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5 Attorneys for Plaintiff  
 WILLIAM A. PRATHER

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 7  
 8 IN THE UNITED STATES DISTRICT COURT  
 9 FOR THE NORTHERN DISTRICT OF CALIFORNIA

10  
 11 WILLIAM A. PRATHER,

No. C 10-02120 JSW

12 Plaintiff,

**STIPULATION AND ORDER TO  
 PROTECT CONFIDENTIAL  
 INFORMATION**

13 vs.

14 RODEO-HERCULES FIRE  
 PROTECTION DISTRICT; JOHN  
 15 MILLS, an individual; WALTER  
 TRUJILLO, an individual;  
 16 J. R. STAFFORD, an individual; BETH  
 BARTKE, an individual;  
 17 and WILLIAM D. ROSS, an individual,

Date: N.A.  
 Time: N.A.  
 Courtroom: 11  
 Judge: Hon. Jeffrey S. White

First Amended Complaint filed: 5/21/10  
 Trial date: None

18 Defendants.

19 \_\_\_\_\_/  
 20 Subject to the approval of this Court, the parties through their respective counsel  
 21 hereby stipulate to the following protective order:

22 1. In connection with discovery proceedings in this action, the parties may  
 23 designate any document, thing, material, testimony or other information derived  
 24 therefrom, as "Confidential" under terms of this Stipulated Protective Order (hereinafter  
 25 "Order"). Confidential information is information which has not been made public and  
 26 which concerns or relates to the processes, operations, type or work, or apparatus, or to  
 27 the production, sales, shipments, purchases, transfers, identification of customers,

1 inventories, amount or source of any income, profits, losses, or expenditures of any  
2 persons, firm, partnership, corporation, or other organization, the disclosure of which  
3 information may have the effect of causing harm to the competitive position of the  
4 person, firm, partnership, corporation, or to the organization from which the information  
5 was obtained. By designating a document, thing, material, testimony or other information  
6 derived therefrom as “confidential,” under the terms of this Order, the party making the  
7 designation is certifying to the Court that there is a good faith basis both in law and in fact  
8 for the designation within the meaning of Federal Rules of Civil Procedure, Rule 26(g).

9         2. Confidential documents shall be so designated by stamping copies of the  
10 document produced to a party with the legend “CONFIDENTIAL”. Stamping the legend  
11 “CONFIDENTIAL” on the cover of any multipage document shall designate all pages of  
12 the document as confidential, unless otherwise indicated by the producing party.

13         3. Testimony taken at a deposition, conference, hearing or trial may be designated  
14 as confidential by making a statement to that effect on the record at the deposition or  
15 other proceeding. Arrangements shall be made with the court reporter taking and  
16 transcribing such proceeding to separately bind such portions of the transcript containing  
17 information designated as confidential, and to label such portions appropriately.

18         4. Material designated as confidential under this Order, the information contained  
19 therein, and any summaries, copies, abstracts, or other documents derived in whole or in  
20 part from material designated as confidential (hereinafter “Confidential Material”) shall  
21 be used only for the purpose of the prosecution, defense, or settlement of this action, and  
22 for no other purpose.

23         5. Confidential Material produced pursuant to this Order may be disclosed or  
24 made available only to the Court, to counsel for a party (including the paralegal, clerical,  
25 and secretarial staff employed by such counsel), and to the “qualified persons” designated  
26 below:

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1 (a) a party, or an officer, director, or employee of a party deemed necessary by  
2 counsel to aid in the prosecution, defense, or settlement of this action;

3 (b) experts or consultants (together with their clerical staff) retained by such  
4 counsel to assist in the prosecution, defense, or settlement of this action;

5 (c) court reporter(s) employed in this action;

6 (d) a witness at any deposition or other proceeding in this action; and

7 (e) any other person as to whom the parties in writing agree

8 Prior to receiving any Confidential Material, each “qualified person” shall be  
9 provided with a copy of this Order and shall execute a nondisclosure agreement in the  
10 form of Attachment A, a copy of which shall be provided forthwith to counsel for each  
11 other party and for the parties.

12 6. Depositions shall be taken only in the presence of qualified persons.

13 7. The parties may further designate certain discovery material or testimony of a  
14 highly confidential and/or proprietary nature as “CONFIDENTIAL--ATTORNEY’S  
15 EYES ONLY” (hereinafter “Attorney’s Eyes Only Material”), in the manner described in  
16 paragraphs 2 and 3 above. Attorney’s Eyes Only Material, and the information contained  
17 therein, shall be disclosed only to the Court, to counsel for the parties (including the  
18 paralegal, clerical, and secretarial staff employed by such counsel), and to the “qualified  
19 persons” listed in subparagraphs 5(b) through (e) above, but shall not be disclosed to a  
20 party, or to an officer, director or employee of a party, unless otherwise agreed or  
21 ordered. If disclosure of Attorney’s Eyes Only Material is made pursuant to this  
22 paragraph, all other provisions in this Order with respect to confidentiality shall also  
23 apply.

24 8. Nothing herein shall impose any restrictions on the use or disclosure by a party  
25 of material obtained by such party independent of discovery in this action, whether or  
26 not such material is also obtained through discovery in this action, or from disclosing its  
27 own Confidential Material as it deems appropriate.

1           9. If Confidential Material, including any portion of a deposition transcript  
2 designated as Confidential or Attorney’s Eyes Only, is included in any papers to be filed  
3 in Court, such papers shall be labeled “Confidential--Subject to Court Order” and filed  
4 under seal until further order of this Court.

5           10. In the event that any Confidential Material is used in any court proceeding in  
6 this action, it shall not lose its confidential status through such use, and the party using  
7 such shall take all reasonable steps to maintain its confidentiality during such use.

8           11. This Order shall be without prejudice to the right of the parties (I) to bring  
9 before the Court at any time the question of whether any particular document or  
10 information is confidential or whether its use should be restricted or (ii) to present a  
11 motion to the Court under FRCP Rule 26(c) for a separate protective order as to any  
12 particular document or information, including restrictions differing from those as  
13 specified herein. This Order shall not be deemed to prejudice the parties in any way in  
14 any future application for modification of this Order.

15           12. This Order is entered solely for the purpose of facilitating the exchange of  
16 documents and information between the parties to this action without involving the Court  
17 unnecessarily in the process. Nothing in this Order nor the production of any information  
18 or document under the terms of this Order nor any proceedings pursuant to this Order  
19 shall be deemed to have the effect of an admission or waiver by either party or of altering  
20 the confidentiality or nonconfidentiality of any such document or information or altering  
21 any existing obligation of any party or the absence thereof.

22           13. This Order shall survive the final termination of this action, to the extent that  
23 the information contained in Confidential Material is not or does not become known to  
24 the public, and the Court shall retain jurisdiction to resolve any dispute concerning the  
25 use of information disclosed hereunder. Upon termination of this case, counsel for the  
26 parties shall assemble and return to each other all documents, material and deposition  
27 transcripts designated as confidential and all copies of same, or shall certify the  
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1 destruction thereof.

2 SO STIPULATED:

3  
4 DATED: September 10, 2010

5 /s/ Carleton L. Briggs  
6 CARLETON L. BRIGGS

7 Attorney for Plaintiff William A. Prather

8 DATED: September 10, 2010

HAYES SCOTT BONINO ELLINGSON & McLAY,  
9 LLP

10 By: /s/ Nicholas Rogers  
11 NICHOLAS ROGERS, ESQ.

12 Attorneys for Defendant William D. Ross

13 DATED: September 10, 2010

EDRINGTON, SCHIRMER & MURPHY, LLP

14  
15 By: /s/ Dolores M. Donohoe  
16 DOLORES M. DONOHOE, ESQ.

17 Attorneys for Defendants Rodeo-Hercules Fire  
18 Protection District, John Mills, Walter Trujillo, J. R.  
19 Stafford, and Beth Bartke

20 **ATTESTATION PURSUANT TO GENERAL ORDER 45.X.B.**

21 I, Carleton L. Briggs, attest that concurrence in the electronic filing of this  
22 document has been obtained from each of the signatories. I declare under penalty of  
23 perjury under the laws of the United States of America that the foregoing is true and  
24 correct. Executed this 10<sup>th</sup> day of September, 2010 at Mountain View, California.

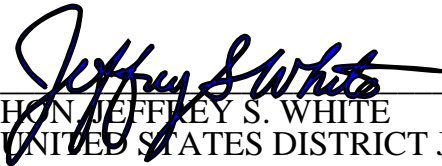
25  
26 /s/ Carleton L. Briggs  
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**ORDER**

~~APPROVED AND SO ORDERED.~~ The Court DENIES the parties stipulated protective order without prejudice based on the parties failure to specify that the parties would comply with N.D. Local Civil Rule 79-5 in seeking to file documents under seal. Documents designated by the parties as confidential will not be filed automatically under seal.

DATED: September 13, 2010

  
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HON. JEFFREY S. WHITE  
UNITED STATES DISTRICT JUDGE

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ATTACHMENT A

**NONDISCLOSURE AGREEMENT**

I, ....., do solemnly swear that I am fully familiar with the terms of the Stipulated Protective Order entered in *Prather v. Rodeo-Hercules, et al.*, United States District Court for the Northern District of California, Civil Action No. C 10-02120 JSW, and hereby agree to comply with and be bound by the terms and conditions of said Order unless and until modified by further order of this Court. I hereby consent to the jurisdiction of said Court for purposes of enforcing this Order.

DATED: .....

/s/-----