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 2 Environment and Natural Resources Division
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14 Attorneys for the United States of America

16 IN THE UNITED STATES DISTRICT COURT
 FOR THE EASTERN DISTRICT OF CALIFORNIA
 17 FRESNO DIVISION

18 UNITED STATES OF AMERICA,)
 19)
 Plaintiff,)
 20)
 v.)
 21)
 STEVEN C. LYON, et al.)
 22)
 Defendants.)
 23)
 _____)
 24)
 AND RELATED CROSS-ACTIONS)
 25)
 AND THIRD PARTY ACTIONS)
 26)
 _____)

Case No. 1:07-CV-00491-LJO-GSA

STIPULATION AND
 ORDER PROTECTING CONFIDENTIAL
 INFORMATION

27
 28

1 Plaintiff United States of America, on behalf of the United States Environmental
2 Protection Agency (“EPA”), Defendants Stephen C. Lyon, Suzanne S. Lyon, Russell R. Tonda,
3 Diane M. Tonda, Rajendra Jamnadas (personal representative of the Estate of Shantalil
4 Jamnadas) (“Defendants”), and Third-Party Defendants Legacy Vulcan Corp., Occidental
5 Chemical Corporation, R.R. Street & Co., Inc., PPG Industries, Inc., Echco Sales Co., Inc.,
6 Cooper Industries, Inc., The Dow Chemical Company, MBL, Inc., Goss-Jewett, City of Modesto,
7 Univar USA, Inc., and Technichem, Inc. ("Third Party Defendants") hereby stipulate to this
8 agreement and proposed protective order (“Stipulation and Protective Order”). This Stipulation
9 and Protective Order is designed to maintain the confidentiality of certain information during
10 discovery that may contain trade secrets or commercial or financial information that is entitled to
11 confidential treatment under 5 U.S.C. § 552(b)(4), 18 U.S.C. § 1905, and 40 C.F.R. § 2.200
12 (“Confidential Material”). The United States, Defendants, and Third Party Defendants stipulate
13 that discovery in this case will involve the production of documents, including those which have
14 been submitted to EPA by various contractors (listed in Attachment A), containing information
15 which may be entitled to confidential treatment. The Court finds that good cause exists for the
16 issuance of an order requiring limited disclosure of such information and that entry of this
17 Protective Order is appropriate pursuant to Federal Rule of Civil Procedure 26(c). Consequently
18 it is hereby ORDERED:

19 1. The term “Confidential Material” as used in this Stipulation and Protective Order
20 means trade secrets and commercial and financial information that is entitled to confidential
21 treatment under 5 U.S.C. § 552(b)(4), 18 U.S.C. § 1905, and 40 C.F.R. § 2.200.

22 2. The producing party may designate Confidential Material as follows:

23 a. The producing party may designate as “confidential” documents the party
24 reasonably and in good faith believes to be Confidential Material by placing or
25 affixing on documents produced the word “Confidential.” The information may
26 be stamped "confidential" on one or more pages of the document and may pertain
27 to the entire document if so noted, even if each page of the document is not
28 stamped. The information in a series of documents also may be identified as

1 confidential by a warning attached to the folder in the compact disk that contains
2 the documents. If a readily identifiable set of documents contains Confidential
3 Material in its entirety, that set may be designated as “Confidential” by a written
4 statement provided at the time such documents are produced. All such documents
5 shall be referred to in this Stipulation and Protective Order as “unredacted
6 Confidential Material” and shall be treated in their entirety, without specific
7 designation of the particular confidential information therein, as confidential in
8 accordance with the provisions of this Stipulation and Protective Order.

9 b. The responding party may designate information set forth in an answer to an
10 interrogatory as Confidential Material by clearly indicating that portion of the
11 response which the party is designating as confidential. Information contained in
12 an answer to any question asked during a deposition taken pursuant to Fed. R.
13 Civ. P. 30 or 31 may be so designated by a statement indicated on the record
14 during the course of the deposition and on the same day that the answer is given,
15 or within thirty (30) days after a party receives a copy of the deposition transcript.
16 Any answers given, or exhibits introduced, during the course of a deposition that
17 contain Confidential Material shall be treated as confidential under this
18 Stipulation and Protective Order. The deposition cover page shall be stamped as
19 follows:

20 This deposition contains confidential information subject to
21 a Stipulation and Protective Order Governing Confidential
22 Information entered in United States of America v. Stephen
C. Lyon, et al., No. 1:07-CV-00491-LJO-GSA

23 3. In addition to producing to the Defendants and Third Party Defendants documents
24 containing unredacted Confidential Material pursuant to the provisions of this Stipulation and
25 Protective Order, the United States may make available to the Defendants and Third Party
26 Defendants copies of such documents from which Confidential Material has been redacted. The
27 United States shall cooperate reasonably with Defendants and Third Party Defendants in
28 redacting Confidential Material from documents for the purposes of preparing exhibits or papers

1 in this Action, to the extent such redaction is necessary. Such redacted documents may be
2 disclosed to any person or party without restriction by any provision of this Stipulation and
3 Protective Order.

4 4. Documents produced by the United States, the Defendants, or Third Party Defendants
5 prior to the entry of this Stipulation and Protective Order may be designated as Confidential
6 Material by the producing party by letter to the requesting party mailed within thirty (30) days of
7 the date of entry of this Stipulation and Protective Order indicating the Bates number, microfilm
8 number, or other information identifying the documents to be so designated, and the documents
9 so designated shall be subject to the terms of this Stipulation and Protective Order except as
10 otherwise required by law, court order or other lawful process. Nothing in this agreement shall
11 be construed to prejudice or limit the right of the United States to take any action to implement or
12 enforce the law or protect public health, safety, welfare or the environment.

13 5. All persons receiving copies of documents, deposition transcripts, responses to written
14 discovery, or other matter designated as unredacted Confidential Material shall maintain such
15 Confidential Material in their possession in a manner sufficient to protect such material against
16 unauthorized disclosure. Any person who is permitted access to unredacted Confidential
17 Material in accordance with this Stipulation and Protective Order may make copies, duplicates,
18 extracts, summaries, or descriptions of such documents or any portion thereof only for the
19 purposes stated in Paragraph 4, below. All copies or duplicates shall be subject to the terms of
20 this Stipulation and Protective Order just as if they were originals and shall be dealt with under
21 the terms of this Stipulation and Protective Order to protect against unauthorized disclosure.

22 6. Unredacted Confidential Material shall be used solely for the purpose of prosecuting,
23 defending, settling, or otherwise conducting the above-captioned litigation (the "Action") and
24 any appeals thereof, and not for any other purpose whatsoever. Except as the Court in this
25 Action may otherwise provide, or as otherwise required by law, court order or other lawful
26 process, unredacted Confidential Materials and any copies thereof, and notes made thereof, shall
27 be disclosed only to counsel for a party to this Action or any appeals thereof, and the following
28 Authorized Persons:

- a. the paralegal, clerical, and secretarial staff employed by counsel for a party;
- b. a party, or an officer, director, or employee of a party deemed necessary by counsel to aid in the prosecution, defense, or settlement of this Action or any appeals thereof;
- c. persons, including partnerships and corporations, retained by the parties or their counsel for the prosecution, defense, or settlement of this Action or any appeals thereof;
- d. court reporter(s) employed in this Action or any appeals thereof;
- e. a witness at any deposition or other proceeding in this Action or any appeals thereof; and
- f. any other person as to whom the parties in writing agree

7. Prior to receiving any unredacted Confidential Material, each Authorized Person shall be provided with a copy of this Stipulation and Protective Order and shall execute a Nondisclosure Certification in the form of Attachment B. Counsel for the party to this Action disclosing the unredacted Confidential Material to an Authorized Person shall retain a copy of each executed Nondisclosure Certification. In the event that an Authorized Person intends to disclose the unredacted Confidential Material to another Authorized Person, consistent with the terms and conditions of this Stipulation and Protective Order, the Authorized Person disclosing the information shall require that the Authorized Person receiving the information execute a Nondisclosure Certification, and shall forward that Certification to counsel for the party that originally disclosed the information to the Authorized Person. The provisions of this Stipulation and Protective Order shall be binding upon each person to whom disclosure is made. Counsel for a party to this Action shall be deemed bound by the provisions of this Stipulation and Protective Order by virtue of his or her execution of this Stipulation and Protective Order on behalf of the party or parties he or she represents. Execution of this Stipulation and Protective Order by any counsel for any party in this action shall be sufficient to bind any member or associate of that counsel's law firm or any individual employed as an attorney by the United States Department of Justice or United States Environmental Protection Agency. For the

1 purposes of the preceding sentence, nonattorney employees of a law firm are not deemed
2 “members or associates” of that firm.

3 8. Counsel to any party to the Action or any appeals thereof, who has not executed this
4 Stipulation and Protective Order prior to its approval and entry by the Court shall execute a
5 counterpart signature page prior to disclosure of Confidential Material to such counsel or any
6 other Authorized Person acting on behalf of such counsel or the party he or she represents. All
7 such counterpart signature pages shall be filed with the Court.

8 9. All depositions in this Action of persons who have specific knowledge of Confidential
9 Material shall be held in the presence only of the deponent, Defendants, Third Party Defendants,
10 their counsel, officers of the Court involved in this Action (including the court reporter), the
11 United States, any federal government employees or representatives authorized by the United
12 States, and any other persons described in Paragraph 4 who have executed the Nondisclosure
13 Certification attached as Attachment B hereto. If, during the course of a deposition of a witness
14 other than one who has specific knowledge of Confidential Material, it becomes necessary to
15 reveal any Confidential Material, all persons other than those described in this Paragraph may be
16 asked to leave the deposition room and, if asked, shall comply. It shall be the duty of counsel to
17 ensure compliance with this Paragraph. The deposition transcript and any exhibits thereto shall
18 be treated in accordance with Paragraph 2, above.

19 10. Any portion of any pleading, motion, deposition transcript or other document
20 submitted or presented to or filed with the Court containing unredacted Confidential Material
21 shall be filed in sealed envelopes or other appropriate sealed containers, on which shall be
22 endorsed the caption of this litigation, an indication of the nature of the contents of such sealed
23 envelope or other container, the word “CONFIDENTIAL,” and a statement substantially in the
24 following form:

25 This envelope, containing documents which are filed in this case
26 by _____ [name of party], is not to be opened and
27 its contents are not to be displayed or revealed except by Order of
28 the Court.

Documents so filed shall not be available to persons other than the Court, the parties’ counsel,

1 and Authorized Persons. Nothing in the foregoing provisions of this Stipulation and Protective
2 Order shall be deemed to preclude any party from seeking and obtaining, on an appropriate
3 showing, additional protection with respect to unredacted Confidential Material.

4 11. Nothing in the foregoing provisions of this Stipulation and Protective Order shall be
5 deemed to preclude the United States, Defendants, or Third Party Defendants from objecting to
6 the designation of documents or other discovery material as Confidential Material. In such event,
7 the party objecting to any such designation shall have the burden of filing a motion with the
8 Court challenging such designation; the party designating such material as confidential shall have
9 the burden of demonstrating that there is good cause to designate the documents or materials as
10 such and that they properly are subject to treatment under this Stipulation and Protective Order.
11 During the pendency of any motion under this Paragraph, the documents that are the subject of
12 such motion shall continue to be treated as confidential under this Stipulation and Protective
13 Order.

14 12. The provisions of this Stipulation and Protective Order shall not be construed as
15 preventing: (a) the disclosure of Confidential Material by the party which designated the
16 information as such, and (b) the disclosure of Confidential Material to any judge, special master,
17 magistrate or employee of a court for purposes of this Action or any appeals thereof.

18 13. In the event that any unredacted Confidential Material is used in any proceeding in
19 this Action or any appeals thereof, it shall not thereby lose its confidential status and, to the
20 greatest extent possible, the party using such unredacted Confidential Material shall preserve its
21 confidentiality during such use, as required by and consistent with the terms of this Stipulation
22 and Protective Order.

23 14. In the event of inadvertent disclosure of unredacted Confidential Material by any
24 person bound by the terms of this Stipulation and Protective Order, the party making such
25 disclosure shall take steps to remedy any breach of confidentiality resulting from the disclosure.
26 Steps to be taken shall include, as appropriate, limiting further dissemination of the information
27 disclosed, retrieving copies of documents inadvertently circulated, withdrawing and refiling
28 papers under seal, and similar actions. In the event of a dispute between the parties concerning

1 the scope or application of this Paragraph, any person who is bound by the terms of this
2 Stipulation and Protective Order or who has submitted unredacted Confidential Material pursuant
3 to this Stipulation and Protective Order may petition the Court for appropriate relief.

4 15. The Plaintiff may seek to supplement or modify the List of Contractors (Attachment
5 A). If it seeks to supplement or modify the List of Contractors, Plaintiff shall notify Defendants
6 and Third Party Defendants in writing of the proposed changes. If no Defendant or Third Party
7 Defendant objects to the proposed changes within five (5) days of receiving Plaintiff's
8 notification, Plaintiff shall file written notice with the Court that sets forth the modified List of
9 Contractors.

10 16. Within sixty (60) days after the termination of this Action or any appeal thereof, or
11 within such other time as counsel for the parties may agree, counsel for the parties shall assemble
12 and return to the producing party all unredacted Confidential Material and copies of same or
13 certify the destruction thereof.

14 17. This Stipulation and Protective Order shall survive the termination of this Action,
15 and the Court shall retain jurisdiction to enforce and resolve disputes under this Stipulation and
16 Protective Order. All unredacted Confidential Material shall continue to be treated as
17 confidential in accordance with this Stipulation and Protective Order. The Clerk of the Court
18 shall maintain under seal all papers filed under seal until the Court orders otherwise.

19 18. Pending Court approval of this Stipulation and Protective Order, counsel for any
20 party who has signed this Stipulation and Protective Order and any person who has executed the
21 Nondisclosure Certification attached hereto as Attachment B shall be bound by the terms of this
22 Stipulation and Protective Order and shall treat all Confidential Material received in accordance
23 with the terms thereof. In the event that this Stipulation and Protective Order or a modification
24 hereof agreed to by the parties is not approved by the Court, all Confidential Material shall be
25 treated in accordance with Paragraph 16, above.

1 19. This agreement may be signed by counsel in counterparts.

2
3 Attachments:
4 Attachment A - List of Contractors
5 Attachment B - Nondisclosure Certification

6 The parties are advised that any party intending to utilize any confidential third party
7 information designated as confidential in a law and motion matter or at trial should lodge the
8 document under seal pursuant to Local Rules 39-140 and 39-141 pending the Court's
9 determination regarding whether a privilege exists that precludes the use of the document or
10 other information as evidence or determining what safeguards, if any, should be utilized if the
11 confidential information is to be considered as evidence.

1 SO STIPULATED:

2 For Plaintiff United States of America

3

RONALD J. TENPAS
Assistant Attorney General

4

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By:

6 _____
DATED

/s/ Elise Feldman (as authorized on 12/18/08)
ELISE FELDMAN
ANN C. HURLEY
Environmental Enforcement Section
Environment and Natural Resources Division
United States Department of Justice
301 Howard Street, Suite 1050
San Francisco, California 94105
Telephone: (415) 744-6470
Facsimile: (415) 744-6476

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1 For Defendants Stephen C. Lyon, Suzanne S. Lyon, Russell R. Tonda, and Diane M. Tonda

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DATED _____

/s/ Aaron P. Silberman (as authorized on 11/25/08)
ROBERT GOODMAN.
AARON P. SILBERMAN
Rogers Joseph O'Donnell
311 California Street
San Francisco, CA 94104

1 For Defendant Rajendra Jamnadas (personal representative of the Estate of Shantalil Jamnadas)

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DATED _____

/s/ Aimee L. Lu for Keith Chidlaw (as authorized
on 12/2/08)
KEITH CHIDLAW
400 University Avenue
Sacramento, CA 95825

1 For Third-Party Defendant Legacy Vulcan Corp.

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DATED _____

/s/ Ruth Ann E. Castro (as authorized on 11/25/08)
JAMES H. COLOPY
RUTH ANN E. CASTRO
Farella Braun & Martel, LLP
Russ Building
235 Montgomery Street
San Francisco, CA 94104

1 For Third-Party Defendant Occidental Chemical Corporation

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DATED _____

/s/ Morgan Gilhuly (as authorized on 11/25/08)
STEPHEN C. LEWIS
R. MORGAN GILHULY
Barg, Coffin, Lewis & Trapp, LLP
350 California Street, 22nd Floor
San Francisco, CA 94104-1435

1 For Third-Party Defendant R.R. Street & Co., Inc.

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DATED

ERIC GRANT
8001 Folsom Blvd., Suite 100
Sacramento, CA 95826

DATED

/s/ Brian Keller (as authorized on 11/25/08)
JOHN B. THOMAS
Hicks Thomas & Lilienstern, LLP
700 Louisiana Street, Suite 2000
Houston, TX 77002

1 For Third-Party Defendant PPG Industries, Inc.

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DATED _____

/s/ Gary J. Smith (as authorized on 11/25/08)
GARY J. SMITH
JIA YN CHEN
Beveridge & Diamond, P.C.
456 Montgomery Street , Suite 1800
San Francisco, CA 94104

1 For Third-Party Defendant Echco Sales Co., Inc.

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DATED _____

/s/ Probal G. Young (as authorized on 12/12/08)
EUGENE C. BLACKARD, JR.
PROBAL G. YOUNG
Archer Norris
2033 North Main St., Suite 800
Post Office Box 8035
Walnut Creek, CA 94596-3728

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1 For Third-Party Defendant Cooper Industries, Inc.

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DATED _____

/s/ Matthew P. Nugent (as authorized on 12/4/08)
P. GERHARDT ZACHER
MORDECAI BOONE
KRISTIN N. REYNA
MATTHEW P. NUGENT
Gordon & Rees LLP
101 W. Broadway, Suite 2000
San Diego, CA 92101

1 For Third-Party Defendant The Dow Chemical Company

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DATED _____

/s/ Stephen J. Valen (as authorized on 12/1/08)
GENNARO A. FILICE, III
STEPHEN J. VALEN
DANIEL J. NICHOLS
Filice Brown Eassa
& McLeod, LLP
1999 Harrison Street, 18th Floor
Oakland, CA 94612

1 For Third-Party Defendant MBL, Inc.

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DATED _____

/s/ Raymond Hamrick (as authorized on 12/10/08)
A. RAYMOND HAMRICK
ELLIE WIEDER
DOUGLAS K. LACKEY
Hamrick & Evans, LLP
10 Universal City Plaza, Suite 2200
Universal City, CA 91608

1 For Third-Party Defendant Goss-Jewett

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DATED _____

/s/ Josette D. Johnson (as authorized on 12/4/08)
EDWARD R. HUGO
ROLAND E. THE
JOSETTE D. JOHNSON
Brydon Hugo & Parker
135 Main Street, 20th Floor
San Francisco, CA 94105

1 For Third-Party Defendant City of Modesto

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DATED _____

/s/ Charles Bolcom (as authorized on 12/11/08)
CHARLES BOLCOM
Davidovitz & Bennett LLP
One Embarcadero Center, Suite 750
San Francisco, CA 94111

1 For Third-Party Defendant Univar USA, Inc.

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DATED _____

/s/ Juliet Markowitz (as authorized on 12/3/08)
JULIET MARKOWITZ
STEVE TEKOSKY
Tatro Tekosky Sadwick, LLP
333 S. Grand Avenue, Suite 4270
Los Angeles, CA 90071

1 For Third-Party Defendant Technichem, Inc., In Pro Per

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DATED _____

/s/ Mark J. Ng (original signature retained by
attorney Elise Feldman)
MARK J. NG
Chairman
Technichem, Inc.
2349 Lincoln Avenue
Hayward, CA 94545

Attachment A
List of Contractors

- 1
- 2
- 3 ACC Environmental Consultants, Inc.
- 4 Agriculture & Priority Pollutants Laboratories, Inc.
- 5 Air Toxics Ltd.
- 6 APPL, Inc.
- 7 Armstrong Data Services, Inc.
- 8 ASRC Aerospace Corp.
- 9 Beylik Drilling, Inc.
- 10 Block Environmental Services, Inc.
- 11 Calgon Carbon Corp.
- 12 California Water Laboratories, Inc.
- 13 CH2M Hill, Inc.
- 14 Condor Earth Technologies, Inc.
- 15 Curtis & Tompkins Analytical Laboratories
- 16 Ecology and Environment, Inc.
- 17 Energy Laboratories, Inc.
- 18 FGL Environmental
- 19 Forward, Inc.
- 20 GeoAnalytical Laboratories, Inc.
- 21 Geological Technics, Inc.
- 22 GRB Environmental Services, Inc.
- 23 ICF Kaiser Engineers, Inc.
- 24 ICF Technology, Inc.
- 25 JL Analytical, Inc.
- 26 Labat-Anderson, Inc.
- 27 Lockheed Idaho Technologies Co.
- 28 Lockheed Martin Environmental Services
- McCain Environmental Services
- Mid-Valley Engineering
- Montgomery Watson Americas, Inc.
- Montgomery Watson Harza
- Montgomery Watson, Inc.
- MPDS Services, Inc.
- Osterburg Brothers Drillers
- Pace Analytical Services, Inc.
- PC Exploration, Inc.
- Pratt-Navarro Architecture
- PRC Environmental Management, Inc.
- PRC Patterson Corp, Inc.
- Radian Corp
- R B Welty & Associates, Inc.
- Recra Environmental Inc.
- Southwest Laboratory of Oklahoma, Inc.
- Standard Management Company
- Thermo Nutech
- Thompson-Hysell Engineers, Inc.
- Trace Analysis Laboratory, Inc.
- Truesdail Laboratories, Inc.
- U.S. Ecology, Inc.

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1 **Attachment B**

2 NONDISCLOSURE CERTIFICATION

3 The undersigned is currently working at _____, which is located at
4 _____. *[During the past one (1) year period, the undersigned has been*
5 *employed or otherwise engaged as an attorney or employee of, or a consultant or contractor to,*
6 *the following entity, located at the following address:*

7 *Company Name:*

8 *Address:]*

9 The undersigned hereby states, under penalty of perjury, that he/she has read the Stipulation and
10 Protective Order Protecting Confidential Information entered by the Court in United States of
11 America v. Stephen C. Lyon, et al., No. 1:07-CV-00491-LJO-GSA, understands the terms
12 thereof, and agrees, upon threat of penalty of contempt of court, civil claims by the party whose
13 claim of confidentiality has been breached, and/or criminal penalties under 18 U.S.C. § 1905 or
14 42 U.S.C. § 9604(e)(7)(B), to be bound by such terms. The undersigned further agrees to submit
15 to the jurisdiction of the Court in connection with any claim that he/she failed to abide by the
16 terms of the Stipulation and Protective Order. The undersigned further agrees to keep any
17 Confidential Material obtained by him/her within his/her exclusive possession, place the material
18 in a secure and segregated location, and agrees not to disclose the material other than to those to
19 whom disclosure is specifically authorized by the Stipulation and Protective Order. He/she
20 further agrees not to use or disclose the material other than as authorized by the Stipulation and
21 Protective Order. The undersigned agrees that the pledge of secrecy under this agreement
22 continues in perpetuity after the above-captioned litigation is concluded.

23
24 Executed this ____ day of _____, in

25 _____.

26
27 _____
28 [SIGNED]

IT IS SO ORDERED.

Dated: January 22, 2009

/s/ Gary S. Austin

UNITED STATES MAGISTRATE JUDGE

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