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 THE COUNTY OF SONOMA

17 **UNITED STATES DISTRICT COURT**
 18 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**
 19 **OAKLAND DIVISION**

21 SONOMA COUNTY ASSOCIATION OF
 22 RETIRED EMPLOYEES,

23 Plaintiff,

24 v.

25 SONOMA COUNTY,

26 Defendant.

No. CV 09-4432 CW

**STIPULATION REGARDING ORDERLY
 REVIEW OF DOCUMENTS AND
 INADVERTENT DISCLOSURE OF
 PRIVILEGED MATERIAL AND
PROTECTIVE ORDER**

Action Filed: September 22, 2009

1 WHEREAS on April 6, 2010, Judge Claudia Wilken authorized limited discovery for
2 Plaintiff Sonoma County Association of Retired Employees (“Plaintiff” or “SCARE”) to review
3 public records ("Limited Discovery") prior to filing an amended complaint;

4 WHEREAS Plaintiff’s First Amended Complaint is to be filed on July 6, 2010;

5 WHEREAS Defendant Sonoma County (the “County” or “Defendant”) represents that it
6 has made a diligent search for and has undertaken a substantial and labor-intensive series of index
7 searches and undertaken a manual search for and recovery of all resolutions and ordinances from
8 1945 to the present that reference retiree or employee health benefits, as well as any extant
9 agenda items, reports, memoranda or other accompanying documentation presented to the County
10 Board of Supervisors related to those resolutions and ordinances and produced those as
11 referenced below.

12 WHEREAS Defendant produced more than 11,000 pages of digitalized documents in
13 connection with its Initial Disclosures in February and March 2010, including all resolutions and
14 ordinances concerning employee and retiree health benefits going back to 1945, and produced
15 another 4,000 pages of e-documents responsive to Plaintiff’s First Set of Document Requests
16 (“Document Requests”) on April 5 and April 16, 2010;

17 WHEREAS Plaintiff has requested, *inter alia*, an opportunity to review all Board of
18 Supervisor meeting minutes (“Minutes”) from 1945 to the present before filing its amended
19 complaint;

20 WHEREAS Defendant has agreed to make available for inspection these Minutes, which
21 are potentially responsive to the Court's order for Limited Discovery; and

22 WHEREAS, the Defendant represents that the production of the quantity of Minutes
23 requested by Plaintiff during the Limited Discovery necessitates that the County amend for these
24 purposes its usual and customary practice and procedures for granting public access to official
25 County records and has the potential to disrupt and interfere with the County’s transaction of
26 business and its ability to respond to requests from other constituents.

27 WHEREAS, prior to Defendant’s April 5, 2010, response and production to the Document
28 Requests and the Court authorizing the Limited Discovery on April 6, 2010, Plaintiff and

1 Defendant had agreed to meet and confer further with the goal of entering into a Stipulated
2 Protective Order to safeguard the protection of any inadvertently disclosed privileged materials,
3 and that would include a rolling document production schedule in connection with Defendant's
4 response to the Document Requests, and now contemplate they will meet and confer further on
5 any future production schedule and other discovery issues as appropriate in the event additional
6 discovery proceeds and will undertake to supplement this Order pursuant to such agreement.

7 THEREFORE, Plaintiff Sonoma County Association of Retired Employees and
8 Defendant Sonoma County (individually a "Party" or collectively "Parties") hereby stipulate to
9 the following:

10 1. The Parties agree to cooperate in creating a procedure and schedule for the
11 production of Minutes and any other public documents during the Limited Discovery.

12 2. The Parties recognize that production of documents does not result in the express
13 or implied waiver of any privilege or protection for the materials produced in the course of this
14 litigation in the above-entitled action, including without limitation information protected from
15 disclosure by the attorney-client privilege, deliberative process/official privileges, the attorney
16 work product doctrine or the constitutional right to privacy.

17 3. To safeguard the protection of any inadvertently disclosed materials subject to the
18 attorney-client privilege, work product doctrine, deliberative process/official privilege or privacy
19 privilege in the production of documents in this litigation, the Parties agree that the production
20 shall be governed by the procedures and terms set forth in this Stipulation Regarding Orderly
21 Review of Documents and Inadvertent Disclosure of Privileged Material ("Stipulation"). Further,
22 the Parties agree that nothing in this Stipulation shall be deemed to constitute a waiver of any of
23 the objections raised in Defendant's Responses to Plaintiff's Document Requests. This
24 Stipulation shall also govern resolution of any disputes that arise between or among the Parties
25 over the designation of any documents or other materials as privileged.

26 4. DEFINITIONS.

27 4.1 Party: Any party to this action, including all of its officers, directors,
28 employees and Counsel (as defined below).

1 4.2 Disclosure or Discovery Material: all items or information, regardless of
2 the medium or manner generated, stored, or maintained (including, among other things,
3 testimony, transcripts, or tangible things) that are produced or generated in disclosures or
4 responses to discovery in this matter.

5 4.3 Receiving Party: a Party or non-party, including but not limited to
6 Professional Vendors, that receives Disclosure or Discovery Material from a Producing Party.

7 4.4 Producing Party: a Party or non-party that produces Disclosure or
8 Discovery Material in this action.

9 4.5 Protected Material: any Disclosure or Discovery Material that is privileged
10 under the attorney-client privilege, the work product doctrine, the deliberative process/official
11 privilege or a privacy privilege.

12 4.6 Outside Counsel: attorneys, as well as their support staff, who are not
13 employees of a Party but who are retained to represent or advise a Party in this action.

14 4.7 County Counsel: attorneys, as well as their support staff, who are
15 employees of a Party.

16 4.8 Counsel : Outside Counsel and County Counsel.

17 4.9 Professional Vendors: persons or entities that provide litigation support
18 services (e.g., photocopying; videotaping; translating; preparing exhibits or demonstrations;
19 organizing, storing, retrieving data in any form or medium; etc.) and their employees and
20 subcontractors retained in this action.

21 5. SCOPE. This Stipulation and Order shall govern all Disclosure or Discovery
22 Material, and the Parties to this action and their counsel of record shall be bound by the
23 provisions hereof. Additionally, this Stipulation and Order may be made applicable to production
24 by a non-party, if designated by the non-party and agreed to by the Parties signatory hereto. The
25 protections conferred by this Stipulation and Order cover not only Protected Material, but also
26 any information copied or extracted therefrom (such as copies, excerpts, summaries, or
27 compilations thereof) by a Receiving Party. This Stipulation and Order prohibits the Receiving
28 Party from revealing any information set forth in the preceding sentence in any way, except as

1 provided for in Paragraphs 9 and 11.

2 6. DURATION. Even after the termination of this litigation, the obligations imposed
3 by this Stipulation and Order shall remain in effect until the Parties agree otherwise in writing or
4 a Court order otherwise directs.

5 7. LIMITED DISCOVERY - PRODUCTION SCHEDULE.

6 7.1 After the signing of this Stipulation, upon reasonable notice to the County
7 by Plaintiff, the County shall make available for inspection to Plaintiff the microfilm and
8 microfiche records of Minutes, which are kept in the ordinary course of business in the office of
9 the Clerk of the County's Board of Supervisors.

10 7.2 Plaintiff shall provide to the County a schedule of the hours and days on
11 which an agent or representative will be reviewing the Minutes and, to the extent possible in
12 advance, who will be reviewing them ("Schedule").

13 7.3 The Parties agree that the Schedule will be provided to the County at least
14 three (3) business days in advance of the days on which Plaintiff wishes to review the Minutes.

15 7.4 Plaintiff agrees to be diligent and sustained in its review of documents and
16 to be cooperative with the County during the production. The County agrees to be cooperative
17 with Plaintiff during the production.

18 8. LIMITED DISCOVERY - PRODUCTION.

19 8.1. The Parties agree that the Minutes will be made available for inspection by
20 the Plaintiff between 8 a.m. and 5 p.m., Monday through Friday. During those hours, Plaintiff
21 may check out selected microfilm and microfiche from the Board of Supervisor's Clerk's office
22 and transport them to be viewed on the available machines in the County Recorder's offices. The
23 Parties further agree that:

24 8.2 During the inspection, Plaintiff may select from those documents the
25 documents it wishes to have produced and will print one copy of each of those documents on the
26 viewing machines.

27 8.3 Before the end of the day on which the selected Minutes are checked out,
28 each microfilm and microfiche will be checked back in at the Board of Supervisor's Clerk's

1 office.

2 8.4 When the microfiche or microfilm is returned for the day, Plaintiff also will
3 provide any paper copies made that day to the Board of Supervisor's Clerk's office. Plaintiff
4 promises and agrees that it will not make any additional copies of the Minutes or retain any
5 copies of the Minutes other than as set forth in this Stipulation.

6 8.5 For each copy, the County will assign a production number to the
7 document and produce it to Plaintiff within five (5) business days of selection. Plaintiff will be
8 charged a per page amount of \$0.10 for each page in accordance with the Board of Supervisors'
9 policy. If Plaintiff wishes to receive a digital production, however, the Parties will meet and
10 confer to determine reasonable intervals for the production of such digital copies and the cost of
11 which will be paid by Plaintiff.

12 9. INADVERTENT DISCLOSURE OF DISCOVERY MATERIAL. The
13 inadvertent disclosure of Protected Material which a Party or non-party later claims should not
14 have been produced or made available for inspection because of a privilege belonging to that
15 entity, including without limitation the attorney-client privilege, the work product doctrine, the
16 deliberative process/official privilege or the privacy privilege, will not be deemed to waive any
17 privileges. A Party or non-party may request the return of any Protected Material. A request for
18 the return of any Protected Material shall identify the Protected Material from production. If a
19 Party or other entity producing documents in this litigation requests the return, pursuant to this
20 Paragraph of any Protected Material, the Receiving Party must immediately return the material in
21 question to the Producing Party, destroy all information copied or extracted therefrom by the
22 Receiving Party and refrain from revealing any such information. The Party or parties returning
23 such Protected Material shall not assert as a ground for entering an order compelling production
24 of the Protected Material the fact or circumstances of the inadvertent production.

25 If a Receiving Party identifies information during its inspection, which it believes may be
26 Protected Material inadvertently disclosed, it must immediately notify and/or return the material,
27 along with any information covered by this Order to the Producing Party. Should the Producing
28 Party assert a claim of privilege of any kind over the identified material, it may request the return

1 of the Protected Material and any information copied or extracted therefrom by the Receiving
2 Party and that the Receiving Party refrain from revealing any information it obtained from the
3 Protected Material.

4 10. CHALLENGING PRIVILEGE CLAIMS

5 10.1 Claim of Privilege. If Protected Material is produced in discovery that is
6 subject to a claim of attorney-client privilege, the work product doctrine, the deliberative process/
7 official privilege or the privacy privilege, the Producing Party making the claim may notify any
8 Party that received the Protected Material of its claim and the basis for return, sequester, or
9 destruction of the specified information until the claim is resolved. If the Receiving Party
10 disclosed the Protected Material before being notified, it must take reasonable steps to retrieve it
11 as specified in Paragraph 11. Once returned, the Producing Party must preserve the Protected
12 Material until the claim is resolved.

13 10.2 Meet and Confer. A Party that elects to initiate a challenge to a Producing
14 Party's privilege claim must do so in good faith and must begin the process by conferring directly
15 (in voice to voice dialogue; other forms of communication are not sufficient unless either Party
16 fails to respond to a voice communication in a reasonable manner) with counsel for the Producing
17 Party. In conferring, the challenging Party must explain the basis for its belief that the privileged
18 claim was not proper and must give the Producing Party an opportunity to review the designated
19 material, to reconsider the circumstances, and, if no change in designation is offered, to explain
20 the basis for the chosen designation. A challenging Party may proceed to the next stage of the
21 challenge process only if it made reasonable efforts to engage in this meet and confer process
22 first.

23 10.3 Judicial Intervention. A Party that elects to press a challenge to a privilege
24 claim after considering the justification offered by the Producing Party may promptly file and
25 serve a motion under Civil Local Rule 7 that identifies the challenged material and sets forth in
26 detail the basis for the challenge for the Court to undertake an *in camera* review. Each such
27 motion must be accompanied by a competent declaration affirming that the movant has complied
28 with the meet and confer requirements imposed in the preceding paragraph and that sets forth

1 with specificity the justification for the privilege claim that was given by the Producing Party in
2 the meet and confer dialogue.

3 The burden of persuasion in any such challenge proceeding shall be on the Producing
4 Party. Until the Court rules on the challenge, the Producing Party must preserve the information.

5 11. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL. If a
6 Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected Material to
7 any person or in any circumstance not authorized under this Order, the Receiving Party must
8 immediately (a) notify in writing the Producing Party of the unauthorized disclosures, (b) inform
9 the person or persons to whom unauthorized disclosures were made of all the terms of this Order,
10 (c) request that the persons or persons immediately return, sequester or destroy the Protected
11 Materials, including all copies, abstracts, compilations, summaries or any other form of
12 reproducing or capturing any of the Protected Material to the Producing Party and use its best
13 efforts to ensure that the person or persons comply with this request; and (d) whether the
14 Protected Material is returned or destroyed, the person or persons must submit a written
15 certification to the Producing Party within five (5) days that identifies (by category, where
16 appropriate) all the Protected Material that was returned or destroyed and that affirms that the
17 Receiving Party has not retained any copies, abstracts, compilations, summaries or other forms of
18 reproducing or capturing any of the Protected Material.

19 12. MISCELLANEOUS

20 9.1 Right to Further Relief. Nothing in this Stipulation abridges the right of
21 any person to seek its modification by the Court in the future.

22 9.2 Right to Assert Other Objections. By stipulating to the entry of this Order,
23 no Party waives any objections made in discovery responses or defenses stated in its pleadings,
24 nor does any Party waive any right it otherwise would have to object to disclosing or producing
25 any information or item on any ground not addressed in this Stipulation. Similarly, no Party
26 waives any right to object on any ground to use in evidence of any of the material covered by this
27 Stipulation and Order.

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IT IS SO STIPULATED.

DATED: May 5, 2010

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

By: /s/ BILL LANN LEE

BILL LANN LEE
Attorneys for Plaintiff
SONOMA COUNTY ASSOCIATION OF
RETIRED EMPLOYEES

DATED: May 5, 2010

HANSON BRIDGETT LLP

By: /s/ RAYMOND F. LYNCH

RAYMOND F. LYNCH
SARAH D. MOTT
Attorneys for Defendant
SONOMA COUNTY

IT IS SO ORDERED.

Dated: May 10, 2010



HON. CLAUDIA WILKEN
United States Judge

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SIGNATURES UNDER GENERAL ORDER NO. 45

Pursuant to General Order No. 45 of the United States District Court, Northern District of California, I, Raymond F. Lynch—the ECF User whose User ID and Password are used in the filing of this document—hereby attest that the concurrence to the filing of this document has been obtained from each of the other signatories to this document.

/s/ _____
Raymond F. Lynch