

1 LOUIS A. LEONE, ESQ. (SBN: 099874)  
2 CLAUDIA LEED, ESQ. (SBN: 122676)

**STUBBS & LEONE**

3 A Professional Corporation  
4 2175 N. California Blvd., Suite 900  
5 Walnut Creek, CA 94596  
6 Telephone: (925) 974-8600  
7 Facsimile: (925) 974-8601  
8 Email: [leonel@stubbsleone.com](mailto:leonel@stubbsleone.com)  
9 [leedc@stubbsleone.com](mailto:leedc@stubbsleone.com)

10 Attorneys for Defendants

11 SAN FRANCISCO COMMUNITY COLLEGE DISTRICT, CHANCELLOR ARTHUR  
12 TYLER, CHIEF ANDRE' L. BARNES, LIEUTENANT JASON WENDT, SERGEANT  
13 CARLOS GAYTAN, OFFICER JULIE TORRES, OFFICER IGOR BOYKO, OFFICER  
14 ERICA MCGLASTON and SERGEANT DON QUINTANA

15 DENNIS J. HERRERA, ESQ. (SBN: 139669)

16 City Attorney

17 CHERYL ADAMS, ESQ. (SBN: 164194)

18 Chief Trial Deputy

19 MARGARET W. BAUMGARTNER, ESQ. (SBN: 151762)

20 Deputy City Attorney

21 Fox Plaza

22 1390 Market Street, 6th Floor

23 San Francisco, California 94102-5408

24 Telephone: (415) 554-3859

25 Facsimile: (415) 554-3837

26 E-Mail: [margaret.baumgartner@sfgov](mailto:margaret.baumgartner@sfgov)

27 Attorneys for DEFENDANTS SFPD OFFICER OLIVER LIM, SFPD SGT. JOSHUA  
28 KUMLI, SFPD CHIEF GREG SUHR, CITY AND COUNTY OF SAN FRANCISCO

RACHEL L. LEDERMAN, ESQ. (SBN: 130192)

**BEACH & LEDERMAN**

558 Capp Street

San Francisco, CA 94110

Telephone: (415) 282-9300

Facsimile: (415) 285-5066

Email: [rachel@beachledermanlaw.com](mailto:rachel@beachledermanlaw.com)

Attorneys for Plaintiffs

SAVE CCSF COALITION and OTTO PIPPENGER

1 UNITED STATES DISTRICT COURT  
2 NORTHERN DISTRICT OF CALIFORNIA

3 SAVE CCSF COALITION, OTTO  
4 PIPPENGER, and DIMITRIOS PHILLIOU,

5 Plaintiffs,

6 v.

7 SFPD OFFICER OLIVER LIM; SFCCDPD  
8 SGT. CARLOS GAYTAN; OFFICER JULIE  
9 TORRES #63; OFFICER IGOR BOYKO;  
10 OFFICER E. MCGLASTON; OFFICER M.  
11 EDAIS; SGT. DON QUINTANA; LT. JASON  
12 WENDT; SFCCDPD CHIEF ANDRE' L.  
13 BARNES; SFPD SGT. JOSHUA KUMLI;  
14 SFPD CHIEF GREG SUHR;  
15 CHANCELLOR ARTHUR TYLER; CITY  
16 AND COUNTY OF SAN FRANCISCO; SAN  
17 FRANCISCO COMMUNITY COLLEGE  
18 DISTRICT; and DOES 1-50, inclusive;

19 Defendants.

**Case No.: 3:14-cv-05286 SI**

**STIPULATION AND ~~[PROPOSED]~~  
PROTECTIVE ORDER FOR  
LITIGATION HIGHLY SENSITIVE  
CONFIDENTIAL INFORMATION**

17 **1. PURPOSES AND LIMITATIONS**

18 Disclosure and discovery activity in this action are likely to involve production of  
19 confidential, proprietary, or private information for which special protection from public  
20 disclosure and from use for any purpose other than prosecuting this litigation may be  
21 warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the  
22 following Stipulated Protective Order. The parties acknowledge that this Order does not  
23 confer blanket protections on all disclosures or responses to discovery and that the  
24 protection it affords from public disclosure and use extends only to the limited  
25 information or items that are entitled to confidential treatment under the applicable legal  
26 principles. The parties further acknowledge, as set forth in Section 14.4, below, that this  
27 Stipulated Protective Order does not entitle them to file confidential information under  
28 seal; Civil Local Rule 79-5 sets forth the procedures that must be followed and the

standards that will be applied when a party seeks permission from the court to file material under seal.

## 2. DEFINITIONS

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

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

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

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

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

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

2.7 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” Information or Items: extremely sensitive “Confidential Information or Items,” disclosure of which to another Party or Non-Party would create a substantial risk of serious harm that could not be avoided by less restrictive means.

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

1           2.9    Outside Counsel of Record: attorneys who are not employees of a party to  
2 this action but are retained to represent or advise a party to this action and have  
3 appeared in this action on behalf of that party or are affiliated with a law firm which has  
4 appeared on behalf of that party.

5           2.10   Party: any party to this action, including all of its officers, directors,  
6 employees, consultants, retained experts, and Outside Counsel of Record (and their  
7 support staffs).

8           2.11   Producing Party: a Party or Non-Party that produces Disclosure or  
9 Discovery Material in this action.

10          2.12   Professional Vendors: persons or entities that provide litigation support  
11 services (e.g., photocopying, videotaping, translating, preparing exhibits or  
12 demonstrations, and organizing, storing, or retrieving data in any form or medium) and  
13 their employees and subcontractors.

14          2.13   Protected Material: any Disclosure or Discovery Material that is  
15 designated as “CONFIDENTIAL,” or as “HIGHLY CONFIDENTIAL – ATTORNEYS’  
16 EYES ONLY.”

17          2.17   Receiving Party: a person who receives Disclosure or Discovery Material  
18 from a Producing Party.

19    3.    SCOPE

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

1 trial or otherwise; and (b) any information known to the Receiving Party prior to the  
2 disclosure or obtained by the Receiving Party after the disclosure from a source who  
3 obtained the information lawfully and under no obligation of confidentiality to the  
4 Designating Party. Any use of Protected Material at trial shall be governed by a  
5 separate agreement or order.

6 4. DURATION

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

16 Each Party or Non-Party that designates information or items for protection under  
17 this Order must take care to limit any such designation to specific material that qualifies  
18 under the appropriate standards. To the extent it is practical to do so, the Designating  
19 Party must designate for protection only those parts of material, documents, items, or  
20 oral or written communications that qualify – so that other portions of the material,  
21 documents, items, or communications for which protection is not warranted are not  
22 swept unjustifiably within the ambit of this Order.

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

28 ///

1 If it comes to a Designating Party's attention that information or items that it  
2 designated for protection do not qualify for protection at all or do not qualify for the level  
3 of protection initially asserted, that Designating Party must promptly notify all other  
4 parties that it is withdrawing the mistaken designation.

5 5.2 Manner and Timing of Designations. Except as otherwise provided in this  
6 Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated  
7 or ordered, Disclosure or Discovery Material that qualifies for protection under this  
8 Order must be clearly so designated before the material is disclosed or produced.  
9 Designation in conformity with this Order requires:

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

18 A Party or Non-Party that makes original documents or materials available for  
19 inspection need not designate them for protection until after the inspecting Party has  
20 indicated which material it would like copied and produced. During the inspection and  
21 before the designation, all of the material made available for inspection shall be deemed  
22 "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY." After the inspecting Party  
23 has identified the documents it wants copied and produced, the Producing Party must  
24 determine which documents, or portions thereof, qualify for protection under this Order.  
25 Then, before producing the specified documents, the Producing Party must affix the  
26 appropriate legend ("CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS'  
27 EYES ONLY") to each page that contains Protected Material. If only a portion or  
28 portions of the material on a page qualifies for protection, the Producing Party also must

1 clearly identify the protected portion(s) (e.g., by making appropriate markings in the  
2 margins) and must specify, for each portion, the level of protection being asserted.

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

17 **Parties shall give the other parties notice if they reasonably expect a**  
18 **deposition, hearing or other proceeding to include Protected Material so that the**  
19 **other parties can ensure that only authorized individuals who have signed the**  
20 **“Acknowledgment and Agreement to Be Bound” (Exhibit A) are present at those**  
21 **proceedings. The use of a document as an exhibit at a deposition shall not in any**  
22 **way affect its designation as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –**  
23 **ATTORNEYS’ EYES ONLY.”**

24 **Transcripts containing Protected Material shall have an obvious legend on**  
25 **the title page that the transcript contains Protected Material, and the title page**  
26 **shall be followed by a list of all pages (including line numbers as appropriate)**  
27 **that have been designated as Protected Material and the level of protection being**  
28 **asserted by the Designating Party. The Designating Party shall inform the court**

1 reporter of these requirements. Any transcript that is prepared before the  
2 expiration of a 21-day period for designation shall be treated during that period as  
3 if it had been designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”  
4 in its entirety unless otherwise agreed. After the expiration of that period, the  
5 transcript shall be treated only as actually designated.

6 (c) for information produced in some form other than documentary and for  
7 any other tangible items, that the Producing Party affix in a prominent place on the  
8 exterior of the container or containers or on the digital media format (thumbdrive, DVD,  
9 CD, etc.) in which the information or item is stored the legend “CONFIDENTIAL” or  
10 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”. If only a portion or portions of  
11 the information or item warrant protection, the Producing Party, to the extent  
12 practicable, shall identify the protected portion(s) and specify the level of protection  
13 being asserted.

14 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent  
15 failure to designate qualified information or items does not, standing alone, waive the  
16 Designating Party’s right to secure protection under this Order for such material. Upon  
17 timely correction of a designation, the Receiving Party must make reasonable efforts to  
18 assure that the material is treated in accordance with the provisions of this Order.

19 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

20 6.1 Timing of Challenges. Any Party or Non-Party may challenge a  
21 designation of confidentiality at any time. Unless a prompt challenge to a Designating  
22 Party’s confidentiality designation is necessary to avoid foreseeable, substantial  
23 unfairness, unnecessary economic burdens, or a significant disruption or delay of the  
24 litigation, a Party does not waive its right to challenge a confidentiality designation by  
25 electing not to mount a challenge promptly after the original designation is disclosed.

26 6.2 Meet and Confer. The Challenging Party shall initiate the dispute  
27 resolution process by providing written notice of each designation it is challenging and  
28 describing the basis for each challenge. To avoid ambiguity as to whether a challenge



1 has been made, the written notice must recite that the challenge to confidentiality is  
2 being made in accordance with this specific paragraph of the Protective Order. The  
3 parties shall attempt to resolve each challenge in good faith and must begin the process  
4 by conferring directly (in voice to voice dialogue; other forms of communication are not  
5 sufficient) within 14 days of the date of service of notice. In conferring, the Challenging  
6 Party must explain the basis for its belief that the confidentiality designation was not  
7 proper and must give the Designating Party an opportunity to review the designated  
8 material, to reconsider the circumstances, and, if no change in designation is offered, to  
9 explain the basis for the chosen designation. A Challenging Party may proceed to the  
10 next stage of the challenge process only if it has engaged in this meet and confer  
11 process first or establishes that the Designating Party is unwilling to participate in the  
12 meet and confer process in a timely manner.

13       6.3    Judicial Intervention. If the Parties cannot resolve a challenge without  
14 court intervention, the Designating Party shall file and serve a motion to retain  
15 confidentiality under Civil Local Rule 7 (and in compliance with Civil Local Rule 79-5, if  
16 applicable) within 21 days of the initial notice of challenge or within 14 days of the  
17 parties agreeing that the meet and confer process will not resolve their dispute,  
18 whichever is earlier.<sup>1</sup> Each such motion must be accompanied by a competent  
19 declaration affirming that the movant has complied with the meet and confer  
20 requirements imposed in the preceding paragraph. Failure by the Designating Party to  
21 make such a motion including the required declaration within 21 days (or 14 days, if  
22 applicable) shall automatically waive the confidentiality designation for each challenged  
23 designation. In addition, the Challenging Party may file a motion challenging a  
24 confidentiality designation at any time if there is good cause for doing so, including a  
25 challenge to the designation of a deposition transcript or any portions thereof. Any

26 \_\_\_\_\_  
27 <sup>1</sup> Alternative: It may be appropriate in certain circumstances for the parties to agree to  
28 shift the burden to move on the Challenging Party after a certain number of challenges  
are made to avoid an abuse of the process. The burden of persuasion would remain on  
the Designating Party.

1 motion brought pursuant to this provision must be accompanied by a competent  
2 declaration affirming that the movant has complied with the meet and confer  
3 requirements imposed by the preceding paragraph.

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

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

13 7.1 Basic Principles. A Receiving Party may use Protected Material that is  
14 disclosed or produced by another Party or by a Non-Party in connection with this case  
15 only for prosecuting, defending, or attempting to settle this litigation. Such Protected  
16 Material may be disclosed only to the categories of persons and under the conditions  
17 described in this Order. When the litigation has been terminated, a Receiving Party  
18 must comply with the provisions of section 15 below (FINAL DISPOSITION).

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

22 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise  
23 ordered by the court or permitted in writing by the Designating Party, a Receiving Party  
24 may disclose any information or item designated "CONFIDENTIAL" only to:

25 (a) the Receiving Party's Outside Counsel of Record in this action, as well  
26 as employees of said Outside Counsel of Record to whom it is reasonably necessary to  
27 disclose the information for this litigation and who have signed the "Acknowledgment  
28 and Agreement to Be Bound" that is attached hereto as Exhibit A;

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

4 (c) the court and its personnel;

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

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

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

17 7.3 **Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY**  
18 **Information or Items.** Unless otherwise ordered by the court or permitted in writing by  
19 the Designating Party, a Receiving Party may disclose any information or item  
20 designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” only to:

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

25 (b) Experts of the Receiving Party (1) to whom disclosure is reasonably  
26 necessary for this litigation, (2) who have signed the “Acknowledgment and Agreement  
27 to Be Bound” (Exhibit A), and (3) as to whom the procedures set forth in paragraph  
28 7.4(a)(2), below, have been followed];

1 (c) the court and its personnel;

2 (d) court reporters and their staff, professional jury or trial consultants, and  
3 Professional Vendors to whom disclosure is reasonably necessary for this litigation and  
4 who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A); and

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

7 7.4 Procedures for Approving or Objecting to Disclosure of "HIGHLY  
8 CONFIDENTIAL – ATTORNEYS' EYES ONLY" Information or Items to Experts.

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

23 ///

24 ///

25 \_\_\_\_\_  
26 <sup>2</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  
28 can be 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 including through a declaration, report, or testimony at a deposition or trial, during the  
2 preceding five years.<sup>3</sup>

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

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

21 In any such proceeding, the Party opposing disclosure to the Expert shall bear  
22 the burden of proving that the risk of harm that the disclosure would entail (under the  
23 safeguards proposed) outweighs the Receiving Party's need to disclose the Protected  
24 Material to its Expert.

25 ///

26 \_\_\_\_\_  
27 <sup>3</sup> It may be appropriate in certain circumstances to restrict the Expert from undertaking  
28 certain limited work prior to the termination of the litigation that could foreseeably result  
in an improper use of the Designating Party's "HIGHLY CONFIDENTIAL –  
ATTORNEYS' EYES ONLY" information.

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

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

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

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

13 (c) cooperate with respect to all reasonable procedures sought to be  
14 pursued by the Designating Party whose Protected Material may be affected.<sup>4</sup>

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

23 ///

24 ///

25 ///

26 \_\_\_\_\_  
27 <sup>4</sup> The purpose of imposing these duties is to alert the interested parties to the existence  
28 of 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  
4 Non-Party in this action and designated as "CONFIDENTIAL" or "HIGHLY  
5 CONFIDENTIAL – ATTORNEYS' EYES ONLY." Such information produced by Non-  
6 Parties in connection with this litigation is protected by the remedies and relief provided  
7 by this Order. Nothing in these provisions should be construed as prohibiting a Non-  
8 Party from seeking additional protections.

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

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

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

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

21 (c) If the Non-Party fails to object or seek a protective order from this  
22 court within 14 days of receiving the notice and accompanying information, the  
23 Receiving Party may produce the Non-Party's confidential information responsive to the  
24 discovery request. If the Non-Party timely seeks a protective order, the Receiving Party  
25 shall not produce any information in its possession or control that is subject to the

26 ///

27 ///

28 ///

1 confidentiality agreement with the Non-Party before a determination by the court.<sup>5</sup>

2 Absent a court order to the contrary, the Non-Party shall bear the burden and expense  
3 of seeking protection in this court of its Protected Material.

4 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

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

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

15 When a Producing Party gives notice to Receiving Parties that certain  
16 inadvertently produced material is subject to a claim of privilege or other protection, the  
17 Receiving Parties may not disclose or in any way use the document(s) pending  
18 resolution of a challenge to the claim of privilege or other protection. This provision is  
19 not intended to modify whatever procedure may be established in an e-discovery order  
20 that provides for production without prior privilege review. Pursuant to Federal Rule of  
21 Evidence 502(d) and (e), insofar as the parties reach an agreement on the effect of  
22 disclosure of a communication or information covered by the attorney-client privilege or  
23 work product protection, the parties may incorporate their agreement in the stipulated  
24 protective order submitted to the court.

25 ///

26  
27 \_\_\_\_\_  
28 <sup>5</sup> The purpose of this provision is to alert the interested parties to the existence of  
confidentiality rights of a Non-Party and to afford the Non-Party an opportunity to protect  
its confidentiality interests in this court.



1 12. MISCELLANEOUS

2 12.1 Right to Further Relief. Nothing in this Order abridges the right of any  
3 person to seek its modification by the court in the future.

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

9 12.3 Filing Protected Material. Without written permission from the Designating  
10 Party or a court order secured after appropriate notice to all interested persons, a Party  
11 may not file in the public record in this action any Protected Material. A Party that seeks  
12 to file under seal any Protected Material must comply with Civil Local Rule 79-5.  
13 Protected Material may only be filed under seal pursuant to a court order authorizing the  
14 sealing of the specific Protected Material at issue. Pursuant to Civil Local Rule 79-5, a  
15 sealing order will issue only upon a request establishing that the Protected Material at  
16 issue is privileged, protectable as a trade secret, or otherwise entitled to protection  
17 under the law. If a Receiving Party's request to file Protected Material under seal  
18 pursuant to Civil Local Rule 79-5(e) is denied by the court, then the Receiving Party  
19 may file the Protected Material in the public record pursuant to Civil Local Rule 79-  
20 5(e)(2) unless otherwise instructed by the court.

21 13. FINAL DISPOSITION

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



ORDER

PURSUANT TO THE STIPULATION OF THE PARTIES, IT IS SO ORDERED.



Dated: 3/9/2015

HONORABLE SUSAN ILLSTON  
UNITED STATES DISTRICT COURT

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**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 *SAVE CCSF  
COALITION, OTTO PIPPENGER v LIM, et al., 3:14-cv-05286* SI, 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: \_\_\_\_\_

[printed name]

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

[signature]