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8 **UNITED STATES DISTRICT COURT**
9 **NORTHERN DISTRICT OF CALIFORNIA**

10 MERCY AMBAT, ZAINABU ANDERSON,
11 JOHN ARITA, DENNIS CARTER, SHARON
12 CASTILLO, JOANNA CROTTY, TEQUISHA
13 CURLEY, ALISA DAVIS-ZEHNER, MARLA
14 DENZER, PATTI FLYNN, TERESA FOX, JON
15 GRAY, TORI JACKSON, LISA JANSSEN,
16 MICHAEL JONES, RICHARD LEE, SANDRA
17 MACLIN-GIBSON, SUKHWANT MANN,
18 GLORIA MARTIN, ARTURO MEDRANO,
19 MARC NUTI, KEVIN O'SHEA, ANTHONY
20 PEPPERS, VINCENT QUOCK, WENDY
21 RODGERS-WELLS, LANA SLOCUM, ERNEST
22 SMITH, TONYETTE SMITH-AL GHANI,
23 MATTIE SPIRES-MORGAN, KENNETH TAN,
24 ANJIE VERSHER, BONNIE WESTLIN,
25 YVETTE WILLIAMS, ROLAND ZANIE,
26 MICHAEL ZEHNER, PAMELA WALKER,
27 GWENDOLYN HARVEY-NOTO, FELISHA
28 THOMAS, JENNIFER KEETON, OLGA
KINCADE, EMIKO THEODORIDIS, and
JEREMY DEJESUS,

Plaintiffs,

vs.

CITY AND COUNTY OF SAN FRANCISCO,

Defendant.

Case No. C-07-3622 SI

(Consolidated with Case No: C-08-2406 SI)

STIPULATED PROTECTIVE ORDER

1 **1. PURPOSES AND LIMITATIONS**

2 Disclosure and discovery activity in this action are likely to involve production of confidential,
3 proprietary, or private information for which special protection from public disclosure and from use for
4 any purpose other than prosecuting this litigation would be warranted. Accordingly, the parties hereby
5 stipulate to and petition the court to enter the following Stipulated Protective Order. The parties
6 acknowledge that this Order does not confer blanket protections on all disclosures or responses to
7 discovery and that the protection it affords extends only to the limited information or items that are
8 entitled under the applicable legal principles to treatment as confidential. The parties further
9 acknowledge, as set forth in Section 10, below, that this Stipulated Protective Order creates no
10 entitlement to file confidential information under seal; Civil Local Rule 79-5 sets forth the procedures
11 that must be followed and reflects the standards that will be applied when a party seeks permission from
12 the court to file material under seal.
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16 **2. DEFINITIONS**

17 2.1 Party: any party to this action, including all of its officers, directors, employees,
18 consultants, retained experts, and outside counsel (and their support staff).

19 2.2 Disclosure or Discovery Material: all items or information, regardless of the medium or
20 manner generated, stored, or maintained (including, among other things, testimony, transcripts, or
21 tangible things) that are produced or generated in disclosures or responses to discovery in this matter.
22

23 2.3 "Confidential" Information or Items: information (regardless of how generated, stored or
24 maintained) or tangible things that qualify for protection under standards developed under F.R.Civ.P.
25 26(c).
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1 2.4 “Highly Confidential – Attorneys’ Eyes Only” Information or Items: extremely sensitive
2 “Confidential Information or Items” whose disclosure to another Party or nonparty would create a
3 substantial risk of serious injury that could not be avoided by less restrictive means.
4

5 2.5 Receiving Party: a Party that receives Disclosure or Discovery Material from a Producing
6 Party.

7 2.6 Producing Party: a Party or non-party that produces Disclosure or Discovery Material in
8 this action.

9 2.7. Designating Party: a Party or non-party that designates information or items that it
10 produces in disclosures or in responses to discovery as “Confidential” or “Highly Confidential —
11 Attorneys’ Eyes Only.”
12

13 2.8 Protected Material: any Disclosure or Discovery Material that is designated as
14 “Confidential” or as “Highly Confidential – Attorneys’ Eyes Only.”
15

16 2.9. Outside Counsel: attorneys who are not employees of a Party but who are retained to
17 represent or advise a Party in this action.

18 2.10 House Counsel: attorneys who are employees of a Party.

19 2.11 Counsel (without qualifier): Outside Counsel and House Counsel (as well as their support
20 staffs).
21

22 2.12 Expert: a person with specialized knowledge or experience in a matter pertinent to the
23 litigation who has been retained by a Party or its counsel to serve as an expert witness or as a consultant
24 in this action and who is not a past or a current employee of a Party or of a competitor of a Party’s and
25 who, at the time of retention, is not anticipated to become an employee of a Party or a competitor of a
26 Party’s. This definition includes a professional jury or trial consultant retained in connection with this
27 litigation.
28

1 2.13 Professional Vendors: persons or entities that provide litigation support services (e.g.,
2 photocopying; videotaping; translating; preparing exhibits or demonstrations; organizing, storing,
3 retrieving data in any form or medium; etc.) and their employees and subcontractors.
4

5 **3. SCOPE**

6 The protections conferred by this Stipulation and Order cover not only Protected Material (as
7 defined above), but also any information copied or extracted therefrom, as well as all copies, excerpts,
8 summaries, or compilations thereof, plus testimony, conversations, or presentations by parties or counsel
9 to or in court or in other settings that might reveal Protected Material.
10

11 **4. DURATION**

12 Even after the termination of this litigation, the confidentiality obligations imposed by this Order
13 shall remain in effect until a Designating Party agrees otherwise in writing or a court order otherwise
14 directs.
15

16 **5. DESIGNATING PROTECTED MATERIAL**

17 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each Party or non-
18 party that designates information or items for protection under this Order must take care to limit any
19 such designation to specific material that qualifies under the appropriate standards. A Designating Party
20 must take care to designate for protection only those parts of material, documents, items, or oral or
21 written communications that qualify – so that other portions of the material, documents, items, or
22 communications for which protection is not warranted are not swept unjustifiably within the ambit of
23 this Order.
24

25 Mass, indiscriminate, or routinized designations are prohibited. Designations that are shown to
26 be clearly unjustified, or that have been made for an improper purpose (e.g., to unnecessarily encumber
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1 or retard the case development process, or to impose unnecessary expenses and burdens on other
2 parties), expose the Designating Party to sanctions.

3 If it comes to a Party's or a non-party's attention that information or items that it designated for
4 protection do not qualify for protection at all, or do not qualify for the level of protection initially
5 asserted, that Party or non-party must promptly notify all other parties that it is withdrawing the mistaken
6 designation.
7

8 5.2 Manner and Timing of Designations. Except as otherwise provided in this Order
9 (see, e.g., second paragraph of section 5.2(a), below), or as otherwise stipulated or ordered, material
10 that qualifies for protection under this Order must be clearly so designated before the material is
11 disclosed or produced.
12

13 Designation in conformity with this Order requires:

14 (a) for information in documentary form (apart from transcripts of depositions
15 or other pretrial or trial proceedings), including documents provided in electronic format (e.g., PDF or
16 TIFF images) (apart from transcripts of depositions or other pretrial or trial proceedings), that the
17 Producing Party affix the legend "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS'
18 EYES ONLY" at the top of each page or image that contains protected material. If only a portion or
19 portions of the material on a page or image qualifies for protection, the Producing Party also must clearly
20 identify the protected portion(s) (e.g., by making appropriate markings in the margins) and must specify,
21 for each portion, the level of protection being asserted (either "CONFIDENTIAL" or "HIGHLY
22 CONFIDENTIAL – ATTORNEYS' EYES ONLY").
23
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25 A Party or non-party that makes original documents or materials available for
26 inspection need not designate them for protection until after the inspecting Party has indicated which
27 material it would like copied and produced. During the inspection and before the designation, all of the
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1 material made available for inspection shall be deemed "HIGHLY CONFIDENTIAL – ATTORNEYS'
2 EYES ONLY." After the inspecting Party has identified the documents it wants copied and produced,
3 the Producing Party must determine which documents, or portions thereof, qualify for protection under
4 this Order, then, before producing the specified documents, the Producing Party must affix the
5 appropriate legend ("CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES
6 ONLY") at the top of each page that contains Protected Material. If only a portion or portions of the
7 material on a page qualifies for protection, the Producing Party also must clearly identify the protected
8 portion(s) (e.g., by making appropriate markings in the margins) and must specify, for each portion, the
9 level of protection being asserted (either "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL –
10 ATTORNEYS' EYES ONLY").
11

12
13 (b) for testimony given in deposition or in other pretrial or trial proceedings,
14 that the Party or non-party offering or sponsoring the testimony identify on the record, before the close
15 of the deposition, hearing, or other proceeding, all protected testimony, and further specify any portions
16 of the testimony that qualify as "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY." When it
17 is impractical to identify separately each portion of testimony that is entitled to protection, and when it
18 appears that substantial portions of the testimony may qualify for protection, the Party or non-party that
19 sponsors, offers, or gives the testimony may invoke on the record (before the deposition or proceeding is
20 concluded) a right to have up to 20 days to identify the specific portions of the testimony as to which
21 protection is sought and to specify the level of protection being asserted ("CONFIDENTIAL" or
22 "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY"). Only those portions of the testimony
23 that are appropriately designated for protection within the 20 days shall be covered by the provisions of
24 this Stipulated Protective Order. Transcript pages containing Protected Material must be separately
25 bound by the court reporter, who must affix to the top of each such page the legend "CONFIDENTIAL"

1 or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY," as instructed by the Party or nonparty
2 offering or sponsoring the witness or presenting the testimony.

3 (c) for information produced in some form other than documentary, and for
4 any other tangible items, that the Producing Party affix in a prominent place on the exterior of the
5 container or containers in which the information or item is stored the legend "CONFIDENTIAL" or
6 "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY." If only portions of the information or
7 item warrant protection, the Producing Party, to the extent practicable, shall identify the protected
8 portions, specifying whether they qualify as "Confidential" or as "Highly Confidential – Attorneys' Eyes
9 Only."
10 Only."

12 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to designate
13 qualified information or items as "Confidential" or "Highly Confidential – Attorneys' Eyes Only" does
14 not, standing alone, waive the Designating Party's right to secure protection under this Order for such
15 material. If material is appropriately designated as "Confidential" or "Highly Confidential – Attorneys'
16 Eyes Only" after the material was initially produced, the Receiving Party, on timely notification of the
17 designation, must make reasonable efforts to assure that the material is treated in accordance with the
18 provisions of this Order.
19

20 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

21 6.1 Timing of Challenges. Unless a prompt challenge to a Designating Party's confidentiality
22 designation is necessary to avoid foreseeable substantial unfairness, unnecessary economic burdens, or a
23 later significant disruption or delay of the litigation, a Party does not waive its right to challenge a
24 confidentiality designation by electing not to mount a challenge promptly after the original designation is
25 disclosed.
26 disclosed.
27
28

1 6.2 Meet and Confer. A Party that elects to initiate a challenge to a Designating Party's
2 confidentiality designation must do so in good faith and must begin the process by conferring directly (in
3 voice to voice dialogue; other forms of communication are not sufficient) with counsel for the
4 Designating Party. In conferring, the challenging Party must explain the basis for its belief that the
5 confidentiality designation was not proper and must give the Designating Party an opportunity to review
6 the designated material, to reconsider the circumstances, and, if no change in designation is offered, to
7 explain the basis for the chosen designation. A challenging Party may proceed to the next stage of the
8 challenge process only if it has engaged in this meet and confer process first.

9
10
11 6.3 Judicial Intervention. A Party that elects to press a challenge to a confidentiality
12 designation after considering the justification offered by the Designating Party may file and serve a
13 motion under Civil Local Rule 7 (and in compliance with Civil Local Rule 79-5, if applicable) that
14 identifies the challenged material and sets forth in detail the basis for the challenge. Each such motion
15 must be accompanied by a competent declaration that affirms that the movant has complied with the
16 meet and confer requirements imposed in the preceding paragraph and that sets forth with specificity the
17 justification for the confidentiality designation that was given by the Designating Party in the meet and
18 confer dialogue.

19
20 The burden of persuasion in any such challenge proceeding shall be on the Designating Party.
21 Until the court rules on the challenge, all parties shall continue to afford the material in question the
22 level of protection to which it is entitled under the Producing Party's designation.

23 24 **7. ACCESS TO AND USE OF PROTECTED MATERIAL**

25 7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed or
26 produced by another Party or by a non-party in connection with this case only for prosecuting, defending,
27 or attempting to settle this litigation. Such Protected Material may be disclosed only to the categories of
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1 persons and under the conditions described in this Order. When the litigation has been terminated, a
2 Receiving Party must comply with the provisions of section 11, below (FINAL DISPOSITION).

3 Protected Material must be stored and maintained by a Receiving Party at a location and in a
4 secure manner that ensures that access is limited to the persons authorized under this Order.
5

6 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise ordered by the
7 court or permitted in writing by the Designating Party, a Receiving Party may disclose any information
8 or item designated CONFIDENTIAL only to:

9 (a) the Receiving Party's Outside Counsel of record in this action, as well as
10 employees of said Counsel to whom it is reasonably necessary to disclose the information for this
11 litigation and who have signed the "Agreement to Be Bound by Protective Order" that is attached hereto
12 as Exhibit A;
13

14 (b) the officers, directors, and employees (including House Counsel) of the Receiving
15 Party to whom disclosure is reasonably necessary for this litigation and who have signed the "Agreement
16 to Be Bound by Protective Order" (Exhibit A);
17

18 (c) experts (as defined in this Order) of the Receiving Party to whom disclosure is
19 reasonably necessary for this litigation and who have signed the "Agreement to Be Bound by Protective
20 Order" (Exhibit A);
21

22 (d) the Court and its personnel;

23 (e) court reporters, their staffs, and professional vendors to whom disclosure is
24 reasonably necessary for this litigation and who have signed the "Agreement to Be Bound by Protective
25 Order" (Exhibit A);
26

27 (f) during their depositions, witnesses in the action to whom disclosure is reasonably
28 necessary and who have signed the "Agreement to Be Bound by Protective Order" (Exhibit A). Pages of

1 transcribed deposition testimony or exhibits to depositions that reveal Protected Material must be
2 separately bound by the court reporter and may not be disclosed to anyone except as permitted under this
3 Stipulated Protective Order.

4 (g) the author of the document or the original source of the information.

5
6 7.3 Disclosure of "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" Information
7 or Items. Unless otherwise ordered by the court or permitted in writing by the Designating Party, a
8 Receiving Party may disclose any information or item designated "HIGHLY CONFIDENTIAL –
9 ATTORNEYS' EYES ONLY" only to:

10
11 (a) the Receiving Party's Outside Counsel of record in this action, as well as
12 employees of said Counsel to whom it is reasonably necessary to disclose the information for this
13 litigation and who have signed the "Agreement to Be Bound by Protective Order" that is attached hereto
14 as Exhibit A;

15
16 (b) Experts (as defined in this Order) (1) to whom disclosure is reasonably necessary for
17 this litigation, (2) who have signed the "Agreement to Be Bound by Protective Order" (Exhibit A).

18 (c) the Court and its personnel;

19 (d) court reporters, their staffs, and professional vendors to whom disclosure is
20 reasonably necessary for this litigation and who have signed the "Agreement to Be Bound by Protective
21 Order" (Exhibit A);

22
23 (e) the author of the document or the original source of the information.

24 (f) House Counsel of a Receiving Party (1) who has no involvement in competitive
25 decision-making, (2) to whom disclosure is reasonably necessary for this litigation, and (3) who
26 has signed the "Agreement to Be Bound by Protective Order" (Exhibit A);
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1 **8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER**
2 **LITIGATION.**

3 If a Receiving Party is served with a subpoena or an order issued in other litigation that would
4 compel disclosure of any information or items designated in this action as "CONFIDENTIAL" or
5 "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY," the Receiving Party must so notify the
6 Designating Party, in writing (by fax, if possible) immediately and in no event more than three court
7 days after receiving the subpoena or order. Such notification must include a copy of the subpoena or
8 court order.
9

10 The Receiving Party also must immediately inform in writing the Party who caused the subpoena
11 or order to issue in the other litigation that some or all the material covered by the subpoena or order is
12 the subject of this Protective Order. In addition, the Receiving Party must deliver a copy of this
13 Stipulated Protective Order promptly to the Party in the other action that caused the subpoena or order to
14 issue.
15

16 The purpose of imposing these duties is to alert the interested parties to the existence of this
17 Protective Order and to afford the Designating Party in this case an opportunity to try to protect its
18 confidentiality interests in the court from which the subpoena or order issued. The Designating Party
19 shall bear the burdens and the expenses of seeking protection in that court of its confidential material –
20 and nothing in these provisions should be construed as authorizing or encouraging a Receiving Party in
21 this action to disobey a lawful directive from another court.
22

23 **9. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**
24

25 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected Material
26 to any person or in any circumstance not authorized under this Stipulated Protective Order, the
27 Receiving Party must immediately (a) notify in writing the Designating Party of the unauthorized
28

disclosures, (b) use its best efforts to retrieve all copies of the Protected Material, (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of this Order, and (d) request such person or persons to execute the "Acknowledgment and Agreement to Be Bound" that is attached hereto as Exhibit A.

10. FILING PROTECTED MATERIAL.

Without written permission from the Designating Party or a court order secured after appropriate notice to all interested persons, a Party may not file in the public record in this action any Protected Material. A Party that seeks to file under seal any Protected Material must comply with Civil Local Rule 79-5.

11. FINAL DISPOSITION.

Unless otherwise ordered or agreed in writing by the Producing Party, within sixty days after the final termination of this action, each Receiving Party must return all Protected Material to the Producing Party. As used in this subdivision, "all Protected Material" includes all copies, abstracts, compilations, summaries or any other form of reproducing or capturing any of the Protected Material. With permission in writing from the Designating Party, the Receiving Party may destroy some or all of the Protected Material instead of returning it. Whether the Protected Material is returned or destroyed, the Receiving Party must submit a written certification to the Producing Party (and, if not the same person or entity, to the Designating Party) by the sixty day deadline that identifies (by category, where appropriate) all the Protected Material that was returned or destroyed and that affirms that the Receiving Party has not retained any copies, abstracts, compilations, summaries or other forms of reproducing or capturing any of the Protected Material. Notwithstanding this provision, Counsel are entitled to retain an archival copy of all pleadings, motion papers, transcripts, legal memoranda, correspondence or attorney work product,

even if such materials contain Protected Material. Any such archival copies that contain or constitute Protected Material remain subject to this Protective Order as set forth in Section 4 (DURATION), above.

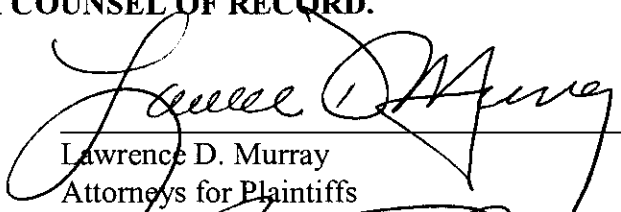
12. MISCELLANEOUS

12.1 Right to Further Relief. Nothing in this Order abridges the right of any person to seek its modification by the Court in the future.

12.2 Right to Assert Other Objections. By stipulating to the entry of this Protective Order no Party waives any right it otherwise would have to object to disclosing or producing any information or item on any ground not addressed in this Stipulated Protective Order. Similarly, no Party waives any right to object on any ground to use in evidence of any of the material covered by this Protective Order.

IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

DATED: April 21 2009
~~March~~ __, 2009


Lawrence D. Murray
Attorneys for Plaintiffs

DATED: April 21
~~March~~ __, 2009


Margaret Baumgartner
Attorneys for Defendant

PURSUANT TO STIPULATION, IT IS SO ORDERED.

DATED: March __, 2009

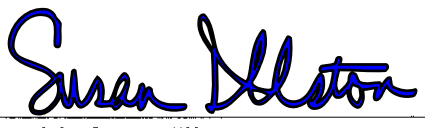

Honorable Susan Illston
United States District Court Judge

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 _____ **[insert formal name of the case and the number and initials assigned to it by the court]**. 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: _____

Signature: _____