

1 JOHN L. BURRIS, Esq. (SBN 69888)  
 2 LATEEF H. GRAY, Esq. (SBN 250055)  
 3 **THE LAW OFFICES OF JOHN L. BURRIS**  
 4 Airport Corporate Centre  
 5 7677 Oakport Street, Suite 1120  
 6 Oakland, California 94621  
 7 Telephone: (510) 839-5200  
 8 Facsimile: (510) 839-3882  
 9 john.burris@johnburrislaw.com  
 10 lateef.gray@johnburrislaw.com

11 Attorneys for Plaintiff

12 **UNITED STATES DISTRICT COURT**  
 13 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

14 T.K., a minor, by and through her guardian ad  
 15 litem TANYA KONARIS, et al.

16 Plaintiffs,

17 v.

18 CITY OF SAN FRANCISCO; a municipal  
 19 corporation; et al.,

20 Defendants.

Case No.: 15-cv-4043 YGR

STIPULATED PROTECTIVE ORDER

\*AS MODIFIED BY THE COURT\*

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 may 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 from public disclosure  
 28 and use extends only to the limited information or items that are entitled to confidential treatment

1 under the applicable legal principles. The parties further acknowledge, as set forth in Section  
2 12.3, below, that this Stipulated Protective Order does not entitle them to file confidential  
3 information under seal; Civil Local Rule 79-5 sets 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 Challenging Party: a Party or Non-Party that challenges the designation of  
8 information or items under this Order.

9 2.2 “CONFIDENTIAL” Information or Items: information (regardless of how it is  
10 generated, stored or maintained) or tangible things that qualify for protection under Federal Rule  
11 of Civil Procedure 26(c).

12 2.3 Counsel (without qualifier): Outside Counsel of Record and House Counsel (as  
13 well as their support staff).

14 2.4 Designating Party: a Party or Non-Party that designates information or items that  
15 it produces in disclosures or in responses to discovery as “CONFIDENTIAL.”

16 2.5 Disclosure or Discovery Material: all items or information, regardless of the  
17 medium or manner in which it is generated, stored, or maintained (including, among other things,  
18 testimony, transcripts, and tangible things), that are produced or generated in disclosures or  
19 responses to discovery in this matter.

20 2.6 Expert: a person with specialized knowledge or experience in a matter pertinent to  
21 the litigation who has been retained by a Party or its counsel to serve as an expert witness or as a  
22 consultant in this action.

23 2.7 House Counsel: attorneys who are employees of a party to this action. House  
24 Counsel does not include Outside Counsel of Record or any other outside counsel.

25 2.8 Non-Party: any natural person, partnership, corporation, association, or other legal  
26 entity not named as a Party to this action.

27 2.9 Outside Counsel of Record: attorneys who are not employees of a party to this  
28 action but are retained to represent or advise a party to this action and have appeared in this action

1 on behalf of that party or are affiliated with a law firm which has appeared on behalf of that party.

2 2.10 Party: any party to this action, including all of its officers, directors, employees,  
3 consultants, retained experts, and Outside Counsel of Record (and their support staffs).

4 2.11 Producing Party: a Party or Non-Party that produces Disclosure or Discovery  
5 Material in this action.

6 2.12 Professional Vendors: persons or entities that provide litigation support services  
7 (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations, and  
8 organizing, storing, or retrieving data in any form or medium) and their employees and  
9 subcontractors.

10 2.13 Protected Material: any Disclosure or Discovery Material that is designated as  
11 “CONFIDENTIAL.”

12 2.14 Receiving Party: a Party that receives Disclosure or Discovery Material from a  
13 Producing Party.

### 14 3. SCOPE

15 The protections conferred by this Stipulation and Order cover not only Protected Material  
16 (as defined above), but also (1) any information copied or extracted from Protected Material; (2)  
17 all copies, excerpts, summaries, or compilations of Protected Material; and (3) any testimony,  
18 conversations, or presentations by Parties or their Counsel that might reveal Protected Material.  
19 However, the protections conferred by this Stipulation and Order do not cover the following  
20 information: (a) any information that is in the public domain at the time of disclosure to a  
21 Receiving Party or becomes part of the public domain after its disclosure to a Receiving Party as  
22 a result of publication not involving a violation of this Order, including becoming part of the  
23 public record through trial or otherwise; and (b) any information known to the Receiving Party  
24 prior to the disclosure or obtained by the Receiving Party after the disclosure from a source who  
25 obtained the information lawfully and under no obligation of confidentiality to the Designating  
26 Party. Any use of Protected Material at trial shall be governed by a separate agreement or order.

### 27 4. DURATION

28 Even after final disposition of this litigation, the confidentiality obligations imposed by

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

7 5. DESIGNATING PROTECTED MATERIAL

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

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

19 If it comes to a Designating Party's attention that information or items that it designated  
20 for protection do not qualify for protection, that Designating Party must promptly notify all other  
21 Parties that it is withdrawing the mistaken designation.

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

26 Designation in conformity with this Order requires:

27 (a) for information in documentary form (e.g., paper or electronic documents, but  
28 excluding transcripts of depositions or other pretrial or trial proceedings), that the Producing

1 Party affix the legend “CONFIDENTIAL” to each page that contains protected material. If only a  
2 portion or portions of the material on a page qualifies for protection, the Producing Party also  
3 must clearly identify the protected portion(s) (e.g., by making appropriate markings in the  
4 margins).

5 A Party or Non-Party that makes original documents or materials available for inspection  
6 need not designate them for protection until after the inspecting Party has indicated which  
7 material it would like copied and produced. During the inspection and before the designation, all  
8 of the material made available for inspection shall be deemed “CONFIDENTIAL.” After the  
9 inspecting Party has identified the documents it wants copied and produced, the Producing Party  
10 must determine which documents, or portions thereof, qualify for protection under this Order.  
11 Then, before producing the specified documents, the Producing Party must affix the  
12 “CONFIDENTIAL” legend to each page that contains Protected Material. If only a portion or  
13 portions of the material on a page qualifies for protection, the Producing Party also must clearly  
14 identify the protected portion(s) (e.g., by making appropriate markings in the margins).

15 (b) for testimony given in deposition or in other pretrial or trial proceedings, that the  
16 Designating Party identify on the record, before the close of the deposition, hearing, or other  
17 proceeding, all protected testimony.

18 (c) for information produced in some form other than documentary and for any other  
19 tangible items, that the Producing Party affix in a prominent place on the exterior of the container  
20 or containers in which the information or item is stored the legend “CONFIDENTIAL.” If only a  
21 portion or portions of the information or item warrant protection, the Producing Party, to the  
22 extent practicable, shall identify the protected portion(s).

23 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to  
24 designate qualified information or items does not, standing alone, waive the Designating Party’s  
25 right to secure protection under this Order for such material. Upon timely correction of a  
26 designation, the Receiving Party must make reasonable efforts to assure that the material is  
27 treated in accordance with the provisions of this Order.

28 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

1           6.1    Timing of Challenges. Any Party or Non-Party may challenge a designation of  
2 confidentiality at any time. Unless a prompt challenge to a Designating Party’s confidentiality  
3 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic  
4 burdens, or a significant disruption or delay of the litigation, a Party does not waive its right to  
5 challenge a confidentiality designation by electing not to mount a challenge promptly after the  
6 original designation is disclosed.

7           6.2    Meet and Confer. The Challenging Party shall initiate the dispute resolution  
8 process by providing written notice of each designation it is challenging and describing the basis  
9 for each challenge. To avoid ambiguity as to whether a challenge has been made, the written  
10 notice must recite that the challenge to confidentiality is being made in accordance with this  
11 specific paragraph of the Protective Order. The parties shall attempt to resolve each challenge in  
12 good faith and must begin the process by conferring directly (in voice to voice dialogue; other  
13 forms of communication are not sufficient) within 14 days of the date of service of notice. In  
14 conferring, the Challenging Party must explain the basis for its belief that the confidentiality  
15 designation was not proper and must give the Designating Party an opportunity to review the  
16 designated material, to reconsider the circumstances, and, if no change in designation is offered,  
17 to explain the basis for the chosen designation. A Challenging Party may proceed to the next  
18 stage of the challenge process only if it has engaged in this meet and confer process first or  
19 establishes that the Designating Party is unwilling to participate in the meet and confer process in  
20 a timely manner.

21           6.3    Judicial Intervention. If the Parties cannot resolve a challenge without court  
22 intervention, the parties shall follow the Court’s Standing Order in Civil Cases regarding  
23 Discovery and Discovery Motions. The parties may file a joint letter brief regarding retaining  
24 confidentiality within 21 days of the initial notice of challenge or within 14 days of the parties  
25 agreeing that the meet and confer process will not resolve their dispute, whichever is earlier.  
26 Failure by a Designating Party to file such discovery dispute letter within the applicable 21 or 14  
27 day period (set forth above) with the Court shall automatically waive the confidentiality  
28 designation for each challenged designation. If, after submitting a joint letter brief, the Court

1 allows that a motion may be filed, any such motion must be accompanied by a competent  
2 declaration affirming that the movant has complied with the meet and confer requirements  
3 imposed in the preceding paragraph. The Court, in its discretion, may elect to transfer the  
4 discovery matter to a Magistrate Judge.

5 In addition, the parties may file a joint letter brief regarding a challenge to a  
6 confidentiality designation at any time if there is good cause for doing so, including a challenge to  
7 the designation of a deposition transcript or any portions thereof. If, after submitting a joint letter  
8 brief, the Court allows that a motion may be filed, any motion brought pursuant to this provision  
9 must be accompanied by a competent declaration affirming that the movant has complied with the  
10 meet and confer requirements imposed by the preceding paragraph. The Court, in its discretion,  
11 may elect to refer the discovery matter to a Magistrate Judge.

12 The burden of persuasion in any such challenge proceeding shall be on the Designating  
13 Party. Frivolous challenges, and those made for an improper purpose (e.g., to harass or impose  
14 unnecessary expenses and burdens on other parties) may expose the Challenging Party to  
15 sanctions. Unless the Designating Party has waived the confidentiality designation by failing to  
16 file a letter brief to retain confidentiality as described above, all parties shall continue to afford  
17 the material in question the level of protection to which it is entitled under the Producing Party's  
18 designation until the court rules on the challenge.

## 19 7. ACCESS TO AND USE OF PROTECTED MATERIAL

20 7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed or  
21 produced by another Party or by a Non-Party in connection with this case only for prosecuting,  
22 defending, or attempting to settle this litigation. Such Protected Material may be disclosed only to  
23 the categories of persons and under the conditions described in this Order. When the litigation has  
24 been terminated, a Receiving Party must comply with the provisions of section 13 below (FINAL  
25 DISPOSITION).

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

28 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise ordered

1 by the court or permitted in writing by the Designating Party, a Receiving Party may disclose any  
2 information or item designated “CONFIDENTIAL” only to:

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

6 (b) the court and its personnel;

7 (c) court reporters and their staff, professional jury or trial consultants, mock jurors, and  
8 Professional Vendors to whom disclosure is reasonably necessary for this litigation and who have  
9 signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

10 (d) the author or recipient of a document containing the information or a custodian or  
11 other person who otherwise possessed or knew the information.

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

14 If a Party is served with a subpoena or a court order issued in other litigation that compels  
15 disclosure of any information or items designated in this action as “CONFIDENTIAL,” that Party  
16 must:

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

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

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

24 If the Designating Party timely seeks a protective order, the Party served with the  
25 subpoena or court order shall not produce any information designated in this action as  
26 “CONFIDENTIAL” before a determination by the court from which the subpoena or order  
27 issued, unless the Party has obtained the Designating Party’s permission. The Designating Party  
28 shall bear the burden and expense of seeking protection in that court of its confidential material –



1 and nothing in these provisions should be construed as authorizing or encouraging a Receiving  
2 Party in this action to disobey a lawful directive from another court.

3 9. A NON-PARTY'S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN THIS  
4 LITIGATION

5 (a) The terms of this Order are applicable to information produced by a Non-Party in this  
6 action and designated as "CONFIDENTIAL." Such information produced by Non-Parties in  
7 connection with this litigation is protected by the remedies and relief provided by this Order.  
8 Nothing in these provisions should be construed as prohibiting a Non-Party from seeking  
9 additional protections.

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

13 (1) promptly notify in writing the Requesting Party and the Non-Party that some or all of  
14 the information requested is subject to a confidentiality agreement with a Non-Party;

15 (2) promptly provide the Non-Party with a copy of the Stipulated Protective Order in this  
16 litigation, the relevant discovery request(s), and a reasonably specific description of the  
17 information requested; and

18 (3) make the information requested available for inspection by the Non-Party.

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

26 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

27 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected  
28 Material to any person or in any circumstance not authorized under this Stipulated Protective

1 Order, the Receiving Party must immediately (a) notify in writing the Designating Party of the  
2 unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the  
3 Protected Material, (c) inform the person or persons to whom unauthorized disclosures were  
4 made of all the terms of this Order, and (d) request such person or persons to execute the  
5 “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit A.

6 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED  
7 MATERIAL

8 When a Producing Party gives notice to Receiving Parties that certain inadvertently  
9 produced material is subject to a claim of privilege or other protection, the obligations of the  
10 Receiving Parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This  
11 provision is not intended to modify whatever procedure may be established in an e-discovery  
12 order that provides for production without prior privilege review. Pursuant to Federal Rule of  
13 Evidence 502(d) and (e), insofar as the parties reach an agreement on the effect of disclosure of a  
14 communication or information covered by the attorney-client privilege or work product  
15 protection, the parties may incorporate their agreement in the stipulated protective order  
16 submitted to the court.

17 12. MISCELLANEOUS

18 12.1 Right to Further Relief. Nothing in this Order abridges the right of any person to  
19 seek its modification by the court in the future.

20 12.2 Right to Assert Other Objections. By stipulating to the entry of this Protective  
21 Order no Party waives any right it otherwise would have to object to disclosing or producing any  
22 information or item on any ground not addressed in this Stipulated Protective Order. Similarly, no  
23 Party waives any right to object on any ground to use in evidence of any of the material covered  
24 by this Protective Order.

25 12.3 Filing Protected Material. Without written permission from the Designating Party  
26 or a court order secured after appropriate notice to all interested persons, a Party may not file in  
27 the public record in this action any Protected Material. A Party that seeks to file under seal any  
28 Protected Material must comply with Civil Local Rule 79-5. Protected Material may only be filed

1 under seal pursuant to a court order authorizing the sealing of the specific Protected Material at  
2 issue. Pursuant to Civil Local Rule 79-5, a sealing order will issue only upon a request  
3 establishing that the Protected Material at issue is privileged, protectable as a trade secret, or  
4 otherwise entitled to protection under the law. If a Receiving Party's request to file Protected  
5 Material under seal pursuant to Civil Local Rule 79-5(d) is denied by the court, then the  
6 Receiving Party may file the information in the public record pursuant to Civil Local Rule 79-5(e)  
7 unless otherwise instructed by the court.

8 13. FINAL DISPOSITION

9 Within 60 days after the final disposition of this action, as defined in paragraph 4, each  
10 Receiving Party must return all Protected Material to the Producing Party or destroy such  
11 material. As used in this subdivision, "all Protected Material" includes all copies, abstracts,  
12 compilations, summaries, and any other format reproducing or capturing any of the Protected  
13 Material. Whether the Protected Material is returned or destroyed, the Receiving Party must  
14 submit a written certification to the Producing Party (and, if not the same person or entity, to the  
15 Designating Party) by the 60 day deadline that (1) identifies (by category, where appropriate) all  
16 the Protected Material that was returned or destroyed and (2) affirms that the Receiving Party has  
17 not retained any copies, abstracts, compilations, summaries or any other format reproducing or  
18 capturing any of the Protected Material. Notwithstanding this provision, Counsel are entitled to  
19 retain an archival copy of all pleadings, motion papers, trial, deposition, and hearing transcripts,  
20 legal memoranda, correspondence, deposition and trial exhibits, expert reports, attorney work  
21 product, and consultant and expert work product, even if such materials contain Protected  
22 Material. Any such archival copies that contain or constitute Protected Material remain subject to  
23 this Protective Order as set forth in Section 4 (DURATION).

24 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

25  
26 DATED: 9/29/16 \_\_\_\_\_ /s/ \_\_\_\_\_  
27 Attorney for Plaintiffs  
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DATED: 9/29/16 \_\_\_\_\_ /s/ \_\_\_\_\_

Attorney for Defendants

PURSUANT TO STIPULATION, IT IS SO ORDERED.

DATED: October 5, 2016 \_\_\_\_\_



YVONNE GONZALEZ ROGERS  
United States District Judge

1 EXHIBIT A

2 ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

3 I, \_\_\_\_\_ [print or type full name], of \_\_\_\_\_ [print or  
4 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 \_\_\_\_\_ [**insert formal name of the case and**  
7 **the number and initials assigned to it by the court**]. I agree to comply with and to be bound by  
8 all the terms of this Stipulated Protective Order and I understand and acknowledge that failure to so  
9 comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise  
10 that I will not disclose in any manner any information or item that is subject to this Stipulated  
11 Protective Order to any person or entity except in strict compliance with the provisions of this  
12 Order.

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

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

20  
21 Date: \_\_\_\_\_

22 City and State where sworn and signed: \_\_\_\_\_

23  
24 Printed name: \_\_\_\_\_

25  
26 Signature: \_\_\_\_\_

27  
28