

1 Rebecca S. Widen, SBN 219207
 2 Andrea A. Najor, SBN 221853
 3 HAAPALA, THOMPSON & ABERN, LLP
 4 1939 Harrison Street, Suite 800
 Oakland, California 94612
 Tel: 510-763-2324
 Fax: 510-273-8570

5 Attorneys For Defendants
 6 COUNTY OF ALAMEDA

7
 8 UNITED STATES DISTRICT COURT

9 NORTHERN DISTRICT OF CALIFORNIA – OAKLAND

10 R.J.; N.J.; and N.J.; MINORS, BY AND)	Case No.: C11-04123 CW
11 THROUGH THEIR GUARDIAN AD LITEM)	
12 CURTIS R. NAMBA,)	STIPULATED PROTECTIVE ORDER
13)	
14 Plaintiffs,)	
15)	
16 vs.)	
17)	
18 COUNTY OF ALAMEDA; ALAMEDA)	
19 COUNTY DEPARTMENT OF SOCIAL)	
20 SERVICES; WESTCOAST CHILDREN’S)	
21 CLINIC; DOES 1 through 60, inclusive,)	
22)	
23 Defendants.)	
24)	

25 1. PURPOSES AND LIMITATIONS

26 Disclosure and discovery activity in this action are likely to involve production of
 27 confidential, proprietary, or private information for which special protection from public
 28 disclosure and from use for any purpose other than prosecuting this litigation would be warranted.
 Accordingly, the parties hereby stipulate to and petition the Court to enter the following
 Stipulated Protective Order. The parties acknowledge that this Order does not confer blanket
 protections on all disclosures or responses to discovery and that the protection it affords extends
 only to the limited information or items that are entitled under the applicable legal principles to
 treatment as confidential. The parties further acknowledge, as set forth in Section 10, below, that
 this Stipulated Protective Order creates no entitlement to file confidential information under seal;
 Civil Local Rule 79-5 sets forth the procedures that must be followed and reflects the standards

Haapala, Thompson & Abern LLP
 Attorneys At Law
 Park Plaza Building
 1939 Harrison St., Suite 800
 Oakland, California 94612
 Telephone: 510-763-2324
 Facsimile: 510-273-8570

1 that will be applied when a party seeks permission from the Court to file material under seal.

2 2. DEFINITIONS

3 2.1 Party: any party to this action, including all of its officers, directors, employees,
4 consultants, retained experts, and outside counsel (and their support staff).

5 2.2 Disclosure or Discovery Material: all items or information, regardless of the
6 medium or manner generated, stored, or maintained (including, among other things, testimony,
7 transcripts, or tangible things) that are produced or generated in disclosures or responses to
8 discovery in this matter.

9 2.3 “Confidential” Information or Items: information (regardless of how generated,
10 stored or maintained) or tangible things that qualify for protection under standards developed
11 under F.R.Civ.P. 26(c).

12 2.4 Receiving Party: a Party that receives Disclosure or Discovery Material from a
13 Producing Party.

14 2.5 Producing Party: a Party or non-party that produces Disclosure or Discovery
15 Material in this action.

16 2.6 Designating Party: a Party or non-party that designates information or items that
17 it produces in disclosures or in responses to discovery as “Confidential.”

18 2.7 Protected Material: any Disclosure or Discovery Material that is designated as
19 “Confidential.”

20 2.8 Outside Counsel: attorneys who are not employees of a Party but who are
21 retained to represent or advise a Party in this action.

22 2.9 House Counsel: attorneys who are employees of a Party.

23 2.10 Counsel (without qualifier): Outside Counsel and House Counsel (as well as
24 their support staffs).

25 2.11 Expert: a person with specialized knowledge or experience in a matter pertinent
26 to the litigation who has been retained by a Party or its counsel to serve as an expert witness or
27 as a consultant in this action and who is not a past or a current employee of a Party.

28 2.12 Professional Vendors: persons or entities that provide litigation support services

1 (e.g., photocopying; videotaping; translating; preparing exhibits or demonstrations; organizing,
2 storing, retrieving data in any form or medium; etc.) and their employees and subcontractors.

3 3. SCOPE

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

9 4. DURATION

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

13 5. DESIGNATING PROTECTED MATERIAL

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

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

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

1 5.2 Manner and Timing of Designations. Except as otherwise provided in this Order
2 (see, e.g., second paragraph of section 5.2(a), below), or as otherwise stipulated or ordered,
3 material that qualifies for protection under this Order must be clearly so designated before the
4 material is disclosed or produced.

5 Designation in conformity with this Order requires:

6 (a) for information in documentary form (apart from transcripts of depositions or
7 other pretrial or trial proceedings), the Producing Party will designate that the documents are
8 produced are “CONFIDENTIAL”

9 A Party or non-party that makes original documents or materials available for
10 inspection need not designate them for protection until after the inspecting Party has indicated
11 which material it would like copied and produced. During the inspection and before the
12 designation, all of the material made available for inspection shall be deemed
13 “CONFIDENTIAL.” After the inspecting Party has identified the documents it wants copied
14 and produced, the Producing Party must determine which documents, or portions thereof,
15 qualify for protection under this Order, then, before producing the specified documents, the
16 Producing Party must designate that the documents produced are “CONFIDENTIAL.”

17 (b) for testimony given in deposition or in other pretrial or trial proceedings that the
18 Party or non-party offering or sponsoring the testimony identify on the record, before the close
19 of the deposition, hearing, or other proceeding, all protected testimony, and further specify any
20 portions of the testimony that qualify as “CONFIDENTIAL.” When it is impractical to identify
21 separately each portion of testimony that is entitled to protection, and when it appears that
22 substantial portions of the testimony may qualify for protection, the Party or non-party that
23 sponsors, offers, or gives the testimony may invoke on the record (before the deposition or
24 proceeding is concluded) a right to have up to 30 days to identify the specific portions of the
25 testimony as to which protection is sought. Only those portions of the testimony that are
26 appropriately designated for protection within the 30 days shall be covered by the provisions of
27 this Stipulated Protective Order.

28 Transcript pages containing Protected Material must be separately bound by the

1 court reporter, who must affix to the top of each such page the legend “CONFIDENTIAL” as
2 instructed by the Party or non-party offering or sponsoring the witness or presenting the
3 testimony.

4 (c) for information produced in some form other than documentary, and for any
5 other tangible items, that the Producing Party must affix in a prominent place on the exterior of
6 the container or containers in which the information or item is stored the legend
7 “CONFIDENTIAL.” If only portions of the information or item warrant protection, the
8 Producing Party, to the extent practicable, shall identify the protected portions.

9 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
10 designate qualified information or items as “Confidential” does not, standing alone, waive the
11 Designating Party’s right to secure protection under this Order for such material. If material is
12 appropriately designated as “Confidential” after the material was initially produced, the
13 Receiving Party, on timely notification of the designation, must make reasonable efforts to
14 assure that the material is treated in accordance with the provisions of this Order.

15 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

16 6.1 Timing of Challenges. Unless a prompt challenge to a Designating Party’s
17 confidentiality designation is necessary to avoid foreseeable substantial unfairness, unnecessary
18 economic burdens, or a later significant disruption or delay of the litigation, a Party does not
19 waive its right to challenge a confidentiality designation by electing not to mount a challenge
20 promptly after the original designation is disclosed.

21 6.2 Meet and Confer. A Party that elects to initiate a challenge to a Designating
22 Party’s confidentiality designation must do so in good faith and must begin the process by
23 conferring directly (in voice to voice dialogue; other forms of communication are not sufficient)
24 with counsel for the Designating Party. In conferring, the challenging Party must explain the
25 basis for its belief that the confidentiality designation was not proper and must give the
26 Designating Party an opportunity to review the designated material, to reconsider the
27 circumstances, and, if no change in designation is offered, to explain the basis for the chosen
28 designation. A challenging Party may proceed to the next stage of the challenge process only if

1 it has engaged in this meet and confer process first.

2 6.3 Judicial Intervention. A Party that elects to press a challenge to a confidentiality
3 designation after considering the justification offered by the Designating Party may file and
4 serve a motion under Civil Local Rule 7 (and in compliance with Civil Local Rule 79-5, if
5 applicable) that identifies the challenged material and sets forth in detail the basis for the
6 challenge. Each such motion must be accompanied by a competent declaration that affirms that
7 the movant has complied with the meet and confer requirements imposed in the preceding
8 paragraph and that sets forth with specificity the justification for the confidentiality designation
9 that was given by the Designating Party in the meet and confer dialogue.

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

13 7. ACCESS TO AND USE OF PROTECTED MATERIAL

14 7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed
15 or produced by another Party or by a non-party in connection with this case only for
16 prosecuting, defending, or attempting to settle this litigation. Such Protected Material may be
17 disclosed only to the categories of persons and under the conditions described in this Order.
18 When the litigation has been terminated, a Receiving Party must comply with the provisions of
19 section 11, below (FINAL DISPOSITION).

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

22 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise
23 ordered by the court or permitted in writing by the Designating Party, a Receiving Party may
24 disclose any information or item designated CONFIDENTIAL only to:

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

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

4 (c) the Court and its personnel;

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

8 (e) during their depositions, witnesses in the action to whom disclosure is
9 reasonably necessary and who have signed the “Agreement to Be Bound by Protective Order”
10 (Exhibit A). Pages of transcribed deposition testimony or exhibits to depositions that reveal
11 Protected Material must be separately bound by the court reporter and may not be disclosed to
12 anyone except as permitted under this Stipulated Protective Order.

13 (f) the author of the document or the original source of the information.

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

16 If a Receiving Party is served with a subpoena or an order issued in other litigation that
17 would compel disclosure of any information or items designated in this action as
18 “CONFIDENTIAL,” the Receiving Party must so notify the Designating Party, in writing (by
19 fax, if possible) immediately and in no event more than three court days after receiving the
20 subpoena or order. Such notification must include a copy of the 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
23 subpoena or order is the subject of this Protective Order. In addition, the Receiving Party must
24 deliver a copy of this Stipulated Protective Order promptly to the Party in the other action that
25 caused the subpoena or order to issue.

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

1 Designating Party shall bear the burdens and the expenses of seeking protection in that court of
2 its confidential material - and nothing in these provisions should be construed as authorizing or
3 encouraging a Receiving 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
7 Order, the Receiving Party must immediately (a) notify in writing the Designating Party of the
8 unauthorized disclosures, (b) use its best efforts to retrieve all copies of the Protected Material,
9 (c) inform the person or persons to whom unauthorized disclosures were made of all the terms
10 of this Order, and (d) request such person or persons to execute the “Acknowledgment and
11 Agreement to Be Bound” that is 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
15 action any Protected Material. A Party that seeks to file under seal any Protected Material must
16 comply with Civil Local Rule 79-5.

17 11. FINAL DISPOSITION

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

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Attorneys At Law
Park Plaza Building
1939 Harrison St., Suite 800
Oakland, California 94612
Telephone: 510-763-2324
Facsimile: 510-273-8570

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

6 12. MISCELLANEOUS

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

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

14 Dated: February 7, 2012

DREYER BABICH BUCCOLA
CALLAHAM & WOOD, LLP

15 By: */s/ Robert Buccola
16 Robert Buccola
17 Attorneys For Plaintiffs
18 *Mr. Buccola provided his consent that
this document be electronically filed.

19 Dated: February 7, 2012

HAAPALA, THOMPSON & ABERN, LLP

20 By: /s/ Rebecca S. Widen
21 Rebecca S. Widen
22 Attorneys For Defendant
COUNTY OF ALAMEDA

23 Dated: February 7, 2012

PERRY, JOHNSON, ANDERSON,
MILLER & MOSKOWITZ, LLP

24 By: */s/ Anne C. D'Arcy
25 Anne C. D'Arcy
26 Attorneys For Defendant
27 WESTCOAST CHILDREN'S CLINIC
28 *Ms. D'Arcy provided her consent that
this document be electronically filed.

PURSUANT TO STIPULATION, IT IS SO ORDERED.



Honorable Claudia Wilken
Judge of the U. S. District Court

Haapala, Thompson & Abern LLP
Attorneys At Law
Park Plaza Building
1939 Harrison St., Suite 800
Oakland, California 94612
Telephone: 510-763-2324
Facsimile: 510-273-8570

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