

EXHIBIT

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20 CITY OF BERKELEY

21 **IN THE UNITED STATES DISTRICT COURT**
22 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

23 _____)
24 UNITED STATES POSTAL SERVICE,)

25 Plaintiff,)

26 v.)

27 CITY OF BERKELEY)

28 Defendant.)

Case No. 16-cv-4815-WHA

CITY'S [PROPOSED] ORDER
RE MOTION FOR PROTECTIVE
ORDER

29 *United States Postal Service v. City of Berkeley*, Case No. 16-cv-4815
30 City's [Proposed] Order re Motion for Protective Order

1 Upon consideration of Defendant’s Motion for Protective Order, ECF No. 67, the
2 opposition thereto, ECF No. 68, and the reply in support thereof, ECF No. 69; the Plaintiff’s
3 letters of September 29, 2017, ECF No. 73, and October 5, 2017, ECF No. 77, the Defendant’s
4 letter of October 6, 2017, ECF No, 78; and the argument at the hearing on October 11, 2017, IT
5 IS HEREBY

6 ORDERED that Defendant’s Motion for Protective Order is GRANTED IN PART AND
7 DENIED IN PART. Plaintiff’s depositions of the City’s Legislators shall be limited to one
8 Planning Commissioner of the City’s choice as a 30(b)(6) witness, two City Councilmembers of
9 Plaintiff’s choice, and former Mayor Bates. [Tr. 40:10–22] One of the two City
10 Councilmembers deposed by Plaintiff may be Mayor Arreguín, who was a City Councilmember
11 at the time of the enactment of Berkeley Municipal Code Chapter 23E.98, the Civic Center
12 District Overlay (the “Zoning Ordinance”) (hereinafter “City Official Deponents”). [Tr. 40:1–5,
13 45:10–15] No depositions of other members of the City Council or Planning Commission will be
14 permitted. [Tr. 40:21-22, 44:21-45:15; 47:16-18]

15 At such depositions, Plaintiff may inquire as to non-privileged matters limited to [Tr.
16 46:11-22, 47:6-18]:

- 17 1. Objective historical facts that led up to the passage of the Zoning Ordinance [Tr. 35:
18 5–6], such as statements previously made by the City Official Deponents to parties
19 regarding the intended effect of the Zoning Ordinance [Tr. 34:22–25, 37:9–11];
- 20 2. The City Official Deponents’ present-day opinions about the land uses permitted and
21 not permitted by the Zoning Ordinance [Tr. 36:16-37:7];
- 22 3. Communications by the City Council, the Mayor or the Planning Commission
23 regarding the Property or the Zoning Ordinance with Save The Berkeley Post Office,
24 the Downtown Berkeley Association, or the National Post Office Collaborate [Tr.
25 41:14 –43:22];
- 26 4. Communications by the City Council, the Mayor or the Planning Commission that
27 followed-up on the directive in Resolution 66,025-N.S. that “the City shall reach out

1 to other Cities affected by the sale of postal facilities to develop a collective
2 response” [Tr. 44:1–22]; and

- 3 5. Communications by the City Council, the Mayor or the Planning Commission with
4 real estate brokers or consultants regarding the value of the Berkeley Main Post
5 Office or the proposed sale of the Berkeley Main Post Office. [Tr. 45:16–23]

6 The Postal Service is entitled to testimony regarding Topics 1–2, *supra*, irrespective of whether
7 the City Official Deponents’ prior statements regarding the intended effect of the Zoning
8 Ordinance, *see supra* Topic 1, or their present-day opinions about the land uses permitted and
9 not permitted by the Ordinance, *see supra* Topic 2, actually include the word “effect.” [Tr.
10 43:21–22]; and

11 FURTHER ORDERED that the City Official Deponents shall not be asked or required to
12 answer any questions as to their intent, purpose, mental states, or motivations [Tr. 7:23-25, 8:10-
13 12, 13:11-13, 22:8-10, 34:23-24, 35:3–4, 38:14–15]; and

14 FURTHER ORDERED that there shall be no objections at depositions, including those of
15 the City Official Deponents except to protect privilege or as necessary to ensure compliance with
16 this Order. The communications with third parties covered by Topics 3–5, *supra*, are not
17 privileged. [Tr. 47:10–18] All other objections shall be preserved [Tr. 49:12–18]; and

18 FURTHER ORDERED that Plaintiff shall not take any further depositions regarding
19 Topics 5, 6, and 7 of Revised Exhibit 1 to Plaintiff’s Notice to Take Deposition Pursuant to
20 Federal Rule of Civil Procedure 30(b)(6) [Tr. 4:22-25, 41:10-13], and Plaintiff shall not take any
21 further deposition regarding Topic 4 of Revised Exhibit 1 regarding “The City’s negotiations or
22 agreements with its own tenants, renters or lessees in properties subject to the Zoning
23 Ordinance,” but may instead propound written discovery to Defendant on Topic 4. [Tr. 7:5-10]

24 **SO ORDERED.**

25 Dated: _____

26 _____
27 HON. WILLIAM ALSUP
28 UNITED STATES DISTRICT JUDGE