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8 UNITED STATES DISTRICT COURT  
 9 IN AND FOR THE NORTHER DISTRICT OF CALIFORNIA, OAKLAND

10

11 ROBERT LEE WOODARD,  
 12 Plaintiff,

CASE NO: CV-09-3331-SBA

**STIPULATED PROTECTIVE ORDER**

13 vs.

14 CITY OF MENLO PARK, MAYOR, ANDY  
 15 COHEN, THE MENLO PARK POLICE  
 DEPARTMENT, POLICE CHIEF, BRUCE  
 16 GOITIA, POLICE OFFICER, RON  
 VENZON, ET AL.,

17 Defendants.

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20 **1. PURPOSES AND LIMITATIONS**

21 Disclosure and discovery activity in this action are likely to involve production of  
 22 confidential, proprietary, or private information for which special protection from public  
 23 disclosure and from use for any purpose other than prosecuting this litigation may be  
 24 warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the  
 25 following Stipulated Protective Order. The parties acknowledge that this Order does not  
 26 confer blanket protections on all disclosures or responses to discovery and that the protection  
 27 it affords from public disclosure and use extends only to the limited information or items that  
 28 are entitled to confidential treatment under the applicable legal principles. The parties further

1 acknowledge, as set forth in Section 12.3, below, that this Stipulated Protective Order does  
2 not entitle them to file confidential information under seal; Civil Local Rule 79-5 and General  
3 Order 62 set forth the procedures that must be followed and the standards that will be applied  
4 when a party seeks permission from the court to file material under seal.

## 5 **2. DEFINITIONS**

6 2.1 Challenging Party: a Party or Non-Party that challenges the designation of  
7 information or items under this Order.

8 2.2 "CONFIDENTIAL" Information or Items: information (regardless of how it is  
9 generated, stored or maintained) or tangible things that qualify for protection under Federal  
10 Rule of Civil Procedure 26(c).

11 2.3 Counsel (without qualifier): Outside Counsel of Record and House Counsel (as  
12 well as their support staff).

13 2.4 Designating Party: a Party or Non-Party that designates information or items  
14 that it produces in disclosures or in responses to discovery as "CONFIDENTIAL."

15 2.5 Disclosure or Discovery Material: all items or information, regardless of the  
16 medium or manner in which it is generated, stored, or maintained (including, among other  
17 things, testimony, transcripts, and tangible things), that are produced or generated in  
18 disclosures or responses to discovery in this matter.

19 2.6 Expert: a person with specialized knowledge or experience in a matter pertinent  
20 to the litigation who has been retained by a Party or its counsel to serve as an expert witness  
21 or as a consultant in this action.

22 2.7 House Counsel: attorneys who are employees of a party to this action. House  
23 Counsel does not include Outside Counsel of Record or any other outside counsel.

24 2.8 Non-Party: any natural person, partnership, corporation, association, or other  
25 legal entity not named as a Party to this action.

26 2.9 Outside Counsel of Record: attorneys who are not employees of a party to this  
27 action but are retained to represent or advise a party to this action and have appeared in this  
28 action on behalf of that party or are affiliated with a law firm which has appeared on behalf

1 of that party.

2 2.10 Party: any party to this action, including all of its officers, directors, employees,  
3 consultants, retained experts, and Outside Counsel of Record (and their support staffs).

4 2.11 Producing Party: a Party or Non-Party that produces Disclosure or Discovery  
5 Material in this action.

6 2.12 Professional Vendors: persons or entities that provide litigation support services  
7 (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations, and  
8 organizing, storing, or retrieving data in any form or medium) and their employees and  
9 subcontractors.

10 2.13 Protected Material: any Disclosure or Discovery Material that is designated as  
11 "CONFIDENTIAL."

12 2.14 Receiving Party: a Party that receives Disclosure or Discovery Material from  
13 a Producing Party.

### 14 **3. SCOPE**

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

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1 **4. DURATION**

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

9 **5. DESIGNATING PROTECTED MATERIAL**

10 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each  
11 Party or Non-Party that designates information or items for protection under this Order must  
12 take care to limit any such designation to specific material that qualifies under the appropriate  
13 standards. The Designating Party must designate for protection only those parts of material,  
14 documents, items, or oral or written communications that qualify - so that other portions of the  
15 material, documents, items, or communications for which protection is not warranted are not  
16 swept unjustifiably within the ambit of this Order.

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

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

24 5.2 Manner and Timing of Designations. Except as otherwise provided in this Order  
25 (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered,  
26 Disclosure or Discovery Material that qualifies for protection under this Order must be clearly  
27 so designated before the material is disclosed or produced.

28 Designation in conformity with this Order requires:

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

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

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

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

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

1 material is treated in accordance with the provisions of this Order.

## 2 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

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

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

23 6.3 Judicial Intervention. If the Parties cannot resolve a challenge without court  
24 intervention, the Designating Party shall file and serve a motion to retain confidentiality under  
25 Civil Local Rule 7 (and in compliance with Civil Local Rule 79-5 and General Order 62, if  
26 applicable) within 21 days of the initial notice of challenge or within 14 days of the parties  
27 agreeing that the meet and confer process will not resolve their dispute, whichever is earlier.  
28 Each such motion must be accompanied by a competent declaration affirming that the

1 movant has complied with the meet and confer requirements imposed in the preceding  
2 paragraph. Failure by the Designating Party to make such a motion including the required  
3 declaration within 21 days (or 14 days, if applicable) shall automatically waive the  
4 confidentiality designation for each challenged designation. In addition, the Challenging Party  
5 may file a motion challenging a confidentiality designation at any time if there is good cause  
6 for doing so, including a challenge to the designation of a deposition transcript or any portions  
7 thereof. Any motion brought pursuant to this provision must be accompanied by a competent  
8 declaration affirming that the movant has complied with the meet and confer requirements  
9 imposed by the preceding paragraph.

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

## 17 **7. ACCESS TO AND USE OF PROTECTED MATERIAL**

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

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

27 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise ordered  
28 by the court or permitted in writing by the Designating Party, a Receiving Party may disclose

1 any information or item designated "CONFIDENTIAL" only to:

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

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

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

12 (d) the court and its personnel;

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

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

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

25 **8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER**  
26 **LITIGATION**

27 If a Party is served with a subpoena or a court order issued in other litigation that  
28 compels disclosure of any information or items designated in this action as



1 "CONFIDENTIAL," that Party must:

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

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

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

10 If the Designating Party timely seeks a protective order, the Party served with the  
11 subpoena or court order shall not produce any information designated in this action as  
12 "CONFIDENTIAL" before a determination by the court from which the subpoena or order  
13 issued, unless the Party has obtained the Designating Party's permission. The Designating  
14 Party shall bear the burden and expense of seeking protection in that court of its confidential  
15 material - and nothing in these provisions should be construed as authorizing or encouraging  
16 a Receiving Party in this action to disobey a lawful directive from another court.

17 **9. A NON-PARTY'S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN THIS**  
18 **LITIGATION**

19 (a) The terms of this Order are applicable to information produced by a  
20 Non-Party in this action and designated as "CONFIDENTIAL." Such information produced by  
21 Non-Parties in connection with this litigation is protected by the remedies and relief provided  
22 by this Order. Nothing in these provisions should be construed as prohibiting a Non-Party  
23 from seeking additional protections.

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

28 (1) promptly notify in writing the Requesting Party and the Non-Party

1 that some or all of the information requested is subject to a confidentiality agreement with a  
2 Non-Party;

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

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

8 (c) If the Non-Party fails to object or seek a protective order from this court  
9 within 14 days of receiving the notice and accompanying information, the Receiving Party  
10 may produce the Non-Party's confidential information responsive to the discovery request.  
11 If the Non-Party timely seeks a protective order, the Receiving Party shall not produce any  
12 information in its possession or control that is subject to the confidentiality agreement with the  
13 Non-Party before a determination by the court <sup>1</sup>. Absent a court order to the contrary, the  
14 Non-Party shall bear the burden and expense of seeking protection in this court of its  
15 Protected Material.

16 **10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

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

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28 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.

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2 **11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED**  
3 **MATERIAL**

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

13 **12. MISCELLANEOUS**

14 12.1 Right to Further Relief. Nothing in this Order abridges the right of any person  
15 to seek its modification by the court in the future.

16 12.2 Right to Assert Other Objections. By stipulating to the entry of this Protective  
17 Order no Party waives any right it otherwise would have to object to disclosing or producing  
18 any information or item on any ground not addressed in this Stipulated Protective Order.  
19 Similarly, no Party waives any right to object on any ground to use in evidence of any of the  
20 material covered by this Protective Order.

21 12.3 Filing Protected Material. Without written permission from the Designating Party  
22 or a court order secured after appropriate notice to all interested persons, a Party may not  
23 file in the public record in this action any Protected Material. A Party that seeks to file under  
24 seal any Protected Material must comply with Civil Local Rule 79-5 and General Order 62.  
25 Protected Material may only be filed under seal pursuant to a court order authorizing the  
26 sealing of the specific Protected Material at issue. Pursuant to Civil Local Rule 79-5 and  
27 General Order 62, a sealing order will issue only upon a request establishing that the  
28 Protected Material at issue is privileged, protectable as a trade secret, or otherwise entitled

1 to protection under the law. If a Receiving Party's request to file Protected Material under seal  
2 pursuant to Civil Local Rule 79-5(d) and General Order 62 is denied by the court, then the  
3 Receiving Party may file the information in the public record pursuant to Civil Local Rule  
4 79-5(e) unless otherwise instructed by the court.

5 **13. FINAL DISPOSITION**

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

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2 exhibits, expert reports, attorney work product, and consultant and expert work product, even  
3 if such materials contain Protected Material. Any such archival copies that contain or  
4 constitute Protected Material remain subject to this Protective Order as set forth in Section  
5 4 (DURATION).

6 IT IS STIPULATED, through counsel of record.

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8 Dated: July 3, 2012

PAUL HASTINGS LLP

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/s/

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Peter C. Meier  
Kristin M. Hall  
Attorneys for Plaintiff  
ROBERT LEE WOODARD

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14 Dated: July 3, 2012

JORGENSON, SIEGEL  
McCLURE & FLEGEL, LLP

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/s/


\_\_\_\_\_  
Nicolas A. Flegel  
Attorneys for Defendant  
RON VENZON

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19 **IT IS SO ORDERED.**

20 Dated: 8/1/12

  
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The Honorable Sandra Brown Armstrong  
United States District Court Judge

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