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9 COUNTY OF ALAMEDA, MARY TAKEUCHI,
10 DALIE BILLITER and MICHAEL YEE

11 UNITED STATES DISTRICT COURT

12 NORTHERN DISTRICT OF CALIFORNIA – SAN FRANCISCO

13 DANIELLE POLAR, SHALAWN POLLAR,) Case No.: C08-04196 BZ
14 Guardian Ad Litem for J.A., a minor,)
15) **STIPULATED PROTECTIVE ORDER**
16 Plaintiffs,)
17 vs.)
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1. **PURPOSES AND LIMITATIONS**

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

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

2 2. DEFINITIONS

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

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

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

12 2.4 Receiving Party: a Party that receives Disclosure or Discovery Material from a
13 Producing Party.

14 2.5 Producing Party: a Party or non-party that produces Disclosure or Discovery
15 Material in this action.

16 2.6 Designating Party: a Party or non-party that designates information or items that
17 it produces in disclosures or in responses to discovery as “Confidential.”

18 2.7 Protected Material: any Disclosure or Discovery Material that is designated as
19 “Confidential.”

20 2.8 Outside Counsel: attorneys who are not employees of a Party but who are
21 retained to represent or advise a Party in this action.

22 2.9 House Counsel: attorneys who are employees of a Party.

23 2.10 Counsel (without qualifier): Outside Counsel and House Counsel (as well as
24 their support staffs).

25 2.11 Expert: a person with specialized knowledge or experience in a matter pertinent
26 to the litigation who has been retained by a Party or its counsel to serve as an expert witness or
27 as a consultant in this action and who is not a past or a current employee of a Party.

28 2.12 Professional Vendors: persons or entities that provide litigation support services

1 (e.g., photocopying; videotaping; translating; preparing exhibits or demonstrations; organizing,
2 storing, retrieving data in any form or medium; etc.) and their employees and subcontractors.

3 3. SCOPE

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

9 4. DURATION

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

13 5. DESIGNATING PROTECTED MATERIAL

14 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each
15 Party or non-party that designates information or items for protection under this Order must take
16 care to limit any such designation to specific material that qualifies under the appropriate
17 standards. A Designating Party must take care to designate for protection only those parts of
18 material, documents, items, or oral or written communications that qualify - so that other
19 portions of the material, documents, items, or communications for which protection is not
20 warranted are not swept unjustifiably within the ambit of this Order.

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

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

1 5.2 Manner and Timing of Designations. Except as otherwise provided in this Order
2 (see, e.g., second paragraph of section 5.2(a), below), or as otherwise stipulated or ordered,
3 material that qualifies for protection under this Order must be clearly so designated before the
4 material is disclosed or produced.

5 Designation in conformity with this Order requires:

6 (a) for information in documentary form (apart from transcripts of depositions or
7 other pretrial or trial proceedings), that the Producing Party affix the legend
8 “CONFIDENTIAL” at the top of each page that contains protected material. If only a portion or
9 portions of the material on a page qualifies for protection, the Producing Party also must clearly
10 identify the protected portion(s) (e.g., by making appropriate markings in the margins) and must
11 specify, for each portion, that part “CONFIDENTIAL”.

12 A Party or non-party that makes original documents or materials available for
13 inspection need not designate them for protection until after the inspecting Party has indicated
14 which material it would like copied and produced. During the inspection and before the
15 designation, all of the material made available for inspection shall be deemed
16 “CONFIDENTIAL.” After the inspecting Party has identified the documents it wants copied
17 and produced, the Producing Party must determine which documents, or portions thereof,
18 qualify for protection under this Order, then, before producing the specified documents, the
19 Producing Party must affix the appropriate legend “CONFIDENTIAL” at the top of each page
20 that contains Protected Material. If only a portion or portions of the material on a page qualifies
21 for protection, the Producing Party also must clearly identify the protected portion(s) (e.g., by
22 making appropriate markings in the margins) and must specify, for each portion, that portion as
23 “CONFIDENTIAL”.

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

1 substantial portions of the testimony may qualify for protection, the Party or non-party that
2 sponsors, offers, or gives the testimony may invoke on the record (before the deposition or
3 proceeding is concluded) a right to have up to 30 days to identify the specific portions of the
4 testimony as to which protection is sought. Only those portions of the testimony that are
5 appropriately designated for protection within the 30 days shall be covered by the provisions of
6 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” as
9 instructed by the Party or non-party offering or sponsoring the witness or presenting the
10 testimony.

11 (c) for information produced in some form other than documentary, and for any
12 other 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
14 “CONFIDENTIAL”. If only portions of the information or item warrant protection, the
15 Producing Party, to the extent practicable, shall identify the protected portions.

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

22 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

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

28 6.2 Meet and Confer. A Party that elects to initiate a challenge to a Designating

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

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

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

20 7. ACCESS TO AND USE OF PROTECTED MATERIAL

21 7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed
22 or produced by another Party or by a non-party in connection with this case only for
23 prosecuting, defending, or attempting to settle this litigation. Such Protected Material may be
24 disclosed only to the categories of persons and under the conditions described in this Order.
25 When the litigation has been terminated, a Receiving Party must comply with the provisions of
26 section 11, below (FINAL DISPOSITION).

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

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1 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise
2 ordered by the court or permitted in writing by the Designating Party, a Receiving Party may
3 disclose any information or item designated CONFIDENTIAL only to:

4 (a) the Receiving Party’s Outside Counsel of record in this action, as well as
5 employees of said Counsel to whom it is reasonably necessary to disclose the information for
6 this litigation and who have signed the “Agreement to Be Bound by Protective Order” that is
7 attached hereto as Exhibit A;

8 (b) experts (as defined in this Order) of the Receiving Party 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 (c) the Court and its personnel;

12 (d) court reporters, their staffs, and professional vendors to whom disclosure is
13 reasonably necessary for this litigation and who have signed the “Agreement to Be Bound by
14 Protective Order” (Exhibit A);

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

20 (f) the author of the document or the original source of the information.

21 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN
22 OTHER LITIGATION

23 If a Receiving Party is served with a subpoena or an order issued in other litigation that
24 would compel disclosure of any information or items designated in this action as
25 “CONFIDENTIAL,” the Receiving Party must so notify the Designating Party, in writing (by
26 fax, if possible) immediately and in no event more than three court days after receiving the
27 subpoena or order. Such notification must include a copy of the subpoena or court order.

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

1 subpoena or order to issue in the other litigation that some or all the material covered by the
2 subpoena or order is the subject of this Protective Order. In addition, the Receiving Party must
3 deliver a copy of this Stipulated Protective Order promptly to the Party in the other action that
4 caused the subpoena or order to issue.

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

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

12 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected
13 Material to any person or in any circumstance not authorized under this Stipulated Protective
14 Order, the Receiving Party must immediately (a) notify in writing the Designating Party of the
15 unauthorized disclosures, (b) use its best efforts to retrieve all copies of the Protected Material,
16 (c) inform the person or persons to whom unauthorized disclosures were made of all the terms
17 of this Order, and (d) request such person or persons to execute the “Acknowledgment and
18 Agreement to Be Bound” that is attached hereto as Exhibit A.

19 **10. FILING PROTECTED MATERIAL**

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

24 **11. FINAL DISPOSITION**

25 Unless otherwise ordered or agreed in writing by the Producing Party, within sixty days
26 after the final termination of this action, each Receiving Party must return all Protected Material
27 to the Producing Party. As used in this subdivision, “all Protected Material” includes all copies,
28 abstracts, compilations, summaries or any other form of reproducing or capturing any of the

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1 Protected Material. With permission in writing from the Designating Party, the Receiving Party
2 may destroy some or all of the Protected Material instead of returning it. Whether the Protected
3 Material is returned or destroyed, the Receiving Party must submit a written certification to the
4 Producing Party (and, if not the same person or entity, to the Designating Party) by the sixty day
5 deadline that identifies (by category, where appropriate) all the Protected Material that was
6 returned or destroyed and that affirms that the Receiving Party has not retained any copies,
7 abstracts, compilations, summaries or other forms of reproducing or capturing any of the
8 Protected Material. Notwithstanding this provision, Counsel are entitled to retain an archival
9 copy of all pleadings, motion papers, transcripts, legal memoranda, correspondence or attorney
10 work product, even if such materials contain Protected Material. Any such archival copies that
11 contain or constitute Protected Material remain subject to this Protective Order as set forth in
12 Section 4 (DURATION), above.

13 12. MISCELLANEOUS

14 12.1 Right to Further Relief. Nothing in this Order abridges the right of any person to
15 seek its modification by the Court in the future.

16 12.2 Right to Assert Other Objections. By stipulating to the entry of this Protective
17 Order no Party waives any right it otherwise would have to object to disclosing or producing any
18 information or item on any ground not addressed in this Stipulated Protective Order. Similarly,
19 no Party waives any right to object on any ground to use in evidence of any of the material
20 covered by this Protective Order.

21 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

22 Dated: October 29, 2008 HAAPALA, THOMPSON & ABERN, LLP

24 By: /s/ Rebecca S. Widen
25 Rebecca S. Widen
26 Attorneys For Defendant
27 COUNTY OF ALAMEDA

27 /
28 /

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Dated: October ____, 2008

LAW OFFICES OF ROBERT R. POWELL

By: _____
Robert R. Powell
Attorneys For Plaintiffs

ORDER

PURSUANT TO STIPULATION, IT IS SO ORDERED.

Dated: October 31, 2008


Honorable Bernard Zimmerman
United States Magistrate Judge

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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 **[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.

Dated: _____
City and State where sworn and signed: _____
Printed Name: _____
Signature: _____