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WILLIAM A. PRATHER

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

WILLIAM A. PRATHER,

No. C 10-02120 JSW

Plaintiff,

**STIPULATION AND ORDER TO  
PROTECT CONFIDENTIAL  
INFORMATION**

vs.

RODEO-HERCULES FIRE  
PROTECTION DISTRICT; JOHN  
MILLS, an individual; WALTER  
TRUJILLO, an individual;  
J. R. STAFFORD, an individual; BETH  
BARTKE, an individual;  
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

Defendants.

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 may 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 from public disclosure and use extends only to the limited

1 information or items that are entitled to confidential treatment under the applicable legal  
2 principles. The parties further acknowledge, as set forth in Section 12.3 below, that this  
3 Stipulated Protective Order does not entitle them to file confidential information under  
4 seal; Civil Local Rule 79-5 sets forth the procedures that must be followed and  
5 the standards that will be applied when a party seeks permission from the court to file  
6 material under seal.

7 2. DEFINITIONS

8 2.1 Challenging Party: a Party or Non-Party that challenges the designation of  
9 information or items under this Order.

10 2.2 “CONFIDENTIAL” Information or Items: information (regardless of how it is  
11 generated, stored or maintained) or tangible things that qualify for protection under  
12 Federal Rule of Civil Procedure 26(c).

13 2.3 Counsel (without qualifier): Outside Counsel of Record and House Counsel  
14 (as well as their support staff).

15 2.4 Designated House Counsel: House Counsel who seek access to “HIGHLY  
16 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” information in this matter.

17 2.5 Designating Party: a Party or Non-Party that designates information or items  
18 that it produces in disclosures or in responses to discovery as “CONFIDENTIAL” or  
19 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

20 2.6 Disclosure or Discovery Material: all items or information, regardless of the  
21 medium or manner in which it is generated, stored, or maintained (including, among other  
22 things, testimony, transcripts, and tangible things), that are produced or generated in  
23 disclosures or responses to discovery in this matter.

24 2.7 Expert: a person with specialized knowledge or experience in a matter  
25 pertinent to the litigation who (1) has been retained by a Party or its counsel to serve as an  
26 expert witness or as a consultant in this action, (2) is not a past or current employee of a  
27 Party or of a Party’s competitor, and (3) at the time of retention, is not anticipated to  
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1 become an employee of a Party or of a Party's competitor.

2 2.8 "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" Information or  
3 Items: extremely sensitive "Confidential Information or Items," disclosure of which to  
4 another Party or Non-Party would create a substantial risk of serious harm that could not  
5 be avoided by less restrictive means.

6 2.9 House Counsel: attorneys who are employees of a party to this action. House  
7 Counsel does not include Outside Counsel of Record or any other outside counsel.

8 2.10 Non-Party: any natural person, partnership, corporation, association, or other  
9 legal entity not named as a Party to this action.

10 2.11 Outside Counsel of Record: attorneys who are not employees of a party to  
11 this action but are retained to represent or advise a party to this action and have appeared  
12 in this action on behalf of that party or are affiliated with a law firm which has appeared  
13 on behalf of that party.

14 2.12 Party: any party to this action, including all of its officers, directors,  
15 employees, consultants, retained experts, and Outside Counsel of Record (and their  
16 support staffs).

17 2.13 Producing Party: a Party or Non-Party that produces Disclosure or Discovery  
18 Material in this action.

19 2.14 Professional Vendors: persons or entities that provide litigation support  
20 services (e.g., photocopying, videotaping, translating, preparing exhibits or  
21 demonstrations, and organizing, storing, or retrieving data in any form or medium) and  
22 their employees and subcontractors.

23 2.15 Protected Material: any Disclosure or Discovery Material that is designated  
24 as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES  
25 ONLY."

26 2.16 Receiving Party: a Party that receives Disclosure or Discovery Material  
27 from a Producing Party.

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1           3. SCOPE

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

16           4. DURATION

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

24           5. DESIGNATING PROTECTED MATERIAL

25           5.1 Exercise of Restraint and Care in Designating Material for Protection. Each  
26 Party or Non-Party that designates information or items for protection under this Order  
27 must take care to limit any such designation to specific material that qualifies under the  
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1 appropriate standards. To the extent it is practical to do so, the Designating Party must  
2 designate for protection only those parts of material, documents, items, or oral or written  
3 communications that qualify – so that other portions of the material, documents, items, or  
4 communications for which protection is not warranted are not swept unjustifiably within  
5 the ambit of this Order.

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

11 If it comes to a Designating Party’s attention that information or items that it  
12 designated for protection do not qualify for protection at all or do not qualify for the level  
13 of protection initially asserted, that Designating Party must promptly notify all other  
14 Parties that it is withdrawing the mistaken designation.

15 5.2 Manner and Timing of Designations. Except as otherwise provided in this  
16 Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or  
17 ordered, Disclosure or Discovery Material that qualifies for protection under this Order  
18 must be clearly so designated before the material is disclosed or produced.

19 Designation in conformity with this Order requires:

20 (a) for information in documentary form (e.g., paper or electronic documents, but  
21 excluding transcripts of depositions or other pretrial or trial proceedings), that the  
22 Producing Party affix the legend “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –  
23 ATTORNEYS’ EYES ONLY” to each page that contains protected material. If only a  
24 portion or portions of the material on a page qualifies for protection, the Producing Party  
25 also must clearly identify the protected portion(s) (e.g., by making appropriate markings  
26 in the margins) and must specify, for each portion, the level of protection being asserted.

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1 A Party or Non-Party that makes original documents or materials available for  
2 inspection need not designate them for protection until after the inspecting Party has  
3 indicated which material it would like copied and produced. During the inspection and  
4 before the designation, all of the material made available for inspection shall be deemed  
5 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” After the inspecting  
6 Party has identified the documents it wants copied and produced, the Producing Party  
7 must determine which documents, or portions thereof, qualify for protection under this  
8 Order. Then, before producing the specified documents, the Producing Party must affix  
9 the appropriate legend (“CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –  
10 ATTORNEYS’ EYES ONLY”) to each page that contains Protected Material. If only a  
11 portion or portions of the material on a page qualifies for protection, the Producing Party  
12 also must clearly identify the protected portion(s) (e.g., by making appropriate markings  
13 in the margins) and must specify, for each portion, the level of protection being asserted.

14 (b) for testimony given in deposition or in other pretrial or trial proceedings, that  
15 the Designating Party identify on the record, before the close of the deposition, hearing,  
16 or other proceeding, all protected testimony and specify the level of protection being  
17 asserted. When it is impractical to identify separately each portion of testimony that is  
18 entitled to protection and it appears that substantial portions of the testimony may qualify  
19 for protection, the Designating Party may invoke on the record (before the deposition,  
20 hearing, or other proceeding is concluded) a right to have up to 21 days to identify the  
21 specific portions of the testimony as to which protection is sought and to specify the level  
22 of protection being asserted. Only those portions of the testimony that are appropriately  
23 designated for protection within the 21 days shall be covered by the provisions of this  
24 Stipulated Protective Order. Alternatively, a Designating Party may specify, at the  
25 deposition or up to 21 days afterwards if that period is properly invoked, that the entire  
26 transcript shall be treated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –  
27 ATTORNEYS’ EYES ONLY.”

1 Parties shall give the other parties notice if they reasonably expect a deposition,  
2 hearing, or other proceeding to include Protected Material so that the other parties can  
3 ensure that only authorized individuals who have signed the “Acknowledgment and  
4 Agreement to Be Bound” (Exhibit A) are present at those proceedings. The use of a  
5 document as an exhibit at a deposition shall not in any way affect its designation as  
6 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”  
7 Transcripts containing Protected Material shall have an obvious legend on the title  
8 page that the transcript contains Protected Material, and the title page shall be followed  
9 by a list of all pages (including line numbers as appropriate) that have been designated as  
10 Protected Material and the level of protection being asserted by the Designating Party.  
11 The Designating Party shall inform the court reporter of these requirements. Any  
12 transcript that is prepared before the expiration of a 21-day period for designation shall be  
13 treated during that period as if it had been designated “HIGHLY CONFIDENTIAL –  
14 ATTORNEYS’ EYES ONLY” in its entirety unless otherwise agreed. After the  
15 expiration of that period, the transcript shall be treated only as actually designated.

16 (c) for information produced in some form other than documentary and for any  
17 other tangible items, that the Producing Party affix in a prominent place on the exterior of  
18 the container or containers in which the information or item is stored the legend  
19 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”  
20 If only a portion or portions of the information or item warrant protection, the Producing  
21 Party, to the extent practicable, shall identify the protected portion(s) and specify the level  
22 of protection being asserted.

23 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to  
24 designate qualified information or items does not, standing alone, waive the Designating  
25 Party’s right to secure protection under this Order for such material. Upon timely  
26 correction of a designation, the Receiving Party must make reasonable efforts to assure  
27 that the material is treated in accordance with the provisions of this Order.

1           6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

2           6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation of  
3 confidentiality at any time. Unless a prompt challenge to a Designating Party's  
4 confidentiality designation is necessary to avoid foreseeable, substantial unfairness,  
5 unnecessary economic burdens, or a significant disruption or delay of the litigation, a  
6 Party does not waive its right to challenge a confidentiality designation by electing not to  
7 mount a challenge promptly after the original designation is disclosed.

8           6.2 Meet and Confer. The Challenging Party shall initiate the dispute  
9 resolution process by providing written notice of each designation it is challenging and  
10 describing the basis for each challenge. To avoid ambiguity as to whether a challenge has  
11 been made, the written notice must recite that the challenge to confidentiality is being  
12 made in accordance with this specific paragraph of the Protective Order. The parties shall  
13 attempt to resolve each challenge in good faith and must begin the process by conferring  
14 directly (in voice to voice dialogue; other forms of communication are not sufficient)  
15 within 14 days of the date of service of notice. In conferring, the Challenging Party must  
16 explain the basis for its belief that the confidentiality designation was not proper and must  
17 give the Designating Party an opportunity to review the designated material, to reconsider  
18 the circumstances, and, if no change in designation is offered, to explain the basis for the  
19 chosen designation. A Challenging Party may proceed to the next stage of the challenge  
20 process only if it has engaged in this meet and confer process first or establishes that the  
21 Designating Party is unwilling to participate in the meet and confer process in a timely  
22 manner.

23           6.3 Judicial Intervention. If the Parties cannot resolve a challenge without court  
24 intervention, the Designating Party shall file and serve a motion to retain confidentiality  
25 under Civil Local Rule 7 (and in compliance with Civil Local Rule 79-5, if applicable)  
26 within 21 days of the initial notice of challenge or within 14 days of the parties agreeing  
27 that the meet and confer process will not resolve their dispute, whichever is earlier. Each  
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1 such motion must be accompanied by a competent declaration affirming that the movant  
2 has complied with the meet and confer requirements imposed in the preceding paragraph.  
3 Failure by the Designating Party to make such a motion including the required declaration  
4 within 21 days (or 14 days, if applicable) shall automatically waive the confidentiality  
5 designation for each challenged designation. In addition, the Challenging Party may file  
6 a motion challenging a confidentiality designation at any time if there is good cause for  
7 doing so, including a challenge to the designation of a deposition transcript or any  
8 portions thereof. Any motion brought pursuant to this provision must be accompanied by  
9 a competent declaration affirming that the movant has complied with the meet and confer  
10 requirements imposed by the preceding paragraph.

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

## 19       7. ACCESS TO AND USE OF PROTECTED MATERIAL

20       7.1 Basic Principles. A Receiving Party may use Protected Material that is  
21 disclosed or produced by another Party or by a Non-Party in connection with this case  
22 only for prosecuting, defending, or attempting to settle this litigation. Such Protected  
23 Material may be disclosed only to the categories of persons and under the conditions  
24 described in this Order. When the litigation has been terminated, a Receiving Party must  
25 comply with the provisions of section 13 below (FINAL DISPOSITION). Protected  
26 Material must be stored and maintained by a Receiving Party at a location and in a secure  
27 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  
3 may 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 Outside Counsel of Record to whom it is reasonably necessary to  
6 disclose the information for this litigation and who have signed the “Acknowledgment  
7 and Agreement to Be Bound” that is attached hereto as Exhibit A;

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

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

14           (d) the court and its personnel;

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

18           (f) during their depositions, witnesses in the action to whom disclosure is  
19 reasonably necessary and who have signed the “Acknowledgment and Agreement to Be  
20 Bound” (Exhibit A), unless otherwise agreed by the Designating Party or ordered by the  
21 court. Pages of transcribed deposition testimony or exhibits to depositions that reveal  
22 Protected Material must be separately bound by the court reporter and may not be  
23 disclosed to anyone except as permitted under this Stipulated Protective Order.

24           (g) the author or recipient of a document containing the information or a custodian  
25 or other person who otherwise possessed or knew the information.

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1           7.3 Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”  
2 Information or Items. Unless otherwise ordered by the court or permitted in writing by  
3 the Designating Party, a Receiving Party may disclose any information or item designated  
4 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” only to:

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

9           (b) Designated House Counsel of the Receiving Party (1) who has no involvement  
10 in competitive decision-making, (2) to whom disclosure is reasonably necessary for this  
11 litigation, (3) who has signed the “Acknowledgment and Agreement to Be Bound”  
12 (Exhibit A), and (4) as to whom the procedures set forth in paragraph 7.4(a)(1), below,  
13 have been followed;

14           (c) Experts of the Receiving Party (1) to whom disclosure is reasonably necessary  
15 for this litigation, (2) who have signed the “Acknowledgment and Agreement to Be  
16 Bound” (Exhibit A), and (3) as to whom the procedures set forth in paragraph 7.4(a)(2),  
17 below, have been followed;

18           (d) the court and its personnel;

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

22           (f) the author or recipient of a document containing the information or a custodian  
23 or other person who otherwise possessed or knew the information.

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1           7.4 Procedures for Approving or Objecting to Disclosure of “HIGHLY  
2 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” Information or Items to Designated  
3 House Counsel or Experts.

4           (a)(1) Unless otherwise ordered by the court or agreed to in writing by the  
5 Designating Party, a Party that seeks to disclose to Designated House Counsel any  
6 information or item that has been designated “HIGHLY CONFIDENTIAL –  
7 ATTORNEYS’ EYES ONLY” pursuant to paragraph 7.3(b) first must make a written  
8 request to the Designating Party that (1) sets forth the full name of the Designated House  
9 Counsel and the city and state of his or her residence and (2) describes the Designated  
10 House Counsel’s current and reasonably foreseeable future primary job duties and  
11 responsibilities in sufficient detail to determine if House Counsel is involved, or may  
12 become involved, in any competitive decision-making.

13           (a)(2) Unless otherwise ordered by the court or agreed to in writing by the  
14 Designating Party, a Party that seeks to disclose to an Expert (as defined in this Order)  
15 any information or item that has been designated “HIGHLY CONFIDENTIAL –  
16 ATTORNEYS’ EYES ONLY” pursuant to paragraph 7.3(c) first must make a written  
17 request to the Designating Party that (1) identifies the general categories of “HIGHLY  
18 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” information that the Receiving Party  
19 seeks permission to disclose to the Expert, (2) sets forth the full name of the Expert and  
20 the city and state of his or her primary residence, (3) attaches a copy of the Expert’s  
21 current resume, (4) identifies the Expert’s current employer(s), (5) identifies each person  
22 or entity from whom the Expert has received compensation or funding for work in his or  
23 her areas of expertise or to whom the expert has provided professional services, including  
24 in connection with a litigation, at any time during the preceding five years,<sup>2</sup> and (6)  
25 identifies (by name and number of the case, filing date, and location of court) any  
26 litigation in connection with which the Expert has offered expert testimony, including  
27 through a declaration, report, or testimony at a deposition or trial, during the preceding  
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1 five years.<sup>1</sup>

2 (b) A Party that makes a request and provides the information specified in the  
3 preceding respective paragraphs may disclose the subject Protected Material to the  
4 identified Designated House Counsel or Expert unless, within 14 days of delivering the  
5 request, the Party receives a written objection from the Designating Party. Any such  
6 objection must set forth in detail the grounds on which it is based.

7 (c) A Party that receives a timely written objection must meet and confer with the  
8 Designating Party (through direct voice to voice dialogue) to try to resolve the matter by  
9 agreement within seven days of the written objection. If no agreement is reached, the  
10 Party seeking to make the disclosure to Designated House Counsel or the Expert may file  
11 a motion as provided in Civil Local Rule 7 (and in compliance with Civil Local Rule  
12 79-5, if applicable) seeking permission from the court to do so. Any such motion must  
13 describe the circumstances with specificity, set forth in detail the reasons why disclosure  
14 to Designated House Counsel or the Expert is reasonably necessary, assess the risk of  
15 harm that the disclosure would entail, and suggest any additional means that could be  
16 used to reduce that risk. In addition, any such motion must be accompanied by a  
17 competent declaration describing the parties' efforts to resolve the matter by agreement  
18 (i.e., the extent and the content of the meet and confer discussions) and  
19 setting forth the reasons advanced by the Designating Party for its refusal to approve the  
20 disclosure.

21 In any such proceeding, the Party opposing disclosure to Designated House  
22 Counsel or the Expert shall bear the burden of proving that the risk of harm that the  
23 disclosure would entail (under the safeguards proposed) outweighs the Receiving Party's  
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26 <sup>1</sup> If the Expert believes any of this information is subject to a confidentiality obligation to  
27 a third-party, then the Expert should provide whatever information the Expert believes can be  
28 disclosed without violating any confidentiality agreements, and the Party seeking to disclose to  
the Expert shall be available to meet and confer with the Designating Party regarding any such  
engagement.

1 need to disclose the Protected Material to its Designated House Counsel or Expert.

2 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN  
3 OTHER LITIGATION

4 If a Party is served with a subpoena or a court order issued in other litigation that  
5 compels disclosure of any information or items designated in this action as  
6 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY,”  
7 that Party must:

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

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

14 (c) cooperate with respect to all reasonable procedures sought to be pursued by the  
15 Designating Party whose Protected Material may be affected.<sup>2</sup>

16 If the Designating Party timely seeks a protective order, the Party served with the  
17 subpoena or court order shall not produce any information designated in this action as  
18 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”  
19 before a determination by the court from which the subpoena or order issued, unless the  
20 Party has obtained the Designating Party’s permission. The Designating Party shall bear  
21 the burden and expense of seeking protection in that court of its confidential material –  
22 and nothing in these provisions should be construed as authorizing or encouraging a  
23 Receiving Party in this action to disobey a lawful directive from another court.

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27 <sup>2</sup> The purpose of imposing these duties is to alert the interested parties to the existence of  
28 this Protective Order and to afford the Designating Party in this case an opportunity to try to  
protect its confidentiality interests in the court from which the subpoena or order issued.

1 9. A NON-PARTY'S PROTECTED MATERIAL SOUGHT TO BE PRODUCED  
2 IN THIS LITIGATION

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

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

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

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

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

20 (c) If the Non-Party fails to object or seek a protective order from this court within  
21 14 days of receiving the notice and accompanying information, the Receiving Party may  
22 produce the Non-Party's confidential information responsive to the discovery request. If  
23 the Non-Party timely seeks a protective order, the Receiving Party shall not produce any  
24 information in its possession or control that is subject to the confidentiality agreement  
25 with the Non-Party before a determination by the court.<sup>3</sup> Absent a court order to the  
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27 <sup>3</sup> The purpose of this provision is to alert the interested parties to the existence of  
28 confidentiality rights of a Non-Party and to afford the Non-Party an opportunity to protect its

1 contrary, the Non-Party shall bear the burden and expense of seeking protection in this  
2 court of its Protected Material.

3 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

4 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed  
5 Protected Material to any person or in any circumstance not authorized under this  
6 Stipulated Protective Order, the Receiving Party must immediately (a) notify in writing  
7 the Designating Party of the unauthorized disclosures, (b) use its best efforts to retrieve  
8 all unauthorized copies of the Protected Material, (c) inform the person or persons to  
9 whom unauthorized disclosures were made of all the terms of this Order, and (d) request  
10 such person or persons to execute the "Acknowledgment and Agreement to Be Bound"  
11 that is attached hereto as Exhibit A.

12 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE  
13 PROTECTED MATERIAL

14 When a Producing Party gives notice to Receiving Parties that certain  
15 inadvertently produced material is subject to a claim of privilege or other protection, the  
16 obligations of the Receiving Parties are those set forth in Federal Rule of Civil Procedure  
17 26(b)(5)(B). This provision is not intended to modify whatever procedure may be  
18 established in an e-discovery order that provides for production without prior privilege  
19 review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar as the parties reach  
20 an agreement on the effect of disclosure of a communication or information covered by  
21 the attorney-client privilege or work product protection, the parties may incorporate their  
22 agreement in the stipulated protective order submitted to the court.

23 12. MISCELLANEOUS

24 12.1 Right to Further Relief. Nothing in this Order abridges the right of any  
25 person to seek its modification by the court in the future.

26 //

27 \_\_\_\_\_  
28 confidentiality interests in this court.



1           12.2 Right to Assert Other Objections. By stipulating to the entry of this  
2 Protective Order no Party waives any right it otherwise would have to object to disclosing  
3 or producing any information or item on any ground not addressed in this Stipulated  
4 Protective Order. Similarly, no Party waives any right to object on any ground to use in  
5 evidence of any of the material covered by this Protective Order.

6           12.3 Filing Protected Material. Without written permission from the Designating  
7 Party or a court order secured after appropriate notice to all interested persons, a Party  
8 may not file in the public record in this action any Protected Material. A Party that seeks  
9 to file under seal any Protected Material must comply with Civil Local Rule 79-5.  
10 Protected Material may only be filed under seal pursuant to a court order authorizing the  
11 sealing of the specific Protected Material at issue. Pursuant to Civil Local Rule 79-5, a  
12 sealing order will issue only upon a request establishing that the Protected Material at  
13 issue is privileged, protectable as a trade secret, or otherwise entitled to protection under  
14 the law. If a Receiving Party's request to file Protected Material under seal pursuant to  
15 Civil Local Rule 79-5(d) is denied by the court, then the Receiving Party may file the  
16 Protected Material in the public record pursuant to Civil Local Rule 79-5(e) unless  
17 otherwise instructed by the court.

### 18           13. FINAL DISPOSITION

19           Within 60 days after the final disposition of this action, as defined in paragraph 4,  
20 each Receiving Party must return all Protected Material to the Producing Party or destroy  
21 such material. As used in this subdivision, "all Protected Material" includes all copies,  
22 abstracts, compilations, summaries, and any other format reproducing or capturing any of  
23 the Protected Material. Whether the Protected Material is returned or destroyed, the  
24 Receiving Party must submit a written certification to the Producing Party (and, if not the  
25 same person or entity, to the Designating Party) by the 60 day deadline that (1) identifies  
26 (by category, where appropriate) all the Protected Material that was returned or destroyed  
27 and (2) affirms that the Receiving Party has not retained any copies, abstracts,  
28

1 compilations, summaries or any other format reproducing or capturing any of the  
2 Protected Material. Notwithstanding this provision, Counsel are entitled to retain an  
3 archival copy of all pleadings, motion papers, trial, deposition, and hearing transcripts,  
4 legal memoranda, correspondence, deposition and trial exhibits, expert reports, attorney  
5 work product, and consultant and expert work product, even if such materials contain  
6 Protected Material. Any such archival copies that contain or constitute Protected Material  
7 remain subject to this Protective Order as set forth in Section 4 (DURATION).  
8

9 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

10  
11 DATED: September 13, 2010

12 /s/ Carleton L. Briggs  
13 CARLETON L. BRIGGS

14 Attorney for Plaintiff William A. Prather

15 DATED: September 13, 2010

HAYES SCOTT BONINO ELLINGSON & McLAY,  
16 LLP

17 By: /s/ Nicholas A. Rogers  
18 NICHOLAS ROGERS, ESQ.

19 Attorneys for Defendant William D. Ross

20 DATED: September 13, 2010

EDRINGTON, SCHIRMER & MURPHY, LLP

22  
23 By: /s/ Dolores M. Donohoe  
DOLORES M. DONOHOE, ESQ.

24 Attorneys for Defendants Rodeo-Hercules Fire  
25 Protection District, John Mills, Walter Trujillo, J. R.  
26 Stafford, and Beth Bartke  
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**ATTESTATION PURSUANT TO GENERAL ORDER 45.X.B.**

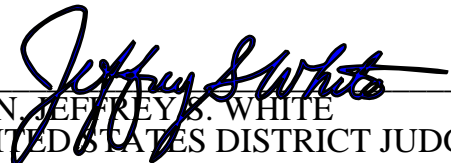
I, Carleton L. Briggs, attest that concurrence in the electronic filing of this document has been obtained from each of the signatories. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed this 13<sup>th</sup> day of September, 2010 at Santa Rosa, California.

/s/ Carleton L. Briggs

**ORDER**

PURSUANT TO STIPULATION, IT IS SO ORDERED.

DATED: September 14, 2010

  
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HON. JEFFREY S. WHITE  
UNITED STATES DISTRICT 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 Prather v. Rodeo-Hercules, et al., Civil Action No. C 10-02120 JSW. 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: \_\_\_\_\_

Signature: \_\_\_\_\_