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18
 19 **UNITED STATES DISTRICT COURT**
 20 **NORTHERN DISTRICT OF CALIFORNIA, OAKLAND DIVISION**

22 SONOMA COUNTY ASSOCIATION OF
 RETIRED EMPLOYEES,

23 Plaintiff,

24 v.

25 SONOMA COUNTY,

26 Defendant.

CASE NO. CV 09-4432 CW

STIPULATED PROTECTIVE ORDER

Judge: Hon. Claudia Wilken
 Location: 1301 Clay Street
 Oakland, CA 94612

1 1. PURPOSES AND LIMITATIONS

2 Disclosure and discovery activity in this action are likely to involve production of
3 confidential, proprietary, or private information for which special protection from public
4 disclosure and from use for any purpose other than prosecuting this litigation may be
5 warranted. Accordingly, the parties hereby stipulate to and petition the Court to enter the
6 following Stipulated Protective Order, which will replace and supersede the Stipulated
7 Protective Order entered earlier (see, Docket nos. 31 and 32). The parties acknowledge
8 that this Order does not confer blanket protections on all disclosures or responses to
9 discovery and that the protection it affords from public disclosure and use extends only to
10 the limited information or items that are entitled to confidential treatment under the
11 applicable legal principles. The parties further acknowledge, as set forth in Section 12.3,
12 below, that this Stipulated Protective Order does not entitle them to file confidential
13 information under seal; Civil Local Rule 79-5 sets forth the procedures that must be
14 followed and the standards that will be applied when a party seeks permission from the
15 court to file material under seal.

16 2. DEFINITIONS

17 2.1 Challenging Party: a Party or Non-Party that challenges the designation of
18 information or items under this Order.

19 2.2 "CONFIDENTIAL" Information or Items: information (regardless of how it is
20 generated, stored or maintained) or tangible things that qualify for protection under
21 Federal Rule of Civil Procedure 26(c).

22 2.3 Counsel (without qualifier): Outside Counsel of Record and House Counsel
23 (as well as their support staff).

24 2.4 Designating Party: a Party or Non-Party that designates information or
25 items that it produces in disclosures or in responses to discovery as "CONFIDENTIAL."

26 2.5 Disclosure or Discovery Material: all items or information, regardless of the
27 medium or manner in which it is generated, stored, or maintained (including, among other
28 things, testimony, transcripts, and tangible things), that are produced or generated in

1 disclosures or responses to discovery in this matter.

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

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

8 2.8 Non-Party: any natural person, partnership, corporation, association, or
9 other legal entity not named as a Party to this action.

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

14 2.10 Party: any party to this action, including all of its officers, directors,
15 employees, consultants, retained experts, and Outside Counsel of Record (and their
16 support staffs).

17 2.11 Producing Party: a Party or Non-Party that produces Disclosure or
18 Discovery Material in this action.

19 2.12 Professional Vendors: persons or entities that provide litigation support
20 services (e.g., photocopying, videotaping, translating, preparing exhibits or
21 demonstrations, and organizing, storing, or retrieving data in any form or medium) and
22 their employees and subcontractors.

23 2.13 Protected Material: any Disclosure or Discovery Material that is designated
24 as "CONFIDENTIAL."

25 2.14 Receiving Party: a Party that receives Disclosure or Discovery Material
26 from a Producing Party.

27 3. SCOPE

28 The protections conferred by this Stipulation and Order cover not only Protected

1 Material (as defined above), but also (1) any information copied or extracted from
2 Protected Material; (2) all copies, excerpts, summaries, or compilations of Protected
3 Material; and (3) any testimony, conversations, or presentations by Parties or their
4 Counsel that might reveal Protected Material. However, the protections conferred by this
5 Stipulation and Order do not cover the following information: (a) any information that is in
6 the public domain at the time of disclosure to a Receiving Party or becomes part of the
7 public domain after its disclosure to a Receiving Party as a result of publication not
8 involving a violation of this Order, including becoming part of the public record through
9 trial or otherwise; and (b) any information known to the Receiving Party prior to the
10 disclosure or obtained by the Receiving Party after the disclosure from a source who
11 obtained the information lawfully and under no obligation of confidentiality to the
12 Designating Party. Any use of Protected Material at trial shall be governed by a separate
13 agreement or order.

14 4. DURATION

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

22 5. DESIGNATING PROTECTED MATERIAL

23 5.1 Exercise of Restraint and Care in Designating Material for Protection: Each
24 Party or Non-Party that designates information or items for protection under this Order
25 must take care to limit any such designation to specific material that qualifies under the
26 appropriate standards. The Designating Party must designate for protection only those
27 parts of material, documents, items, or oral or written communications that qualify – so
28 that other portions of the material, documents, items, or communications for which

1 protection is not warranted are not swept unjustifiably within the ambit of this Order.

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

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

10 5.2 Manner and Timing of Designations: Except as otherwise provided in this
11 Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or
12 ordered, Disclosure or Discovery Material that qualifies for protection under this Order
13 must be clearly so designated before the material is disclosed or produced.

14 Designation in conformity with this Order requires:

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

21 A Party or Non-Party that makes original documents or materials available for
22 inspection need not designate them for protection until after the inspecting Party has
23 indicated which material it would like copied and produced. During the inspection and
24 before the designation, all of the material made available for inspection shall be deemed
25 "CONFIDENTIAL." After the inspecting Party has identified the documents it wants
26 copied and produced, the Producing Party must determine which documents, or portions
27 thereof, qualify for protection under this Order. Then, before producing the specified
28 documents, the Producing Party must affix the "CONFIDENTIAL" legend to each page

1 that contains Protected Material. If only a portion or portions of the material on a page
2 qualifies for protection, the Producing Party also must clearly identify the protected
3 portion(s) (e.g., by making appropriate markings in the margins).

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

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

13 5.3 Inadvertent Failures to Designate: If timely corrected, an inadvertent failure
14 to designate qualified information or items does not, standing alone, waive the
15 Designating Party's right to secure protection under this Order for such material. Upon
16 timely correction of a designation, the Receiving Party must make reasonable efforts to
17 assure that the material is treated in accordance with the provisions of this Order.

18 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

19 6.1 Timing of Challenges: Any Party or Non-Party may challenge a designation
20 of confidentiality at any time. Unless a prompt challenge to a Designating Party's
21 confidentiality designation is necessary to avoid foreseeable, substantial unfairness,
22 unnecessary economic burdens, or a significant disruption or delay of the litigation, a
23 Party does not waive its right to challenge a confidentiality designation by electing not to
24 mount a challenge promptly after the original designation is disclosed.

25 6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution
26 process by providing written notice of each designation it is challenging and describing
27 the basis for each challenge. To avoid ambiguity as to whether a challenge has been
28 made, the written notice must recite that the challenge to confidentiality is being made in

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

12 6.3 Judicial Intervention. If the Parties cannot resolve a challenge without court
13 intervention, the Designating Party shall file and serve a motion to retain confidentiality
14 under Civil Local Rule 7 (and in compliance with Civil Local Rule 79-5, if applicable)
15 within 21 days of the initial notice of challenge or within 14 days of the parties agreeing
16 that the meet and confer process will not resolve their dispute, whichever is earlier. Each
17 such motion must be accompanied by a competent declaration affirming that the movant
18 has complied with the meet and confer requirements imposed in the preceding
19 paragraph. Failure by the Designating Party to make such a motion including the
20 required declaration within 21 days (or 14 days, if applicable) shall automatically waive
21 the confidentiality designation for each challenged designation. In addition, the
22 Challenging Party may file a motion challenging a confidentiality designation at any time if
23 there is good cause for doing so, including a challenge to the designation of a deposition
24 transcript or any portions thereof. Any motion brought pursuant to this provision must be
25 accompanied by a competent declaration affirming that the movant has complied with the
26 meet and confer requirements imposed by the preceding paragraph.

27 The burden of persuasion in any such challenge proceeding shall be on the
28 Designating Party. Frivolous challenges, and those made for an improper purpose (e.g.,

1 to harass or impose unnecessary expenses and burdens on other parties) may expose
2 the Challenging Party to sanctions. Unless the Designating Party has waived the
3 confidentiality designation by failing to file a motion to retain confidentiality as described
4 above, all parties shall continue to afford the material in question the level of protection to
5 which it is entitled under the Producing Party's designation until the court rules on the
6 challenge.

7 7. ACCESS TO AND USE OF PROTECTED MATERIAL

8 7.1 Basic Principles: A Receiving Party may use Protected Material that is
9 disclosed or produced by another Party or by a Non-Party in connection with this case
10 only for prosecuting, defending, or attempting to settle this litigation. Such Protected
11 Material may be disclosed only to the categories of persons and under the conditions
12 described in this Order. When the litigation has been terminated, a Receiving Party must
13 comply with the provisions of section 13 below (FINAL DISPOSITION).

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

17 7.2 Disclosure of "CONFIDENTIAL" Information or Items: Unless otherwise
18 ordered by the court or permitted in writing by the Designating Party, a Receiving Party
19 may disclose any information or item designated "CONFIDENTIAL" only to:

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

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

28 (c) Experts (as defined in this Order) of the Receiving Party to whom

1 disclosure is reasonably necessary for this litigation and who have signed the
2 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

3 (d) the court and its personnel;

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

8 (f) during or in preparation for their depositions, witnesses in the action
9 to whom disclosure is reasonably necessary and who have signed the “Acknowledgment
10 and Agreement to Be Bound” (Exhibit A), unless otherwise agreed by the Designating
11 Party or 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 reporter
13 and may not be disclosed to anyone except as permitted under this Stipulated Protective
14 Order.

15 (g) 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 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN
18 OTHER LITIGATION

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

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

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

28 (c) cooperate with respect to all reasonable procedures sought to be

1 pursued by the Designating Party whose Protected Material may be affected.

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

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

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

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

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

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

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

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

9 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

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

18 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED
19 MATERIAL

20 When a Producing Party gives notice to Receiving Parties that certain
21 inadvertently produced material is subject to a claim of privilege or other protection, the
22 obligations of the Receiving Parties are those set forth in Federal Rule of Civil Procedure
23 26(b)(5)(B). This provision is not intended to modify whatever procedure may be
24 established in an e-discovery order that provides for production without prior privilege
25 review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar as the parties reach
26 an agreement on the effect of disclosure of a communication or information covered by
27 the attorney-client privilege or work product protection, the parties may incorporate their
28 agreement in the stipulated protective order submitted to the 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 disclosing
6 or producing any information or item on any ground not addressed in this Stipulated
7 Protective Order. Similarly, no Party waives any right to object on any ground to use in
8 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 under
17 the law. If a Receiving Party's request to file Protected Material under seal pursuant to
18 Civil Local Rule 79-5(d) is denied by the court, then the Receiving Party may file the
19 information in the public record pursuant to Civil Local Rule 79-5(e) unless otherwise
20 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 collect all Protected Material from the persons to whom they
24 disclosed "CONFIDENTIAL" Information or Items. As used in this subdivision, "all
25 Protected Material" includes all copies, abstracts, compilations, summaries, and any
26 other format reproducing or capturing any of the Protected Material. Once the Protected
27 Material is collected, the Disclosing Party must submit a written certification to the
28 Producing Party (and, if not the same person or entity, to the Designating Party) by the

1 60 day deadline that (1) identifies (by category, where appropriate) all the Protected
2 Material that was disclosed and (2) affirms that the Disclosing Party has collected any
3 copies, abstracts, compilations, summaries or any other format reproducing or capturing
4 any of the Protected Material. All collected Protected Material remain subject to this
5 Protective Order as set forth in Section 4 (DURATION), including without limitation the
6 provisions of Section 8 (Protected Material Subpoenaed Or Ordered Produced In Other
7 Litigation).

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

24 **IT IS SO STIPULATED**, through counsel of record.

25 DATED: July 28, 2014

HANSON BRIDGETT LLP

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By: /S/ Raymond F. Lynch
RAYMOND F. LYNCH
Attorneys for COUNTY OF SONOMA

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1 DATED: July 28, 2014

LEWIS, FEINBERG, LEE, RENAKER &
JACKSON, P.C.

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By: /S/ Jeffrey Lewis

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JEFFREY LEWIS
Attorneys for Plaintiff
SONOMA COUNTY ASSOCIATION OF
RETIRED EMPLOYEES

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8 **IT IS SO ORDERED.**

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Dated: July 29, 2014



HONORABLE CLAUDIA WILKEN

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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: _____