

1 John A. Shupe, Esq., SBN: 87716  
 Eric K. Shiu, Esq., SBN: 156167  
 2 SHUPE AND FINKELSTEIN  
 177 Bovet Road, Suite 600  
 3 San Mateo, CA 94402  
 Telephone: (650) 341-3693  
 4 Facsimile: (650) 341-1395

5 Attorneys for Defendant  
 LAURANCE GAINES  
 6  
 7

8 UNITED STATES DISTRICT COURT  
 9 NORTHERN DISTRICT OF CALIFORNIA

10 STACEY MOODY, an individual,

11 Plaintiff,

12 v.

13 COUNTY OF SAN MATEO, LAURANCE  
 GAINES, RON SALAZAR and DOES 10,  
 14 individually, et. al.

15 Defendants.  
 16

Case No: CV 08 1864 MMC

**STIPULATION FOR ORDER  
 COMPELLING PRODUCTION OF  
 DOCUMENTS SUBJECT TO  
 PROTECTIVE ORDER; PROPOSED  
 ORDER AS MODIFIED**

Shupe and Finkelstein  
 177 Bovet Road, Suite 600  
 San Mateo, CA 94402  
 (650) 341-3693

17 **1.0 PURPOSES AND LIMITATIONS**

18 Plaintiff Stacey Moody and Defendant Laurance Gaines seek the disclosure, discovery and  
 19 production of documents which Defendant County of San Mateo agrees are relevant but which the  
 20 County claims are confidential, proprietary, or private and which need special protection from public  
 21 disclosure and from use for any purpose other than prosecuting this litigation may be warranted to  
 22 wit: **All memoranda, notes, interviews, interview notes, interview tape recordings,**  
 23 **correspondence, computer files and records of communications which were generated by the**  
 24 **Sheriff's Department and/or any employee thereof in connection with the Sheriff's internal**  
 25 **investigation of that incident of July 6, 2007 involving Plaintiff Stacey Moody and Defendant**  
 26 **Laurance Gaines (hereinafter, "the Subject Records").** Accordingly, the parties hereby stipulate  
 27 to and petition the Court to enter the following Stipulated Order Compelling Production of  
 28 Documents Subject to Protective Order, and then to review, in camera, all of the Subject Records in

1 the possession, custody or control of defendant County of San Mateo, which Records shall be  
2 delivered to the Court's Chambers within ten days of the date on which the parties receive notice  
3 that the Court has executed this Order; and to use <sup>applicable legal principles</sup> ~~the balancing approach described in California~~  
4 ~~Evidence Code section 1045(b)~~ to determine which of such records shall be produced to the  
5 opposing parties in this case pursuant to the protections set forth in this Stipulated Order. The  
6 parties acknowledge that this Order does not confer blanket protections on all disclosures or  
7 responses to discovery and that the protection it affords extends only to the limited information or  
8 items that are entitled to the applicable legal principles to treatment as confidential, defined herein as  
9 the Subject Records. The parties further acknowledge, as set forth in Section 10.0, below, that this  
10 Stipulated Protective Order creates no entitlement to file confidential information under seal; Civil  
11 Local Rule 79-5 sets forth the procedures that must be followed and reflects the standards that will  
12 be applied when a party seeks permission from the court to file material under seal.

13 **2.0 DEFINITIONS**

14 2.1 PARTY or PARTIES: any party to this action, including all of its officers, directors,  
15 employees, consultants, retained experts, and outside counsel (and their support staff).

16 2.2 DISCLOSURE MATERIAL: all those items, records or information, regardless of  
17 the medium or manner generated, stored, or maintained (including, among other things, testimony,  
18 transcript, or tangible things) that are produced or generated in disclosures or responses to this  
19 Stipulated Protective Order.

20 2.3 CONFIDENTIAL INFORMATION or ITEMS: information (regardless of how  
21 generated, stored or maintained) or tangible things that qualify for protection under standards  
22 developed under F.R.Civ.P. 26(c).

23 2.4 HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY INFORMATION or  
24 ITEMS: extremely sensitive CONFIDENTIAL INFORMATION or ITEMS whose disclosure to  
25 another Party or non-party would create a substantial risk of serious injury that could not be avoided  
26 by less restrictive means.

27 2.5 RECEIVING PARTY: a PARTY that receives DISCLOSURE from a PRODUCING  
28 PARTY.

1           2.6    **PRODUCING PARTY:** a PARTY or non-party that produces DISCLOSURE  
2 MATERIAL in this action.

3           2.7    **DESIGNATING PARTY:** a PARTY or non-party that designates information or  
4 items that it produces in disclosures as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –  
5 ATTORNEYS’ EYES ONLY.”

6 //

7           2.8    **PROTECTED MATERIAL:** any DISCLOSURE MATERIAL that is designated as  
8 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

9           2.9    **OUTSIDE COUNSEL:** attorneys who are not employees of a PARTY but who are  
10 retained to represent or advise a PARTY in this action.

11           2.10   **HOUSE COUNSEL:** attorneys who are employees of a PARTY.

12           2.11   **COUNSEL (without qualifier):** OUTSIDE COUNSEL and HOUSE COUNSEL (as  
13 well as their support staff).

14           2.12   **EXPERT:** a person with specialized knowledge or experience in a matter  
15 pertinent to the litigation who has been retained by a PARTY or its counsel to serve as an expert  
16 witness or as a consultant in this action and who is not a past or a current employee of a PARTY or  
17 of a competitor of a PARTY and who, at the time of retention, is not anticipated to become an  
18 employee of a PARTY or a competitor of a PARTY. This definition includes a professional jury or  
19 trial consultant retained in connection with this litigation.

20           2.13   **PROFESSIONAL VENDORS:** persons or entities that provide litigation support  
21 services (e.g., photocopying; videotaping; translating; preparing exhibits or demonstrations;  
22 organizing, storing, retrieving data in any form or medium; etc.) and their employees and  
23 subcontractors.

24           **3.0    SCOPE**

25           The protections conferred by this Stipulation and Order cover not only PROTECTED  
26 MATERIALS (as defined above), but also any information copied or extracted therefrom, as well as  
27 all copies, excerpts, summaries, or compilations thereof, plus testimony, conversations, or  
28 presentations by PARTIES or COUNSEL to or in court or in other settings that might reveal

1 PROTECTED MATERIAL.

2 **4.0 DURATION**

3 Even after the termination of this litigation, the confidentiality obligations imposed by this  
4 Order shall remain in effect until a DESIGNATING PARTY agrees otherwise in writing or a court  
5 order otherwise directs.

6 //

7 **5.0 DESIGNATING PROTECTIVE MATERIAL**

8 5.1 EXERCISE OF RESTRAINT AND CARE IN DESIGNATING MATERIAL FOR  
9 PROTECTION. Each PARTY or non-party that designates information or items for protection under  
10 this Order must take care to limit any such designation to specific material that qualifies under the  
11 appropriate standards. A DESIGNATING PARTY must take care to designate for protection only  
12 those parts of material, documents, items, or oral or written communications that qualify – so that  
13 other portions of the material, documents, items, or communications for which protection is not  
14 warranted are not swept unjustifiably within the ambit of this Order.

15 Mass, indiscriminate, or routinized designations are prohibited. Designations that are shown  
16 to be clearly unjustified, or that have been made for an improper purpose (e.g., to unnecessarily  
17 encumber or retard the case development process, or to impose unnecessary expenses and burdens  
18 on other parties), expose the DESIGNATING PARTY to sanctions.

19 If it comes to a PARTY's or non-party's attention that information or items that it designated  
20 for protection do not qualify for protection at all, or do not qualify for the level of protection initially  
21 asserted, that PARTY or non-party must promptly notify all other PARTIES that it is withdrawing  
22 the mistaken designation.

23 5.2 MANNER AND TIMING OF DESIGNATIONS. Except as otherwise provided in  
24 this Order (*see, e.g.,* second paragraph of Section 5.2(a), below), or as otherwise stipulated or  
25 ordered, material that qualifies for protection under this Order must be clearly so designated before  
26 the material is disclosed or produced.

27 Designation in conformity with this Order requires:

28 (a) For information in documentary form (apart from transcripts of depositions or other

1 pre-trial or trial proceedings), that the PRODUCING PARTY affix the legend “CONFIDENTIAL”  
2 or “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  
4 qualifies for protection, the PRODUCING PARTY also must clearly identify the protected  
5 portion(s) (e.g., by making appropriate markings in the margins) and must specify, for each portion,  
6 //  
7 the level of protection being asserted (either “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –  
8 ATTORNEYS’ EYES ONLY”).

9 A PARTY or non-party that makes original documents or materials available for inspection  
10 need not designate them for protection until after the inspecting PARTY has indicated which  
11 material it would like copied and produced. During the inspection and before the designation, all of  
12 the material made available for inspection shall be deemed “HIGHLY CONFIDENTIAL –  
13 ATTORNEYS’ EYES ONLY.” After the inspecting PARTY has identified the documents it wants  
14 copied and produced, the PRODUCING PARTY must determine which documents, or portions  
15 thereof, qualify for protection under this Order, then, before producing the specified documents, the  
16 PRODUCING PARTY must affix the appropriate label (“CONFIDENTIAL” or “HIGHLY  
17 CONFIDENTIAL – ATTORNEYS’ EYES ONLY”) at the top of each page that contains  
18 PROTECTED MATERIAL. If only a portion or portions of the material on a page qualifies for  
19 protection, the PRODUCING PARTY also must clearly identify the protected portion(s) (e.g., by  
20 making appropriate markings in the margins) and must specify, for each portion, the level of  
21 protection being asserted (either “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –  
22 ATTORNEYS’ EYES ONLY”).

23 (b) for testimony given in deposition or in other pre-trial or trial proceedings, that the  
24 PARTY or non-party offering or sponsoring the testimony identify on the record, before the close of  
25 the deposition, hearing, or other proceeding, all protected testimony, and further specify any portions  
26 of the testimony that qualify as “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”  
27 When it is impractical to identify separately each portion of testimony that is entitled to protection,  
28 and when it appears that substantial portions of the testimony may qualify for protection, the

1 PARTY or non-party that sponsors, offers, or gives the testimony may invoke on the record (before  
2 the deposition or proceeding is concluded) a right to have up to 20 days to identify the specific  
3 portions of the testimony as to which protection is sought and to specify the level of protection being  
4 asserted (“CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”).  
5 Only those portions of the testimony that are appropriately designated for protection within the 20  
6 days shall be covered by the provisions of this Stipulated Protective Order.

7 Transcript pages containing PROTECTED MATERIAL must be separately bound by the  
8 court reporter, who must affix to the top of each such page the legend “CONFIDENTIAL” or  
9 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” as instructed by the PARTY or non-  
10 party offering or sponsoring the witness or presenting the testimony.

11 (c) for information produced in some form other than documentary, and for any other  
12 tangible items, that the PRODUCING PARTY affix in a prominent place on the exterior of the  
13 container or containers in which the information or item is stored the legend “CONFIDENTIAL” or  
14 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” If only portions of the information  
15 or item warrant protection, the PRODUCING PARTY, to the extent practicable, shall identify the  
16 protected portions, specifying whether they qualify as “CONFIDENTIAL” or as “HIGHLY  
17 CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

18 5.3 INADVERTENT FAILURES TO DESIGNATE. If timely corrected, an inadvertent  
19 failure to designate information or items as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –  
20 ATTORNEYS’ EYES ONLY” does not, standing alone, waive the DESIGNATING PARTY’s right  
21 to secure protection under this Order for such material. If material is appropriately designated as  
22 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” after the  
23 material was initially produced, the RECEIVING PARTY, on timely notification of the designation,  
24 must make reasonable efforts to assure that the material is treated in accordance with the provisions  
25 of this Order.

26 **6.0 CHALLENGING CONFIDENTIALITY DESIGNATIONS**

27 6.1 TIMING OF CHALLENGES. Unless a prompt challenge to a DESIGNATING  
28 PARTY’s confidentiality designation is necessary to avoid foreseeable substantial unfairness,

1 unnecessary economic burdens, or a later significant disruption or delay of the litigation, a PARTY  
2 does not waive its right to challenge a confidentiality designation by electing not to mount a  
3 challenge promptly after the original designation is disclosed.

4       6.2    MEET AND CONFER. A PARTY that elects to initiate a challenge to a  
5 DESIGNATING PARTY's confidentiality designation must do so in good faith and must begin the  
6 process by conferring directly (in voice-to-voice dialogue; other forms of communications are not  
7 sufficient) with COUNSEL for the DESIGNATING PARTY. In conferring, the challenging  
8 PARTY must explain the basis for its belief that the confidentiality designation was not proper and  
9 must give the DESIGNATING PARTY an opportunity to review the designated material, to  
10 reconsider the circumstances, and, if no change in designation is offered, to explain the basis for the  
11 chosen designation. A challenging PARTY may proceed to the next stage of the challenge process  
12 only if it has engaged in this meet and confer process first.

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

21       The burden of persuasion in any such challenge shall be on the DESIGNATING PARTY.  
22 Until the Court rules on the challenge, all parties shall continue to afford the material in question the  
23 level of protection to which it is entitled under the PRODUCING PARTY's designation.

## 24       **7.0    ACCESS TO AND USE OF PROTECTED MATERIAL**

25       7.1    BASIC PRINCIPLES. A RECEIVING PARTY may use PROTECTED MATERIAL  
26 that is produced by another PARTY or by a non-party in connection with this case only for  
27 prosecuting, defending, or attempting to settle this litigation. Such PROTECTED MATERIAL may  
28 be disclosed only to the categories of persons and under the conditions described in this Order.

1 When the litigation has been terminated, a RECEIVING PARTY must comply with the provisions  
2 of Section 11.0, below (FINAL DISPOSITION).

3 PROTECTED MATERIAL must be stored and maintained by a RECEIVING PARTY at a  
4 location and in a secure manner that ensures that access is limited to the persons authorized under  
5 this Order.

6 //

7 7.2 DISCLOSURE OF "CONFIDENTIAL" INFORMATION or ITEMS. Unless  
8 otherwise ordered by the court or permitted in writing by the DESIGNATING PARTY, a  
9 RECEIVING PARTY may disclose any information or item designated CONFIDENTIAL only to:

10 (a) the RECEIVING PARTY's OUTSIDE COUNSEL of record in this action, as well as  
11 employees of said COUNSEL to whom it is reasonably necessary to disclose the information for this  
12 litigation and who have signed the "Acknowledgment and Agreement to be Bound by Protective  
13 Order" that is attached hereto as Exhibit A;

14 (b) the officers, directors, and employees (including HOUSE COUNSEL) of the  
15 RECEIVING PARTY to whom disclosure is reasonably necessary for this litigation and who have  
16 signed the "Acknowledgment and Agreement to be Bound by Protective Order" (Exhibit A);

17 (c) EXPERTS (as defined in this Order) of the RECEIVING PARTY to whom disclosure  
18 is reasonably necessary for this litigation and who have signed the "Acknowledgment and  
19 Agreement to be Bound by Protective Order" that is attached hereto as Exhibit A;

20 (d) the Court and its personnel;

21 (e) court reporters, their staffs, and PROFESSIONAL VENDORS to whom disclosure is  
22 reasonably necessary for this litigation and who have signed the "Acknowledgment and Agreement  
23 to be Bound by Protective Order" that is attached hereto as Exhibit A;

24 (f) during their depositions, witnesses in the action to whom disclosure is reasonably  
25 necessary and who have signed the "Acknowledgment and Agreement to be Bound by Protective  
26 Order" (Exhibit A). Pages of transcribed deposition testimony or exhibits to depositions that reveal  
27 PROTECTED MATERIAL must be separately bound by the court reporter and may not be disclosed  
28 to anyone except as permitted under this Stipulated Protective Order.



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

2 7.3 DISCLOSURE OF "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY"  
3 INFORMATION or ITEMS. Unless otherwise ordered by the court or permitted in writing by the  
4 DESIGNATING PARTY, a RECEIVING PARTY may disclose any information or item designated  
5 "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" only to:

6 (a) the RECEIVING PARTY's OUTSIDE COUNSEL of record in this action, as well as  
7 employees of said COUNSEL to whom it is reasonably necessary to disclose the information for this  
8 litigation and who have signed the "Acknowledgment and Agreement to be Bound by Protective  
9 Order" that is attached hereto as Exhibit A;

10 (b) EXPERTS (as defined in this Order) (1) to whom disclosure is reasonably necessary  
11 for this litigation; (2) who have signed the "Acknowledgment and Agreement to be Bound by  
12 Protective Order" (Exhibit A); and (3) as to whom the procedures set forth in Paragraph 7.4, below,  
13 have been followed;

14 (c) the Court and its personnel;

15 (d) court reporters, their staffs, and PROFESSIONAL VENDORS to whom disclosure is  
16 reasonably necessary for this litigation and who have signed the "Acknowledgment and Agreement  
17 to be Bound by Protective Order" (Exhibit A); and

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

19 7.4 PROCEDURES FOR APPROVING DISCLOSURE OF "HIGHLY  
20 CONFIDENTIAL – ATTORNEYS' EYES ONLY" INFORMATION OR ITEMS TO EXPERTS

21 (a) Unless otherwise ordered by the court or agreed in writing by the DESIGNATING  
22 PARTY, a PARTY that seeks to disclose to an EXPERT (as defined in this Order) any information  
23 or item that has been designated "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" first  
24 must make a written request to the DESIGNATING PARTY that (1) identifies the specific HIGHLY  
25 CONFIDENTIAL information that the RECEIVING PARTY seeks permission to disclose to the  
26 EXPERT; (2) sets forth the full name of the EXPERT and the city and state of his or her primary  
27 residence; (3) attaches a copy of the EXPERT's current resume; (4) identifies the EXPERT's current  
28 employer; (5) identifies each person or entity from whom the EXPERT has received compensation

1 for work in his or her areas of expertise or to whom the expert has provided professional services at  
2 any time during the preceding five years; and (6) identifies (by name and number of the case, filing  
3 date, and location of court) any litigation in connection with which the EXPERT has provided any  
4 professional services during the preceding five years.

5 (b) A PARTY that makes a request and provides the information specified in the  
6 preceding paragraph may disclose the subject PROTECTED MATERIAL to the identified EXPERT  
7 unless, within seven (7) court days of delivering the request, the PARTY receives a written objection  
8 from the DESIGNATING PARTY. Any such objection must set forth in detail the grounds on  
9 which it is based.

10 (c) A PARTY that receives a timely written objection must meet and confer with the  
11 DESIGNATING PARTY (through direct voice-to-voice dialogue) to try to resolve the matter by  
12 agreement. If no agreement is reached, the PARTY seeking to make the disclosure to the EXPERT  
13 may file a motion as provided in Civil Local Rule 7 (and in compliance with Civil Local Rule 79-5,  
14 if applicable) seeking permission from the court to do so. Any such motion must describe the  
15 circumstances with specificity, set forth in detail the reasons for which the disclosure to the  
16 EXPERT is reasonably necessary, assess the risk of harm that the disclosure would entail and  
17 suggest any additional means that might be used to reduce that risk. In addition, any such motion  
18 must be accompanied by a competent declaration in which the movant describes the PARTIES'  
19 efforts to resolve the matter by agreement (*i.e.*, the extent and the content of the meet and confer  
20 discussions) and sets forth the reasons advanced by the DESIGNATING PARTY for its refusal to  
21 approve the disclosure.

22 In any such proceeding, the PARTY opposing disclosure to the EXPERT shall bear the  
23 burden of proving that the risk of harm that the disclosure would entail (under the safeguards  
24 proposed) outweighs the RECEIVING PARTY's need to disclose the PROTECTED MATERIAL to  
25 its EXPERT.

26 **8.0 PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN**  
27 **OTHER LITIGATION.**

28 If a RECEIVING PARTY is served with a subpoena or an order issued in other litigation that

1 would compel disclosure of any information or items designated in this action as  
2 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” the  
3 RECEIVING PARTY must so notify the DESIGNATING PARTY, in writing (by fax, if possible)  
4 immediately and in no event more than three (3) court days after receiving the subpoena or order.  
5 Such notification must include a copy of the subpoena or court order.

6 //

7 The RECEIVING PARTY also must immediately inform in writing the PARTY who caused  
8 the subpoena or order to issue in the other litigation that some or all of the material covered by the  
9 subpoena or order is the subject of this Protective Order. In addition, the RECEIVING PARTY  
10 must deliver a copy of this Stipulated Protective Order promptly to the PARTY in the other action  
11 that caused the subpoena or order to issue.

12 The purpose of imposing these duties is to alert the interested PARTIES to the existence of  
13 this Protective Order and to afford the DESIGNATING PARTY in this case an opportunity to try to  
14 protect its confidentiality interests in the court from which the subpoena or order issued. The  
15 DESIGNATING PARTY shall bear the burdens and the expenses of seeking the protection in that  
16 court of its confidential material – and nothing in these provisions should be construed as  
17 authorizing or encouraging the RECEIVING PARTY in this action to disobey a lawful directive  
18 from another court.

19 **9.0 UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL.**

20 If a RECEIVING PARTY learns that, by inadvertence or otherwise, it has disclosed  
21 PROTECTED MATERIAL to any person or in any circumstance not authorized under this  
22 Stipulated Protective Order, the RECEIVING PARTY must immediately (a) notify in writing the  
23 DESIGNATING PARTY of the unauthorized disclosures; (b) use its best efforts to retrieve all  
24 copies of the PROTECTED MATERIAL; (c) inform the person or persons to whom unauthorized  
25 disclosures were made of all the terms of this Order; and (d) request such person or persons to  
26 execute the “Acknowledgment and Agreement to be Bound” that is attached hereto as Exhibit A.

27 **10.0 FILING PROTECTED MATERIAL.**

28 Without written permission from the DESIGNATING PARTY or a court order secured after

1 appropriate notice to all interested persons, a PARTY may not file in the public record in this action  
2 any PROTECTED MATERIAL. A PARTY that seeks to file under seal any PROTECTED  
3 MATERIAL must comply with Civil Local Rule 79-5.

4 **11.0 FINAL DISPOSITION.**

5 Unless otherwise ordered or agreed in writing by the PRODUCING PARTY, within  
6 sixty (60) days after the final termination of this action, each RECEIVING must return all  
7 PROTECTED MATERIAL to the PRODUCING PARTY. As used in this subdivision, "all  
8 PROTECTED MATERIAL" includes all copies, abstracts, compilations, summaries or any other  
9 form of reproducing or capturing any of the PROTECTED MATERIAL. With permission in writing  
10 from the DESIGNATING PARTY, the RECEIVING PARTY may destroy some or all of the  
11 PROTECTED MATERIAL instead of returning it. Whether the PROTECTED MATERIAL is  
12 returned or destroyed, the RECEIVING PARTY must submit a written certification to the  
13 PRODUCING PARTY (and, if not the same person or entity, to the DESIGNATING PARTY) by  
14 the sixty (60) day deadline that identifies (by category, where appropriate) all the PROTECTED  
15 MATERIAL that was returned or destroyed and that affirms that the RECEIVING PARTY has not  
16 retained any copies, abstracts, compilations, summaries or other forms of reproducing or capturing  
17 any of the PROTECTED MATERIAL. Notwithstanding this provision, COUNSEL are entitled to  
18 retain an archival copy of all pleadings, motion papers, transcripts, legal memoranda,  
19 correspondence or attorney work product, even if such materials contain PROTECTED  
20 MATERIAL. Any such archival copies that contain or constitute PROTECTED MATERIAL  
21 remain subject to this Protective Order as set forth in Section 4.0 (DURATION), above.

22 **12.0 MISCELLANEOUS.**

23 12.1 RIGHT TO FURTHER RELIEF. Nothing in this Order abridges the right of any  
24 person to seek its modification by the Court in the future.

25 12.2 RIGHT TO ASSERT OTHER OBJECTIONS. By stipulating to the entry of this  
26 Protective Order, no PARTY waives any right it otherwise would have to object to disclosing or  
27 producing any information or item on any ground not addressed in this Stipulated Protective Order.  
28 Similarly, no PARTY waives any right to object on any ground to use in evidence of any of the

1 material covered by this Protective Order.

2           12.3 PRODUCTION OF DOCUMENTS. Within ten (10) calendar days following receipt  
3 of notice of execution of this Stipulation and Order, Defendant County of San Mateo shall deliver to  
4 the Court for in camera review all of the Subject Records, along with a Log or Brief explaining any  
5 objections to turning such materials over to opposing counsel, and shall simultaneously serve all  
6 counsel with a copy of such Log or Brief. Opposing counsel shall then have seven (7) days to file  
7 and serve a brief of not more than five (5) pages addressing the County's arguments, if any. The  
8 matter then shall be submitted to the Court for its review and determination of whether the subject  
9 records, or any part thereof, shall be produced pursuant to the protections of the Order. All  
10 documents so produced shall be labeled according to the terms of Paragraph 5, above. Nothing in  
11 this Stipulation and Order requires the disclosure of documents subject to the work product or  
12 attorney client privilege. The PARTIES acknowledge and agree that the use of any documents  
13 identified as PROTECTED MATERIAL shall be subject to the terms of this Stipulation and Order.

14 //

15 //

16 //

17 //

18 //

19 //

20 //

21 //

22 //

23 //

24 //

25 //

26 //

27 //

28 //

1 //  
2 //  
3 //

4 IT IS SO STIPULATED, THROUGH THE PARTIES AND/OR THEIR COUNSEL OF  
5 RECORD.

6 Dated: March 16, 2009

OFFICE OF THE COUNTY COUNSEL,  
COUNTY OF SAN MATEO

7  
8 By David A. Levy  
9 David A. Levy, Esq., Attorneys for  
Defendant COUNTY OF SAN MATEO

10 Dated: March 16, 2009

LAW OFFICES OF WAUKEEN Q.  
MCCOY

11  
12  
13 By Waukeen Q. McCoy  
14 Waukeen Q. McCoy, Attorneys for Plaintiff  
STACEY MOODY

15 Dated: March 17, 2009

SHUPE AND FINKELSTEIN

16  
17 By John A. Shupe  
18 John A. Shupe, Esq., Attorneys for  
19 Defendant LAURANCE GAINES

20 ORDER

21 PURSUANT TO THE PARTIES' STIPULATION, IT IS SO ORDERED AS MODIFIED.

22 Dated: 3/26/09

23 United States Magistrate Judge.

24 M:\Moody\Discovery\StipulatedProtectiveOrder.wpd

