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5 Attorneys for Defendants
CITY OF BENICIA, Police Chief
6 SANDRA SPAGNOLI, City Manager
JIM ERICKSON, Sergeant FRANK
7 HARTIG, Sergeant BOB OETTINGER,
Sergeant CHRIS BIDOU, Sergeant
8 SCOTT PRZEKURAT, Officer JOHN
McFADDEN, Officer MARK MENESINI,
9 Officer JAMES LAUGHTER, Officer
KEVIN ROSE, Officer JASON EAKIN,
10 Officer TED CRIADO and Officer
JAKE HEINEMEYER

11
12 UNITED STATES DISTRICT COURT
13 EASTERN DISTRICT OF CALIFORNIA

14 PETER KNOWLES,
15 Plaintiff,

CASE NO. 2:09-CV-03470-WBS-DAD

**SECOND AMENDED STIPULATION
REGARDING CONFIDENTIALITY AND FOR
PROTECTIVE ORDER**

17 CITY OF BENICIA, Police Chief
SANDRA SPAGNOLI, City Manager
18 JIM ERICKSON, Sergeant FRANK
HARTIG, Sergeant BOB OETTINGER,
19 Sergeant CHRIS BIDOU, Sergeant
SCOTT PRZEKURAT, Officer JOHN
20 McFADDEN, Officer MARK MENESINI,
Officer JAMES LAUGHTER, Officer
21 KEVIN ROSE, Officer JASON EAKIN,
Officer TED CRIADO, Officer JAKE
22 HEINEMEYER and DOES I through
XXX, inclusive,

23 Defendants.
24

25
26 **IT IS HEREBY STIPULATED** by and between plaintiff Peter
27 Knowles, through his counsel of record, and defendants City of
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1 Benicia, Police Chief Sandra Spagnoli, City Manager Jim Erickson,
2 Sergeant Frank Hartig, Sergeant Bob Oettinger, Sergeant Chris
3 Bidou, Sergeant Scott Przekurat, Officer John McFadden, Officer
4 Mark Menesini, Officer James Laughter, Officer Kevin Rose,
5 Officer Jason Eakin, Officer Ted Criado, and Officer Jake
6 Heinemeyer, through their counsel of record, as follows:

7 1. Information and Matters Subject to this ORDER. This
8 stipulation and order (hereafter "**ORDER**") shall govern all
9 "**CONFIDENTIAL INFORMATION**" (as defined hereafter) and all
10 information derived therefrom, including, but not limited to, all
11 copies, excerpts or summaries thereof. All references herein to
12 "**PARTIES**" shall include plaintiff Peter Knowles, and his counsel
13 of record, and defendants City of Benicia, Police Chief Sandra
14 Spagnoli, City Manager Jim Erickson, Sergeant Frank Hartig,
15 Sergeant Bob Oettinger, Sergeant Chris Bidou, Sergeant Scott
16 Przekurat, Officer John McFadden, Officer Mark Menesini, Officer
17 James Laughter, Officer Kevin Rose, Officer Jason Eakin, Officer
18 Ted Criado, and Officer Jake Heinemeyer, and their counsel of
19 record in the above-entitled action.

20 2. Definitions. The following definitions shall apply in
21 the construction and application of this **ORDER**.

22 a. The term "**INFORMATION**" means any materials, as defined
23 by Federal Rule of Evidence 1001, or materials produced by the
24 **PARTIES** or any person or entity subject to their employ or
25 control in conjunction with this proceeding, including, but not
26 limited to, (1) documents produced pursuant to requests under
27 Federal Rule of Civil Procedure 34, (2) documents produced
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1 pursuant to subpoena, (3) documents produced voluntarily or in
2 response to informal request, and (4) answers to deposition
3 questions set forth in deposition transcripts.

4 b. The term "**CONFIDENTIAL**" means any **INFORMATION** designated
5 as **CONFIDENTIAL** by the **PARTIES**. Only the following **INFORMATION**
6 may be so designated:

7 (1) All **INFORMATION** regarding medical records, personnel
8 records, employment files, performance evaluations,
9 physical/mental evaluations, disciplinary action, citizen
10 complaints, internal affairs investigations, and all other
11 employment-related writings regarding any employee of the City of
12 Benicia produced in this action;

13 (2) All **INFORMATION** regarding policies, procedures,
14 manuals, training manuals or curriculum and other documents
15 regarding personnel practices and training practices of the City
16 of Benicia produced in this action that are otherwise exempted
17 from public disclosure under California Government Code Section
18 6254(f); and

19 (3) All **INFORMATION** regarding psychological and/or
20 psychiatric records of PETER KNOWLES, including treatment notes
21 and records, consultation notes and records, psychological
22 histories, examinations, findings, diagnosis, prognosis,
23 observations, impressions, conclusions, recommendations, sign-in
24 sheets, admission records, doctor's notes/instructions, nurses
25 notes, examinations/consultation notes, in-patient and out-
26 patient treatment records and discharge records.

27 c. The term "**QUALIFIED PERSONS**" means (1) the Presiding
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1 Judge and any of his or her staff, (2) any referee appointed by a
2 judge in this matter to preside over any hearings in this matter
3 and any of his or her staff, (3) a jury empanelled for trial, (4)
4 stenographic reporters engaged in these proceedings as are
5 necessarily incident to the preparation for trial and/or trial of
6 this action, (5) counsel for the **PARTIES** in this litigation, (6)
7 paralegal, stenographic, clerical, and secretarial personnel
8 employed by counsel for the **PARTIES**, (7) the **PARTIES** to these
9 proceedings, including their officers, directors, agents, and
10 employees, and (8) any person employed by counsel for the **PARTIES**
11 in this proceeding to assist such counsel in this proceeding,
12 such as experts or other consultants.

13 d. The term "DISCLOSE" or any version thereof means to
14 show, give, make available, or communicate in any fashion to any
15 person any **CONFIDENTIAL INFORMATION**, information concerning the
16 existence or content of any **CONFIDENTIAL INFORMATION**, or any
17 copy, portion, version, or summary of any **CONFIDENTIAL**
18 **INFORMATION**.

19 3. Grounds for Protection of **CONFIDENTIAL INFORMATION**. The
20 **PARTIES** acknowledge and recognize the **INFORMATION** identified as
21 **CONFIDENTIAL INFORMATION** herein in paragraph 2.b.(1)-(3) is
22 protected by a right of privacy under both state and federal
23 laws. This **ORDER** is necessary in order to protect the important
24 privacy interests of the **PARTIES** with regard to the **CONFIDENTIAL**
25 **INFORMATION** by protecting such **CONFIDENTIAL INFORMATION** from
26 public disclosure and meet the respective concerns of the **PARTIES**
27 while permitting the **PARTIES** to expedite discovery.

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1 4. Use of CONFIDENTIAL INFORMATION. **CONFIDENTIAL**
2 **INFORMATION** shall be used solely in connection with, and only as
3 necessary to, this action and the preparation and trial of this
4 action, or any related proceeding, including, but not limited to,
5 appeal or writ, and not for any other purpose, including, without
6 limitation, any civil, criminal, administrative, or personal
7 purpose or function. **CONFIDENTIAL INFORMATION** shall not be
8 **DISCLOSED** to anyone other than **QUALIFIED PERSONS** and shall not be
9 **DISCLOSED** except in accordance with this **ORDER**. Control and
10 distribution of all **CONFIDENTIAL INFORMATION** shall be the
11 responsibility of the attorneys of record and the **PARTIES**. The
12 provisions of this **ORDER**, insofar as they restrict the
13 communication and use of **CONFIDENTIAL INFORMATION** produced
14 hereunder, copies of summaries thereof, or information obtained
15 therefrom, shall continue to be binding after the conclusion of
16 this action.

17 5. Designation of INFORMATION as CONFIDENTIAL. In the
18 preparation for any trial of this proceeding, and any appeal or
19 writ taken herein, **CONFIDENTIAL INFORMATION** shall be designated
20 in the following manner:

21 a. **INFORMATION** shall be designated as **CONFIDENTIAL** only
22 after a bona fide and good faith determination by the producing
23 party that the material contains **CONFIDENTIAL INFORMATION** as
24 defined herein, the **DISCLOSURE** and use of which would be
25 detrimental to or invade the privacy of the producing party.

26 b. Any information sought to be protected is properly
27 subject to protection under FRCP Rule 26(c), and **PARTIES** and
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1 counsel shall not designate any discovery material **CONFIDENTIAL**
2 without first making a good faith determination that protection
3 is warranted.

4 c. Any party seeking protection under FRCP Rule 26(c) has
5 the burden of proof to show that such protection is warranted.

6 d. The designation of **INFORMATION** as **CONFIDENTIAL** shall be
7 made, whenever possible prior to production, by placing or
8 affixing on each page of such material in a manner that will not
9 interfere with its legibility the words "**CONFIDENTIAL**," or by the
10 designation of categories of documents as "**CONFIDENTIAL**." If
11 such designation is not possible prior to production, the
12 designation must be made by the producing party within twenty
13 (20) days after disclosure. The **INFORMATION** shall be treated as
14 **CONFIDENTIAL** until the twenty (20) days has elapsed. Within such
15 twenty (20)-day period, the disclosing party must notify all
16 **PARTIES** in writing of the precise **INFORMATION** sought to be
17 designated as **CONFIDENTIAL**. Absent such notice, the **INFORMATION**
18 cannot be treated as **CONFIDENTIAL**.

19 6. **DISCLOSURE of CONFIDENTIAL INFORMATION.** Each
20 individual, other than counsel whose law firms are actual
21 signatories to this **ORDER**, to whom **CONFIDENTIAL INFORMATION** is
22 furnished, shown, or **DISCLOSED**, shall, prior to the time s/he
23 receives access to such materials, be provided by counsel
24 furnishing her/him such material a copy of this **ORDER** and agree
25 to be bound by its terms, and shall certify that s/he has
26 carefully read the **ORDER** and fully understands its terms. Such
27 person must also consent to be subject to the personal
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1 jurisdiction of the United States District Court, Eastern
2 District of California, with respect to any proceeding relating
3 to enforcement of this **ORDER**, including any proceeding relating
4 to contempt of court. The certificate shall be in the form
5 attached hereto. Counsel making **DISCLOSURE** to any person as
6 described herein shall retain the original executed copy of such
7 certificate until final termination of this case.

8 a. **DISCLOSURE During Depositions.** In the event that
9 **CONFIDENTIAL INFORMATION** is **DISCLOSED**, revealed, utilized,
10 examined or referred to during depositions, then only **QUALIFIED**
11 **PERSONS**, the deponent, and the court reporter shall be present.
12 If **CONFIDENTIAL INFORMATION** is made exhibits to, or if
13 **CONFIDENTIAL INFORMATION** is the subject of examination during, a
14 deposition, then arrangements will be made with the court
15 reporter to separately bind those exhibits and those portions of
16 the transcript containing **CONFIDENTIAL INFORMATION**, and each page
17 on which such **CONFIDENTIAL INFORMATION** appears shall be stamped
18 with the word "**CONFIDENTIAL.**" Those exhibits and transcript
19 portions shall be placed in a sealed envelope or other
20 appropriate sealed container on which shall be endorsed "Knowles
21 v. City of Benicia, et al.," Confidential Pursuant to Order in
22 Case No. 2:09-CV-03470-WBS-DAD," and a statement substantially in
23 the following form:

24 "THIS ENVELOPE IS SEALED PURSUANT TO STIPULATED PROTECTIVE
25 ORDER OF COURT, IN "Knowles v. City of Benicia, et al.," UNITED
26 STATES DISTRICT COURT, EASTERN DISTRICT OF CALIFORNIA, CASE NO.
27 2:09-CV-03470-WBS-DAD, AND CONTAINS CONFIDENTIAL DOCUMENTS
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1 PRODUCED OR GENERATED BY PARTIES TO THE PROCEEDING. IT IS NOT TO
2 BE OPENED, OR THE CONTENTS THEREOF TO BE DISCLOSED, EXCEPT TO
3 QUALIFIED PERSONS AS DEFINED BY SAID ORDER."

4 Each court reporter participating in any deposition
5 involving **CONFIDENTIAL INFORMATION** shall be informed of and
6 provided with a copy of this **ORDER** and exhibit hereto and shall
7 be requested to sign a copy of said exhibit. Furthermore, each
8 court reporter participating in any deposition involving
9 **CONFIDENTIAL INFORMATION** shall show a copy of this **ORDER** to any
10 other person participating in the preparation of any deposition
11 transcript and shall have such person sign a copy of said
12 exhibit.

13 b. Papers Filed in Court. If any **PARTY** wishes to file any
14 document containing **CONFIDENTIAL INFORMATION** with the court, that
15 **PARTY** shall file and serve a motion requesting an order
16 authorizing the filing of such documents under seal, or an order
17 authorizing the redaction of **CONFIDENTIAL INFORMATION** from the
18 documents. The motion shall be filed and served in accordance
19 with Local Rules 140 and 141 and all documents requested to be
20 filed under seal shall be submitted to the Court in accordance
21 with Local Rule 141(b). Upon the Court's Order granting a motion
22 to file **CONFIDENTIAL INFORMATION** under seal, all documents that
23 the Court Orders to be filed under seal shall be submitted to the
24 Court in accordance with Local Rule 141(e)(2).

25 In the event that the Court denies any **PARTY's** motion
26 requesting an order authorizing the filing of documents
27 containing **CONFIDENTIAL INFORMATION** under seal or in redacted
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1 form, such **CONFIDENTIAL INFORMATION** shall not be filed with the
2 Court, but shall instead be returned to the moving party.

3 c. **DISCLOSURE to Experts.** In case of any **DISCLOSURE** to an
4 expert, consultant, or other **QUALIFIED PERSON** under paragraph
5 2(c) above, plaintiffs, *pro se*, or counsel for the disclosing
6 party shall make reasonable efforts to ensure that the
7 **CONFIDENTIAL INFORMATION DISCLOSED** is not disseminated in any
8 form to anyone by such expert, consultant, or other **QUALIFIED**
9 **PERSON** and that said **CONFIDENTIAL INFORMATION** and any copies or
10 summaries thereof are returned in their entirety to the
11 disclosing party after they are no longer needed in this action.

12 7. **DISCLOSURE of CONFIDENTIAL INFORMATION to Other Than**
13 **QUALIFIED PERSONS.** In the event that any party desires
14 **CONFIDENTIAL INFORMATION** to be **DISCLOSED**, discussed, or made
15 available to any person other than a **QUALIFIED PERSON**, such party
16 shall submit to opposing counsel a written statement specifically
17 identifying the **CONFIDENTIAL INFORMATION** to be **DISCLOSED** and the
18 name, title, and business relationship of the persons with whom
19 they wish to communicate. Counsel for the opposing party shall
20 have fifteen (15) calendar days from the date notice was served
21 to object to the **DISCLOSURE** to any person identified in the
22 notice. If the **PARTIES** are unable to agree on the terms and
23 conditions of the requested **DISCLOSURE**, the **PARTY** seeking
24 disclosure may file and serve on opposing counsel a notice of
25 motion and motion for authority to make such **DISCLOSURE**. Such
26 motion shall be filed and served pursuant to Local Rule 251.

27 a. Unless opposing counsel responds timely in writing to
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1 the fifteen (15)-day notification provided for above, the persons
2 named in the notice shall, subject to the terms and conditions of
3 this **ORDER**, be entitled to receive only that **CONFIDENTIAL**
4 **INFORMATION** specified in this notice.

5 8. DISCLOSURE to Author or Addressee. Nothing in this
6 **ORDER** shall preclude the **DISCLOSURE** of **CONFIDENTIAL INFORMATION**
7 to any person who authored, prepared, was an addressee of,
8 received a copy of, or participated in the preparation of such
9 **CONFIDENTIAL INFORMATION**.

10 9. Objections To Designation. Should any party to whom
11 **CONFIDENTIAL INFORMATION** is disclosed object to classification of
12 such materials, and should the **PARTIES** be unable to resolve the
13 objection informally, then the objecting party ("the moving
14 party") shall have the burden of moving forward and may move, at
15 any time upon proper notice, for an order determining whether or
16 not the materials are properly designated. Until a motion is
17 filed and resolved by the Court, all materials designated
18 **CONFIDENTIAL INFORMATION** shall be treated as **CONFIDENTIAL**. In
19 the event such a motion is made, the party opposing the motion
20 (the "opposing party") shall have the burden of providing and
21 establishing that the **INFORMATION** is protected as privileged
22 within the meaning of and under applicable federal laws and the
23 laws of the State of California. This burden, imposed on the
24 opposing party, shall include, but shall not be limited to, the
25 burden imposed on any party seeking a protective **ORDER**.

26 10. Objections To Production. Nothing in this **ORDER** shall
27 be deemed to limit or waive any right of any party to object to
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1 discovery with respect to any **INFORMATION** which may be claimed to
2 be outside the scope of discovery for any reason, privileged, or
3 otherwise protected or protectable under applicable federal laws
4 and the laws of the State of California

5 11. Further Protection. Nothing contained in this **ORDER**
6 shall be deemed to preclude any party at any time (a) from
7 seeking and obtaining from the opposing party or the Court, on
8 appropriate showing, a further protective **ORDER** relating to
9 **CONFIDENTIAL INFORMATION** or relating to any discovery in this
10 case, (b) to apply to the Court for an **ORDER** requiring the
11 removal of the **CONFIDENTIAL** designation from any document
12 pursuant to Paragraph 4 above; and (c) to apply to the Court for
13 any relief from a provision of this Stipulation and **ORDER**, upon
14 good cause shown. Nothing in this **ORDER** shall be construed as
15 preventing any party from making application to the Court for
16 revision of the terms of this **ORDER**.

17 12. Contempt. Upon any violation of the provisions set
18 forth in this **ORDER**, the **PARTY** asserting the violation may file
19 and serve an appropriate motion seeking an order holding the
20 violating **PARTY** either in contempt of this Court or in violation
21 of this **ORDER**.

22 13. General Provisions.

23 a. This **ORDER** is the result of negotiations by attorneys
24 for the **PARTIES** and shall not be construed against any party or
25 signatory to this **ORDER** because that **PARTY** or their counsel may
26 have drafted this **ORDER** in whole or in part. This **ORDER** shall be
27 construed and interpreted fairly in accordance with its purpose
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1 and plain meaning.

2 b. This **ORDER** shall continue to be binding after the
3 conclusion of this litigation, except that a party may seek
4 written permission from the opposing **PARTIES** or further **ORDER** of
5 the Court with respect to dissolution or modification of this
6 **ORDER**.

7 c. Within thirty (30) days after the conclusion of this
8 case, any and all original, copy, portion, version, or summary of
9 any **CONFIDENTIAL INFORMATION** materials in the possession,
10 control, and/or custody of any **QUALIFIED PERSON** shall be
11 returned. Counsel of record for a **PARTY** returning **CONFIDENTIAL**
12 **INFORMATION** shall verify by declaration under oath that all such
13 **INFORMATION** has been returned and that it has not retained any
14 such **INFORMATION** or derivatives therefrom. Counsel may retain
15 copies of briefs filed with the Court and work product so long as
16 it is maintained in accordance with this **ORDER**.

17 d. Disclosure of **CONFIDENTIAL INFORMATION** shall not
18 constitute a waiver of the attorney-client privilege, work-
19 product doctrine, or any other applicable rights or privilege.

20 e. Notices pursuant to this **ORDER** shall be sent to the
21 attorneys for the **PARTIES** listed on the signature page of this
22 **ORDER** unless notified in writing of a change.

23 f. This **ORDER** shall not constitute an admission by any of
24 the **PARTIES** that **INFORMATION** identified as **CONFIDENTIAL** is in
25 fact confidential or the subject of entitlement thereto. This
26 **ORDER** is entered into solely to expedite discovery and meet the
27 respective concerns of the **PARTIES**. This **ORDER** not be considered
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1 an admission of validity to any claim of confidentiality
2 hereunder except as is necessary to enforce the terms of the
3 **ORDER** as provided herein.

4 g. The Court's jurisdiction to enforce the terms of this
5 order shall extend until six months after the final termination
6 of this action.

7 The above is stipulated to by the respective counsel for the
8 **PARTIES** as follows:

9
10 DATED: July 7, 2010 ROSEN, BIEN & GALVAN, LLP

11
12 By: /s/ Mark Feeser (as authorized
13 on July 7, 2010)
14 ERNEST GALVAN
15 MARK FEESER
16 Attorneys for Plaintiff, PETER
17 KNOWLES

18 DATED: July 7, 2010 SELMAN BREITMAN LLP

19 By: /s/ Jennifer L. Rusnak (as
20 authorized on July 7, 2010)
21 GREGG A. THORNTON
22 JENNIFER L. RUSNAK
23 Attorneys for Defendants
24 CITY OF BENICIA, Police Chief
25 SANDRA SPAGNOLI, City Manager JIM
26 ERICKSON, Sergeant FRANK HARTIG,
27 Sergeant BOB OETTINGER, Sergeant
28 CHRIS BIDOU, Sergeant SCOTT
PRZEKURAT, Officer JOHN MCFADDEN,
Officer MARK MENESINI, Officer
JAMES LAUGHTER, Officer KEVIN ROSE,
Officer JASON EAKIN, Officer TED
CRIADO and Officer JAKE HEINEMEYER

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EXHIBIT A

1 Gregg A. Thornton (SBN 146282)
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2 SELMAN BREITMAN LLP
33 New Montgomery, Sixth Floor
3 San Francisco, CA 94105
Telephone: (415) 979-0400
4 Facsimile: (415) 979-2099

5 Attorneys for Defendants
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6 SANDRA SPAGNOLI, City Manager
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McFADDEN, Officer MARK MENESINI,
9 Officer JAMES LAUGHTER, Officer
KEVIN ROSE, Officer JASON EAKIN,
10 Officer TED CRIADO and Officer
JAKE HEINEMEYER
11

12 UNITED STATES DISTRICT COURT
13 EASTERN DISTRICT OF CALIFORNIA

14 PETER KNOWLES,
15 Plaintiff,
16 v.

CASE NO. 2:09-CV-03470-WBS-DAD

NON-DISCLOSURE AGREEMENT RELATING
TO STIPULATION REGARDING
CONFIDENTIALITY AND FOR
PROTECTIVE ORDER

17 CITY OF BENICIA, Police Chief
SANDRA SPAGNOLI, City Manager
18 JIM ERICKSON, Sergeant FRANK
HARTIG, Sergeant BOB OETTINGER,
19 Sergeant CHRIS BIDOU, Sergeant
SCOTT PRZEKURAT, Officer JOHN
20 McFADDEN, Officer MARK MENESINI,
Officer JAMES LAUGHTER, Officer
21 KEVIN ROSE, Officer JASON EAKIN,
Officer TED CRIADO, Officer JAKE
22 HEINEMEYER and DOES I through
XXX, inclusive,
23 Defendants.
24

25 I, _____, declare as follows:

26 1. My home address and telephone number is
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1 2. The name, address and telephone number of my employer
2 is:

3 _____
4 3. I have received a copy of the Stipulation Regarding
5 Confidentiality and for Protective Order and Protective Order
6 (hereinafter the "ORDER") filed in the above-entitled action.

7 4. I have carefully read and understand the terms of the
8 ORDER.

9 5. I hereby agree to be bound by the terms of the ORDER.

10 6. During the pendency and after final resolution of this
11 case, I will hold in confidence and not disclose to anyone not
12 qualified under the terms of the ORDER any confidential writings,
13 documents, things, information, or discovery disclosed to me.

14 7. I agree to be subject to the personal jurisdiction of
15 the United States District Court, Eastern District of California,
16 with regard to any proceeding relating to the enforcement of the
17 ORDER.

18 I declare under penalty of perjury under the laws of the
19 State of California that the foregoing is true and correct and
20 that this declaration was executed this ____ day of _____
21 (month), ____ (year), at _____ (city), California.

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24 DATED: _____

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ORDER

IT IS SO ORDERED.

Dated: July 8, 2010.

By: *Dale A. Drozd*
Dale A. Drozd
United States Magistrate Judge
Eastern District of California

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