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JUL 13 2009

Richard W. Wieking
Clerk, U.S. District Court
Northern District of California

6 Attorneys for Defendants
 7 CITY OF SAN MATEO, SHANDON MURPHY, JOSEPH YANSUKA

8 UNITED STATES DISTRICT COURT
 9 NORTHERN DISTRICT OF CALIFORNIA

FILED

JUL 15 2009

07-2596
 RICHARD W. WIEKING
 CLERK, U.S. DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA

11 JANE DOE,

Case No. C-05596-SI

12 Plaintiff,

STIPULATED PROTECTIVE ORDER

13 vs.

07-5596 SI

14 CITY OF SAN MATEO, et al.

15 Defendant.

17 1. PURPOSES AND LIMITATIONS

18 Disclosure and discovery activity in this action are likely to involve production of
 19 confidential, proprietary, or private information for which special protection from public
 20 disclosure and from use for any purpose other than prosecuting this litigation would be
 21 warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the
 22 following Stipulated Protective Order. The parties acknowledge that this Order does not confer
 23 blanket protections on all disclosures or responses to discovery and that the protection it affords
 24 extends only to the limited information or items that are entitled under the applicable legal
 25 principles to treatment as confidential. The parties further acknowledge, as set forth in
 26 Section 10, below, that this Stipulated Protective Order creates no entitlement to file confidential
 27 information under seal; Civil Local Rule 79-5 sets forth the procedures that must be followed
 28

1 and reflects the standards that will be applied when a party seeks permission from the court to
2 file material under seal.

3 2. DEFINITIONS

4 2.1 Party: any party to this action, including all of its officers, directors, employees,
5 consultants, retained experts, and outside counsel (and their support staff).

6 2.2 Disclosure or Discovery Material: all items or information, regardless of the
7 medium or manner generated, stored, or maintained (including, among other things, testimony,
8 transcripts, or tangible things) that are produced or generated in disclosures or responses to
9 discovery in this matter.

10 2.3 "Confidential" Information or Items: information (regardless of how generated,
11 stored or maintained) or tangible things that qualify for protection under standards developed
12 under F.R.Civ.P. 26(c).

13 2.4 "Highly Confidential – Attorneys' Eyes Only" Information or Items: extremely
14 sensitive "Confidential Information or Items" whose disclosure to another Party or non-party
15 would create a substantial risk of serious injury that could not be avoided by less restrictive
16 means.

17 2.5 Receiving Party: a Party that receives Disclosure or Discovery Material from a
18 Producing Party.

19 2.6 Producing Party: a Party or non-party that produces Disclosure or Discovery
20 Material in this action.

21 2.7 Designating Party: a Party or non-party that designates information or items that it
22 produces in disclosures or in responses to discovery as "Confidential" or "Highly Confidential—
23 Attorneys' Eyes Only."

24 2.8 Protected Material: any Disclosure or Discovery Material that is designated as
25 "Confidential" or as "Highly Confidential – Attorneys' Eyes Only."

26 2.9 Outside Counsel: attorneys who are not employees of a Party but who are retained
27 to represent or advise a Party in this action.

28 2.10 House Counsel: attorneys who are employees of a Party.

1 2.11 Counsel (without qualifier): Outside Counsel and House Counsel (as well as their
2 support staffs).

3 2.12 Expert: a person with specialized knowledge or experience in a matter pertinent to
4 the litigation who has been retained by a Party or its counsel to serve as an expert witness or as a
5 consultant in this action and who is not a past or a current employee of a Party or of competitor of
6 a Party's and who, at the time of retention, is not anticipated to become an employee of a Party or
7 a competitor of a Party's. This definition includes a professional jury or trial consultant retained
8 in connection with this litigation.

9 2.13 Professional Vendors: persons or entities that provide litigation support services
10 (e.g., photocopying; videotaping; translating; preparing exhibits or demonstrations; organizing,
11 storing, retrieving data in any form or medium; etc.) and their employees and subcontractors.

12 3. SCOPE

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

17 4. DURATION

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

21 5. DESIGNATING PROTECTED MATERIAL

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

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

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

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

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), that the Producing Party affix the legend
16 "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" at the top
17 of each page that contains protected material. If only a portion or portions of the material on a
18 page qualifies for protection, the Producing Party also must clearly identify the protected
19 portion(s) (e.g., by making appropriate markings in the margins) and must specify, for each
20 portion, the level of protection being asserted (either "CONFIDENTIAL" or "HIGHLY
21 CONFIDENTIAL – ATTORNEYS' EYES ONLY").

22 A Party or non-party that makes original documents or materials available
23 for inspection need not designate them for protection until after the inspecting Party has
24 indicated which material it would like copied and produced. During the inspection and before the
25 designation, all of the material made available for inspection shall be deemed "HIGHLY
26 CONFIDENTIAL – ATTORNEYS' EYES ONLY." After the inspecting Party has identified the
27 documents it wants copied and produced, the Producing Party must determine which documents,
28 or portions thereof, qualify for protection under this Order, then, before producing the specified

1 documents, the Producing Party must affix the appropriate legend (“CONFIDENTIAL” or
2 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”) at the top of each page that
3 contains Protected Material. If only a portion or portions of the material on a page qualifies for
4 protection, the Producing Party also must clearly identify the protected portion(s) (e.g., by
5 making appropriate markings in the margins) and must specify, for each portion, the level of
6 protection being asserted (either “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –
7 ATTORNEYS’ EYES ONLY”).

8 (b) for testimony given in deposition or in other pretrial or trial proceedings,
9 that the Party or non-party offering or sponsoring the testimony identify on the record, before the
10 close of the deposition, hearing, or other proceeding, all protected testimony, and further specify
11 any portions of the testimony that qualify as “HIGHLY CONFIDENTIAL – ATTORNEYS’
12 EYES ONLY.” When it is impractical to identify separately each portion of testimony that is
13 entitled to protection, and when it appears that substantial portions of the testimony may qualify
14 for protection, the Party or non-party that sponsors, offers, or gives the testimony may invoke on
15 the record (before the deposition or proceeding is concluded) a right to have up to twenty
16 (20) days to identify the specific portions of the testimony as to which protection is sought and to
17 specify the level of protection being asserted (“CONFIDENTIAL” or “HIGHLY
18 CONFIDENTIAL – ATTORNEYS’ EYES ONLY”). Only those portions of the testimony that
19 are appropriately designated for protection within the twenty (20) days shall be covered by the
20 provisions of this Stipulated Protective Order.

21 Transcript pages containing Protected Material must be separately bound
22 by the court reporter, who must affix to the top of each such page the legend
23 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” as
24 instructed by the Party or non-party offering or sponsoring the witness or presenting the
25 testimony.

26 (c) for information produced in some form other than documentary, and for
27 any other tangible items, that the Producing Party affix in a prominent place on the exterior of the
28 container or containers in which the information or item is stored the legend “CONFIDENTIAL”

1 or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY." If only portions of the
2 information or item warrant protection, the Producing Party, to the extent practicable, shall
3 identify the protected portions, specifying whether they qualify as "Confidential" or as "Highly
4 Confidential – Attorneys' Eyes Only."

5 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
6 designate qualified information or items as "Confidential" or "Highly Confidential – Attorneys'
7 Eyes Only" does not, standing alone, waive the Designating Party's right to secure protection
8 under this Order for such material. If material is appropriately designated as "Confidential" or
9 "Highly Confidential – Attorneys' Eyes Only" after the material was initially produced, the
10 Receiving Party, on timely notification of the designation, must make reasonable efforts to assure
11 that the material is treated in accordance with the provisions of this Order.

12 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

13 6.1 Timing of Challenges. Unless a prompt challenge to a Designating Party's
14 confidentiality designation is necessary to avoid foreseeable substantial unfairness, unnecessary
15 economic burdens, or a later significant disruption or delay of the litigation, a Party does not
16 waive its right to challenge a confidentiality designation by electing not to mount a challenge
17 promptly after the original designation is disclosed.

18 6.2 Meet and Confer. A Party that elects to initiate a challenge to a Designating
19 Party's confidentiality designation must do so in good faith and must begin the process by
20 conferring directly (in voice to voice dialogue; other forms of communication are not sufficient)
21 with counsel for the Designating Party. In conferring, the challenging Party must explain the basis
22 for its belief that the confidentiality designation was not proper and must give the Designating
23 Party an opportunity to review the designated material, to reconsider the circumstances, and, if no
24 change in designation is offered, to explain the basis for the chosen designation. A challenging
25 Party may proceed to the next stage of the challenge process only if it has engaged in this meet
26 and confer process first.

27 6.3 Judicial Intervention. A Party that elects to press a challenge to a confidentiality
28 designation after considering the justification offered by the Designating Party may file and serve

1 a motion under Civil Local Rule 7 (and in compliance with Civil Local Rule 79-5, if applicable)
2 that identifies the challenged material and sets forth in detail the basis for the challenge. Each
3 such motion must be accompanied by a competent declaration that affirms that the movant has
4 complied with the meet and confer requirements imposed in the preceding paragraph and that sets
5 forth with specificity the justification for the confidentiality designation that was given by the
6 Designating Party in the meet and confer dialogue.

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

11 7. ACCESS TO AND USE OF PROTECTED MATERIAL

12 7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed or
13 produced by another Party or by a non-party in connection with this case only for prosecuting,
14 defending, or attempting to settle this litigation. Such Protected Material may be disclosed only to
15 the categories of persons and under the conditions described in this Order. When the litigation has
16 been terminated, a Receiving Party must comply with the provisions of section 11, below (FINAL
17 DISPOSITION).

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

21 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise ordered
22 by the court or permitted in writing by the Designating Party, a Receiving Party may disclose any
23 information or item designated CONFIDENTIAL only to:

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

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

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

7 (d) the Court and its personnel;

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

11 (f) during their depositions, witnesses in the action to whom disclosure is
12 reasonably necessary and who have signed the "Agreement to Be Bound by Protective Order"
13 (Exhibit A). Pages of transcribed deposition testimony or exhibits to depositions that reveal
14 Protected Material must be separately bound by the court reporter and may not be disclosed to
15 anyone except as permitted under this Stipulated Protective Order.

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

17 7.3 Disclosure of "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY"

18 Information or Items. Unless otherwise ordered by the court or permitted in writing by the
19 Designating Party, a Receiving Party may disclose any information or item designated "HIGHLY
20 CONFIDENTIAL – ATTORNEYS' EYES ONLY" only to:

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

25 (b) experts (as defined in this Order) (1) to whom disclosure is reasonably
26 necessary for this litigation, (2) who have signed the "Agreement to be Bound by Protective
27 Order" (Exhibit A);

28 (c) the Court and its personnel;

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

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

5 **8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER**
6 **LITIGATION.**

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

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

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

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

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

1 (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of
2 this Order, and (d) request such person or persons to execute the "Acknowledgment and
3 Agreement to Be Bound" that is attached hereto as Exhibit A.

4 10. FILING PROTECTED MATERIAL.

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

9 11. FINAL DISPOSITION.

10 Unless otherwise ordered or agreed in writing by the Producing Party, within sixty (60)
11 days after the final termination of this action, each Receiving Party must return all Protected
12 Material to the Producing Party. As used in this subdivision, "all Protected Material" includes all
13 copies, abstracts, compilations, summaries or any other form of reproducing or capturing any of
14 the Protected Material. With permission in writing from the Designating Party, the Receiving
15 Party may destroy some or all of the Protected Material instead of returning it. Whether the
16 Protected Material is returned or destroyed, the Receiving Party must submit a written
17 certification to the Producing Party (and, if not the same person or entity, to the Designating
18 Party) by the sixty (60) day deadline that identifies (by category, where appropriate) all the
19 Protected Material that was returned or destroyed and that affirms that the Receiving Party has
20 not retained any copies, abstracts, compilations, summaries or other forms of reproducing or
21 capturing any of the Protected Material. Notwithstanding this provision, Counsel are entitled to
22 retain an archival copy of all pleadings, motion papers, transcripts, legal memoranda,
23 correspondence or attorney work product, even if such materials contain Protected Material. Any
24 such archival copies that contain or constitute Protected Material remain subject to this
25 Protective Order as set forth in Section 4 (DURATION), above.

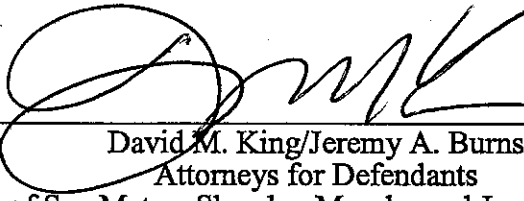
26 12. MISCELLANEOUS

27 12.1 Right to Further Relief. Nothing in this Order abridges the right of any person to
28 seek its modification by the Court in the future.


1 12.2 Right to Assert Other Objections. By stipulating to the entry of this Protective
2 Order no Party waives any right it otherwise would have to object to disclosing or producing any
3 information or item on any ground not addressed in this Stipulated Protective Order. Similarly, no
4 Party waives any right to object on any ground to use in evidence of any of the material covered
5 by this Protective Order.

6 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.


7
8 Dated: 7-7-09 By: 
9 Jane Doe
In Pro Per

10
11 Dated: 7-1-09 By: 
12 David M. King/Jeremy A. Burns
Attorneys for Defendants
13 City of San Mateo, Shandon Murphy and Joseph Yansuka

14
15 Dated: _____ By: _____
16 Jennifer L. Rusnak, Esq.
Attorneys for Defendants
17 City of Burlingame, Kevin Kashiwahara, Jim Ford, and
Steve Vega

18
19 Dated: 6/24/09 By: 
20 Kathryn E. Alberti
Attorneys for Defendants
21 County of San Mateo, San Mateo County Sheriff's Office
and Deputy Suzanne Blick

22
23 PURSUANT TO STIPULATION, IT IS SO ORDERED

24
25 Dated: 7/19/09 By: 
26 Susan Ilston
United States District Judge

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EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____, of _____, CA, 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 _____ in the case of Jane Doe v. City of San Mateo, et al.; Case No. C 07-05596. 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 _____ of _____ 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: _____