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[G.C. §6103]

5 Attorneys for Defendants  
 6 COUNTY OF ALAMEDA and DEREK THOMS

7  
 8 UNITED STATES DISTRICT COURT  
 9 NORTHERN DISTRICT OF CALIFORNIA, SAN FRANCISCO BRANCH

11 PATRICIA HIVES, individually and as co-  
 12 successor in interest to Decedent Jacori  
 Calhoun,

**CASE NO.: 15-cv-02490-DMR**

13 Plaintiff,

**STIPULATED PROTECTIVE ORDER  
 REGARDING PRODUCTION OF  
 CONFIDENTIAL RECORDS**

14 vs.

15 COUNTY OF ALAMEDA, municipal  
 16 corporation; DEREK THOMS, individually  
 and in his official capacity as deputy for the  
 17 COUNTY OF ALAMEDA et al.,

Defendants. \_\_\_\_\_ /

18  
 19 The parties, by and through their respective attorneys of record, hereby stipulate to the  
 20 following protective order being issued in this matter:

21 1. PURPOSES AND LIMITATIONS

22 Disclosure and discovery activity in this action are likely to involve production of  
 23 confidential, proprietary, or private information for which special protection from public  
 24 disclosure and from use for any purpose other than prosecuting this litigation would be warranted.  
 25 Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated  
 26 Protective Order. The parties acknowledge that this Order does not confer blanket protections on  
 27 all disclosures or responses to discovery and that the protection it affords extends only to the  
 28 limited information or items that are entitled under the applicable legal principles to treatment as

1 confidential. The parties further acknowledge, as set forth in Section 10, below, that this  
2 Stipulated Protective Order creates no entitlement to file confidential information under seal;  
3 Civil Local Rule 79-5 and General Order 62 set forth the procedures that must be followed and  
4 the standards that will be applied when a party seeks permission from the court to file material  
5 under seal.

6 2. DEFINITIONS

7 2.1 Party:

8 Any party to this action, including all of its officers, directors, employees, consultants,  
9 retained experts, and outside counsel (and their support staff).

10 2.2 Challenging Party:

11 A Party or Non-Party that challenges the designation of information or items under this  
12 Order.

13 2.3 Non-Party:

14 Any natural person, partnership, corporation, association, or other legal entity not named  
15 as a Party to this action.

16 2.4 Disclosure or Discovery Material:

17 All items or information, regardless of the medium or manner generated, stored or  
18 maintained (including, among other things, testimony, transcripts, or tangible things) that are  
19 produced or generated in disclosures or responses to discovery by any Party in this matter.

20 2.5 “Confidential” Information or Items:

21 Information (regardless of how generated, stored or maintained) or tangible things that  
22 qualify for protection under standards developed under F.R.Civ.P. 26(c). This material includes,  
23 but is not limited to, confidential records designated as such, including the existence of such  
24 records and/or information.

25 2.6 “Highly Confidential – Attorneys’ Eyes Only” Information or Items:

26 Extremely sensitive “Confidential Information or Items” whose disclosure to another Party  
27 or non-party would create a substantial risk of serious injury that could not be avoided by less  
28 restrictive means. This material includes but it not limited to officer personnel records, juvenile

1 records, officer disciplinary records, and Internal Affairs files and information on witnesses  
2 identified in each parties' initial disclosures.

3 2.7 Receiving Party:

4 A Party that receives Disclosure or Discovery Material from a Producing Party.

5 2.8 Producing Party:

6 A Party or non-party that produces Disclosure or Discovery Material in this action.

7 2.9 Designating Party:

8 A Party or non-party that designates information or items that it produces in disclosures or  
9 in responses to discovery as "Confidential" or "Highly Confidential – Attorneys' Eyes Only."

10 2.10 Protected Material:

11 Any Disclosure or Discovery Material that is designated as "Confidential" or "Highly  
12 Confidential – Attorneys' Eyes Only."

13 2.11 Outside Counsel:

14 Attorneys who are not employees of a Party but who are retained to represent or advise a  
15 party in this action.

16 2.12 House Counsel:

17 Attorneys who are employees of a Party.

18 2.13 Counsel (without qualifier):

19 Outside Counsel and House Counsel (as well as their support staffs).

20 2.14 Expert:

21 A person with specialized knowledge or experience in a matter pertinent to the litigation  
22 who has been retained by a Party or its counsel to serve as an expert witness or as a consultant in  
23 this action and who is not a past or a current employee of a Party or of a competitor of a Party and  
24 who, at the time of retention, is not anticipated to become an employee of a party or a competitor  
25 of a Party.

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1 2.15 Professional Vendors:

2 Persons or entities that provide litigation support services (e.g., photocopying;  
3 videotaping; translating; preparing exhibits or demonstrations; organizing, storing, retrieving data  
4 in any form or medium; etc.) and their employees and subcontractors.

5 3. SCOPE

6 The protections conferred by this Stipulation and Order cover not only Protected Material  
7 (as defined above), but also (1) any information copied or extracted from Protected Material; (2)  
8 all copies, excerpts, summaries, or compilations of Protected Material; and (3) any testimony,  
9 conversations, or presentations by Parties or their Counsel that might reveal Protected Material.

10 However, the protections conferred by this Stipulation and Order do not cover the following  
11 information: (a) any information that is in the public domain at the time of disclosure to a  
12 Receiving Party or becomes part of the public domain after its disclosure to a Receiving Party as a  
13 result of publication not involving a violation of this Order, including becoming part of the public  
14 record through trial or otherwise; and (b) any information known to the Receiving Party prior to  
15 the disclosure or obtained by the Receiving Party after the disclosure from a source who obtained  
16 the information lawfully and under no obligation of confidentiality to the Designating Party. Any  
17 use of Protected Material at trial shall be governed by a separate agreement or order.

18 4. DURATION

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

26 5. DESIGNATING PROTECTED MATERIAL

27 5.1 Exercise of Restraint and Care in Designating Material for Protection

28 Each Party or non-party that designates information or items for protection under this

1 Order must take care to limit any such designation to specific material that qualifies under the  
2 appropriate standards. A Designating Party must take care to designate for protection only those  
3 parts of material, documents, items, or oral or written communications that qualify – so that other  
4 portions of the material, documents, items or communications for which protection is not  
5 warranted are not swept unjustifiably within the ambit of this Order.

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

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

#### 14 5.2 Manner and Timing of Designations

15 Except as otherwise provided in this Order (see, e.g., second paragraphs of section 5.2(a),  
16 below), or as otherwise stipulated or ordered, material that qualifies for protection under this  
17 Order must be clearly so designated before the material is disclosed or produced.

18 Designation in conformity with this Order requires:

19 (a) For information in documentary form (apart from transcripts of depositions or other  
20 pretrial or trial proceedings), that the Producing Party affix the legend "CONFIDENTIAL" at the  
21 top of each page that contains protected material and/or the first page of stapled/clipped materials  
22 if it is a group of related documents. If only a portion or portions of the material on a page  
23 qualifies for protection, the Producing Party also must clearly identify the protected portion(s)  
24 (e.g., by making appropriate markings in the margins) and must specify, for each portion, the  
25 level of protection being asserted.

26 A Party or non-party that makes original documents or materials available for inspection  
27 need not designate them for protection until after the inspecting Party has indicated which  
28 material it would like copied and produced. During the inspection and before the designation, all

1 of the material made available for inspection shall be deemed “CONFIDENTIAL.” After the  
2 inspecting Party has identified the documents it wants copied and produced, the Producing Party  
3 must determine which documents, or portions thereof, qualify for protection under this Order,  
4 then, before producing the specified documents, the Producing Party must affix the appropriate  
5 legend (“CONFIDENTIAL”) at the top of each page that contains Protected Material. If only a  
6 portion or portions of the material on a page qualifies for protection, the Producing Party must  
7 clearly identify the protected portion(s) (e.g., by making appropriate markings in the margins) and  
8 must specify, for each portion, the level of protection being asserted.

9 (b) For testimony given in deposition or in other pretrial or trial proceedings, that the Party  
10 or non-party offering or sponsoring the testimony identify on the record, before the close of the  
11 deposition, hearing, or other proceeding, all protected testimony, and further specify any portions  
12 of the testimony that qualify as “CONFIDENTIAL.” When it is impractical to identify separately  
13 each portion of testimony that is entitled to protection, and when it appears that substantial  
14 portions of the testimony may qualify for protection, the party or non-party that sponsors, offers,  
15 or gives the testimony may invoke on the record (before the deposition or proceeding is  
16 concluded) to a right to have up to twenty (20) days to identify the specific portions of the  
17 testimony as to which protection is sought and to specify the level of protection being asserted.  
18 Only those portions of the testimony that are appropriately designated for protection within the 20  
19 days shall be covered by the provisions of this Stipulated Protective Order. The Court Reporter  
20 shall be instructed to separately bind the pages of transcribed deposition testimony or exhibits that  
21 contain Protected Material and to mark the cover of this separate volume “CONFIDENTIAL.”

22 (c) For information produced in some form other than documentary, and for any other  
23 tangible items, that the Producing Party affix in a prominent place on the exterior of the container  
24 or containers in which the information or items is stored the label “CONFIDENTIAL.” If only  
25 portions of the information or item warrant protection, the Producing Party, to the extent  
26 practicable, shall identify the protected portions, specifying that they qualify as  
27 “CONFIDENTIAL.”

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1 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to designate  
2 qualified information or items does not, standing alone, waive the Designating Party's right to  
3 secure protection under this Order for such material. Upon timely correction of a designation, the  
4 Receiving Party must make reasonable efforts to assure that the material is treated in accordance  
5 with the provisions of this Order.

6 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

7 6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation of  
8 confidentiality at any time. Unless a prompt challenge to a Designating Party's confidentiality  
9 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic  
10 burdens, or a significant disruption or delay of the litigation, a Party does not waive its right to  
11 challenge a confidentiality designation by electing not to mount a challenge promptly after the  
12 original designation is disclosed.

13 6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution process by  
14 providing written notice of each designation it is challenging and describing the basis for each  
15 challenge. To avoid ambiguity as to whether a challenge has been made, the written notice must  
16 recite that the challenge to confidentiality is being made in accordance with this specific paragraph  
17 of the Protective Order. The parties shall attempt to resolve each challenge in good faith and must  
18 begin the process by conferring directly (in person or by telephone; other forms of communication  
19 are not sufficient) within 14 days of the date of service of notice. In conferring, the Challenging  
20 Party must explain the basis for its belief that the confidentiality designation was not proper and  
21 must give the Designating Party an opportunity to review the designated material, to reconsider the  
22 circumstances, and, if no change in designation is offered, to explain the basis for the chosen  
23 designation. A Challenging Party may proceed to the next stage of the challenge process only if it  
24 has engaged in this meet and confer process first or establishes that the Designating Party is  
25 unwilling to participate in the meet and confer process in a timely manner.

26 6.3 Judicial Intervention. If the Parties cannot resolve a challenge without court intervention,  
27 the parties shall follow the procedures for a Motion to Compel set forth by the Magistrate. All  
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1 parties shall continue to afford the material in question the level of protection to which it is entitled  
2 under the Producing Party’s designation until the court rules on the challenge.

3 7. ACCESS TO AND USE OF PROTECTED MATERIAL

4 7.1 Basic Principles

5 Unless otherwise ordered by this court, a Receiving Party may use Protected Material that  
6 is disclosed or produced by another Party or by a Non-Party in connection with this case only for  
7 prosecuting, defending, or attempting to settle this litigation. Such Protected Material may be  
8 disclosed only to the categories of persons and under the conditions described in this Order. When  
9 the litigation has been terminated, a Receiving Party must comply with the provisions of section  
10 11 below (FINAL DISPOSITION) unless otherwise ordered by this court.

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

13 7.2 Disclosure of Protected Material

14 Unless otherwise ordered by the court or permitted in writing by the Designating Party, a  
15 Receiving Party may disclose any information or item designated “CONFIDENTIAL” or  
16 “HIGHLY CONFIDENTIAL” only to:

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

21 (b) The officers, directors, and employees (including House Counsel) of the Receiving Party to  
22 whom disclosure is reasonably necessary for this litigation and who have signed the  
23 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

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

27 (d) The court and its personnel;

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- 1 (e) Court reporters and their staff, professional jury or trial consultants, mock jurors, and  
2 professional vendors to whom disclosure is reasonably necessary for this litigation and who have  
3 signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);
- 4 (f) During their depositions, witnesses in the action to whom disclosure is reasonably necessary  
5 and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A), unless  
6 otherwise agreed by the Designating Party or ordered by the court. Pages of transcribed deposition  
7 testimony or exhibits to depositions that reveal Protected Material must be separately bound by the  
8 court reporter and may not be disclosed to anyone except as permitted under this Stipulated  
9 Protective Order;
- 10 (g) Parties to this litigation;
- 11 (h) The author or recipient of a document containing the information or a custodian or other  
12 person who otherwise possessed or knew the information;
- 13 (i) For purposes of evaluating the settlement value or potential jury verdict, Counsel for Plaintiff  
14 may discuss the general nature of the “CONFIDENTIAL Information” with Plaintiff. Plaintiff’s  
15 Counsel may also review with Plaintiff any statement or interview given by that Plaintiff.

16 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER  
17 LITIGATION

18 If a Receiving Party is served with a subpoena or an order issued in other litigation that  
19 would compel disclosure of any information or items designated in this action as  
20 “CONFIDENTIAL,” the Receiving Party must so notify the Designating Party, in writing (by fax  
21 or e-mail, if possible) immediately and in no event more than three court days after receiving the  
22 subpoena or order. Such notification must include a copy of the subpoena or court order.

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

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1           The purpose of imposing these duties is to alert the interested parties to the existence of  
2 this Protective Order and to afford the Designating party in this case an opportunity to try to  
3 protect its confidentiality interests in the court from which the subpoena or order issued. If the  
4 Designating Party timely seeks a protective order, the Party served with the subpoena or court  
5 order shall not produce any Protected Material before a determination by the court from which the  
6 subpoena or order issued, unless the Party has obtained the Designating Party's permission. The  
7 Designating Party shall bear the burdens and the expenses of seeking protection in that court of its  
8 confidential material – and nothing in these provisions should be construed as authorizing or  
9 encouraging a Receiving party in this action to disobey a lawful directive from another court.

10 9.       UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

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

18 10.      FILING PROTECTED MATERIAL

19           Without written permission from the Designating Party or a court order secured after  
20 appropriate notice to all interested persons, a Party may not file in the public record in this action  
21 any Protected Material. A Party that seeks to file under seal any Protected Material must comply  
22 with Civil Local Rule 79-5 and General Order 62. Protected Material may only be filed under  
23 seal pursuant to a court order authorizing the sealing of the specific Protected Material at issue.  
24 Pursuant to Civil Local Rule 79-5 and General Order 62, a sealing order will issue only upon a  
25 request establishing that the Protected Material at issue is privileged, protectable as a trade secret,  
26 or otherwise entitled to protection under the law. If a Receiving Party's request to file Protected  
27 Material under seal pursuant to Civil Local Rule 79-5(d) and General Order 62 is denied by the  
28

1 court, then the Receiving Party may file the information in the public record pursuant to Civil  
2 Local Rule 79-5(e) unless otherwise instructed by the court.

3 11. FINAL DISPOSITION

4 Unless otherwise ordered or agreed in writing by the Producing Party, within sixty (60)  
5 days after the final termination of this action, defined as the dismissal or entry of judgment by the  
6 district court, or if an appeal is filed, the disposition of the appeal, each Receiving Party must  
7 return all Protected Material to the Producing Party. As used in this subdivision, “all Protected  
8 Material” includes all copies, abstracts, compilations, summaries or any other form of  
9 reproducing or capturing any of the Protected Material. With permission in writing from the  
10 Designating Party, the Receiving Party may destroy some or all of the Protected Material instead  
11 of returning it. Whether the Protected Material is returned or destroyed, the Receiving Party must  
12 submit a written certification to the Producing Party (and, if not the same person or entity, to the  
13 Designating Party) by the sixty day deadline that identifies (by category, where appropriate) all  
14 the Protected Material that was returned or destroyed and that affirms that the Receiving Party has  
15 not retained any copies, abstracts, compilations, summaries or other forms of reproducing or  
16 capturing any of the Protected Material. Notwithstanding this provision, Counsel are entitled to  
17 retain an archival copy of all pleadings, motion papers, transcripts, legal memoranda,  
18 correspondence or attorney work product, even if such materials contain Protected Material. Any  
19 such archival copies that contain or constitute Protected Material remain subject to this Protective  
20 Order as set forth in Section 4 (DURATION), above.

21 12. MISCELLANEOUS

22 12.1 Right to Further Relief. Nothing in this Order abridges the right of any person to seek its  
23 modification by the court in the future.

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

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**IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD**

DATED: March 18, 2016

THE LAW OFFICES OF JOHN L. BURRIS

By: \_\_\_\_\_ /s/  
DeWitt M. Lacy, Esq.  
Attorneys for Plaintiffs

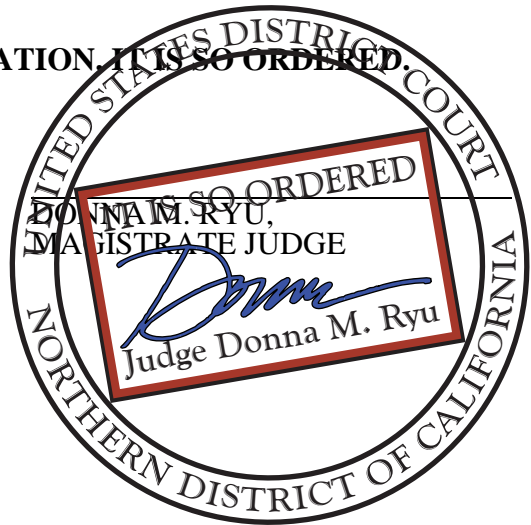
DATED: March 18, 2016

EDRINGTON, SCHIRMER & MURPHY LLP

By: \_\_\_\_\_ /s/  
Timothy P. Murphy Esq.  
Attorneys for Defendants

**PURSUANT TO STIPULATION, IT IS SO ORDERED.**

Dated: March 22, 2016





1 **CERTIFICATION BY TIMOTHY P. MURPHY PURSUANT TO LOCAL RULE NO.5-1,**  
2 **SECTION (i)(3). RE E-FILING ON BEHALF OF MULTIPLE SIGNATORIES**

3 1. I am an attorney licensed to practice law in the State of California, and am an  
4 attorney in the law firm of Edrington, Schirmer & Murphy, counsel for Defendants COUNTY OF  
5 ALAMEDA and DEREK THOMS. The statements herein are made on my personal knowledge,  
6 and if called as a witness, I could and would testify thereto.

7 2. The above e-filed document contains multiple signatures. I declare that  
8 concurrence has been obtained from each of the other signatories to file this jointly prepared  
9 document with the Court. Pursuant to Local Rule 5-1, section (i)(3), I shall maintain records to  
10 support this concurrence for subsequent production for the Court if so ordered, or for inspection  
11 upon request by a party until one year after final resolution of the action (including appeal, if any).  
12 I declare under penalty of perjury under the laws of the United States of California that the  
13 foregoing is true and correct on March 18, 2016.

14  
15 /s/  
16 Timothy P. Murphy