

1 Shirley Mahoney
1 Elysian PL
2 Oakland, CA 94605
Phone Number (510-418-0330)

3 Shirley Mahoney, IN PRO PER
4

5 MELINDA HAAG (CSBN 132612)
United States Attorney
6 ALEX G. TSE (CSBN 152348)
Chief, Civil Division
7 NEILL T. TSENG (CSBN 220348)
Assistant United States Attorney

8 450 Golden Gate Avenue, Box 36055
9 San Francisco, California 94102-3495
Telephone: (415) 436-7155
10 FAX: (415) 436-6927
neill.tseng@usdoj.gov

11 Attorneys for Defendant
12 PATRICK DONAHOE

13 UNITED STATES DISTRICT COURT
14 NORTHERN DISTRICT OF CALIFORNIA
15 SAN FRANCISCO DIVISION
16

17 SHIRLEY MAHONEY,)
18 Plaintiff,)
19 v.)
20 PATRICK DONAHOE, Postmaster General,)
United States Postal Service,)
21 Defendant.)
22

No. C 11-00177 MEJ

**STIPULATION AND [PROPOSED]
PROTECTIVE ORDER RE
INADVERTENT PRODUCTION OF
PRIVILEGED OR PROTECTED
MATERIAL**

23 Subject to the approval of this Court, plaintiff Shirley Mahoney, *pro se*, and defendant
24 Patrick Donahoe, through his counsel of record in this action, hereby stipulate as follows:

25 1. The parties recognize that the defense of this action, including responding to
26 certain discovery propounded by Plaintiff, will require Defendant to review and produce large
27 quantities of documents, including electronically stored information, through the discovery
28 process. As a result, documents produced to Plaintiff could inadvertently include or contain

STIP. & [PROPOSED] PROTECTIVE ORDER RE INADVERTENT PRODUCTION OF PRIVILEGED OR
PROTECTED MATERIAL
C 11-00177 MEJ

1 materials subject to privilege or other legally recognized protection (hereinafter, “privileged
2 information”) and therefore not subject to production in discovery. Such inadvertent production
3 of privileged information is possible despite due diligence and reasonable care taken to protect
4 privileged information.

5 2. Absent this Protective Order, the effect of inadvertent disclosure of privileged
6 information is not certain, given some legal precedents and guidance dealing with this issue,
7 namely, whether privilege or protection will be deemed to have been waived by the inadvertent
8 disclosure of privileged information.

9 3. If Defendant produces any document, including electronically stored information,
10 which Defendant later claims was inadvertently produced and should not have been produced
11 because it includes or contains privileged information, then Defendant may notify Plaintiff in
12 writing of the claim and the basis for it, specifically identifying the affected document, and
13 request the return of the document. If only part of the document is claimed to contain privileged
14 information, then Defendant shall substitute a redacted version of the document at the time of
15 requesting the return of the document. After being notified of Defendant’s request for return,
16 Plaintiff must promptly return to Defendant the document and any copies in her possession,
17 custody or control; must not use or disclose the document until the claim is resolved; and must
18 take reasonable steps to retrieve the document if Plaintiff disclosed it before being notified.
19 Defendant must preserve the document until the claim is resolved. Notwithstanding the
20 foregoing, if Plaintiff wishes to challenge the recall of a document on the ground that it does not
21 include or contain privileged information, Plaintiff may keep one copy of the challenged
22 document, for a period not exceeding 14 days after receiving Defendant’s request for return, to
23 present to the Court under seal for a determination of the claim. If Defendant’s claim of
24 privilege or protection is upheld by the Court, then Plaintiff must immediately return the
25 document to Defendant. If Plaintiff does not submit the challenged document to the Court under
26 seal for a determination of the claim before the end of the 14-day period, then Plaintiff must
27 immediately return the document to Defendant and Plaintiff’s challenge to Defendant’s claim of
28 privilege or protection will be deemed waived.

1 4. Inadvertent disclosure of any information or document which Defendant later
2 claims should not have been disclosed because of any privilege or protection will not be deemed
3 to constitute a waiver of the privilege or protection. Plaintiff agrees that she shall not claim or
4 otherwise urge the Court to deem a privilege or protection to have been waived solely on the
5 basis of the inadvertent disclosure of the information or document to which the privilege or
6 protection applies.

7 5. Any party may at any time seek modification of this Protective Order by
8 agreement or, failing agreement, by appropriate request or motion to the Court.

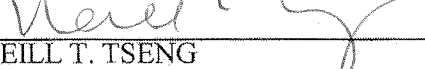
9 **IT IS SO STIPULATED.**

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12 DATED: 10-20-12

By: 
SHIRLEY MAHONEY
Plaintiff In Pro Per

MELINDA HAAG
United States Attorney

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17 DATED: 10/22/12

By: 
NEILL T. TSENG
Assistant United States Attorney
Attorneys for Defendant

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20 **PURSUANT TO STIPULATION, IT IS SO ORDERED.**

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23 DATED: October 23, 2012


HONORABLE MARIA-ELENA JAMES
UNITED STATES CHIEF MAGISTRATE JUDGE