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 CITY AND COUNTY OF SAN FRANCISCO

11 UNITED STATES DISTRICT COURT
 12 NORTHERN DISTRICT OF CALIFORNIA

13 FREDERICK SCHIFF,
 14

15 Plaintiff,

16 vs.

17 THE CITY & COUNTY OF SAN
 FRANCISCO,

18 Defendant.

Case No. CV-10-01051 PJH

STIPULATED PROTECTIVE ORDER

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 20 IT IS HEREBY STIPULATED by and between plaintiff Frederick Schiff and defendant City
 21 and County of San Francisco, through their respective counsel.
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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 disclosure
4 and from use for any purpose other than prosecuting this litigation would be warranted. Accordingly,
5 the parties hereby stipulate to and petition the court to enter the following Stipulated Protective
6 Order. The parties acknowledge that this Order does not confer blanket protections on all disclosures
7 or responses to discovery and that the protection it affords extends only to the limited information or
8 items that are entitled under the applicable legal principles to treatment as confidential. The parties
9 further acknowledge, as set forth in Section 10, below, that this Stipulated Protective Order creates no
10 entitlement to file confidential information under seal; Civil Local Rule 79-5 sets forth the procedures
11 that must be followed and reflects the standards that will be applied when a party seeks permission
12 from the court to file material under seal.

13 **2. DEFINITIONS**

14 2.1 Party: any party to this action, including all of its officers, directors,
15 employees, consultants, retained experts, and outside counsel (and their support staff).

16 2.2 Disclosure or Discovery Material: all items or information, regardless of the
17 medium or manner generated, stored, or maintained (including, among other things, testimony,
18 transcripts, or tangible things) that are produced or generated in disclosures or responses to discovery
19 in this matter.

20 2.3 “Confidential” Information or Items: information (regardless of how
21 generated, stored or maintained) or tangible things that qualify for protection under standards
22 developed under F.R.Civ.P. 26(e).

23 2.4 “Highly Confidential – Attorneys’ Eyes Only” Information or Items:
24 extremely sensitive “Confidential Information or Items” whose disclosure to another Party or non-
25 party would create a substantial risk of serious injury that could not be avoided by less restrictive
26 means.

27 2.5 Receiving Party: a Party that receives Disclosure or Discovery Material from a
28 Producing Party.

1 2.6 Producing Party: a Party or non-party that produces Disclosure or Discovery
2 Material in this action.

3 2.7. Designating Party: a Party or non-party that designates information or items
4 that it produces in disclosures or in responses to discovery as “Confidential” or “Highly Confidential
5 — Attorneys’ Eyes Only.”

6 2.8 Protected Material: any Disclosure or Discovery Material that is designated as
7 “Confidential” or as “Highly Confidential – Attorneys’ Eyes Only.”

8 2.9. Outside Counsel: attorneys who are not employees of a Party but who are
9 retained to represent or advise a Party in this action.

10 2.10 House Counsel: attorneys who are employees of a Party.

11 2.11 Counsel (without qualifier): Outside Counsel and House Counsel (as well as
12 their support staffs).

13 2.12 Expert: a person with specialized knowledge or experience in a matter
14 pertinent to the litigation who has been retained by a Party or its counsel to serve as an expert witness
15 or as a consultant in this action and who is not a past or a current employee of a Party or of a
16 competitor of a Party’s and who, at the time of retention, is not anticipated to become an employee of
17 a Party or a competitor of a Party’s. This definition includes a professional jury or trial consultant
18 retained in connection with this litigation.

19 2.13 Professional Vendors: persons or entities that provide litigation support
20 services (e.g., photocopying; videotaping; translating; preparing exhibits or demonstrations;
21 organizing, storing, retrieving data in any form or medium; etc.) and their employees and
22 subcontractors.

23 3. SCOPE

24 The protections conferred by this Stipulation and Order cover not only Protected Material (as
25 defined above), but also any information copied or extracted therefrom, as well as all copies,
26 excerpts, summaries, or compilations thereof, plus testimony, conversations, or presentations by
27 parties or counsel to or in court or in other settings that might reveal Protected Material.

1 **4. DURATION**

2 Even after the termination of this litigation, the confidentiality obligations imposed by this
3 Order shall remain in effect until a Designating Party agrees otherwise in writing or a court order
4 otherwise directs.

5 **5. DESIGNATING PROTECTED MATERIAL**

6 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each
7 Party or non-party that designates information or items for protection under this Order must take care
8 to limit any such designation to specific material that qualifies under the appropriate standards. A
9 Designating Party must take care to designate for protection only those parts of material, documents,
10 items, or oral or written communications that qualify – so that other portions of the material,
11 documents, items, or communications for which protection is not warranted are not swept
12 unjustifiably within the ambit of this Order.

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

17 If it comes to a Party's or a non-party's attention that information or items that it designated
18 for protection do not qualify for protection at all, or do not qualify for the level of protection initially
19 asserted, that Party or non-party must promptly notify all other parties that it is withdrawing the
20 mistaken designation.

21 5.2 Manner and Timing of Designations. Except as otherwise provided in this
22 Order (see, e.g., second paragraph of section 5.2(a), below), or as otherwise stipulated or ordered,
23 material that qualifies for protection under this Order must be clearly so designated before the
24 material is disclosed or produced.

25 Designation in conformity with this Order requires:

26 (a) for information in documentary form, including documents provided in electronic
27 format (e.g., PDF or TIFF images) (apart from transcripts of depositions or other pretrial or trial
28 proceedings), that the Producing Party affix the legend "CONFIDENTIAL" or "HIGHLY

1 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” at the top of each page or image that contains
2 protected material. If only a portion or portions of the material on a page or image qualifies for
3 protection, the Producing Party also must clearly identify the protected portion(s) (e.g., by making
4 appropriate markings in the margins) and must specify, for each portion, the level of protection being
5 asserted (either “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
6 ONLY”).

7 A Party or non-party that makes original documents or materials available for inspection need
8 not designate them for protection until after the inspecting Party has indicated which material it
9 would like copied and produced. During the inspection and before the designation, all of the material
10 made available for inspection shall be deemed “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
11 ONLY.” After the inspecting Party has identified the documents it wants copied and produced, the
12 Producing Party must determine which documents, or portions thereof, qualify for protection under
13 this Order, then, before producing the specified documents, the Producing Party must affix the
14 appropriate legend (“CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
15 ONLY”) at the top of each page that contains Protected Material. If only a portion or portions of the
16 material on a page qualifies for protection, the Producing Party also must clearly identify the
17 protected portion(s) (e.g., by making appropriate markings in the margins) and must specify, for each
18 portion, the level of protection being asserted (either “CONFIDENTIAL” or “HIGHLY
19 CONFIDENTIAL – ATTORNEYS’ EYES ONLY”).

20 (b) for testimony given in deposition or in other pretrial or trial proceedings, that the
21 Party or non-party offering or sponsoring the testimony identify on the record, before the close of the
22 deposition, hearing, or other proceeding, all protected testimony, and further specify any portions of
23 the testimony that qualify as “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” When
24 it is impractical to identify separately each portion of testimony that is entitled to protection, and
25 when it appears that substantial portions of the testimony may qualify for protection, the Party or non-
26 party that sponsors, offers, or gives the testimony may invoke on the record (before the deposition or
27 proceeding is concluded) a right to have up to 20 days to identify the specific portions of the
28 testimony as to which protection is sought and to specify the level of protection being asserted

1 (“CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”). Only those
2 portions of the testimony that are appropriately designated for protection within the 20 days shall be
3 covered by the provisions of this Stipulated Protective Order. Transcript pages containing Protected
4 Material must be separately bound by the court reporter, who must affix to the top of each such page
5 the legend “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” as
6 instructed by the Party or non-party offering or sponsoring the witness or presenting the testimony.

7 (c) for information produced in some form other than documentary, and for any other
8 tangible items, that the Producing Party affix in a prominent place on the exterior of the container or
9 containers in which the information or item is stored the legend “CONFIDENTIAL” or “HIGHLY
10 CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” If only portions of the information or item
11 warrant protection, the Producing Party, to the extent practicable, shall identify the protected portions,
12 specifying whether they qualify as “Confidential” or as “Highly Confidential – Attorneys’ Eyes
13 Only.”

14 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
15 designate qualified information or items as “Confidential” or “Highly Confidential – Attorneys’ Eyes
16 Only” does not, standing alone, waive the Designating Party’s right to secure protection under this
17 Order for such material. If material is appropriately designated as “Confidential” or “Highly
18 Confidential – Attorneys’ Eyes Only” after the material was initially produced, the Receiving Party,
19 on timely notification of the designation, must make reasonable efforts to assure that the material is
20 treated in accordance with the provisions of this Order.

21 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

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

27 6.2 Meet and Confer. A Party that elects to initiate a challenge to a Designating
28 Party’s confidentiality designation must do so in good faith and must begin the process by conferring

1 directly (in voice to voice dialogue; other forms of communication are not sufficient) with counsel for
2 the Designating Party. In conferring, the challenging Party must explain the basis for its belief that
3 the confidentiality designation was not proper and must give the Designating Party an opportunity to
4 review the designated material, to reconsider the circumstances, and, if no change in designation is
5 offered, to explain the basis for the chosen designation. A challenging Party may proceed to the next
6 stage of the challenge process only if it has engaged in this meet and confer process first.

7 6.3 Judicial Intervention. A Party that elects to press a challenge to a
8 confidentiality designation after considering the justification offered by the Designating Party may
9 file and serve a motion under Civil Local Rule 7 (and in compliance with Civil Local Rule 79-5, if
10 applicable) that identifies the challenged material and sets forth in detail the basis for the challenge.
11 Each such motion must be accompanied by a competent declaration that affirms that the movant has
12 complied with the meet and confer requirements imposed in the preceding paragraph and that sets
13 forth with specificity the justification for the confidentiality designation that was given by the
14 Designating Party in the meet and confer dialogue.

15 The burden of persuasion in any such challenge proceeding shall be on the Designating Party.
16 Until the court rules on the challenge, all parties shall continue to afford the material in question the
17 level of protection to which it is entitled under the Producing Party's designation.

18 7. **ACCESS TO AND USE OF PROTECTED MATERIAL**

19 7.1 Basic Principles. A Receiving Party may use Protected Material that is
20 disclosed or produced by another Party or by a non-party in connection with this case only for
21 prosecuting, defending, or attempting to settle this litigation. Such Protected Material may be
22 disclosed only to the categories of persons and under the conditions described in this Order. When
23 the litigation has been terminated, a Receiving Party must comply with the provisions of section 11,
24 below (FINAL DISPOSITION).

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

1 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise
2 ordered by the court or permitted in writing by the Designating Party, a Receiving Party may disclose
3 any information or item designated CONFIDENTIAL only to:

4 (a) the Receiving Party’s Outside Counsel of record in this action, as well as
5 employees of said Counsel to whom it is reasonably necessary to disclose the information for this
6 litigation and who have signed the “Agreement to Be Bound by Protective Order” that is attached
7 hereto as Exhibit A;

8 (b) the officers, directors, and employees (including House Counsel) of the
9 Receiving Party to whom disclosure is reasonably necessary for this litigation and who have signed
10 the “Agreement to Be Bound by Protective Order” (Exhibit A);

11 (c) experts (as defined in this Order) of the Receiving Party to whom disclosure
12 is reasonably necessary for this litigation and who have signed the “Agreement to Be Bound by
13 Protective Order” (Exhibit A);

14 (d) the Court and its personnel;

15 (e) court reporters, their staffs, and professional vendors to whom disclosure is
16 reasonably necessary for this litigation and who have signed the “Agreement to Be Bound by
17 Protective Order” (Exhibit A);

18 (f) during their depositions, witnesses in the action to whom disclosure is
19 reasonably necessary and who have signed the “Agreement to Be Bound by Protective Order”
20 (Exhibit A). 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 except as
22 permitted under this Stipulated Protective Order.

23 (g) the author of the document or the original source of the information.

24 7.3 Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”
25 Information or Items. Unless otherwise ordered by the court or permitted in writing by the
26 Designating Party, a Receiving Party may disclose any information or item designated “HIGHLY
27 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” only to:
28

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

5 (b) Experts (as defined in this Order) (1) to whom disclosure is reasonably
6 necessary for this litigation, (2) who have signed the "Agreement to Be Bound by Protective Order"
7 (Exhibit A).

8 (c) the Court and its personnel;

9 (d) court reporters, their staffs, and professional vendors to whom disclosure is
10 reasonably necessary for this litigation and who have signed the "Agreement to Be Bound by
11 Protective Order" (Exhibit A); and

12 (e) the author of the document or the original source of the information.

13 **8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN**
14 **OTHER LITIGATION.**

15 If a Receiving Party is served with a subpoena or an order issued in other litigation that would
16 compel disclosure of any information or items designated in this action as "CONFIDENTIAL" or
17 "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY," the Receiving Party must so notify
18 the Designating Party, in writing (by fax, if possible) immediately and in no event more than three
19 court days after receiving the subpoena or order. Such notification must include a copy of the
20 subpoena or court order.

21 The Receiving Party also must immediately inform in writing the Party who caused the
22 subpoena or order to issue in the other litigation that some or all the material covered by the subpoena
23 or order is the subject of this Protective Order. In addition, the Receiving Party must deliver a copy
24 of this Stipulated Protective Order promptly to the Party in the other action that caused the subpoena
25 or order to issue.

26 The purpose of imposing these duties is to alert the interested parties to the existence of this
27 Protective Order and to afford the Designating Party in this case an opportunity to try to protect its
28 confidentiality interests in the court from which the subpoena or order issued. The Designating Party

1 shall bear the burdens and the expenses of seeking protection in that court of its confidential material
2 – and nothing in these provisions should be construed as authorizing or encouraging a Receiving
3 Party in this action to disobey a lawful directive from another court.

4 **9. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

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

12 **10. FILING PROTECTED MATERIAL**

13 Without written permission from the Designating Party or a court order secured after
14 appropriate notice to all interested persons, a Party may not file in the public record in this action any
15 Protected Material. A Party that seeks to file under seal any Protected Material must comply with
16 Civil Local Rule 79-5.

17 **11. FINAL DISPOSITION**

18 Unless otherwise ordered or agreed in writing by the Producing Party, within sixty days after
19 the final termination of this action, each Receiving Party must return all Protected Material to the
20 Producing Party. As used in this subdivision, “all Protected Material” includes all copies, abstracts,
21 compilations, summaries or any other form of reproducing or capturing any of the Protected Material.
22 With permission in writing from the Designating Party, the Receiving Party may destroy some or all
23 of the Protected Material instead of returning it. Whether the Protected Material is returned or
24 destroyed, the Receiving Party must submit a written certification to the Producing Party (and, if not
25 the same person or entity, to the Designating Party) by the sixty day deadline that identifies (by
26 category, where appropriate) all the Protected Material that was returned or destroyed and that affirms
27 that the Receiving Party has not retained any copies, abstracts, compilations, summaries or other
28 forms of reproducing or capturing any of the Protected Material. Notwithstanding this provision,

1 Counsel are entitled to retain an archival copy of all pleadings, motion papers, transcripts, legal
2 memoranda, correspondence or attorney work product, even if such materials contain Protected
3 Material. Any such archival copies that contain or constitute Protected Material remain subject to
4 this Protective Order as set forth in Section 4 (DURATION), above.

5 **12. MISCELLANEOUS**

6 12.1 Right to Further Relief. Nothing in this Order abridges the right of any person
7 to seek its modification by the Court in the future.

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

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IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

Dated: *January 18, 2011*

By: 
THOMAS K. BOURKE
Attorney for Plaintiff, Frederick Schiff

Dated: *1/19/11*

DENNIS J. HERRERA
City Attorney
ELIZABETH SALVESON
Chief Labor Attorney
JONATHAN ROLNICK
LAUREN M. MONSON
Deputy City Attorneys

By: 
LAUREN M. MONSON
Attorneys for Defendants
CITY AND COUNTY OF SAN FRANCISCO

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

Dated: January 21, 2011

By: 
PHYLLIS J. HAMILTON
U.S. DISTRICT COURT JUDGE

