

1 DENNIS J. HERRERA, State Bar #139669
 City Attorney
 2 CHERYL ADAMS, State Bar #164194
 Chief Trial Deputy
 3 MARGARET W. BAUMGARTNER, State Bar #151762
 Deputy City Attorney
 4 Fox Plaza
 1390 Market Street, Sixth Floor
 5 San Francisco, California 94102-5408
 Telephone: (415) 554-3859
 6 Facsimile: (415) 554-3837
 E-Mail: margaret.baumgartner@sfgov.org

7 Attorneys for Defendants
 8 CITY AND COUNTY OF SAN FRANCISCO,
 GREG SUHR in his official capacity,
 9 CHRISTOPHER O'BRIEN, DANIEL DUDLEY
 AND BRIAN STANSBURY

11 UNITED STATES DISTRICT COURT
 12 NORTHERN DISTRICT OF CALIFORNIA

13 LORENZO ADAMSON, an individual,
 14 Plaintiff,
 15 vs.
 16 CITY OF SAN FRANCISCO, a municipal
 17 corporation; GREG SUHR, individually and in
 his official capacity as Chief of Police for the
 18 CITY OF SAN FRANCISCO;
 CHRISTOPHER O'BRIEN, individually and
 19 in his official capacity as a Police Officer for
 the CITY OF SAN FRANCISCO; DANIEL
 20 DUDLEY, individually and in his official
 capacity as a Police Officer for the CITY OF
 21 SAN FRANCISCO; BRIAN STANSBURY,
 individually and in his official capacity as a
 22 Police Officer for the CITY OF SAN
 FRANCISCO and DOES 1-50, inclusive; in
 23 their individual and/or official capacities as
 police officers for the CITY OF SAN
 24 FRANCISCO,
 25 Defendants.

Case No. 13-cv-5233 DMR

**STIPULATED PROTECTIVE ORDER FOR
 LITIGATION INVOLVING PATENTS,
 HIGHLY SENSITIVE CONFIDENTIAL
 INFORMATION AND/OR TRADE SECRETS**

26
 27
 28

1 1. PURPOSES AND LIMITATIONS

2 Disclosure and discovery activity in this action are likely to involve production of confidential,
3 proprietary, or private information for which special protection from public disclosure and from use
4 for any purpose other than prosecuting this litigation may be warranted. Accordingly, the parties
5 hereby stipulate to and petition the court to enter the following Stipulated Protective Order. The parties
6 acknowledge that this Order does not confer blanket protections on all disclosures or responses to
7 discovery and that the protection it affords from public disclosure and use extends only to the limited
8 information or items that are entitled to confidential treatment under the applicable legal principles.
9 The parties further acknowledge, as set forth in Section 14.4, below, that this Stipulated Protective
10 Order does not entitle them to file confidential information under seal; Civil Local Rule 79-5 sets forth
11 the procedures that must be followed and the standards that will be applied when a party seeks
12 permission from the court to file material under seal.

13 2. DEFINITIONS

14 2.1 Challenging Party: a Party or Non-Party that challenges the designation of information
15 or items under this Order.

16 2.2 “CONFIDENTIAL” Information or Items: information (regardless of how it is
17 generated, stored or maintained) or tangible things that qualify for protection under Federal Rule of
18 Civil Procedure 26(c).

19 2.3 Counsel (without qualifier): Outside Counsel of Record and House Counsel (as well as
20 their support staff).

21 2.4 Designating Party: a Party or Non-Party that designates information or items that it
22 produces in disclosures or in responses to discovery as “CONFIDENTIAL” or “HIGHLY
23 CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

24 2.5 Disclosure or Discovery Material: all items or information, regardless of the medium or
25 manner in which it is generated, stored, or maintained (including, among other things, testimony,
26 transcripts, and tangible things), that are produced or generated in disclosures or responses to
27 discovery in this matter.
28

1 2.6 Expert: a person with specialized knowledge or experience in a matter pertinent to the
2 litigation who (1) has been retained by a Party or its counsel to serve as an expert witness or as a
3 consultant in this action, (2) is not a past or current employee of a Party or of a Party’s competitor, and
4 (3) at the time of retention, is not anticipated to become an employee of a Party or of a Party’s
5 competitor.

6 2.7 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” Information or Items:
7 extremely sensitive “Confidential Information or Items,” disclosure of which to another Party or Non-
8 Party would create a substantial risk of serious harm that could not be avoided by less restrictive
9 means.

10 2.8 Non-Party: any natural person, partnership, corporation, association, or other legal
11 entity not named as a Party to this action.

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

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

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

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

22 2.13 Protected Material: any Disclosure or Discovery Material that is designated as
23 “CONFIDENTIAL,” or as “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

24 2.17 Receiving Party: a person who receives Disclosure or Discovery Material from a
25 Producing Party.

26 3. SCOPE

27 The protections conferred by this Stipulation and Order cover not only Protected Material (as
28 defined above), but also (1) any information copied or extracted from Protected Material; (2) all

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

11 4. DURATION

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

18 5. DESIGNATING PROTECTED MATERIAL

19 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each Party or
20 Non-Party that designates information or items for protection under this Order must take care to limit
21 any such designation to specific material that qualifies under the appropriate standards. To the extent it
22 is practical to do so, the Designating Party must designate for protection only those parts of material,
23 documents, items, or oral or written communications that qualify – so that other portions of the
24 material, documents, items, or communications for which protection is not warranted are not swept
25 unjustifiably within the ambit of this Order.

26 Mass, indiscriminate, or routinized designations are prohibited. Designations that are shown to
27 be clearly unjustified or that have been made for an improper purpose (e.g., to unnecessarily encumber
28

1 or retard the case development process or to impose unnecessary expenses and burdens on other
2 parties) expose the Designating Party to sanctions.

3 If it comes to a Designating Party's attention that information or items that it designated for
4 protection do not qualify for protection at all or do not qualify for the level of protection initially
5 asserted, that Designating Party must promptly notify all other parties that it is withdrawing the
6 mistaken designation.

7 5.2 Manner and Timing of Designations. Except as otherwise provided in this Order (see,
8 e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered, Disclosure or
9 Discovery

10 Material that qualifies for protection under this Order must be clearly so designated before the
11 material is disclosed or produced.

12 Designation in conformity with this Order requires:

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

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

1 a page qualifies for protection, the Producing Party also must clearly identify the protected portion(s)
2 (e.g., by making appropriate markings in the margins) and must specify, for each portion, the level of
3 protection being asserted.

4 (b) for testimony given in deposition or in other pretrial or trial proceedings, that the
5 Designating Party identify on the record, before the close of the deposition, hearing, or other
6 proceeding, all protected testimony and specify the level of protection being asserted. When it is
7 impractical to identify separately each portion of testimony that is entitled to protection and it appears
8 that substantial portions of the testimony may qualify for protection, the Designating Party may invoke
9 on the record (before the deposition, hearing, or other proceeding is concluded) a right to have up to
10 21 days to identify the specific portions of the testimony as to which protection is sought and to
11 specify the level of protection being asserted. Only those portions of the testimony that are
12 appropriately designated for protection within the 21 days shall be covered by the provisions of this
13 Stipulated Protective Order. Alternatively, a Designating Party may specify, at the deposition or up to
14 21 days afterwards if that period is properly invoked, that the entire transcript shall be treated as
15 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

16 Parties shall give the other parties notice if they reasonably expect a deposition, hearing or
17 other proceeding to include Protected Material so that the other parties can ensure that only authorized
18 individuals who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A) are
19 present at those proceedings. The use of a document as an exhibit at a deposition shall not in any way
20 affect its designation as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
21 ONLY.”

22 Transcripts containing Protected Material shall have an obvious legend on the title page that
23 the transcript contains Protected Material, and the title page shall be followed by a list of all pages
24 (including line numbers as appropriate) that have been designated as Protected Material and the level
25 of protection being asserted by the Designating Party. The Designating Party shall inform the court
26 reporter of these requirements. Any transcript that is prepared before the expiration of a 21-day period
27 for designation shall be treated during that period as if it had been designated “HIGHLY
28

1 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” in its entirety unless otherwise agreed. After the
2 expiration of that period, the transcript shall be treated only as actually designated.

3 (c) for information produced in some form other than documentary and for any other tangible
4 items, that the Producing Party affix in a prominent place on the exterior of the container or containers
5 or on the digital media format (thumbdrive, DVD, CD, etc.) in which the information or item is stored
6 the legend “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”. If
7 only a portion or portions of the information or item warrant protection, the Producing Party, to the
8 extent practicable, shall identify the protected portion(s) and specify the level of protection being
9 asserted.

10 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
11 designate qualified information or items does not, standing alone, waive the Designating Party’s right
12 to secure protection under this Order for such material. Upon timely correction of a designation, the
13 Receiving Party must make reasonable efforts to assure that the material is treated in accordance with
14 the provisions of this Order.

15 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

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

22 6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution process by
23 providing written notice of each designation it is challenging and describing the basis for each
24 challenge. To avoid ambiguity as to whether a challenge has been made, the written notice must recite
25 that the challenge to confidentiality is being made in accordance with this specific paragraph of the
26 Protective Order. The parties shall attempt to resolve each challenge in good faith and must begin the
27 process by conferring directly (in voice to voice dialogue; other forms of communication are not
28 sufficient) within 14 days of the date of service of notice. In conferring, the Challenging Party must

1 explain the basis for its belief that the confidentiality designation was not proper and must give the
2 Designating Party an opportunity to review the designated material, to reconsider the circumstances,
3 and, if no change in designation is offered, to explain the basis for the chosen designation. A
4 Challenging Party may proceed to the next stage of the challenge process only if it has engaged in this
5 meet and confer process first or establishes that the Designating Party is unwilling to participate in the
6 meet and confer process in a timely manner.

7 6.3 Judicial Intervention. If the Parties cannot resolve a challenge without court
8 intervention, the Designating Party shall file and serve a ~~motion~~<sup>joint discovery letter pursuant to
this court's standing order</sup> to retain confidentiality under Civil
9 Local Rule 7 (and in compliance with Civil Local Rule 79-5, if applicable) within 21 days of the initial
10 notice of challenge or within 14 days of the parties agreeing that the meet and confer process will not
11 resolve their dispute, whichever is earlier.¹ Each such ~~motion~~^{letter} must be accompanied by a competent
12 declaration affirming that the movant has complied with the meet and confer requirements imposed in
13 the preceding paragraph. Failure by the Designating Party to make such a motion including the
14 required declaration within 21 days (or 14 days, if applicable) shall automatically waive the
15 confidentiality designation for each challenged designation. In addition, the Challenging Party may
16 file a motion challenging a confidentiality designation at any time if there is good cause for doing so,
17 including a challenge to the designation of a deposition transcript or any portions thereof. Any ~~motion~~^{letter}
18 brought pursuant to this provision must be accompanied by a competent declaration affirming that the
19 movant has complied with the meet and confer requirements imposed by the preceding paragraph.

20 The burden of persuasion in any such challenge proceeding shall be on the Designating Party.
21 Frivolous challenges and those made for an improper purpose (e.g., to harass or impose unnecessary
22 expenses and burdens on other parties) may expose the Challenging Party to sanctions. Unless the
23 Designating Party has waived the confidentiality designation by failing to file a motion to retain
24 confidentiality as described above, all parties shall continue to afford the material in question the level
25
26

27 ¹ Alternative: It may be appropriate in certain circumstances for the parties to agree to shift the
28 burden to move on the Challenging Party after a certain number of challenges are made to avoid an
abuse of the process. The burden of persuasion would remain on the Designating Party.

1 of protection to which it is entitled under the Producing Party’s designation until the court rules on the
2 challenge.

3 7. ACCESS TO AND USE OF PROTECTED MATERIAL

4 7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed or
5 produced by another Party or by a Non-Party in connection with this case only for prosecuting,
6 defending, or attempting to settle this litigation. Such Protected Material may be disclosed only to the
7 categories of persons and under the conditions described in this Order. When the litigation has been
8 terminated, a Receiving Party must comply with the provisions of section 15 below (FINAL
9 DISPOSITION).

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

12 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise ordered by
13 the court or permitted in writing by the Designating Party, a Receiving Party may disclose any
14 information or item designated “CONFIDENTIAL” only to:

15 (a) the Receiving Party’s Outside Counsel of Record in this action, as well as employees of
16 said Outside Counsel of Record to whom it is reasonably necessary to disclose the information for this
17 litigation and who have signed the “Acknowledgment and Agreement to Be Bound” that is attached
18 hereto as Exhibit A;

19 (b) Experts (as defined in this Order) of the Receiving Party to whom disclosure is reasonably
20 necessary for this litigation and who have signed the “Acknowledgment and Agreement to Be Bound”
21 (Exhibit A);

22 (c) the court and its personnel;

23 (d) court reporters and their staff, professional jury or trial consultants, and Professional
24 Vendors to whom disclosure is reasonably necessary for this litigation and who have signed the
25 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

26 (e) during their depositions, witnesses in the action to whom disclosure is reasonably necessary
27 and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A), unless
28 otherwise agreed by the Designating Party or ordered by the court. Pages of transcribed deposition

1 testimony or exhibits to depositions that reveal Protected Material must be separately bound by the
2 court reporter and may not be disclosed to anyone except as permitted under this Stipulated Protective
3 Order.

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

6 7.3 Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY
7 Information or Items. Unless otherwise ordered by the court or permitted in writing by the Designating
8 Party, a Receiving Party may disclose any information or item designated “HIGHLY
9 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” only to:

10 (a) the Receiving Party’s Outside Counsel of Record in this action, as well as employees of
11 said Outside Counsel of Record to whom it is reasonably necessary to disclose the information for this
12 litigation and who have signed the “Acknowledgment and Agreement to Be Bound” that is attached
13 hereto as Exhibit A;

14 (b) Experts of the Receiving Party (1) to whom disclosure is reasonably necessary for this
15 litigation, (2) who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A), and
16 (3) as to whom the procedures set forth in paragraph 7.4(a)(2), below, have been followed];

17 (c) the court and its personnel;

18 (d) court reporters and their staff, professional jury or trial consultants, and Professional
19 Vendors to whom disclosure is reasonably necessary for this litigation and who have signed the
20 “Acknowledgment and Agreement to Be Bound” (Exhibit A); and

21 (e) the author or recipient of a document containing the information or a custodian or other
22 person who otherwise possessed or knew the information.

23 7.4 Procedures for Approving or Objecting to Disclosure of “HIGHLY CONFIDENTIAL –
24 ATTORNEYS’ EYES ONLY” Information or Items to Experts.

25 (a)(1) Unless otherwise ordered by the court or agreed to in writing by the Designating Party,
26 a Party that seeks to disclose to an Expert (as defined in this Order) any information or item that has
27 been designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” pursuant to paragraph
28 7.3(c) first must make a written request to the Designating Party that (1) identifies the general

1 categories of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” information that the
2 Receiving Party seeks permission to disclose to the Expert, (2) sets forth the full name of the Expert
3 and the city and state of his or her primary residence, (3) attaches a copy of the Expert’s current
4 resume, (4) identifies the Expert’s current employer(s), (5) identifies each person or entity from whom
5 the Expert has received compensation or funding for work in his or her areas of expertise or to whom
6 the expert has provided professional services, including in connection with a litigation, at any time
7 during the preceding five years,² and (6) identifies (by name and number of the case, filing date, and
8 location of court) any litigation in connection with which the Expert has offered expert testimony,
9 including through a declaration, report, or testimony at a deposition or trial, during the preceding five
10 years.³

11 (b) A Party that makes a request and provides the information specified in the preceding
12 respective paragraphs may disclose the subject Protected Material to the identified Expert unless,
13 within 14 days of delivering the request, the Party receives a written objection from the Designating
14 Party. Any such objection must set forth in detail the grounds on which it is based.

15 (c) A Party that receives a timely written objection must meet and confer with the Designating
16 Party (through direct voice to voice dialogue) to try to resolve the matter by agreement within seven
17 days of the written objection. If no agreement is reached, the Party seeking to make the disclosure to
18 the Expert may file a motion as provided in Civil Local Rule 7 (and in compliance with Civil Local
19 Rule 79-5, if applicable) seeking permission from the court to do so. Any such motion must describe
20 the circumstances with specificity, set forth in detail the reasons why the disclosure to the Expert is
21 reasonably necessary, assess the risk of harm that the disclosure would entail, and suggest any
22 additional means that could be used to reduce that risk. In addition, any such motion must be
23 accompanied by a competent declaration describing the parties’ efforts to resolve the matter by

24 ² If the Expert believes any of this information is subject to a confidentiality obligation to a
25 third-party, then the Expert should provide whatever information the Expert believes can be disclosed
26 without violating any confidentiality agreements, and the Party seeking to disclose to the Expert shall
be available to meet and confer with the Designating Party regarding any such engagement.

27 ³ It may be appropriate in certain circumstances to restrict the Expert from undertaking certain
28 limited work prior to the termination of the litigation that could foreseeably result in an improper use
of the Designating Party’s “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”
information.

1 agreement (i.e., the extent and the content of the meet and confer discussions) and setting forth the
2 reasons advanced by the Designating Party for its refusal to approve the disclosure.

3 In any such proceeding, the Party opposing disclosure to the Expert shall bear the burden of
4 proving that the risk of harm that the disclosure would entail (under the safeguards proposed)
5 outweighs the Receiving Party's need to disclose the Protected Material to its Expert.

6 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER
7 LITIGATION

8 If a Party is served with a subpoena or a court order issued in other litigation that compels
9 disclosure of any information or items designated in this action as "CONFIDENTIAL" or "HIGHLY
10 CONFIDENTIAL – ATTORNEYS' EYES ONLY" that Party must:

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

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

16 (c) cooperate with respect to all reasonable procedures sought to be pursued by the Designating
17 Party whose Protected Material may be affected.⁴

18 If the Designating Party timely seeks a protective order, the Party served with the subpoena or
19 court order shall not produce any information designated in this action as "CONFIDENTIAL" or
20 "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" before a determination by the court
21 from which the subpoena or order issued, unless the Party has obtained the Designating Party's
22 permission. The Designating Party shall bear the burden and expense of seeking protection in that
23 court of its confidential material – and nothing in these provisions should be construed as authorizing
24 or encouraging a Receiving Party in this action to disobey a lawful directive from another court.

25
26
27 ⁴ The purpose of imposing these duties is to alert the interested parties to the existence of this
28 Protective Order and to afford the Designating Party in this case an opportunity to try to protect its
confidentiality interests in the court from which the subpoena or order issued.

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

3 (a) The terms of this Order are applicable to information produced by a Non-Party in this
4 action and designated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’
5 EYES ONLY.” Such information produced by Non-Parties in connection with this litigation is
6 protected by the remedies and relief provided by this Order. Nothing in these provisions should be
7 construed as prohibiting a Non-Party from seeking additional protections.

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

- 11 1. promptly notify in writing the Requesting Party and the Non-Party that some or
12 all of the information requested is subject to a confidentiality agreement with a Non-Party;
13 2. promptly provide the Non-Party with a copy of the Stipulated Protective Order
14 in this litigation, the relevant discovery request(s), and a reasonably specific description of the
15 information requested; and
16 3. make the information requested available for inspection by the Non-Party.

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

24
25
26
27 ⁵ The purpose of this provision is to alert the interested parties to the existence of
28 confidentiality rights of a Non-Party and to afford the Non-Party an opportunity to protect its
confidentiality interests in this court.

1 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

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

9 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED
10 MATERIAL

11 When a Producing Party gives notice to Receiving Parties that certain inadvertently produced
12 material is subject to a claim of privilege or other protection, the Receiving Parties may not disclose or
13 in any way use the document(s) pending resolution of a challenge to the claim of privilege or other
14 protection. This provision is not intended to modify whatever procedure may be established in an e-
15 discovery order that provides for production without prior privilege review. Pursuant to Federal Rule
16 of Evidence 502(d) and (e), insofar as the parties reach an agreement on the effect of disclosure of a
17 communication or information covered by the attorney-client privilege or work product protection, the
18 parties may incorporate their agreement in the stipulated protective order submitted to the court.

19 12. MISCELLANEOUS

20 12.1 Right to Further Relief. Nothing in this Order abridges the right of any person to seek
21 its modification by the court in the future.

22 12.2 Right to Assert Other Objections. By stipulating to the entry of this Protective Order no
23 Party waives any right it otherwise would have to object to disclosing or producing any information or
24 item on any ground not addressed in this Stipulated Protective Order. Similarly, no Party waives any
25 right to object on any ground to use in evidence of any of the material covered by this Protective
26 Order.

1 12.3 Filing Protected Material. Without written permission from the Designating Party or a
2 court order secured after appropriate notice to all interested persons, a Party may not file in the public
3 record in this action any Protected Material. A Party that seeks to file under seal any Protected
4 Material must comply with Civil Local Rule 79-5. Protected Material may only be filed under seal
5 pursuant to a court order authorizing the sealing of the specific Protected Material at issue. Pursuant to
6 Civil Local Rule 79-5, a sealing order will issue only upon a request establishing that the Protected
7 Material at issue is privileged, protectable as a trade secret, or otherwise entitled to protection under
8 the law. If a Receiving Party's request to file Protected Material under seal pursuant to Civil Local
9 Rule 79-5(e) is denied by the court, then the Receiving Party may file the Protected Material in the
10 public record pursuant to Civil Local Rule 79-5(e)(2) unless otherwise instructed by the court.

11 13. FINAL DISPOSITION

12 Within 60 days after the final disposition of this action, as defined in paragraph 4, each
13 Receiving Party must return all Protected Material to the Producing Party or destroy such material. As
14 used in this subdivision, "all Protected Material" includes all copies, abstracts, compilations,
15 summaries, and any other format reproducing or capturing any of the Protected Material. Whether the
16 Protected Material is returned or destroyed, the Receiving Party must submit a written certification to
17 the Producing Party (and, if not the same person or entity, to the Designating Party) by the 60-day
18 deadline that (1) identifies (by category, where appropriate) all the Protected Material that was
19 returned or destroyed and (2) affirms that the Receiving Party has not retained any copies, abstracts,
20 compilations, summaries or any other format reproducing or capturing any of the Protected Material.
21 Notwithstanding this provision, Counsel are entitled to retain an archival copy of all pleadings, motion
22 papers, trial, deposition, and hearing transcripts, legal memoranda, correspondence, deposition and
23
24
25
26
27
28

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

4 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

5
6 Dated: March 2, 2015

7 THE LAW OFFICES OF JOHN L. BURRIS

8 By: **/s/ DeWitt M. Lacy
9 DEWITT M. LACY

10 Attorneys for Plaintiff
11 LORENZO ADAMSON

12 **Pursuant to Civil L.R. 5-1(i)(3), the electronic
signatory has obtained approval from this signatory.

13 Dated: March 2, 2015

14 DENNIS J. HERRERA
15 City Attorney

16 By: /s/ Margaret W. Baumgartner
17 MARGARET W. BAUMGARTNER
Deputy City Attorney

18 Attorneys for Defendant
19 CITY AND COUNTY OF SAN FRANCISCO

20 PURSUANT TO STIPULATION, IT IS SO ORDERED.

21 DATED: March 3, 2015

22 
23 _____
24 Hon. Donna M. Ryu
25 United States Magistrate Judge
26
27
28

1 EXHIBIT A

2 ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

3 I, _____ [print or type full name], of _____ [print
4 or type full address], declare under penalty of perjury that I have read in its entirety and understand the
5 Stipulated Protective Order that was issued by the United States District Court for the Northern
6 District of California on [date] in the case of *Nieto v. City and County of San Francisco*, 14-CV-3823
7 NC. I agree to comply with and to be bound by all the terms of this Stipulated Protective Order and I
8 understand and acknowledge that failure to so comply could expose me to sanctions and punishment in
9 the nature of contempt. I solemnly promise that I will not disclose in any manner any information or
10 item that is subject to this Stipulated Protective Order to any person or entity except in strict
11 compliance with the provisions of this Order.

12 I further agree to submit to the jurisdiction of the United States District Court for the Northern
13 District of California for the purpose of enforcing the terms of this Stipulated Protective Order, even if
14 such enforcement proceedings occur after termination of this action.

15 I hereby appoint _____ [print or type full name] of
16 _____ [print or type full address and telephone number] as
17 my California agent for service of process in connection with this action or any proceedings related to
18 enforcement of this Stipulated Protective Order.

19
20 Date: _____

21 City and State where sworn and signed: _____

22 Printed name: _____
23 [printed name]

24 Signature: _____
25 [signature]