

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

NYE, PEABODY, STIRLING, HALE & MILLER
33 WEST MISSION STREET, SUITE 201
SANTA BARBARA, CALIFORNIA 93101

Jonathan D. Miller (SBN 220848)
jonathan@nps-law.com
Holly C. Blackwell (SBN 224941)
holly@nps-law.com
NYE, PEABODY, STIRLING, HALE & MILLER, LLP
33 West Mission Street, Suite 201
Santa Barbara, California 93101
Telephone: (805) 963-2345
Facsimile: (805) 563-5385

Attorneys for Plaintiffs David Anduri, Sr., Patti Dee
Anduri, and the Estate of David Anduri, Jr.

**UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA**

DAVID ANDURI, SR., PATTI DEE
ANDURI, and the ESTATE OF DAVID
ANDURI, JR, Individuals,

Plaintiffs,

v.

CITY OF SANTA BARBARA, a public
entity, JAMES ARMSTRONG, an
individual, CAMARINO SANCHEZ, an
individual, and DOES 1-20, Inclusive,

Defendants.

CASE NO.: 2:16-cv-05461 MWF
(SKx)

**STIPULATED PROTECTIVE
ORDER FOR LITIGATION
INVOLVING PATENTS, HIGHLY
SENSITIVE CONFIDENTIAL
INFORMATION AND/OR TRADE
SECRETS**

Complaint Filed: July 21, 2016
Trial Date: February 20, 2018

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 may 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

1 disclosures or responses to discovery and that the protection it affords from public
2 disclosure and use extends only to the limited information or items that are entitled
3 to confidential treatment under the applicable legal principles. The parties further
4 acknowledge, as set forth in Section 14.4, below, that this Stipulated Protective
5 Order does not entitle them to file confidential information under seal; Civil Local
6 Rule 79-5 sets forth the procedures that must be followed and the standards that will
7 be applied when a party seeks permission from the court to file material under seal.

8 **2. DEFINITIONS**

9 2.1 Challenging Party: a Party or Non-Party that challenges the designation
10 of information or items under this Order.

11 2.2 “CONFIDENTIAL” Information or Items: information (regardless of
12 how it is generated, stored or maintained) or tangible things that qualify for
13 protection under Federal Rule of Civil Procedure 26(c).

14 2.3 Counsel (without qualifier): Outside Counsel of Record and House
15 Counsel (as well as their support staff).

16 2.4 Designated House Counsel: House Counsel who seek access to
17 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” information in this
18 matter.

19 2.5 Designating Party: a Party or Non-Party that designates information or
20 items that it produces in disclosures or in responses to discovery as
21 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
22 ONLY”.

23 2.6 Disclosure or Discovery Material: all items or information, regardless
24 of the medium or manner in which it is generated, stored, or maintained (including,
25 among other things, testimony, transcripts, and tangible things), that are produced or
26 generated in disclosures or responses to discovery in this matter.

27 2.7 Expert: a person with specialized knowledge or experience in a matter
28 pertinent to the litigation who (1) has been retained by a Party or its counsel to serve

1 as an expert witness or as a consultant in this action, (2) is not a past or current
2 employee of a Party or of a Party's competitor, and (3) at the time of retention, is
3 not anticipated to become an employee of a Party or of a Party's competitor.

4 2.8 "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY"

5 Information or Items: extremely sensitive "Confidential Information or Items,"
6 disclosure of which to another Party or Non-Party would create a substantial risk of
7 serious harm that could not be avoided by less restrictive means.

8 2.10 House Counsel: attorneys who are employees of a party to this action.

9 House Counsel does not include Outside Counsel of Record or any other outside
10 counsel.

11 2.11 Non-Party: any natural person, partnership, corporation, association, or
12 other legal entity not named as a Party to this action.

13 2.12 Outside Counsel of Record: attorneys who are not employees of a party
14 to this action but are retained to represent or advise a party to this action and have
15 appeared in this action on behalf of that party or are affiliated with a law firm which
16 has appeared on behalf of that party.

17 2.13 Party: any party to this action, including all of its officers, directors,
18 employees, consultants, retained experts, and Outside Counsel of Record (and their
19 support staffs).

20 2.14 Producing Party: a Party or Non-Party that produces Disclosure or
21 Discovery Material in this action.

22 2.15 Professional Vendors: persons or entities that provide litigation support
23 services (e.g., photocopying, videotaping, translating, preparing exhibits or
24 demonstrations, and organizing, storing, or retrieving data in any form or medium)
25 and their employees and subcontractors.

26 2.16 Protected Material: any Disclosure or Discovery Material that is
27 designated as "CONFIDENTIAL," or as "HIGHLY CONFIDENTIAL –
28 ATTORNEYS' EYES ONLY."

1 2.17 Receiving Party: a Party that receives Disclosure or Discovery Material
2 from a Producing Party.

3 3. **SCOPE**

4 The protections conferred by this Stipulation and Order cover not only
5 Protected Material (as defined above), but also (1) any information copied or
6 extracted from Protected Material; (2) all copies, excerpts, summaries, or
7 compilations of Protected Material; and (3) any testimony, conversations, or
8 presentations by Parties or their Counsel that might reveal Protected Material.
9 However, the protections conferred by this Stipulation and Order do not cover the
10 following information: (a) any information that is in the public domain at the time of
11 disclosure to a Receiving Party or becomes part of the public domain after its
12 disclosure to a Receiving Party as a result of publication not involving a violation of
13 this Order, including becoming part of the public record through trial or otherwise;
14 and (b) any information known to the Receiving Party prior to the disclosure or
15 obtained by the Receiving Party after the disclosure from a source who obtained the
16 information lawfully and under no obligation of confidentiality to the Designating
17 Party. Any use of Protected Material at trial shall be governed by a separate
18 agreement or order.

19 4. **DURATION**

20 Even after final disposition of this litigation, the confidentiality obligations
21 imposed by this Order shall remain in effect until a Designating Party agrees
22 otherwise in writing or a court order otherwise directs. Final disposition shall be
23 deemed to be the later of (1) dismissal of all claims and defenses in this action, with
24 or without prejudice; and (2) final judgment herein after the completion and
25 exhaustion of all appeals, rehearings, remands, trials, or reviews of this action,
26 including the time limits for filing any motions or applications for extension of time
27 pursuant to applicable law.

28 5. **DESIGNATING PROTECTED MATERIAL**

1 5.1 Exercise of Restraint and Care in Designating Material for Protection.
2 Each Party or Non-Party that designates information or items for protection under
3 this Order must take care to limit any such designation to specific material that
4 qualifies under the appropriate standards. To the extent it is practical to do so, the
5 Designating Party must designate for protection only those parts of material,
6 documents, items, or oral or written communications that qualify – so that other
7 portions of the material, documents, items, or communications for which protection
8 is not warranted are not swept unjustifiably within the ambit of this Order.
9 Mass, indiscriminate, or routinized designations are prohibited. Designations that
10 are shown to be clearly unjustified or that have been made for an improper purpose
11 (e.g., to unnecessarily encumber or retard the case development process or to
12 impose unnecessary expenses and burdens on other parties) expose the Designating
13 Party to sanctions.

14 If it comes to a Designating Party’s attention that information or items that it
15 designated for protection do not qualify for protection at all or do not qualify for the
16 level of protection initially asserted, that Designating Party must promptly notify all
17 other parties that it is withdrawing the mistaken designation.

18 5.2 Manner and Timing of Designations. Except as otherwise provided in
19 this Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise
20 stipulated or ordered, Disclosure or Discovery
21 Material that qualifies for protection under this Order must be clearly so designated
22 before the material is disclosed or produced.

23 Designation in conformity with this Order requires:

24 (a) for information in documentary form (e.g., paper or electronic documents,
25 but excluding transcripts of depositions or other pretrial or trial proceedings), that
26 the Producing Party affix the legend “CONFIDENTIAL” or “HIGHLY
27 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” to each page that contains
28 protected material. If only a portion or portions of the material on a page qualifies

1 for protection, the Producing Party also must clearly identify the protected portion(s)
2 (e.g., by making appropriate markings in the margins) and must specify, for each
3 portion, the level of protection being asserted.

4 A Party or Non-Party that makes original documents or materials available for
5 inspection need not designate them for protection until after the inspecting Party has
6 indicated which material it would like copied and produced. During the inspection
7 and before the designation, all of the material made available for inspection shall be
8 deemed “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” After the
9 inspecting Party has identified the documents it wants copied and produced, the
10 Producing Party must determine which documents, or portions thereof, qualify for
11 protection under this Order. Then, before producing the specified documents, the
12 Producing Party must affix the appropriate legend (“CONFIDENTIAL” or
13 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”) to each page that
14 contains Protected Material. If only a portion or portions of the material on a page
15 qualifies for protection, the Producing Party also must clearly identify the protected
16 portion(s) (e.g., by making appropriate markings in the margins) and must specify,
17 for each portion, the level of protection being asserted.

18 (b) for testimony given in deposition or in other pretrial or trial proceedings,
19 that the Designating Party identify on the record, before the close of the deposition,
20 hearing, or other proceeding, all protected testimony and specify the level of
21 protection being asserted. When it is impractical to identify separately each portion
22 of testimony that is entitled to protection and it appears that substantial portions of
23 the testimony may qualify for protection, the Designating Party may invoke on the
24 record (before the deposition, hearing, or other proceeding is concluded) a right to
25 have up to 21 days to identify the specific portions of the testimony as to which
26 protection is sought and to specify the level of protection being asserted. Only those
27 portions of the testimony that are appropriately designated for protection within the
28 21 days shall be covered by the provisions of this Stipulated Protective Order.

1 Alternatively, a Designating Party may specify, at the deposition or up to 21 days
2 afterwards if that period is properly invoked, that the entire transcript shall be
3 treated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’
4 EYES ONLY.”

5 Parties shall give the other parties notice if they reasonably expect a
6 deposition, hearing or other proceeding to include Protected Material so that the
7 other parties can ensure that only authorized individuals who have signed the
8 “Acknowledgment and Agreement to Be Bound” (Exhibit A) are present at those
9 proceedings. The use of a document as an exhibit at a deposition shall not in any
10 way affect its designation as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –
11 ATTORNEYS’ EYES ONLY.”

12 Transcripts containing Protected Material shall have an obvious legend on the
13 title page that the transcript contains Protected Material, and the title page shall be
14 followed by a list of all pages (including line numbers as appropriate) that have been
15 designated as Protected Material and the level of protection being asserted by the
16 Designating Party. The Designating Party shall inform the court reporter of these
17 requirements. Any transcript that is prepared before the expiration of a 21-day
18 period for designation shall be treated during that period as if it had been designated
19 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” in its entirety unless
20 otherwise agreed. After the expiration of that period, the transcript shall be treated
21 only as actually designated.

22 (c) for information produced in some form other than documentary and for
23 any other tangible items, that the Producing Party affix in a prominent place on the
24 exterior of the container or containers in which the information or item is stored the
25 legend “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’
26 EYES ONLY”. If only a portion or portions of the information or item warrant
27 protection, the Producing Party, to the extent practicable, shall identify the protected
28 portion(s) and specify the level of protection being asserted.

1 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
2 failure to designate qualified information or items does not, standing alone, waive
3 the Designating Party’s right to secure protection under this Order for such material.
4 Upon timely correction of a designation, the Receiving Party must make reasonable
5 efforts to assure that the material is treated in accordance with the provisions of this
6 Order.

7 6. **CHALLENGING CONFIDENTIALITY DESIGNATIONS**

8 6.1 Timing of Challenges. Any Party or Non-Party may challenge a
9 designation of confidentiality at any time. Unless a prompt challenge to a
10 Designating Party’s confidentiality designation is necessary to avoid foreseeable,
11 substantial unfairness, unnecessary economic burdens, or a significant disruption or
12 delay of the litigation, a Party does not waive its right to challenge a confidentiality
13 designation by electing not to mount a challenge promptly after the original
14 designation is disclosed.

15 6.2 Meet and Confer. The Challenging Party shall initiate the dispute
16 resolution process by providing written notice of each designation it is challenging
17 and describing the basis for each challenge. To avoid ambiguity as to whether a
18 challenge has been made, the written notice must recite that the challenge to
19 confidentiality is being made in accordance with this specific paragraph of the
20 Protective Order. The parties shall attempt to resolve each challenge in good faith
21 and must begin the process by conferring directly (in voice to voice dialogue; other
22 forms of communication are not sufficient) within 14 days of the date of service of
23 notice. In conferring, the Challenging Party must explain the basis for its belief that
24 the confidentiality designation was not proper and must give the Designating Party
25 an opportunity to review the designated material, to reconsider the circumstances,
26 and, if no change in designation is offered, to explain the basis for the chosen
27 designation. A Challenging Party may proceed to the next stage of the challenge
28 process only if it has engaged in this meet and confer process first or establishes that

1 the Designating Party is unwilling to participate in the meet and confer process in a
2 timely manner.

3 6.3 Judicial Intervention. If the Parties cannot resolve a challenge without
4 court intervention, the Designating Party shall file and serve a motion to retain
5 confidentiality under Civil Local Rule 7 (and in compliance with Civil Local Rule
6 79-5, if applicable) within 21 days of the initial notice of challenge or within 14
7 days of the parties agreeing that the meet and confer process will not resolve their
8 dispute, whichever is earlier. Each such motion must be accompanied by a
9 competent declaration affirming that the movant has complied with the meet and
10 confer requirements imposed in the preceding paragraph. Failure by the Designating
11 Party to make such a motion including the required declaration within 21 days (or
12 14 days, if applicable) shall automatically waive the confidentiality designation for
13 each challenged designation. In addition, the Challenging Party may file a motion
14 challenging a confidentiality designation at any time if there is good cause for doing
15 so, including a challenge to the designation of a deposition transcript or any portions
16 thereof. Any motion brought pursuant to this provision must be accompanied by a
17 competent declaration affirming that the movant has complied with the meet and
18 confer requirements imposed by the preceding paragraph.

19 The burden of persuasion in any such challenge proceeding shall be on the
20 Designating Party. Frivolous challenges and those made for an improper purpose
21 (e.g., to harass or impose unnecessary expenses and burdens on other parties) may
22 expose the Challenging Party to sanctions. Unless the Designating Party has waived
23 the confidentiality designation by failing to file a motion to retain confidentiality as
24 described above, all parties shall continue to afford the material in question the level
25 of protection to which it is entitled under the Producing Party's designation until the
26 court rules on the challenge.

27 **7. ACCESS TO AND USE OF PROTECTED MATERIAL**

28 7.1 Basic Principles. A Receiving Party may use Protected Material that is

1 disclosed or produced by another Party or by a Non-Party in connection with this
2 case only for prosecuting, defending, or attempting to settle this litigation. Such
3 Protected Material may be disclosed only to the categories of persons and under the
4 conditions described in this Order. When the litigation has been terminated, a
5 Receiving Party must comply with the provisions of section 15 below (FINAL
6 DISPOSITION).

7 Protected Material must be stored and maintained by a Receiving Party at a location
8 and in a secure manner that ensures that access is limited to the persons authorized
9 under this Order.

10 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless
11 otherwise ordered by the court or permitted in writing by the Designating Party, a
12 Receiving Party may disclose any information or item designated
13 “CONFIDENTIAL” only to:

14 (a) the Receiving Party’s Outside Counsel of Record in this action, as well as
15 employees of said Outside Counsel of Record to whom it is reasonably necessary to
16 disclose the information for this litigation and who have signed the
17 “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit
18 A;

19 (b) the officers, directors, and employees (including House Counsel) of the
20 Receiving Party to whom disclosure is reasonably necessary for this litigation and
21 who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

22 (c) Experts (as defined in this Order) of the Receiving Party to whom
23 disclosure is reasonably necessary for this litigation and who have signed the
24 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

25 (d) the court and its personnel;

26 (e) court reporters and their staff, professional jury or trial consultants, and
27 Professional Vendors to whom disclosure is reasonably necessary for this litigation
28 and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit

1 A);

2 (f) during their depositions, witnesses in the action to whom disclosure is
3 reasonably necessary and who have signed the “Acknowledgment and Agreement to
4 Be Bound” (Exhibit A), unless otherwise agreed by the Designating Party or ordered
5 by the court. Pages of transcribed deposition testimony or exhibits to depositions
6 that reveal Protected Material must be separately bound by the court reporter and
7 may not be disclosed to anyone except as permitted under this Stipulated Protective
8 Order.

9 (g) the author or recipient of a document containing the information or a
10 custodian or other person who otherwise possessed or knew the information.

11 7.3 Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
12 ONLY” Information or Items. Unless otherwise ordered by the court or permitted in
13 writing by the Designating Party, a Receiving Party may disclose any information or
14 item designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”]
15 only to:

16 (a) the Receiving Party’s Outside Counsel of Record in this action, as well as
17 employees of said Outside Counsel of Record to whom it is reasonably necessary to
18 disclose the information for this litigation and who have signed the
19 “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit
20 A;

21 (b) Optional as deemed appropriate in case-specific circumstances:
22 Designated House Counsel of the Receiving Party (1) who has no involvement in
23 competitive decision-making, (2) to whom disclosure is reasonably necessary for
24 this litigation, (3) who has signed the “Acknowledgment and Agreement to Be
25 Bound” (Exhibit A), and (4) as to whom the procedures set forth in paragraph
26 7.4(a)(1), below, have been followed];

27 (c) Experts of the Receiving Party (1) to whom disclosure is reasonably
28 necessary for this litigation, (2) who have signed the “Acknowledgment and

1 Agreement to Be Bound” (Exhibit A), and (3) as to whom the procedures set forth in
2 paragraph 7.4(a)(2), below, have been followed];

3 (d) the court and its personnel;

4 (e) court reporters and their staff, professional jury or trial consultants, and
5 Professional Vendors to whom disclosure is reasonably necessary for this litigation
6 and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit
7 A); and

8 (f) the author or recipient of a document containing the information or a
9 custodian or other person who otherwise possessed or knew the information.

10 7.4 Procedures for Approving or Objecting to Disclosure of “HIGHLY
11 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” Information or Items to
12 Designated House Counsel or Experts.

13 (a)(1) Unless otherwise ordered by the court or agreed to in writing by the
14 Designating Party, a Party that seeks to disclose to Designated House Counsel any
15 information or item that has been designated “HIGHLY CONFIDENTIAL –
16 ATTORNEYS’ EYES ONLY” pursuant to paragraph 7.3(b) first must make a
17 written request to the Designating Party that (1) sets forth the full name of the
18 Designated House Counsel and the city and state of his or her residence, and (2)
19 describes the Designated House Counsel’s current and reasonably foreseeable future
20 primary job duties and responsibilities in sufficient detail to determine if House
21 Counsel is involved, or may become involved, in any competitive decision-making.

22 (a)(2) Unless otherwise ordered by the court or agreed to in writing by the
23 Designating Party, a Party that seeks to disclose to an Expert (as defined in this
24 Order) any information or item that has been designated “HIGHLY
25 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” pursuant to paragraph 7.3(c)
26 first must make a written request to the Designating Party that (1) identifies the
27 general categories of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”
28 information that the Receiving Party seeks permission to disclose to the Expert, (2)

1 sets forth the full name of the Expert and the city and state of his or her primary
2 residence, (3) attaches a copy of the Expert’s current resume, (4) identifies the
3 Expert’s current employer(s), (5) identifies each person or entity from whom the
4 Expert has received compensation or funding for work in his or her areas of
5 expertise or to whom the expert has provided professional services, including in
6 connection with a litigation, at any time during the preceding five years, and (6)
7 identifies (by name and number of the case, filing date, and location of court) any
8 litigation in connection with which the Expert has offered expert testimony,
9 including through a declaration, report, or testimony at a deposition or trial, during
10 the preceding five years.

11 (b) A Party that makes a request and provides the information specified in the
12 preceding respective paragraphs may disclose the subject Protected Material to the
13 identified Designated House Counsel or Expert unless, within 14 days of delivering
14 the request, the Party receives a written objection from the Designating Party. Any
15 such objection must set forth in detail the grounds on which it is based.

16 (c) A Party that receives a timely written objection must meet and confer with
17 the Designating Party (through direct voice to voice dialogue) to try to resolve the
18 matter by agreement within seven days of the written objection. If no agreement is
19 reached, the Party seeking to make the disclosure to Designated House Counsel or
20 the Expert may file a motion as provided in Civil Local Rule 7 (and in compliance
21 with Civil Local Rule 79-5, if applicable) seeking permission from the court to do
22 so. Any such motion must describe the circumstances with specificity, set forth in
23 detail the reasons why the disclosure to Designated House Counsel or the Expert is
24 reasonably necessary, assess the risk of harm that the disclosure would entail, and
25 suggest any additional means that could be used to reduce that risk. In addition, any
26 such motion must be accompanied by a competent declaration describing the
27 parties’ efforts to resolve the matter by agreement (i.e., the extent and the content of
28 the meet and confer discussions) and setting forth the reasons advanced by the

1 Designating Party for its refusal to approve the disclosure.

2 In any such proceeding, the Party opposing disclosure to Designated House Counsel
3 or the Expert shall bear the burden of proving that the risk of harm that the
4 disclosure would entail (under the safeguards proposed) outweighs the Receiving
5 Party’s need to disclose the Protected Material to its Designated House Counsel or
6 Expert.

7 10. **PROTECTED MATERIAL SUBPOENAED OR ORDERED**
8 **PRODUCED IN OTHER LITIGATION**

9 If a Party is served with a subpoena or a court order issued in other litigation
10 that compels disclosure of any information or items designated in this action as
11 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
12 ONLY”] that Party must:

13 (a) promptly notify in writing the Designating Party. Such notification shall
14 include a copy of the subpoena or court order;

15 (b) promptly notify in writing the party who caused the subpoena or order to
16 issue in the other litigation that some or all of the material covered by the subpoena
17 or order is subject to this Protective Order. Such notification shall include a copy of
18 this Stipulated Protective Order; and

19 (c) cooperate with respect to all reasonable procedures sought to be pursued
20 by the Designating Party whose Protected Material may be affected.

21 If the Designating Party timely seeks a protective order, the Party served with the
22 subpoena or court order shall not produce any information designated in this action
23 as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
24 ONLY” before a determination by the court from which the subpoena or order
25 issued, unless the Party has obtained the Designating Party’s permission. The
26 Designating Party shall bear the burden and expense of seeking protection in that
27 court of its confidential material – and nothing in these provisions should be
28 construed as authorizing or encouraging a Receiving Party in this action to disobey a

1 lawful directive from another court.

2 11. **A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE**
3 **PRODUCED IN THIS LITIGATION**

4 (a) The terms of this Order are applicable to information produced by a
5 Non-Party in this action and designated as “CONFIDENTIAL” or “HIGHLY
6 CONFIDENTIAL – ATTORNEYS’ EYES ONLY”. Such information produced by
7 Non-Parties in connection with this litigation is protected by the remedies and relief
8 provided by this Order. Nothing in these provisions should be construed as
9 prohibiting a Non-Party from seeking additional protections.

10 (b) In the event that a Party is required, by a valid discovery request, to
11 produce a Non-Party’s confidential information in its possession, and the Party is
12 subject to an agreement with the Non-Party not to produce the Non-Party’s
13 confidential information, then the Party shall:

14 1. promptly notify in writing the Requesting Party and the Non-Party that
15 some or all of the information requested is subject to a confidentiality agreement
16 with a Non-Party;

17 2. promptly provide the Non-Party with a copy of the Stipulated
18 Protective Order in this litigation, the relevant discovery request(s), and a
19 reasonably specific description of the information requested; and

20 3. make the information requested available for inspection by the Non-
21 Party.

22 (c) If the Non-Party fails to object or seek a protective order from this
23 court within 14 days of receiving the notice and accompanying information, the
24 Receiving Party may produce the Non-Party’s confidential information responsive
25 to the discovery request. If the Non-Party timely seeks a protective order, the
26 Receiving Party shall not produce any information in its possession or control that is
27 subject to the confidentiality agreement with the Non-Party before a determination
28 by the court. Absent a court order to the contrary, the Non-Party shall bear the

1 burden and expense of seeking protection in this court of its Protected Material.

2 12. **UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

3 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed
4 Protected Material to any person or in any circumstance not authorized under this
5 Stipulated Protective Order, the Receiving Party must immediately (a) notify in
6 writing the Designating Party of the unauthorized disclosures, (b) use its best efforts
7 to retrieve all unauthorized copies of the Protected Material, (c) inform the person or
8 persons to whom unauthorized disclosures were made of all the terms of this Order,
9 and (d) request such person or persons to execute the “Acknowledgment and
10 Agreement to Be Bound” that is attached hereto as Exhibit A.

11 13. **INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE**
12 **PROTECTED MATERIAL**

13 When a Producing Party gives notice to Receiving Parties that certain
14 inadvertently produced material is subject to a claim of privilege or other protection,
15 the obligations of the Receiving Parties are those set forth in Federal Rule of Civil
16 Procedure 26(b)(5)(B). This provision is not intended to modify whatever
17 procedure may be established in an e-discovery order that provides for production
18 without prior privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e),
19 insofar as the parties reach an agreement on the effect of disclosure of a
20 communication or information covered by the attorney-client privilege or work
21 product protection, the parties may incorporate their agreement in the stipulated
22 protective order submitted to the court.

23 14. **MISCELLANEOUS**

24 14.1 Right to Further Relief. Nothing in this Order abridges the right of any
25 person to seek its modification by the court in the future.

26 14.2 Right to Assert Other Objections. By stipulating to the entry of this
27 Protective Order no Party waives any right it otherwise would have to object to
28 disclosing or producing any information or item on any ground not addressed in this

1 Stipulated Protective Order. Similarly, no Party waives any right to object on any
2 ground to use in evidence of any of the material covered by this Protective Order.

3 14.3 Filing Protected Material. Without written permission from the
4 Designating Party or a court order secured after appropriate notice to all interested
5 persons, a Party may not file in the public record in this action any Protected
6 Material. A Party that seeks to file under seal any Protected Material must comply
7 with Civil Local Rule 79-5. Protected Material may only be filed under seal
8 pursuant to a court order authorizing the sealing of the specific Protected Material at
9 issue. Pursuant to Civil Local Rule 79-5, a sealing order will issue only upon a
10 request establishing that the Protected Material at issue is privileged, protectable as
11 a trade secret, or otherwise entitled to protection under the law. If a Receiving
12 Party's request to file Protected Material under seal pursuant to Civil Local Rule 79-
13 5(e) is denied by the court, then the Receiving Party may file the Protected Material
14 in the public record pursuant to Civil Local Rule 79-5(e)(2) unless otherwise
15 instructed by the court.

16 15. **FINAL DISPOSITION**

17 Within 60 days after the final disposition of this action, as defined in
18 paragraph 4, each Receiving Party must return all Protected Material to the
19 Producing Party or destroy such material. As used in this subdivision, "all Protected
20 Material" includes all copies, abstracts, compilations, summaries, and any other
21 format reproducing or capturing any of the Protected Material. Whether the
22 Protected Material is returned or destroyed, the Receiving Party must submit a
23 written certification to the Producing Party (and, if not the same person or entity, to
24 the Designating Party) by the 60-day deadline that (1) identifies (by category, where
25 appropriate) all the Protected Material that was returned or destroyed and (2) affirms
26 that the Receiving Party has not retained any copies, abstracts, compilations,
27 summaries or any other format reproducing or capturing any of the Protected
28 Material. Notwithstanding this provision, Counsel are entitled to retain an archival

1 copy of all pleadings, motion papers, trial, deposition, and hearing transcripts, legal
2 memoranda, correspondence, deposition and trial exhibits, expert reports, attorney
3 work product, and consultant and expert work product, even if such materials
4 contain Protected Material. Any such archival copies that contain or constitute
5 Protected Material remain subject to this Protective Order as set forth in Section 4
6 (DURATION).

7 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

8 DATED: October 12, 2017

9 /s/
10 Holly C. Blackwell
11 Attorneys for Plaintiffs

12 DATED: October 12, 2017

13 /s/
14 Angela Powell
15 Attorneys for Defendants

16 For good cause shown, IT IS SO ORDERED.

17 Dated: October 18, 2017


18 STEVE KIM
19 United States Magistrate Judge

20 Local Rule 5-4.3.4 Certification

21 I hereby attest that all other signatories listed, on whose behalf this filing is
22 submitted, concur in the filing's content and have authorized this filing.

23 DATED: October 12, 2017

24 /s/
25 Holly C. Blackwell
26 Attorneys for Plaintiffs

27
28

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of
_____ [print or type full address], declare under penalty of perjury
that I have read in its entirety and understand the Stipulated Protective Order that
was issued by the United States District Court for the Northern District of California
on [date] in the case of *David Anduri, Sr., et al., v. City of Santa Barbara, et al.*;
Case No. 2:16-cv-05461-MWF-SK. I agree to comply with and to be bound by all
the terms of this Stipulated Protective Order and I understand and acknowledge that
failure to so comply could expose me to sanctions and punishment in the nature of
contempt. I solemnly promise that I will not disclose in any manner any information
or item that is subject to this Stipulated Protective Order to any person or entity
except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the
Northern District of California for the purpose of enforcing the terms of this
Stipulated Protective Order, even if such enforcement proceedings occur after
termination of this action.

I hereby appoint _____ [print or type full name] of
_____ [print or type full address and
telephone number] as my California agent for service of process in connection with
this action or any proceedings related to enforcement of this Stipulated Protective
Order.

Date: _____
City and State where sworn and signed: _____
Printed name: _____
[printed name]
Signature: _____
[signature]