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14 UNITED STATES DISTRICT COURT
 15 NORTHERN DISTRICT OF CALIFORNIA
 16

17 GREGG S. BOSNAK,

18 Plaintiff,

19 vs.

20 CITY AND COUNTY OF SAN
 FRANCISCO, ET AL.,

21 Defendants.
 22

Case No. 14-cv-01429-MEJ (JCS)

AMENDED
 STIPULATED PROTECTIVE ORDER

SAC Filed: January 8, 2015
 Trial Date: November 27, 2017

1 1. PURPOSES AND LIMITATIONS

2 Disclosure and discovery activity in this action are likely to involve production of confidential,
3 proprietary, or private information for which special protection from public disclosure and from use
4 for any purpose other than prosecuting this litigation may be warranted. Accordingly, the parties
5 hereby stipulate to and petition the court to enter the following Stipulated Protective Order. The parties
6 acknowledge that this Order does not confer blanket protections on all disclosures or responses to
7 discovery and that the protection it affords from public disclosure and use extends only to the limited
8 information or items that are entitled to confidential treatment under the applicable legal principles.
9 The parties further acknowledge, as set forth in Section 12.3, below, that this Stipulated Protective
10 Order does not entitle them to file confidential information under seal; Civil Local Rule 79-5 sets forth
11 the procedures that must be followed and the standards that will be applied when a party seeks
12 permission from the court to file material under seal.

13 2. DEFINITIONS

14 2.1 Challenging Party: a Party or Non-Party that challenges the designation of information
15 or items under this Order.

16 2.2 “CONFIDENTIAL” Information or Items: information (regardless of how it is
17 generated, stored or maintained) or tangible things that qualify for protection under Federal Rule of
18 Civil Procedure 26(c).

19 2.3 Counsel (without qualifier): Outside Counsel of Record and House Counsel (as well as
20 their support staff).

21 2.4 Designating Party: a Party or Non-Party that designates information or items that it
22 produces in disclosures or in responses to discovery as “CONFIDENTIAL.”

23 2.5 Disclosure or Discovery Material: all items or information, regardless of the medium
24 or manner in which it is generated, stored, or maintained (including, among other things, testimony,
25 transcripts, and tangible things), that are produced or generated in disclosures or responses to
26 discovery in this matter.

1 2.6 Expert: a person with specialized knowledge or experience in a matter pertinent to the
2 litigation who has been retained by a Party or its counsel to serve as an expert witness or as a
3 consultant in this action.

4 2.7 House Counsel: attorneys who are employees of a party to this action. House Counsel
5 does not include Outside Counsel of Record or any other outside counsel.

6 2.8 Non-Party: any natural person, partnership, corporation, association, or other legal
7 entity not named as a Party to this action.

8 2.9 Outside Counsel of Record: attorneys who are not employees of a party to this action
9 but are retained to represent or advise a party to this action and have appeared in this action on behalf
10 of that party or are affiliated with a law firm which has appeared on behalf of that party.

11 2.10 Party: any party to this action, including all of its officers, directors, employees,
12 consultants, retained experts, and Outside Counsel of Record (and their support staffs).

13 2.11 Producing Party: a Party or Non-Party that produces Disclosure or Discovery Material
14 in this action.

15 2.12 Professional Vendors: persons or entities that provide litigation support services (e.g.,
16 photocopying, videotaping, translating, preparing exhibits or demonstrations, and organizing, storing,
17 or retrieving data in any form or medium) and their employees and subcontractors.

18 2.13 Protected Material: any Disclosure or Discovery Material that is designated as
19 “CONFIDENTIAL.”

20 2.14 Receiving Party: a Party that receives Disclosure or Discovery Material from a
21 Producing Party.

22 3. SCOPE

23 The protections conferred by this Stipulation and Order cover not only Protected Material (as
24 defined above), but also (1) any information copied or extracted from Protected Material; (2) all
25 copies, excerpts, summaries, or compilations of Protected Material; and (3) any testimony,
26 conversations, or presentations by Parties or their Counsel that might reveal Protected Material.
27 However, the protections conferred by this Stipulation and Order do not cover the following
28 information: (a) any information that is in the public domain at the time of disclosure to a Receiving

1 Party or becomes part of the public domain after its disclosure to a Receiving Party as a result of
2 publication not involving a violation of this Order, including becoming part of the public record
3 through trial or otherwise; and (b) any information known to the Receiving Party prior to the
4 disclosure or obtained by the Receiving Party after the disclosure from a source who obtained the
5 information lawfully and under no obligation of confidentiality to the Designating Party. Any use of
6 Protected Material at trial shall be governed by a separate agreement or order.

7 4. DURATION

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

14 5. DESIGNATING PROTECTED MATERIAL

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

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

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

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

5 Designation in conformity with this Order requires:

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

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

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

24 (c) for information produced in some form other than documentary and for any other tangible
25 items, that the Producing Party affix in a prominent place on the exterior of the container or containers
26 in which the information or item is stored the legend “CONFIDENTIAL.” If only a portion or portions
27 of the information or item warrant protection, the Producing Party, to the extent practicable, shall
28 identify the protected portion(s).

1 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
2 designate qualified information or items does not, standing alone, waive the Designating Party’s right
3 to secure protection under this Order for such material. Upon timely correction of a designation, the
4 Receiving Party must make reasonable efforts to assure that the material is treated in accordance with
5 the provisions of this Order.

6 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

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

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

26 6.3 Judicial Intervention. No motions to compel shall be considered. Instead, the parties
27 must meet and confer in person for the purpose of resolving all disputes. If unable to resolve any
28 disputes, the parties shall file a joint letter that contains the following:

1 (a) A cover page with the case caption, an attestation that the parties met and conferred in
2 person in a good faith attempt to resolve their dispute(s) prior to filing the letter, and the signature of
3 both parties or counsel;

4 (b) A joint section setting forth the pertinent factual background and unresolved dispute;

5 (c) A detailed summary of each party's position, including citations to relevant legal
6 authority; and

7 (d) Each party's proposed compromise on the issue(s) in dispute.

8 The joint letter shall be limited to five pages, excluding the cover page, and may not be
9 accompanied by exhibits or affidavits other than exact copies of interrogatories, requests for
10 production of documents and/or responses, privilege logs, and relevant deposition testimony. It is
11 preferable that the parties file a separate letter for each dispute.

12 If the parties are unable to meet and confer as directed above, or a moving party is unable to
13 obtain the opposing party's portion of a joint letter after the meet and confer session, the moving party
14 shall file a written request for a telephonic conference for the purpose of enforcing the Court's meet
15 and confer requirement, or for the Court to fashion an alternative procedure. The written request shall
16 include a declaration which states any attempt to meet and confer and/or obtain the joint letter, the
17 reasons for the inability to comply with the standing order, and (if possible) three dates and times
18 during which all parties are available for a telephonic conference. The moving party may attach
19 exhibits to the declaration, but the declaration and exhibits combined may not exceed seven pages. The
20 Court will not excuse a party from the requisite in-person meeting unless good cause is shown.

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

1 7. ACCESS TO AND USE OF PROTECTED MATERIAL

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

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

10 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise ordered by
11 the court or permitted in writing by the Designating Party, a Receiving Party may disclose any
12 information or item designated “CONFIDENTIAL” only to:

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

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

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

23 (d) the court and its personnel;

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

27 (f) during their depositions, witnesses in the action to whom disclosure is reasonably necessary
28 and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A), unless

1 otherwise agreed by the Designating Party or ordered by the court. Pages of transcribed deposition
2 testimony or exhibits to depositions that reveal Protected Material must be separately bound by the
3 court reporter and may not be disclosed to anyone except as permitted under this Stipulated Protective
4 Order.

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

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

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

12 (a) promptly notify in writing the Designating Party. Such notification shall include a copy of
13 the 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
18 Designating 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
24 construed as authorizing or encouraging a Receiving Party in this action to disobey a lawful directive
25 from another court.

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

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

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

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

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

16 (3) make the information requested available for inspection by the Non-Party.

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

24 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

25 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected
26 Material to any person or in any circumstance not authorized under this Stipulated Protective Order,
27 the Receiving Party must immediately (a) notify in writing the Designating Party of the unauthorized
28 disclosures, (b) use its best efforts to retrieve all unauthorized copies of the Protected Material, (c)

1 inform the person or persons to whom unauthorized disclosures were made of all the terms of this
2 Order, and (d) request such person or persons to execute the “Acknowledgment and Agreement to Be
3 Bound” that is attached hereto as Exhibit A.

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

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

14 12. MISCELLANEOUS

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

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

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

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

4 13. FINAL DISPOSITION

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

19 **IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.**

20
21 DATED: March 17, 2017

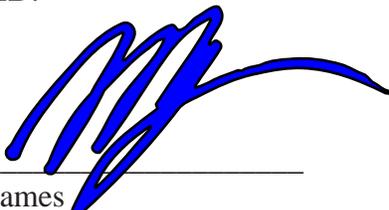
/s/ William C. McNeill, III
William C. McNeill, III, Legal Aid At Work
Attorneys for Plaintiff

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23
24
25 DATED: March 17, 2017

/s/ Amy D. Super
Amy D. Super, Deputy City Attorney
Office of the San Francisco City Attorney
Attorneys for Defendants

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

2
3 DATED: March 24, 2017

4 _____ 
5 Hon. Maria-Elena James
6 United States District/Magistrate Judge

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1 ATTESTATION OF E-FILED SIGNATURE

2 I, Amy D. Super, am the ECF User whose ID and password are being used to file this
3 STIPULATED PROTECTIVE ORDER , [PROPOSED] ORDER THEREON. In compliance with
4 Local Rule 5-1(i)(3), I attest that William C. McNeill, III has read and approved this pleading and
5 consents to its filing in this action.

6 Dated: March 17, 2017

7 DENNIS J. HERRERA
City Attorney
8 KATHARINE HOBIN PORTER
Chief Labor Attorney
9 AMY D. SUPER
Deputy City Attorney

10
11 By: /s/ Amy D. Super
AMY D. SUPER

12 Attorneys for Defendants
13 CITY AND COUNTY OF SAN FRANCISCO
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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.

Date: _____

City and State where sworn and signed: _____

Printed name: _____

Signature: _____