from any experts, consultants and support service personnel retained by any party, information and documents obtained during the course of this litigation pursuant to the terms of the June 6, 2013 Modified Remedial Order and Partial Judgment, Permanent Injunction, & Order Appointing Court Monitor ("MRO") shall be required to maintain the confidentiality of the following information and documents received:

Any and all sources of information and any and all documents, to the extent not covered by prior confidentiality orders of this Court, (i) in which a party or a contractor for a party has or asserts a proprietary interest; (ii) that are protected from disclosure by federal, state or City statute or regulation, or by established City policy; (iii) that contain names, addresses, telephone numbers and Social Security numbers of current and former employee(s) of the City's Fire Department ("FDNY"), or applicants for the entry-level firefighter position in the FDNY; and/or (iv) that contain other information which specifically identifies such current or former employee(s), including but not limited to information in personnel files. If any party determines that any documents are confidential materials subject to this Order, the party shall mark all paper

documents as "CONFIDENTIAL," and shall mark the file name of all electronic documents as "CONFIDENTIAL" when it produces them to the Parties and/or the Court Monitor.

B. Documents and information are not confidential materials to the extent that they are otherwise publicly available or to the extent the party designating the material as confidential discloses the materials to non-parties to this lawsuit without confidentiality protections.

2. Secondary documents, including but not limited to notes, reports and analyses, that are prepared from materials containing confidential information pursuant to paragraph 1.A., above, may be designated as confidential. Such designation shall be made by the party that produces the secondary document.

3. Limitations on Disclosure

Documents and other information designated as confidential pursuant to paragraphs 1 or 2, supra, shall be used solely for the purpose of this litigation.

A. For the purpose of this litigation, the information described in paragraph 1, supra, may be disclosed to the following persons only:

- i) the parties' attorneys and their support staff;
- ii) the parties to this lawsuit who must agree to abide by the terms of this Amended Protective Order, unless a party designates the confidential material as "attorney's eyes only";
- iii) experts and consultants and their administrative and secretarial employees employed by a party or its attorneys in this lawsuit and providers of copy services and litigation preparation support services

employed by a party or its attorneys in this lawsuit, all of whom must agree to abide by the terms of this Amended Protective Order;

iv) the Court, its personnel and court reporters;

v) the Court Monitor (as defined in the MRO) and stenographers; and.

vi) individuals and organizations who, based upon the express agreement of the City, Plaintiff, Plaintiffs-Intervenors, and Court Monitor, are authorized to receive confidential information.

B. Before making disclosure of information designated as confidential pursuant to paragraphs 1 or 2, supra, to persons listed in paragraph 3(A)(ii) (iii) and (vi), such persons shall be advised of the terms of this Protective Order and be given a copy of it; and such person shall execute a nondisclosure agreement in the form of Attachment A. The signed nondisclosure agreement shall be retained by counsel for the party making the disclosure.

C. Disputes regarding the authorization of access to information described in paragraph, 1 and 2, supra, shall be resolved by the Court after the parties have made good faith efforts to resolve such disputes without judicial intervention.

4. Use of Confidential Material

A. Plaintiff, Plaintiffs-Intervenors and the City, any experts or consultants, and any other individual or organization, shall not use the confidential material for any purpose other than for work pertaining to this action.

- B. Portions of hearing transcripts (including exhibits) that reveal Confidential Material shall be deemed confidential and shall be separately bound, with cover page prominently marked "CONFIDENTIAL." Such portion of the transcript shall be deemed Confidential Materials within the meaning of this Protective Order. The party seeking to designate portions of the transcript as confidential shall be responsible for identifying the portions of the transcript that should be treated as confidential. The party that is responsible for maintaining the original transcript shall be responsible for ensuring that confidential portions of hearing transcripts (including exhibits) are separately bound and marked "CONFIDENTIAL."
- C. If any paper which reveals Confidential Material is filed with the Court, the portion(s) of the paper which reveal the Confidential Material shall be redacted from the paper, and the redacted copy of the paper shall be filed with the Court in the usual manner. All documents attached to the paper which reveal Confidential Material shall be redacted, and the redacted copy of the attachment(s) shall be filed with the Court in the usual manner. An unredacted copy of the paper, and any attached documents, shall be delivered to the Court enclosed in a sealed envelope bearing the caption of this action, an indication of the nature of the contents and the following legend:

CONFIDENTIAL

This envelope contains documents or information designated confidential pursuant to an order entered by the United States District Court for the Eastern District of New York in the above-captioned action. This envelope shall not be opened or unsealed

without the express direction of a judge of this Court, and its contents shall not be displayed or revealed except as the Court may order. This envelope and its contents shall at all times be maintained separate and apart from the publicly available files of this case.

- D. Nothing in this Protective Order is meant to, nor shall, inhibit, in any way, the City's use of the information the City designates as confidential pursuant to paragraph 1 and 2, supra, in the ordinary course of the City's operations.
- E. Nothing in this Protective Order is meant to, nor shall, inhibit, in any way, the use of the information described in paragraphs 1 or 2, supra, by any party in preparation for or during, hearings before or submissions to the Court or the Court Monitor; or in preparation for, or in reports and recommendations to the Court by the Court Monitor.
- F. Nothing in this Protective Order is meant to, nor shall, inhibit in any way the right of the United States to provide Confidential Materials to a Congressional entity; provided, however, that the United States shall notify the Congressional entity requesting the materials that the Confidential Materials have been produced pursuant to this Protective Order and shall, if there are no objections interposed by the Congressional entity requesting the documents, use reasonable efforts to notify the party asserting confidentiality of the Congressional entity's request and the United States' response thereto.
- G. If Confidential Material is disclosed to any persons other than in the manner authorized by this Protective Order inadvertently or otherwise, the

party responsible for the disclosure must, immediately upon learning of the disclosure, inform counsel for the other parties of all pertinent non-privileged facts relating to such disclosure in writing and shall make every effort to prevent disclosure by each unauthorized person who received such information.

5. Objections to Confidentiality or Attorney's Eyes Only Designation

If any party objects to the designation of materials as confidential or attorney's eyes only, the party shall inform the opposing party of its view that the information should not be deemed confidential or attorney's eyes only. Any party wishing to maintain confidential status must present a motion to the Court claiming confidential status within thirty (30) days of the date of the objection or the claim is waived. Prior to filing any such motion, the parties must consult with opposing counsel in a good faith effort to narrow the disagreement. If a motion becomes necessary, the Court will determine whether there is good cause to designate the documents confidential and/or for attorney's eyes only. The materials shall continue to have confidential status during the pendency of any motion to determine their confidential status.

6. Destruction of Confidential Material

Within ninety (90) days of the final conclusion of this litigation (including the exhaustion of all time for appeals or the expiration or dissolution by the Court of any consent decree, order or judgment), the Parties shall destroy all documents containing Confidential Material, as described in paragraphs 1 and 2, supra and all copies thereof in its possession, including documents containing such information in the possession of all other persons hired or retained by parties to assist with presenting or defending claims in this action. This paragraph does not apply: (a) to the United States when compliance would be inconsistent with the United


States' document retention policies or other applicable law; or (b) to notes and other materials that are, or contain, the work product of attorneys. However, any documents retained under sections 6(a) or 6(b) above shall not be used by the parties in any other case.

7. Duration

This Amended Protective Order shall remain in effect throughout this litigation and until all Confidential Material and copies thereof and all extracts and summaries of such Confidential Material are destroyed in accordance with the terms set forth at Paragraph 6 herein.

Dated: New York, New York
~~August 20~~, 2017
September

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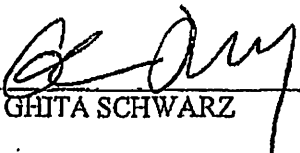
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SQ ORDERED: 11,
s/Nicholas G. Garaufis

U.S.M.J.

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11/16/17

Attachment A

NONDISCLOSURE AGREEMENT

The undersigned hereby acknowledges that (s)he has read the Second Amended Protective Order entered by the United States District Court for the Eastern District of New York on _____, 2017, in the action entitled United States, et al. v. City of New York, et al. No. 07-CV-2067 (E.D.N.Y.) or has been advised of its provisions and contents. The undersigned agrees not to use Confidential Materials defined therein for any purpose other than in connection with that case and agrees to be bound by the terms and conditions of said Order unless and until modified by further Order of the Court in that case.

Dated: _____

Signature