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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 <sup>relevant</sup> non-privileged matters <sup>including, e.g.,</sup> ~~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 <sup>effects of</sup> ~~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 <sup>Berkeley Main Post Office</sup> ~~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 <sup>subjective</sup> 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 <sup>as necessary</sup> 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: October 26, 2017.

