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 6 THE BAY AREA AIR QUALITY
 MANAGEMENT DISTRICT
 7

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

11 ANDREA GORDON,)	Case No. 3:08-cv-03630-BZ
)	
12 Plaintiff,)	STIPULATED PROTECTIVE ORDER
)	
13 v.)	
)	JUDGE: Magistrate Judge
14 THE BAY AREA AIR QUALITY)	Bernard Zimmerman
15 MANAGEMENT DISTRICT,)	COURTROOM: G, 15 th Floor
)	
16 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 warranted.
 21 Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated
 22 Protective Order. The parties acknowledge that this Order does not confer blanket protections on
 23 all disclosures or responses to discovery and that the protection it affords extends only to the
 24 limited information or items that are entitled under the applicable legal principles to treatment as
 25 confidential. The parties further acknowledge, as set forth in Section 10, below, that this
 26 Stipulated Protective Order creates no entitlement to file confidential information under seal; Civil
 27 Local Rule 79-5 sets forth the procedures that must be followed and reflects the standards that will
 28 be applied when a party seeks permission from the court to file material under seal.

1 2. DEFINITIONS

2 2.1 Party: any party to this action, including all of its officers, directors,
3 employees, consultants, retained experts, and outside counsel (and their support staff).

4 2.2 Disclosure or Discovery Material: all items or information, regardless of
5 the medium or manner generated, stored, or maintained (including, among other things, testimony,
6 transcripts, or tangible things) that are produced or generated in disclosures or responses to
7 discovery in this matter.

8 2.3 "Confidential" Information or Items: information (regardless of how
9 generated, stored or maintained) or tangible things that qualify for protection under standards
10 developed under F.R.Civ.P. 26(c).

11 2.4 "Highly Confidential - Attorneys' Eyes Only" Information or Items:
12 extremely sensitive "Confidential Information or Items" whose disclosure to another Party or
13 nonparty would create a substantial risk of serious injury that could not be avoided by less
14 restrictive means.

15 2.5 Receiving Party: a Party that receives Disclosure or Discovery Material
16 from a Producing Party.

17 2.6 Producing Party: a Party or non-party that produces Disclosure or
18 Discovery Material in this action.

19 2.7 Designating Party: a Party or non-party that designates information or
20 items that it produces in disclosures or in responses to discovery as "Confidential" or "Highly
21 Confidential - Attorneys' Eyes Only."

22 2.8 Protected Material: any Disclosure or Discovery Material that is designated
23 as "Confidential" or as "Highly Confidential - Attorneys' Eyes Only."

24 2.9 Outside Counsel: attorneys who are not employees of a Party but who are
25 retained to represent or advise a Party in this action.

26 2.10 House Counsel: attorneys who are employees of a Party.

27 2.11 Counsel (without qualifier): Outside Counsel and House Counsel (as well
28 as their support staffs).

1 2.12 Expert: a person with specialized knowledge or experience in a matter
2 pertinent to the litigation who has been retained by a Party or its counsel to serve as an expert
3 witness or as a consultant in this action and who is not a past or a current employee of a Party or
4 of a competitor of a Party's and who, at the time of retention, is not anticipated to become an
5 employee of a Party or a competitor of a Party's. This definition includes a professional jury or
6 trial consultant retained in connection with this litigation.

7 2.13 Professional Vendors: persons or entities that provide litigation support
8 services (e.g., photocopying; videotaping; translating; preparing exhibits or demonstrations;
9 organizing, storing, retrieving data in any form or medium; etc.) and their employees and
10 subcontractors.

11 3. SCOPE

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

16 4. DURATION

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

20 5. DESIGNATING PROTECTED MATERIAL

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

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1 Mass, indiscriminate, or routinized designations are prohibited. Designations that
2 are 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
10 Order (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
15 depositions or other pretrial or trial proceedings), that the Producing Party either (i) affix the
16 legend "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY" at
17 the top of each page that contains protected material or (ii) designate by Bates Number in a
18 document log supplied with produced documents which pages(s) of material are
19 "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL - ATTORNEY EYES ONLY." If only a
20 portion or portions of the material on a page qualifies for protection, the Producing Party also
21 must clearly identify the protected portion(s) (e.g., by making appropriate markings in the
22 margins) and must specify, for each portion, the level of protection being asserted (either
23 "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY").

24 A Party or non-party that makes original documents or materials available
25 for inspection need not designate them for protection until after the inspecting Party has indicated
26 which material it would like copied and produced. During the inspection and before the
27 designation, all of the material made available for inspection shall be deemed "HIGHLY
28 CONFIDENTIAL - ATTORNEYS' EYES ONLY." After the inspecting Party has identified the

1 documents it wants copied and produced, the Producing Party must determine which documents,
2 or portions thereof, qualify for protection under this Order, then, before producing the specified
3 documents, the Producing Party must affix the appropriate legend ("CONFIDENTIAL" or
4 "HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY") at the top of each page that
5 contains Protected Material. If only a portion or portions of the material on a page qualifies for
6 protection, the Producing Party also must clearly identify the protected portion(s) (e.g., by making
7 appropriate markings in the margins) and must specify, for each portion, the level of protection
8 being asserted (either "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL - ATTORNEYS'
9 EYES ONLY").

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

23 Transcript pages containing Protected Material must be separately bound
24 by the court reporter, who must affix to the top of each such page the legend "CONFIDENTIAL"
25 or "HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY," as instructed by the Party or
26 nonparty offering or sponsoring the witness or presenting the testimony.

27 (c) for information produced in some form other than documentary, and for
28 any other tangible items, that the Producing Party affix in a prominent place on the exterior of the

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

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

13 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

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

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

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1 6.3 Judicial Intervention. A Party that elects to press a challenge to a
2 confidentiality designation after considering the justification offered by the Designating Party may
3 file and serve a motion under Civil Local Rule 7 (and in compliance with Civil Local Rule 79-5,
4 if applicable) that identifies the challenged material and sets forth in detail the basis for the
5 challenge. Each such motion must be accompanied by a competent declaration that affirms that
6 the movant has complied with the meet and confer requirements imposed in the preceding
7 paragraph and that sets forth with specificity the justification for the confidentiality designation
8 that was given by the Designating Party in the meet and confer dialogue.

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

13 7. ACCESS TO AND USE OF PROTECTED MATERIAL

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

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

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

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

1 attached hereto as Exhibit A;

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

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

8 (d) the Court and its personnel;

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

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

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

18 7.3 Disclosure of "HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY"
19 Information or Items. Unless otherwise ordered by the court or permitted in writing by the
20 Designating Party, a Receiving Party may disclose any information or item designated "HIGHLY
21 CONFIDENTIAL - ATTORNEYS' EYES ONLY" only to:

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

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

- 1 (c) the Court and its personnel;
- 2 (d) court reporters, their staffs, and professional vendors to whom
- 3 disclosure is reasonably necessary for this litigation and who have signed the "Agreement to Be
- 4 Bound by Protective Order" (Exhibit A); and
- 5 (e) the author of the document or the original source of the information.

6 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER

7 LITIGATION.

8 If a Receiving Party is served with a subpoena or an order issued in other litigation

9 that would compel disclosure of any information or items designated in this action as

10 "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY," the

11 Receiving Party must so notify the Designating Party, in writing (by fax, or email if possible)

12 immediately and in no event more than three court days after receiving the subpoena or order.

13 Such notification must include a copy of the subpoena or court order.

14 The Receiving Party also must immediately inform in writing the Party who caused

15 the subpoena or order to issue in the other litigation that some or all the material covered by the

16 subpoena or order is the subject of this Protective Order. In addition, the Receiving Party must

17 deliver a copy of this Stipulated Protective Order promptly to the Party in the other action that

18 caused the subpoena or order to issue.

19 The purpose of imposing these duties is to alert the interested parties to the

20 existence of this Protective Order and to afford the Designating Party in this case an opportunity

21 to try to protect its confidentiality interests in the court from which the subpoena or order issued.

22 The Designating Party shall bear the burdens and the expenses of seeking protection in that court

23 of its confidential material - and nothing in these provisions should be construed as authorizing

24 or encouraging a Receiving Party in this action to disobey a lawful directive from another court.

25 9. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

26 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected

27 Material to any person or in any circumstance not authorized under this Stipulated Protective

28 Order, the Receiving Party must immediately (a) notify in writing the Designating Party of the

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

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

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

25 12. MISCELLANEOUS

26 12.1 Right to Further Relief. Nothing in this Order abridges the right of any
27 person to seek its modification by the Court in the future.

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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 Andrea Gordon v. The Bay Area Air Quality Management District,
Case Number 3:08-cv-03630-BZ. 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: _____
[printed name]

Signature: _____
[signature]

1 DALEY & HEFT, ATTORNEYS AT LAW
RICHARD J. SCHNEIDER, ESQ. (SBN 118580)
2 GOLNAR J. FOZI, ESQ. (SBN 167674)
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5 Attorneys for Defendant,
6 THE BAY AREA AIR QUALITY
MANAGEMENT DISTRICT
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8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA

11 ANDREA GORDON,
12 Plaintiff,

13 v.

14 THE BAY AREA AIR QUALITY)
MANAGEMENT DISTRICT,)
15 Defendant.)
16 _____)

Case No. 3:08-cv-03630-BZ

CERTIFICATE OF SERVICE

JUDGE:

Magistrate Judge
Bernard Zimmerman
G, 15th Floor

COURTROOM:

17 I, Linda T. Willis, certify and declare as follows:

- 18 1. I am over the age of 18 years and not a party to this action.
19 2. I caused to be serve the following document(s) via electronic mail:

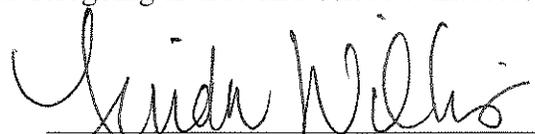
20 **STIPULATED PROTECTIVE ORDER**

21 3. **Electronic Mail Notice List**

22 The following are those who are currently on the list to receive e-mail notices for this case:

23 Howard Moore, Jr., MOORE & MOORE:
moorlaw@aol.com
24 Attorney for Plaintiff, ANDREA GORDON

25 I declare under penalty of perjury that the foregoing is true and correct. Executed on
26 November 6, 2008 in Solana Beach, California.

27 
28 Linda T. Willis, Declarant