

United States District Court  
Northern District of California

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**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA**

ALBERT JAMES BURLESON, JR.  
  
Plaintiffs,  
v.  
  
SAN FRANCISCO BAY AREA RAPID TRANSIT  
DISTRICT (BART), et al.  
  
Defendants.

Case No. 3:14-cv-05462-VC

**STIPULATED PROTECTIVE ORDER**

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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 information or items that are entitled to confidential treatment under the applicable legal principles. The parties further acknowledge, as set forth in Section 12.3, below, that this Stipulated Protective Order does not entitle them to file confidential information under 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.”

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.

1           2.6     Expert: a person with specialized knowledge or experience in a matter pertinent to  
2 the 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  
5 Counsel 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  
10 behalf 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  
14 Material in this action.

15          2.12    Professional Vendors: persons or entities that provide litigation support services  
16 (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations, and organizing,  
17 storing, 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  
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1 information: (a) any information that is in the public domain at the time of disclosure to a Receiving  
2 Party or becomes part of the public domain after its disclosure to a Receiving Party as a result of  
3 publication not involving a violation of this Order, including becoming part of the public record  
4 through trial or otherwise; and (b) any information known to the Receiving Party prior to the  
5 disclosure or obtained by the Receiving Party after the disclosure from a source who obtained the  
6 information lawfully and under no obligation of confidentiality to the Designating Party. Any use of  
7 Protected Material at trial shall be governed by a separate agreement or order.

8 4. DURATION

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

15 5. DESIGNATING PROTECTED MATERIAL

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

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

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

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

7 Designation in conformity with this Order requires:

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

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

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

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

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

9 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

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

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

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

5 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise ordered by  
6 the court or permitted in writing by the Designating Party, a Receiving Party may disclose any  
7 information or item designated “CONFIDENTIAL” only to:

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

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

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

18 (d) the court and its personnel;

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

18 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

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

26 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED  
27 MATERIAL



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

16 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

17  
18 Dated: June 18, 2015

19                           BARBARA J. PARKER, City Attorney  
20                           OTIS MCGEE, JR., Chief Assistant City Attorney  
21                           DAVID A. PEREDA, Deputy City Attorney

22                           By: /s/ David A. Pereda  
23                           DAVID A. PEREDA  
24                           Attorneys for Defendants  
25                           Frank Lowe and Brenton Lowe

26 Dated: June 18, 2015

27                           ALLEN, GLASESSNER, HAZELWOOD & WERTH, LLP

28                           By: /s/ Kevin P. Allen  
                              KEVIN P. ALLEN

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DALE L. ALLEN, JR.  
Attorneys for Defendants  
SAN FRANCISCO BAY AREA RAPID  
TRANSIT DISTRICT, BART POLICE CHIEF  
KENTON RAINEY, OFFICER DARNELL  
BUSSEY AND OFFICER MYRON LEE

Dated: June 18, 2015

By: /s/ Rachel Lederman  
RACHEL LEDERMAN  
Attorney for Plaintiff  
James Burleson Jr.

PURSUANT TO STIPULATION, IT IS SO ORDERED.

DATED: June 19, 2015



United States District Judge

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SIGNATURE ATTESTATION

I am the ECF User whose ID and Password are being used to file this stipulated request. In compliance with General Order 45, X.B., I hereby attest that Mr. Pereda and Mr. Allen have concurred in this filing.

Dated: June 18, 2015  
/s/ RACHEL LEDERMAN

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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: \_\_\_\_\_