

1 Christopher Sproul (State Bar No. 126398)
 2 Jodene Isaacs (State Bar No. 226895)
 3 Brian Orion (State Bar No. 239460)
 4 ENVIRONMENTAL ADVOCATES
 5 5135 Anza Street
 6 San Francisco, California 94121
 7 Telephone: (415) 533-3376, (510) 847-3467
 8 Facsimile: (415) 358-5695
 9 Email: csproul@enviroadvocates.com
 10 Email: jisaacs@enviroadvocates.com

11 William Verick (State Bar No. 140972)
 12 Klamath Environmental Law Center
 13 Fredric Evenson (State Bar No. 198059)
 14 Law Offices of Fredric Evenson
 15 424 First Street
 16 Eureka, California 95501
 17 Telephone: (707) 268-8900
 18 Facsimile: (707) 268-8901
 19 Email: wverick@igc.org, ecorights@earthlink.net

20 Attorneys for Plaintiff
 21 ECOLOGICAL RIGHTS FOUNDATION

22 UNITED STATES DISTRICT COURT
 23 NORTHERN DISTRICT OF CALIFORNIA

24 ECOLOGICAL RIGHTS FOUNDATION,
 25
 26 Plaintiff,
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 28 v.
 29 PACIFIC GAS AND ELECTRIC COMPANY,
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 31 Defendant.

Civil No. CV-10-00121 RS

**STIPULATED PROPOSED
 PROTECTIVE ORDER RE
 DOCUMENTS PRODUCED BY
 ALCO IRON & METALS COMPANY**

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2 1. PURPOSES AND LIMITATIONS

3 Documents sought by Plaintiff Ecological Rights Foundation ("ERF") from Alco Iron and Metals
4 Company ("ALCO"), a non-party in this action, pursuant to ERF's Subpoena for Documents to ALCO
5 involve the production of confidential, proprietary, or private information for which special protection
6 from public disclosure and from use for any purpose other than prosecuting this litigation may be
7 warranted. Accordingly, ERF and ALCO hereby stipulate to and petition the court to enter the following
8 Stipulated Protective Order. ERF and ALCO acknowledge that this Order does not confer blanket
9 protections on all disclosures or responses to discovery and that the protection it affords from public
10 disclosure and use extends only to the limited information or items that are entitled to confidential
11 treatment under the applicable legal principles. ERF and ALCO further acknowledge, as set forth in
12 Section ~~11.3~~^{12.3}, below, that this Stipulated Protective Order does not entitle them to file confidential
13 information under seal; Civil Local Rule 79-5 sets forth the procedures that must be followed and the
14 standards that will be applied when a party seeks permission from the court to file material under seal.

15 2. DEFINITIONS

16 2.1 Challenging Party: a Party or Non-Party that challenges the designation of information or
17 items under this Order.

18 2.2 "CONFIDENTIAL" Information or Items: information (regardless of how it is generated,
19 stored or maintained) or tangible things that qualify for protection under Federal Rule of Civil Procedure
20 26(c).

21 2.3 Counsel (without qualifier): Outside Counsel of Record and House Counsel (as well as their
22 support staff).

23 2.4 Designating Party: a Party or Non-Party that designates information or items that it produces
24 in disclosures or in responses to discovery as "CONFIDENTIAL."

25 2.5 Disclosure or Discovery Material: all items or information, regardless of the medium or
26 manner in which it is generated, stored, or maintained (including, among other things, testimony,
27 transcripts, and tangible things), that are produced or generated in disclosures or responses to discovery
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1 in this matter.

2 2.6 Expert: a person with specialized knowledge or experience in a matter pertinent to the
3 litigation who has been retained by a Party or its counsel to serve as an expert witness or as a consultant
4 in this action.

5 2.7 House Counsel: attorneys who are employees of a party to this action. House Counsel does
6 not include Outside Counsel of Record or any other outside counsel.

7 2.8 Non-Party: any natural person, partnership, corporation, association, or other legal entity not
8 named as a Party to this action.

9 2.9 Outside Counsel of Record: attorneys who are not employees of a party to this action but are
10 retained to represent or advise a party to this action and have appeared in this action on behalf of that
11 party or are affiliated with a law firm which has appeared on behalf of that party.

12 2.10 Party: ERF, including all of its officers, directors, employees, consultants, retained experts,
13 and Outside Counsel of Record (and their support staffs), and any Defendant in this action, including all
14 of its officers, directors, employees, consultants, retained experts, and Outside Counsel of Record (and
15 their support staffs), if and only if the Defendant has signed Exhibit A to this stipulation.

16 2.11 Producing Party: Alco Iron and Metals Company, including its attorneys, officers, directors,
17 agents and employees..

18 2.12 Professional Vendors: persons or entities that provide litigation support services (e.g.,
19 photocopying, videotaping, translating, preparing exhibits or demonstrations, and organizing, storing, or
20 retrieving data in any form or medium) and their employees and subcontractors.

21 2.13 Protected Material: any Disclosure or Discovery Material that is designated as
22 “CONFIDENTIAL.”

23 2.14 Receiving Party: a Party that receives Disclosure or Discovery Material from a Producing
24 Party.

25 3. SCOPE

26 The protections conferred by this Stipulation and Order cover not only Protected Material (as
27 defined above), but also (1) any information copied or extracted from Protected Material; (2) all copies,
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1 excerpts, summaries, or compilations of Protected Material; and (3) any testimony, conversations, or
2 presentations by ERF and ALCO or their Counsel that might reveal Protected Material. However, the
3 protections conferred by this Stipulation and Order do not cover the following information: (a) any
4 information that is in the public domain at the time of disclosure to a Receiving Party or becomes part of
5 the public domain after its disclosure to a Receiving Party as a result of publication not involving a
6 violation of this Order, including becoming part of the public record through trial or otherwise; and (b)
7 any information known to the Receiving Party prior to the disclosure or obtained by the Receiving Party
8 after the disclosure from a source who obtained the information lawfully and under no obligation of
9 confidentiality to the Designating Party. Any use of Protected Material at trial shall be governed by a
10 separate agreement or order.

11 4. DURATION

12 Even after final disposition of this litigation, the confidentiality obligations imposed by this
13 Order shall remain in effect until a Designating Party agrees otherwise in writing or a court order
14 otherwise directs. Final disposition shall be deemed to be the later of (1) dismissal of all claims and
15 defenses in this action, with or without prejudice; and (2) final judgment herein after the completion and
16 exhaustion of all appeals, rehearings, remands, trials, or reviews of this action, including the time limits
17 for filing any motions or applications for extension of time pursuant to applicable law.

18 5. DESIGNATING PROTECTED MATERIAL

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

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

3 If it comes to a Designating Party's attention that information or items that it designated for
4 protection do not qualify for protection, that Designating Party must promptly notify all other Parties
5 that it is withdrawing the mistaken designation.

6 5.2 Manner and Timing of Designations. Except as otherwise provided in this Order (see, e.g.,
7 second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered, Disclosure or
8 Discovery Material that qualifies for protection under this Order must be clearly so designated before
9 the material is disclosed or produced.

10 Designation in conformity with this Order requires:

11 (a) for information in documentary form (e.g., paper or electronic documents, but excluding
12 transcripts of depositions or other pretrial or trial proceedings), that the Producing Party affix the legend
13 "CONFIDENTIAL" to each page that contains protected material. If only a portion or portions of the
14 material on a page qualifies for protection, the Producing Party also must clearly identify the protected
15 portion(s) (e.g., by making appropriate markings in the margins).

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

26 (b) for testimony given in deposition or in other pretrial or trial proceedings, that the Designating
27 Party identify on the record, before the close of the deposition, hearing, or other proceeding, all
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1 protected testimony.

2 (c) for information produced in some form other than documentary and for any other tangible
3 items, that the Producing Party affix in a prominent place on the exterior of the container or containers
4 in which the information or item is stored the legend "CONFIDENTIAL." If only a portion or portions
5 of the information or item warrant protection, the Producing Party, to the extent practicable, shall
6 identify the protected portion(s).

7 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to designate
8 qualified information or items does not, standing alone, waive the Designating Party's right to secure
9 protection under this Order for such material. Upon timely correction of a designation, the Receiving
10 Party must make reasonable efforts to assure that the material is treated in accordance with the
11 provisions of this Order.

12 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

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

19 6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution process by
20 providing written notice of each designation it is challenging and describing the basis for each challenge.
21 To avoid ambiguity as to whether a challenge has been made, the written notice must recite that the
22 challenge to confidentiality is being made in accordance with this specific paragraph of the Protective
23 Order. The parties shall attempt to resolve each challenge in good faith and must begin the process by
24 conferring directly (in voice to voice dialogue; other forms of communication are not sufficient) within
25 14 days of the date of service of notice. In conferring, the Challenging Party must explain the basis for
26 its belief that the confidentiality designation was not proper and must give the Designating Party an
27 opportunity to review the designated material, to reconsider the circumstances, and, if no change in
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1 designation is offered, to explain the basis for the chosen designation. A Challenging Party may proceed
2 to the next stage of the challenge process only if it has engaged in this meet and confer process first or
3 establishes that the Designating Party is unwilling to participate in the meet and confer process in a
4 timely manner.

5 6.3 Judicial Intervention. If the Parties cannot resolve a challenge without court intervention, the
6 Designating Party shall file and serve a motion to retain confidentiality under Civil Local Rule 7 (and in
7 compliance with Civil Local Rule 79-5, if applicable) within 21 days of the initial notice of challenge or
8 within 14 days of the parties agreeing that the meet and confer process will not resolve their dispute,
9 whichever is earlier. Each such motion must be accompanied by a competent declaration affirming that
10 the movant has complied with the meet and confer requirements imposed in the preceding paragraph.
11 Failure by the Designating Party to make such a motion including the required declaration within 21
12 days (or 14 days, if applicable) shall automatically waive the confidentiality designation for each
13 challenged designation. In addition, the Challenging Party may file a motion challenging a
14 confidentiality designation at any time if there is good cause for doing so, including a challenge to the
15 designation of a deposition transcript or any portions thereof. Any motion brought pursuant to this
16 provision must be accompanied by a competent declaration affirming that the movant has complied with
17 the meet and confer requirements imposed by the preceding paragraph.

18 The burden of persuasion in any such challenge proceeding shall be on the Designating Party.
19 Frivolous challenges, and those made for an improper purpose (e.g., to harass or impose unnecessary
20 expenses and burdens on other parties) may expose the Challenging Party to sanctions. Unless the
21 Designating Party has waived the confidentiality designation by failing to file a motion to retain
22 confidentiality as described above, all parties shall continue to afford the material in question the level
23 of protection to which it is entitled under the Producing Party's designation until the court rules on the
24 challenge.

25 7. ACCESS TO AND USE OF PROTECTED MATERIAL

26 7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed or produced
27 by another Party or by a Non-Party in connection with this case only for prosecuting, defending, or
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1 attempting to settle this litigation. Such Protected Material may be disclosed only to the categories of
2 persons and under the conditions described in this Order. When the litigation has been terminated, a
3 Receiving Party must comply with the provisions of section 13 below (FINAL DISPOSITION).
4 Protected Material must be stored and maintained by a Receiving Party at a location and in a secure
5 manner that ensures that access is limited to the persons authorized under this Order.

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

9 (a) the Receiving Party’s Outside Counsel of Record in this action, as well as employees of said
10 Outside Counsel of Record to whom it is reasonably necessary to disclose the information for this
11 litigation and who have signed the “Acknowledgment and Agreement to Be Bound” that is attached
12 hereto as Exhibit A;

13 (b) the officers, directors, and employees (including House Counsel) of the Receiving Party to
14 whom disclosure is reasonably necessary for this litigation and who have signed the “Acknowledgment
15 and Agreement to Be Bound” (Exhibit A);

16 (c) Experts (as defined in this Order) of the Receiving Party to whom disclosure is reasonably
17 necessary for this litigation and who have signed the “Acknowledgment and Agreement to Be Bound”
18 (Exhibit A);

19 (d) the court and its personnel;

20 (e) court reporters and their staff, professional jury or trial consultants, mock jurors, and
21 Professional Vendors to whom disclosure is reasonably necessary for this litigation and who have signed
22 the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

23 (f) during their depositions, witnesses in the action to whom disclosure is reasonably necessary
24 and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A), unless otherwise
25 agreed by the Designating Party or ordered by the court. Pages of transcribed deposition testimony or
26 exhibits to depositions that reveal Protected Material must be separately bound by the court reporter and
27 may not be disclosed to anyone except as permitted under this Stipulated Protective Order.
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1 (g) the author or recipient of a document containing the information or a custodian or other
2 person who otherwise possessed or knew the information.

3 (h) counsel for any other Party who has signed the “Acknowledgment and Agreement to Be
4 Bound” (Exhibit A). If any such counsel refuses to sign Exhibit A, the Receiving Party may file with
5 the Court any or all of the information or items produced by pursuant to this Protective Order under seal
6 as authorized pursuant to Local Rule 79-5 or otherwise upon securing a court order to protect the
7 confidentiality of the information and items.

8 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER
9 LITIGATION

10 If a Party is served with a subpoena or a court order issued in other litigation that compels
11 disclosure of any information or items designated in this action as “CONFIDENTIAL,” that Party must:

12 (a) promptly notify in writing the Designating Party. Such notification shall include a copy of the
13 subpoena or court order;

14 (b) promptly notify in writing the party who caused the subpoena or order to issue in the other
15 litigation that some or all of the material covered by the subpoena or order is subject to this Protective
16 Order. Such notification shall include a copy of this Stipulated Protective Order; and

17 (c) cooperate with respect to all reasonable procedures sought to be pursued by the Designating
18 Party whose Protected Material may be affected.

19 If the Designating Party timely seeks a protective order, the Party served with the subpoena or
20 court order shall not produce any information designated in this action as “CONFIDENTIAL” before a
21 determination by the court from which the subpoena or order issued, unless the Party has obtained the
22 Designating Party’s permission. The Designating Party shall bear the burden and expense of seeking
23 protection in that court of its confidential material – and nothing in these provisions should be construed
24 as authorizing or encouraging a Receiving Party in this action to disobey a lawful directive from another
25 court.
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1 9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN THIS
2 LITIGATION

3 (a) The terms of this Order are applicable to information produced by a Non-Party in this action
4 and designated as “CONFIDENTIAL.” Such information produced by Non-Parties in connection with
5 this litigation is protected by the remedies and relief provided by this Order. Nothing in these provisions
6 should be construed as prohibiting a Non-Party from seeking additional protections.

7 (b) In the event that a Party is required, by a valid discovery request, to produce a Non-Party’s
8 confidential information in its possession, and the Party is subject to an agreement with the Non-Party
9 not to produce the Non-Party’s confidential information, then the Party shall:

10 1. promptly notify in writing the Requesting Party and the Non-Party that some or all of
11 the information requested is subject to a confidentiality agreement with a Non-Party;

12 2. promptly provide the Non-Party with a copy of the Stipulated Protective Order in this
13 litigation, the relevant discovery request(s), and a reasonably specific description of the information
14 requested; and

15 3. make the information requested available for inspection by the Non-Party.

16 (c) If the Non-Party fails to object or seek a protective order from this court within 14 days of
17 receiving the notice and accompanying information, the Receiving Party may produce the Non-Party’s
18 confidential information responsive to the discovery request. If the Non-Party timely seeks a protective
19 order, the Receiving Party shall not produce any information in its possession or control that is subject to
20 the confidentiality agreement with the Non-Party before a determination by the court.¹ Absent a court
21 order to the contrary, the Non-Party shall bear the burden and expense of seeking protection in this court
22 of its Protected Material.

23 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

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

27 ¹ The purpose of this provision is to alert the interested parties to the existence of confidentiality rights
28 of a Non-Party and to afford the Non-Party an opportunity to protect its confidentiality interests in this
court.

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

5 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED
6 MATERIAL

7 When a Producing Party gives notice to Receiving Parties that certain inadvertently produced
8 material is subject to a claim of privilege or other protection, the obligations of the Receiving Parties are
9 those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify
10 whatever procedure may be established in an e-discovery order that provides for production without
11 prior privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar as the parties reach
12 an agreement on the effect of disclosure of a communication or information covered by the attorney-
13 client privilege or work product protection, the parties may incorporate their agreement in the stipulated
14 protective order submitted to the court.

15 12. MISCELLANEOUS

16 12.1 Right to Further Relief. Nothing in this Order abridges the right of any person to seek its
17 modification by the court in the future.

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

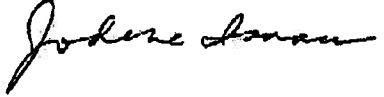
22 12.3 Filing Protected Material. Without written permission from the Designating Party or a court
23 order secured after appropriate notice to all interested persons, a Party may not file in the public record
24 in this action any Protected Material. A Party that seeks to file under seal any Protected Material must
25 comply with Civil Local Rule 79-5. Protected Material may only be filed under seal pursuant to a court
26 order authorizing the sealing of the specific Protected Material at issue. Pursuant to Civil Local Rule 79-
27 5, a sealing order will issue only upon a request establishing that the Protected Material at issue is
28 privileged, protectable as a trade secret, or otherwise entitled to protection under the law. If a Receiving

1 Party's request to file Protected Material under seal pursuant to Civil Local Rule 79-5(d) is denied by the
2 court, then the Receiving Party may file the information in the public record pursuant to Civil Local
3 Rule 79-5(e) unless otherwise instructed by the court.


4 13. FINAL DISPOSITION. Within 60 days after the final disposition of this action, as defined in
5 paragraph 4, each Receiving Party must return all Protected Material to the Producing Party or destroy
6 such material. As used in this subdivision, "all Protected Material" includes all copies, abstracts,
7 compilations, summaries, and any other format reproducing or capturing any of the Protected Material.
8 Whether the Protected Material is returned or destroyed, the Receiving Party must submit a written
9 certification to the Producing Party (and, if not the same person or entity, to the Designating Party) by
10 the 60 day deadline that (1) identifies (by category, where appropriate) all the Protected Material that
11 was returned or destroyed and (2) affirms that the Receiving Party has not retained any copies, abstracts,
12 compilations, summaries or any other format reproducing or capturing any of the Protected Material.
13 Notwithstanding this provision, Counsel are entitled to retain an archival copy of all pleadings, motion
14 papers, trial, deposition, and hearing transcripts, legal memoranda, correspondence, deposition and trial
15 exhibits, expert reports, attorney work product, and consultant and expert work product, even if such
16 materials contain Protected Material. Any such archival copies that contain or constitute Protected
17 Material remain subject to this Protective Order as set forth in Section 4 (DURATION).

18 IT IS SO STIPULATED BY ERF AND ALCO.

19
20 DATED: June 29, 2011


Attorneys for Plaintiff, ERF

21
22 DATED: June 29, 2011


Attorneys for Non-Party Alco Iron and Metals, Co.

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25 Approved as to form:

26 DATED: June 29, 2011


Attorneys for Defendant PG&E

1 PURSUANT TO STIPULATION, IT IS SO ORDERED.

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3 DATED: _ July 7, 2011 _



4 ~~Honorable Richard Seeborg~~ Bernard Zimmerman
5 United States District Judge
6 Magistrate

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EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, Bradley Rochlen [print or type full name], of
Schiff Hardin LLP [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 ERF v. PG&E [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 Rocky Unruh [print or type full name] of
Schiff Hardin, 415-901-8700 [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: 6/30/2011

City and State where sworn and signed: Chicago, IL

Printed name: Bradley Rochlen
[printed name]

Signature: 
[signature]